

## FIRST DIVISION

[ G.R. No. 198314, September 24, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RICHARD GUINTO Y SAN ANDRES, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

This is an appeal filed by herein accused Richard Guinto y San Andres (Guinto) from the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated 31 January 2011, affirming the decision of conviction rendered by the Regional Trial Court (RTC) of Pasig City for violation of Section 5, Article II of R.A. No. 9165.<sup>[2]</sup>

#### **The Facts**

The prosecution presented a buy-bust case.

As narrated by Police Officer 1 Melvin Jesus S. Mendoza (PO1 Mendoza), the operation was conducted on 20 January 2004 at around 1:00 o'clock in the morning by the members of Anti-Illegal Drugs Special Task Force (AIDSTF), Pasig City Police Station. It was prompted by an information given by a female caller received by AIDSTF's Team Supervisor Senior Police Officer 3 Leneal Matias (SPO3 Matias), who in turn, coordinated with Police Inspector Melbert Esguerra (P/Insp. Esguerra), the head of AIDSTF. According to the female caller, a certain "Chard" was selling *shabu* in a place located at 137 MC Guinto, *Barangay Pinagbuhatan*, Pasig City. Based on the information, P/Insp. Esguerra instructed the team to verify the call from their civilian informant residing also in *Barangay Pinagbuhatan*. Upon positive verification, P/Insp. Esguerra formed a buy-bust team composed of SPO3 Matias, SPO2 Braulio Basco (SPO2 Basco), PO1 Michael Familara (PO1 Familara), PO1 Alan Mapula, and PO1 Porferio Bansuelo (PO1 Bansuelo) and designated PO1 Mendoza to act as the poseur-buyer. In turn, SPO3 Matias prepared the pre-operation report and coordinated with the Philippine Drug Enforcement Agency (PDEA) on the buy-bust operation. PO1 Mendoza, as the poseur-buyer, was given two (2) pieces of marked P100.00 bills as buy-bust money by P/Insp. Esguerra.<sup>[3]</sup>

After the briefing, the team including the informant proceeded to the target area at around eleven o'clock in the evening of 19 April 2004. Upon arrival, PO1 Mendoza and the informant positioned themselves outside the house of this certain "Chard" (later identified as the accused Richard S.A. Guinto) and waited for him to step out. Meanwhile, the rest of the team stood nearby and waited for PO1 Mendoza's pre-arranged signal of raising of hand to indicate that the sale transaction was already consummated. After two hours, Guinto finally went out of the house. The informant approached Chard and introduced PO1 Mendoza as a person in need of illegal drugs worth P200.00. PO1 Mendoza then gave buy-bust money to Guinto as payment. Guinto, in turn, drew two (2) plastic sachets containing *shabu* and gave them to PO1

Mendoza. Guinto then put the money on his left pocket. To indicate consummation of illegal sale, PO1 Mendoza made the pre-arranged signal to the other members of the team and introduced himself to Guinto as a police officer. The other members of the team responded and arrested Guinto. Immediately, PO1 Mendoza confiscated the marked money from the left pocket of Guinto and marked the plastic sachet containing shabu with the markings "RSG/MJM."<sup>[4]</sup>

Afterwards, the buy-bust team brought Guinto to Pasig City Police Station and turned him over to SPO2 Basco for investigation. PO1 Mendoza turned over the confiscated drugs to SPO2 Basco. Consequently, SPO2 Basco asked for a laboratory examination request to determine the chemical composition of the confiscated drugs.<sup>[5]</sup> Thereafter, confiscated drug was brought by PO1 Noble to the Philippine National Police (PNP) Crime Laboratory for examination.<sup>[6]</sup>

The prosecution also presented PO1 Familara as its second witness to corroborate the statements given by PO1 Mendoza. However, several inconsistencies were apparent in his testimony.

When asked during his direct examination on who gave the buy-bust money to PO1 Mendoza, PO1 Familara answered that it was SPO3 Matias.<sup>[7]</sup> Likewise, the pre-arranged signal was differently described as scratching of the nape instead of raising of hand.<sup>[8]</sup> He also testified that their asset arrived at around one o'clock in the morning to accompany them to Pinagbuhatan.<sup>[9]</sup> Another inconsistency which surfaced was when PO1 Familara testified that upon the consummation of illegal sale, he went to the place of the arrest and saw PO1 Mendoza arresting Guinto. PO1 Mendoza then positively identified Guinto as the one who sold one (1) plastic sachet of illegal drug instead of two (2) sachets.<sup>[10]</sup>

Finally, the last witness presented by the prosecution was Police Officer 2 Richard Noble (PO2 Noble).<sup>[11]</sup> He corroborated the statements given by his fellow police officers but again, presented an inconsistency as to the time of the asset's arrival compared to the one narrated by PO1 Familara. A conflict came out as to the time of the team's arrival to the target area and as to how long they waited for the accused to go out. In his direct, he testified that the asset arrived at the police station before eleven o'clock in the evening prior to the buy-bust operation.<sup>[12]</sup> Afterwards, they had a briefing on the operation. He recalled that they waited for around 15 to 20 minutes before the accused came out<sup>[13]</sup> while PO1 Mendoza testified that they waited for the accused for two hours. When asked again by the Court on the time of their arrival, he answered that it was at around one o'clock in the morning.<sup>[14]</sup>

The defense interposed denial.

Guinto narrated that at the time of the arrest at 10:00 o'clock in the evening of 19 January 2004, he was in their house cooking with his family. Several men suddenly entered the house, grabbed his arm and searched the premises. When asked why the men entered their home, the men did not give them any reason. Afterwards, Guinto was brought to the police headquarters and investigated by the police.<sup>[15]</sup>

Jane P. Guinto (Jane), the wife of the accused Guinto, corroborated the statements of her husband. She recalled that several armed male persons entered their house while she and her family were cooking to celebrate fiesta the next day. The men were not authorized to search nor arrest the person of his husband and failed to introduce themselves to them. Thereafter, these male persons frisked her husband, handcuffed him and brought to the police station. Meanwhile, Jane left her two children under the care of her aunt to follow her husband. It was there at the station where the police officers tried to extort money from her in the amount of P50, 000.00.<sup>[16]</sup>

Finally, John Mark P. Guinto (John Mark), one of the two children of Guinto, affirmed the narration of his parents on material points. He testified that he and his younger brother were watching television at the time of the illegal arrest of his father. His parents were then cooking when some uniformed police officers arrested his father and brought him to the police station. However, he testified that he went to their neighbor's house and hid there out of fear, contrary to the statement of his mother that she brought them to her aunt.<sup>[17]</sup>

Guinto was eventually charged with Illegal Sale of Dangerous Drugs punishable under Section 5 of Article II of R.A. No. 9165:

On or about January 20, 2004 in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Melvin Santos Mendoza, a police poseur buyer, two (2) heat-sealed transparent plastic bag each containing two centigrams (0.02 gram) of white crystalline substance, which were found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of said law.<sup>[18]</sup>

When arraigned, he pleaded not guilty to the offense charged.

Based on the Pre-Trial Order,<sup>[19]</sup> the prosecution and defense stipulated that Forensic Chemist Annalee R. Forro (Forro) of the PNP Crime Laboratory conducted an examination on the samples submitted and they yielded positive results for methamphetamine hydrochloride commonly known as *shabu*.

### **The Ruling of the Trial Court**

The trial court on 8 October 2008 rendered a Decision<sup>[20]</sup> finding Guinto guilty beyond reasonable doubt of the offense charged and imposed upon him the penalty of life imprisonment and a fine of P500,000.00 for violation of Section 5, Article II of R.A. No. 9165 with all the accessory penalties under the law. It held that all the elements to constitute illegal sale was present to convict the accused of the offense. Likewise, it affirmed the testimonies of the police officers on the conducted buy-bust operation and the presumption of regularity in the performance of their duties as against the claim of unsubstantiated denial of Guinto.

### **The Ruling of the Court of Appeals**

The appellate court affirmed the ruling of the trial court. It ruled that all the elements of illegal sale of dangerous drug were proven as testified by the police officers PO1 Mendoza and PO1 Familara. It found credible the straightforward and categorical statements of the prosecution witnesses on what transpired during the buy-bust operation.<sup>[21]</sup> Further, it held that the prosecution has proven as unbroken the chain of custody of evidence and the regularity of performance of the police officers who conducted the operation. Finally, it affirmed that the non-compliance of the strict procedure in Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 did not invalidate the seizure and custody of the seized items as the integrity and evidentiary value of the seized items are properly preserved by the operatives.<sup>[22]</sup>

### **Our Ruling**

After a careful review of the evidence, we reverse the finding of the trial courts. We find that the prosecution failed to prove the identity of the *corpus delicti*. This is fatal in establishing illegal sale. Moreover, the conflicting statements of the policemen on material points tarnished the credibility of the testimony for the prosecution.

Primarily assailed by the accused are the inconsistent statements of the apprehending police officers with respect to the circumstances of his illegal arrest and the broken chain of custody which would warrant his acquittal.

We are convinced.

In illegal sale of dangerous drugs, the prosecution must establish the identity of the buyer and the seller, the object and consideration of the sale and the delivery of the thing sold and the payment therefor.<sup>[23]</sup> Hence, to establish a concrete case, it is an utmost importance to prove the identity of the narcotic substance itself as it constitutes the very corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is therefore imperative for the prosecution to first establish beyond reasonable doubt the identity of the dangerous drug before asserting other arguments.<sup>[24]</sup>

In this case, the prosecution failed to prove that each and every element that constitutes an illegal sale of dangerous drug was present to convict the accused. Upon evaluation of the testimonies of PO1 Familara and PO1 Mendoza, it is apparent that there is an inconsistency on the identity and number of plastic sachets bought from the accused. In his statement, PO1 Familara recalled that upon arrival at the place of arrest, PO1 Mendoza told him that he was able to buy one plastic sachet of shabu from Guinto. On the other hand, PO1 Mendoza recalled that he was able to buy two plastic sachets instead of one. The pointed inconsistency is not a minor one that can be brushed aside as the discrepancy taints the very corpus delicti of the crime of illegal sale. A vital point of contention, the prosecution's evidence places in reasonable doubt the identification of the dangerous drug that was presented in court.

We likewise see that the conflicting statements of the police officers defeat the presumption of the regularity of their performance of duties ordinarily accorded by