

SECOND DIVISION

[G.R. No. 186455, November 19, 2014]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ROSALINDA CASABUENA, RESPONDENT.

DECISION

BRION, J.:

This is an appeal filed by appellant Rosalinda Casabuena assailing the June 25, 2008 decision^[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 02575. The CA decision affirmed the November 16, 2007 decision^[2] of the Regional Trial Court (RTC), Branch 16, Laoag City, finding the appellant guilty beyond reasonable doubt of violation of Section 5,^[3] Article II of Republic Act (R.A.) No. 9165, and sentencing her to suffer the penalty of life imprisonment.

THE ANTECEDENTS:

The prosecution charged the appellant with illegal sale of shabu under Section 5, Article II of R.A. No. 9165 under an Information which states:

That on or about the 4th day of February, 2004, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously sell in a buy bust operation to Armando Joaquin acting as the poseur-buyer 0.0139 gram of shabu, a dangerous drug, contained in one plastic sachet, without any license or authority to sell the same, in violation of the aforecited law.

CONTRARY TO LAW.^[4]

The appellant was duly arraigned and pleaded not guilty to the charge laid.

The prosecution presented the following witnesses in the trial that ensued: Senior Police Officer (SPO) 1 Rovimmanuel Balolong; Police Senior Inspector (P/Sr. Insp.) Mary Ann Nilo Cayabyab; Armando Joaquin; and SPO2 Loreto Ancheta.

The appellant and Reynante Abian testified for the defense.

SPO1 Balolong testified that on February 4, 2004, one of the police informants, Armando, went to the Laoag City Police Station and informed him that the appellant was selling shabu in *Barangay* 5. Acting on this information, the city's chief of police formed an entrapment team. The team conducted a 'briefing', assigned Armando as the poseur-buyer, and then went to the target area.^[5]

When the team arrived there, they positioned themselves 15 meters from the

appellant's compound. Armando followed them after receiving a call from SPO1 Balolong. Armando entered the appellant's house when he arrived; he went out after two (2) minutes and made the pre-arranged signal to the other members of the buy-bust team. Immediately after, SPO1 Balolong, PO1 Mangapit, and PO1 Celso Pang-ag went inside the appellant's house.

Once inside, Armando handed the sachet of shabu to SPO1 Balolong. Armando then led the police to the bathroom, and there, Armando grabbed the left hand of the appellant. SPO1 Balolong, for his part, "forced open" the appellant's right hand and took two P100 bills from her.^[6] SPO1 Balolong informed the appellant of her constitutional rights, and then ordered PO1 Mangapit to arrest her.

The police then brought the appellant and the seized items to the Laoag City Police Station. When they arrived there, SPO1 Balolong submitted the seized items to SPO2 Loreto Ancheta, the evidence custodian who, in turn, marked these items.^[7]

On cross examination, SPO1 Balolong stated that Armando was just a "walk-in" informant.^[8] SPO1 Balolong also admitted that he did not witness the transaction between Armando and the appellant since he was outside the latter's house.^[9]

P/Sr. Insp. Cayabyab, the Forensic Chemical Officer of the Philippine National Police Crime Laboratory in Laoag City, stated that on February 4, 2004, Merlita Pasion, the laboratory's receiving clerk, handed to her a letter-request and a small plastic sachet containing alleged shabu. She put her initials on the sachet, made an initial preliminary examination on the submitted specimen, and found it positive for the presence of 0.0139 gram of shabu. She conducted a confirmatory test on the specimen, and this test yielded the same result. The results of these two tests were reflected in the Initial Laboratory Report and in Chemistry Report No. D-011-2004, respectively.^[10]

Armando declared on the witness stand that in the afternoon of February 4, 2004, he reported to SPO1 Balolong that the appellant was selling shabu. SPO1 Balolong handed him P200.00, and told him use the money in buying shabu from the appellant. SPO1 Balolong and his team then went to the target area, while the appellant was left at the police station. Afterwards, SPO1 Balolong called Armando on the phone, and told him to come to the target area. Armando rode a tricycle, alighted at Ablan Avenue, and went inside the appellant's house.

Once inside, he saw the appellant brushing her teeth in front of the bathroom.^[11] Armando told the appellant he wanted to buy P200.00 worth of shabu. The appellant took the money, got a sachet inside the bathroom, and gave this to the Armando. Armando went outside the house, and made the pre-arranged signal to the police. The police approached Armando who, in turn, handed the sachet to SPO1 Balolong.^[12]

Thereafter, the police and Armando entered the appellant's house. Armando went to the bathroom, and grabbed the right hand of the appellant. SPO1 Balolong, for his part, held the appellant's left hand, and took the P200.00. Armando went home, while the police brought the appellant to the police station.^[13]

SPO2 Ancheta testified that on February 4, 2004, he received one plastic sachet containing crystalline substances and two (2) pieces of P100 bill from SPO1 Balolong. He claimed that he marked the sachet, weighed it, and prepared a request for laboratory examination. With regard to the marked money, SPO2 Ancheta claimed that he noted their respective serial numbers, and then placed them in a steel cabinet. He maintained that the item presented to him was the same item given to him by SPO1 Balolong because it bore the markings he made.^[14]

The defense presented a different version of the events.

Abian recalled that at around 11:00 a.m. on February 4, 2004, he was in front of the gate of the appellant's house when Armando approached him and asked if there was any available shabu, and whether his (Abian's) aunt was selling shabu. When he answered in the negative, Abian asked him for his aunt's identity. Abian pointed to the appellant – who was then near the bathroom. Thereafter, the appellant called Abian and asked him to buy a shampoo. Abian did as instructed and bought shampoo. When he returned, he handed the shampoo to the appellant who, in turn, went inside the bathroom.^[15] Afterwards, SPO1 Balolong went to the bathroom, kicked the door open, and asked the appellant where the money was. When the appellant answered that there was no money, SPO1 Balolong pulled her (appellant) out of the bathroom. The police asked the appellant to put her clothes on, and then brought her to the police headquarters.^[16]

The appellant testified that on February 4, 2004, she was in front of the bathroom of her house, and about to take a bath, when she saw Armando talking with Abian. The appellant called Abian and requested him to buy shampoo.^[17] Thereafter, Armando entered the appellant's house, approached the appellant, and tried to give her money. The appellant refused to accept the money, and returned to the bathroom to take a bath.

While she was taking a bath, the appellant heard a male voice looking for her.^[18] Immediately after, somebody kicked the bathroom door open. The appellant sat down and covered her naked body. SPO1 Balolong asked where the money was, but when she answered that she had no idea, SPO1 Balolong pulled her out of the bathroom. SPO1 Balolong went inside the bathroom and searched for the money; he then told the appellant to change clothes since she will be brought to the police station for investigation.^[19] According to the appellant, the police did not sign any confiscation receipt. She maintained that she did not sell shabu to Armando on February 4, 2004.^[20]

In its decision dated November 16, 2006, the RTC found the appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165, and sentenced her to suffer the penalty of life imprisonment. It also ordered her to pay a P500,000.00 fine.

On appeal, the CA affirmed the RTC decision. The CA held that the prosecution was able to prove that the appellant sold shabu to the poseur-buyer. It found Armando to be a credible witness, in the absence of any showing that there was ill motive on his part to falsely testify against the appellant. It also ruled that Section 21(a) of R.A. No. 965 had been "dutifully followed" when the police conducted a field test of

the drugs recovered had been made, and forwarded it and the marked money to the PNP Crime Laboratory.

In her brief and supplemental brief, the appellant essentially maintains that the chain of custody over the seized drug was broken. She added that the integrity and evidentiary value of the object evidence had not been preserved.

The Office of the Solicitor General (OSG) counters with the argument that the sale of the shabu between the appellant and the civilian informant had been established. It further argued that the police followed the procedures in the handling and safekeeping of the seized drugs.

THE COURT'S RULING

After due consideration, we resolve to **ACQUIT** the appellant.

The requirements of paragraph 1, Section 21 of Article II of R.A. No. 9165

In a prosecution for the illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti*, i.e., the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the **same** illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.^[21]

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory** 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. [Emphasis ours]

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which reads:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory** 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, a representative from the media and the Department of Justice (DOJ), and any elected public official 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, further, that non-compliance with 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 of and custody over said items. (Emphasis ours)

Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.^[22] The outlined procedure, however, was not shown to have been complied with by the members of the buy-bust team, and nothing on record suggests that they had extended reasonable efforts to comply with the said statutory requirement in handling the seized evidence. The testimonies of SPO1 Balolong, SPO2 Ancheta, and Armando all showed that **the police did not inventory or photograph the seized shabu either at the place where it was seized or at the police station.** Notably, no photographs or certificate of inventory of the confiscated items appear in the records.

To be sure, Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165, *i.e.*, "*non-compliance with 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 of and custody over said items[.]*" This saving clause, however, applies only where the prosecution recognized the procedural lapses and thereafter explained the cited justifiable grounds, and when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.^[23]

These conditions were not met in the present case, as the prosecution **did not even attempt to offer any justification why it failed to inventory and to photograph the seized items.** The Court cannot simply presume what these justifications are. Contrary to the CA's ruling, the so-called "field test of the drugs recovered" and its turn over to the crime laboratory together with the marked money are not the procedures mandated by Section 21 and its IRR.

The "Chain of Custody" Requirement

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed. The rule seeks to settle definitively whether the object evidence subjected to laboratory examination and presented in court is the same object allegedly seized from appellant.^[24]

Board Regulation No. 1, Series of 2002 defines **chain of custody** as "*the duly*