

SECOND DIVISION

[G.R. No. 205821, October 01, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARRY DELA CRUZ Y DE GUZMAN, ACCUSED-APPELLANT.

DECISION

LEONEN, J.:

"Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."^[1]

This resolves an appeal from a conviction for violation of Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On September 15, 2004, accused-appellant Garry dela Cruz (dela Cruz) was charged with illegal sale and illegal possession of dangerous drugs in two separate informations,^[2] as follows:

Criminal Case No. 5450 (20920).

VIOLETION OF SECTION 5, A[R]TICLE (sic) II K OF THE
COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002
(REPUBLIC ACT NO. 9165)

That on or about September 14, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drugs, did then and there wilfully, unlawfully and feloniously, SELL AND DELIVER to PO1 WILFREDO BOBON y TARROZA, a member of the PNP, who acted as buyer, one (1) small heat-sealed transparent plastic pack containing white crystalline substance having a total weight of 0.0120 gram which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (*shabu*) knowing the same to be a dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 5451 (20921).

VIOLETION OF SECTION 11, ARTICLE II OF THE
COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002
(REPUBLIC ACT NO. 9165)

That on or about September 14, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there wilfully, unlawfully and feloniously, have in his possession and under his custody and control six (6) pieces heat-sealed transparent plastic sachets each containing white crystalline substance, each weighing as follows: 1) 0.0135 gram; 2) 0.0183 gram; 3) 0.0542 gram; 4) 0.0197 gram; 5) 0.0100 [gram]; and 6) 0.0128 gram or a total of 0.1285 gram; which when subjected to qualitative examination gave positive result to the tests for Methamphetamine Hydrochloride (*shabu*) knowing same to be a dangerous drug.

CONTRARY TO LAW.^[3] (Citations omitted)

As alleged by the prosecution, dela Cruz was arrested in a buy-bust operation. The buy-bust operation was allegedly conducted after a civilian informant (the informant) tipped the Zamboanga City Police Office that a certain "Gary" was selling illegal drugs at the parking area for buses behind Food Mart, Governor Lim Street, Sangali, Bunguioa, Zamboanga City (the target area).^[4]

The buy-bust operation team included PO1 Wilfredo Bobon (PO1 Bobon), as poseur-buyer, and SPO1 Roberto Roca (SPO1 Roca), as back-up arresting officer. It was agreed that "PO1 Bobon would remove his bull cap once the sale of illegal drugs was [consummated]." The buy-bust team prepared a P100.00 bill with serial number KM 776896 as marked money.^[5]

At around 11:00 a.m. of September 14, 2004, the buy-bust operation team, accompanied by the informant, went to the target area. The informant initially brokered the sale of *shabu*. It was PO1 Bobon who handed the marked money to dela Cruz in exchange for one (1) heat-sealed plastic sachet of suspected *shabu*. After which, he removed his bull cap. SPO1 Roca then arrested dela Cruz.^[6]

Upon frisking dela Cruz, PO1 Bobon supposedly recovered six (6) more heat-sealed sachets of suspected *shabu*. PO1 Bobon placed the sachet he purchased from dela Cruz in his right pocket and the six (6) other sachets in his left pocket. SPO1 Roca recovered the marked ₱100.00 bill.^[7]

Dela Cruz and the seven (7) sachets seized from him were then brought to the Zamboanga City Police Station.^[8] There, PO1 Bobon taped the sachets. He then marked the sachet from his right pocket with his initials, "WB."^[9] He marked the sachets from his left pocket as "WB-1," "WB-2," "WB-3," "WB-4," "WB-5," and "WB-6."^[10]

On the same day, the seven (7) sachets were turned over to SPO1 Federico Lindo, Jr., the investigating officer, who prepared the request for laboratory examination. Subsequently, the tests yielded positive results for *shabu*.^[11]

During trial, the prosecution presented as witnesses PO1 Bobon, SPO1 Roca, and

forensic chemist Police Inspector Melvin L. Manuel. The sole witness presented for the defense was dela Cruz himself.^[12]

For his part, dela Cruz acknowledged that on the morning of September 14, 2004, he was in the target area. As he was leaving the comfort room, someone embraced him from behind, while another poked a gun at him. He was then handcuffed and brought to an L-300 van which was parked in front of Food Mart. Inside the van, he was asked if he was Jing-Jong, alias Jong-Jong. Despite his denials, he was brought to the police station. It was when he was already detained that he learned that he was charged for violation of the Comprehensive Dangerous Drugs Act of 2002.^[13]

On August 19, 2010, the Regional Trial Court, Branch 13, Zamboanga City, convicted dela Cruz for violating Article II, Section 5 of the Comprehensive Dangerous Drugs Act of 2002 and sentenced him to life imprisonment and a fine of P500,000.00. He was also convicted for violating Article II, Section 11 of the Comprehensive Dangerous Drugs Act of 2002 and sentenced to 12 years and one day up to 14 years imprisonment and a fine of P300,000.00. The dispositive portion of this decision reads:

WHEREFORE, this Court finds:

1. In Criminal Case No. 5450 (20920), accused GARRY DELA CRUZ y DE GUZMAN guilty beyond reasonable doubt for violating Section 5, Article II of R.A. 9165 and sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000) without subsidiary imprisonment in case of insolvency;
2. In Criminal Case No. 5451 (20921), accused GARRY DELA CRUZ y DE GUZMAN guilty beyond reasonable doubt for violating Section 11, Article II of R.A. 9165 and sentences him to suffer the penalty of TWELVE YEARS AND ONE DAY to FOURTEEN YEARS of imprisonment and pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000) without subsidiary imprisonment in case of insolvency.

The methamphetamine hydrochloride used as evidence in these cases are hereby ordered confiscated to be turned over to the proper authorities for disposition.

SO ORDERED.^[14]

On appeal to the Court of Appeals, dela Cruz assailed the prosecution's failure to establish the chain of custody of the seized sachets of shabu. He also assailed the validity of the buy-bust operation and the prosecution's failure to present the informant in court.^[15]

On May 31, 2012, the Court of Appeals rendered a decision^[16] affirming dela Cruz' conviction *in toto*. Thereafter, dela Cruz filed his notice of appeal.^[17]

In the resolution^[18] dated April 15, 2013, this court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.

On June 6, 2013, the Office of the Solicitor General filed a manifestation and motion,^[19] on behalf of the People of the Philippines, noting that it would no longer file a supplemental brief as the brief it filed with the Court of Appeals had adequately addressed the arguments and issues raised by dela Cruz.

On August 7, 2013, dela Cruz filed a manifestation^[20] indicating that he, too, would no longer file a supplemental brief and that he was instead re-pleading, adopting, and reiterating the defenses and arguments in the brief he filed before the Court of Appeals.

For resolution is the issue of whether dela Cruz's guilt beyond reasonable doubt for violating Sections 5 and 11 of the Comprehensive Dangerous Drugs Act of 2002 was established. Subsumed in the resolution of this issue are the issues raised by dela Cruz in the brief he filed with the Court of Appeals, foremost of which is whether the prosecution was able to establish compliance with the chain of custody requirements under Section 21 of the Comprehensive Dangerous Drugs Act of 2002.

The elements that must be established to sustain convictions for illegal sale and illegal possession of dangerous drugs are settled:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.^[21]

With respect to the element of *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act of 2002, as amended by Republic Act No. 10640 provides for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Particularly on the matter of custody before a criminal case is filed, Section 21, as amended, provides:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as

well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) **The apprehending team** having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment ***shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof:*** Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification;

. . . .

The significance of complying with Section 21's requirements cannot be overemphasized. Non-compliance is tantamount to failure in establishing identity of corpus delicti, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused.