

SECOND DIVISION

[G.R. No. 190175, November 12, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN CABRERA, ACCUSED-APPELLANT.

R E S O L U T I O N

DEL CASTILLO, J.:

Assailed in this appeal is the June 18, 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 00784 which affirmed in all respects the March 5, 2007 Decision^[2] of the Regional Trial Court (RTC), Branch 15, Cebu City in Criminal Case No. CBU-64615, finding appellant Edwin Cabrera (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165^[3] (RA 9165) and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

Factual Antecedents

After receiving information from residents of Sitio Galaxy, Tangke, Talisay, Cebu and a report from a confidential asset of the illegal drug activities of appellant, police officers from the Talisay Police Station composed of PO1 Leopoldo Palconit (PO1 Palconit), PO3 Isaias Cabuenas, and PO2 Joel Cunan conducted a buy-bust operation against appellant on September 30, 2002. At about 4:30 p.m., poseur-buyer PO1 Palconit, together with the confidential asset, approached appellant who was standing outside his house. The confidential asset introduced PO1 Palconit to appellant as a person who wanted to buy *shabu*. PO1 Palconit gave appellant two marked P50.00 bills, while the latter handed to him two plastic sachets containing white crystalline substance. Thereupon, PO1 Palconit made the pre-arranged signal by touching his head with his right hand. His back-ups then rushed to the scene and simultaneously therewith PO1 Palconit arrested the appellant. He then put the markings "EC" on the two plastic sachets and brought the same to the Philippine National Police (PNP) Crime Laboratory for forensic examination.^[4]

The following day or on October 1, 2002, a Complaint/Information was filed against appellant charging him with violation of Sec. 5, Article II, of RA 9165 as amended, the pertinent portion of which reads:

That on or about 4:30 P.M. of September 30, 2002, at Tangke, Talisay City, Cebu, Police Operatives of Talisay City Police Station proceeded to Tangke, Talisay City, Cebu to conduct buy[-]bust operation [resulting in] the arrest of one (1) Edwin Cabrera and within the jurisdiction of this Honorable Court, the above[-]named accused without the authority of the law, did then and there, willfully, unlawfully and feloniously, [recover] from [his] possession, custody and control, [t]wo (2) x x x plastic

pack[s] of white crystalline substance believed to be shabu, other paraphernalia in [his] illegal activity and [t]wo [f]ifty[-p]eso [b]ill[s] used as mark[ed] money with [the markings] SN.WD565189 and VH234189 (Recovered White [Crystalline] Substance submitted to Crime Lab. [f]or examination.

CONTRARY TO LAW.^[5]

The chemistry report^[6] from the PNP Crime Laboratory later revealed that the white crystalline substance with a total weight of 0.11 gram inside the two plastic sachets marked with "EC" tested positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.

Appellant pleaded "not guilty" to the crime charged.^[7] He denied the accusations against him and offered his own version of the story. According to appellant, at around 4:30 p.m. of September 30, 2002, he was at the alley outside his house washing clothes. Three men then approached him. They requested him to buy *shabu* and gave P200.00. He acceded and thus went to the house of a certain Rey Campo (Campo) which is about 50 meters or six houses away from his house. After buying *shabu* from Campo, he went back to his house to give it to the three men. Thereupon, four policemen arrived and searched his house, but recovered nothing therefrom. Appellant claimed that he was familiar with one of the policemen, PO1 Palconit, because he would see him conducting raids in Sitio Galaxy. Appellant thus averred that he would never sell *shabu* to PO1 Palconit because he knew that he is a police officer.^[8]

Ruling of the Regional Trial Court

In a Decision^[9] dated March 5, 2007, the RTC convicted appellant of the crime charged, viz:

WHEREFORE, in view of the foregoing, this Court hereby finds accused Edwin Cabrera GUILTY beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165 and in the absence of any mitigating and aggravating circumstances, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE of FIVE HUNDRED THOUSAND (P500,000.00) PESOS, together with all the accessory penalties provided for by law. The physical evidence is hereby forfeited in favor of the government to be disposed of in accordance with law.

SO ORDERED.^[10]

Ruling of the Court of Appeals

On appeal to the CA, appellant questioned the legality of the alleged buy-bust operation. He pointed to the absence of a prior surveillance and pre-operation report. He likewise assailed the non-presentation in court of the confidential informant and of the marked money. Moreover, he alleged a break in the chain of

custody by emphasizing that the confiscation of the specimen happened at 4:30 p.m. of September 30, 2002 while the submission of the same to the PNP Crime Laboratory for examination was made only at 10:50 p.m. of the same day. Because of these, appellant averred that his guilt was not proven beyond reasonable doubt.
[11]

In its Decision^[12] dated June 18, 2009, the CA held that the testimony of PO1 Palconit and the existence of the dangerous drug seized from appellant more than sufficiently proved the crime charged. PO1 Palconit positively identified appellant as the person who sold to him the plastic sachets containing the white crystalline substance which was confirmed in the laboratory examination as *shabu* and later brought to and identified in court.

The appellate court likewise upheld the legality of the buy-bust operation. It ratiocinated that prior surveillance is not required in a buy-bust operation especially where the police operatives are accompanied by their informant during the entrapment, as in this case. Neither is the submission of a pre-operation report necessary for a conviction under Section 5, Article II of RA 9165 as long as the elements of the offense are sufficiently established by the prosecution. Further, there is no need to present in court the confidential informant and the marked money. Presentation of the confidential informant is only required when there are material inconsistencies in the testimony of the prosecution witness which is not the case here, since PO1 Palconit's testimony was found by the trial court to be credible and convincing. In the same way, presentation of the marked money is not required either by law or jurisprudence.

The CA did not likewise give credence to appellant's claim of gap in the chain of custody as it found the identity and integrity of the drugs to have been established and preserved by the prosecution. Besides, the defense admitted the existence, due execution and genuineness of the chemistry report and the specimen submitted.

The dispositive portion of the CA Decision reads:

WHEREFORE, the Decision dated March 5, 2007 of the Regional Trial Court ("RTC"), 7th Judicial Region, Branch 15, Cebu City, in Criminal Case No. CBU-64615, finding appellant Edwin Cabrera guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 is AFFIRMED in all respects.

SO ORDERED.^[13]

Appellant thus interposes this appeal where he raised as additional assignment of errors the lack of physical inventory of the seized specimen and the non-taking of its photograph pursuant to Section 21^[14] of the Implementing Rules of RA9165.^[15]

Our Ruling

The appeal has no merit.

The Court has gone over the assailed Decision of the CA and found the appellate