

## SECOND DIVISION

[ G.R. No. 198115, February 27, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE ALEX SECRETO Y VILLANUEVA, ACCUSED-APPELLANT.**

### DECISION

**PEREZ, J.:**

Once again, we recite the well-settled rule that non-compliance with the procedures laid down in Republic Act No. 9165 (R.A. 9165), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, does not necessarily warrant the acquittal of the accused,<sup>[1]</sup> provided that when there is gross disregard of the prescribed safeguards, serious doubt arises as to the identity of the seized item presented in court,<sup>[2]</sup> for which reason, the prosecution cannot simply invoke the presumption of regularity in the performance of official duties<sup>[3]</sup> to justify the omissions. For, indeed, "a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties."<sup>[4]</sup>

We review the Decision<sup>[5]</sup> dated 18 February 2011 of the Court of Appeals in CA-G.R. CR HC No. 02488, which affirmed *in toto* the Decision<sup>[6]</sup> dated 7 August 2006 of the Regional Trial Court, Branch 120, Caloocan City in Criminal Case Nos. C-68520 (03) and C-68521 (03). The trial court found accused-appellant guilty beyond reasonable doubt of illegal sale and illegal possession of methamphetamine hydrochloride (*shabu*) for which he was sentenced to suffer, among others, the severe penalty of life imprisonment.<sup>[7]</sup>

### ***The Facts***

In two (2) separate Informations<sup>[8]</sup> both dated 10 July 2003, accused-appellant was charged with illegal sale and illegal possession of *shabu*<sup>[9]</sup> before the Regional Trial Court of Caloocan City.

On 13 August 2003, accused-appellant pleaded not guilty.<sup>[10]</sup> During pre-trial, the court dispensed with the testimony of forensic chemist Police Inspector Erickson L. Calabocal (P/Insp. Calabocal), after the parties stipulated on the following:

1. That the witness is an expert witness;
2. That on July 10, 2003, [the witness'] office received a request for laboratory examination;
3. That based on the request for laboratory examination x x x, he conducted a qualitative examination on two (2) heat-sealed transparent plastic sachets containing white crystalline

substance with [the] following markings and recorded net weights: A (RLR-1) – 0.06 gram B (RLR-2 – 0.04 gram[;];]

4. That he recorded his findings in writing as evidenced by Physical Science Report No. D-700-03[;]

x x x x

- [5.]That the witness has no personal knowledge as to the facts and circumstances surrounding the arrest of the accused; and

- [6.]That the witness has no personal knowledge from whom the subject specimens were confiscated. That the result of examination is not accompanied by a Certification as required under Rule Sec. 21(3) of R.A. 9165.<sup>[11]</sup>

On trial, the prosecution presented the following: PO2 Loreto Lagmay<sup>[12]</sup> (PO2 Lagmay) and PO1 Randy Llanderal<sup>[13]</sup> (PO1 Llanderal), both of the District Anti-Illegal Drugs Special Operations Group (DAID-SOG), Tanique Street, Kaunlaran Village, Caloocan City. The defense, on the other hand, presented accused-appellant<sup>[14]</sup> and his mother Marietta Secreto.<sup>[15]</sup> Their respective testimonies were summarized by the appellate court in the following manner:

x x x x

From the prosecution's evidence, it is gathered that on 09 July 2003, a tipster gave information to the [O]ffice of the District Anti-Illegal Drugs Special Operations Group (DAID-SOG) about the drug trade of accused-appellant at Libis Espina, Caloocan City. A team went to the area and validated the report. They saw accused-appellant sell Methamphetamine Hydrochloride or "shabu" to three (3) persons. Consequently, a buy-bust operation was planned and immediately implemented on the same day.

At around 8:30 P.M., the team rode on tricycles and proceeded to the target area dressed in civilian clothes. Upon their arrival, the team saw accused-appellant standing in a corner near a small alley. Together with the informant, [PO2 Lagmay], acting as poseur-buyer, approached accused-appellant to buy shabu worth P100.00 and handed to the latter the marked money. Accused-appellant then gave PO2 Lagmay a small sachet of shabu. At once, PO2 Lagmay introduced himself as a police officer and placed accused-appellant under arrest while apprising him of the Miranda rights. PO2 Lagmay then ordered Secreto to empty his pockets and recovered the marked money as well as another sachet of shabu. PO2 Lagmay presented the recovered evidences to the team leader, SPO1 Edgar Pamor. At the DAID-SOG office, the seized items were surrendered to the investigator-on-duty, [PO1 Llanderal] who then instructed PO2 Lagmay to mark the sachet of shabu sold by accused-appellant as "RLR-1," and "RLR-2" for the other sachet that was confiscated from him. PO1 Llanderal took the sworn statements of the buy-bust team and likewise prepared the requests for laboratory examination of the seized items and for a drug test on accused-appellant.

At the crime laboratory, [P/Insp. Calabocal] examined the two (2) recovered sachets weighing six tenths (0.06) and four tenths (0.04) grams, respectively. Both were found positive for shabu, a dangerous

drug. x x x

In his defense, accused-appellant denied ever having possessed, sold, or delivered shabu to PO2 Lagmay. He claimed that on 09 July 2003, he was drinking soft drinks with his friend, Bonet Soria when four (4) policemen suddenly arrested him. He was forcibly frisked but nothing illegal was found on him. The men also unlawfully entered his house looking for a certain Lito Ponga, a drug pusher in their area. His mother was surprised by the presence of the policemen in their house and she yelled at them. He was brought to the police station where he was manhandled and apprised of drug charges against him. Then the police demanded that he raise Twenty Thousand Pesos (P20,000.00) in exchange for his release and the dropping of the charge of illegal sale of dangerous drugs, but he had no money to pay them.

This narration was corroborated by his mother, Marietta. From their house, she heard the screams of accused-appellant as he was being arrested. She became hysterical especially when the policemen entered their house. She learned from her son that the police was demanding money from him. In fact, the policemen also went to her house and demanded the sum of Twenty Thousand Pesos (P20,000.00) so that the charge of Illegal Sale of Dangerous Drugs against her son will be dropped.<sup>[16]</sup>

After trial, the court found accused-appellant guilty beyond reasonable doubt of both crimes.<sup>[17]</sup>

The Court of Appeals affirmed *in toto*<sup>[18]</sup> the decision of the trial court. Hence, this appeal.

### ***Our Ruling***

The appeal is meritorious.

To secure a conviction for illegal sale of *shabu*, the following elements must be present: "(a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing."<sup>[19]</sup> It is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.<sup>[20]</sup> As to the crime of illegal possession of *shabu*, it is necessary to prove the following essential elements of the crime: "(a) the accused [was] in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug."<sup>[21]</sup> And, in the prosecution of these offenses, the primary consideration is to ensure that the identity and integrity of the seized drugs and other related articles has been preserved from the time they were confiscated from the accused until their presentation as evidence in court.<sup>[22]</sup>

We have time and again recognized, however, that a buy-bust operation resulting from the tip of an anonymous confidential informant, although an effective means of

eliminating illegal drug-related activities, is “susceptible to police abuse.”<sup>[23]</sup> Worse, it is usually used as a means for extortion.<sup>[24]</sup> It is for this reason, that the Court must ensure that the enactment of R.A. 9165 providing specific procedures to counter these abuses<sup>[25]</sup> is not put to naught.

Thus, we carefully examined the pieces of evidence on record, read the testimonies of the witnesses for the prosecution and the defense, and took a final look on the following material points:

1) Accused-appellant testified in court that the buy-bust team arrested him outside his house while he was having a light conversation with a friend. He was forcibly frisked, and when nothing was recovered from him, the officer ordered, “[*T*]animan na yan.”<sup>[26]</sup> At the police station, PO2 Lagmay and his company demanded from him the amount of P50,000 later reduced to P20,000 – *first*, allegedly to bail him out in connection with the charge of illegal sale of *shabu*, which he did not know is actually a non-bailable offense,<sup>[27]</sup> and *second*, to drop the charge of illegal sale of *shabu*.<sup>[28]</sup> As he had no money, the police officers went back to his house and demanded the same amount from his mother. Frustrated with the outcome of their errand, one of the police officers allegedly even commented, “[*W*]alang kwentang kausap ang [*n*]anay mo.”<sup>[29]</sup> The narration of the circumstances surrounding the arrest and the allegation of extortion was corroborated by his mother. Both testimonies, as appearing in the transcript of stenographic notes, were consistent on all material points;

2) Contrary to the testimony of PO2 Lagmay that the team used two tricycles in the operation, the vehicle type issued to the team as reflected in the Pre-Operation Report dated 9 July 2003 supported the claim of accused-appellant that they boarded an owner-type jeep;

3) PO2 Lagmay testified that a civilian informant came to their office at around 7:00 o’clock in the evening of 9 July 2003 to report about the illegal peddling of *shabu* by one *alias* Alex at Libis Espina, Caloocan City. A buy-bust team was organized and dispatched at around 7:30 in the evening. However, the Pre-Operation Report<sup>[30]</sup> appeared to have been issued for the surveillance and buy-bust operation against three different persons, namely, *alyas* Boy, Tess, and Jun. Also, pursuant to the said report, the operation was to start at 1:00 o’clock in the afternoon of 9 July 2003. Interestingly, this was clearly ahead of the time the DAID-SOG supposedly received the information<sup>[31]</sup> from the confidential informant at 7:00 o’clock in the evening of the same day.

4) In *Reyes v. CA* earlier referred to, the prosecution failed to explain why only six officers out of the thirteen members of the team actually executed and signed the Joint Affidavit. There, the Court concluded, that such a failure “might indicate that the incrimination of [accused] through the buy-bust operation was probably not reliable.”<sup>[32]</sup> In the present case, there were six listed in the Pre-Operation Report as part of the team but only three names, to wit, PO2 Lagmay, PO1 Ameng and PO1 Allan I. Reyes (PO1 Reyes) appeared on the face of the *Pinagsamang Sinumpaang Salaysay*.<sup>[33]</sup> Of the three only PO2 Lagmay and PO1 Ameng actually signed the document.

5) More telling are the contents of the *Pinagsamang Sinumpaang Salaysay* executed by PO2 Lagmay and PO2 Ameng, which are completely inconsistent with the testimony given by PO2 Lagmay when he later testified in court.

In their *Pinagsamang Sinumpaang Salaysay*, it was made clear that: (1) PO1 Ameng and PO1 Reyes were the ones who caught accused-appellant; while (2) PO2 Lagmay frisked the suspect and recovered from the latter's right pocket the buy-bust money together with another sachet containing white crystalline substances. Thus:

x x x Na matapos kong suriin ito at sa paniniwala ko (PO2 Lagmay) na ito ay Shabu ay kaagad kong seneniyasahan (sic) ang aking mga kasamahan sabay pakilalang mga pulis kami at siya ay aming hinuhuli. **Na kami (PO1 Ameng at PO1 Reyes) ay agad naman naming nahawakan at nahuli ang suspek. Na ng kapkapan ko (PO2 Lagmay) ang suspek ay nakuha ko sa kanang bulsa** ng suot niyang short pant na maong ang buy-bust money na Isandaang Piso at isang pang pirasong maliit na plastic na naglalaman ng maliliit na kristal na sa paniniwala ko rin na ito ay Shabu.<sup>[34]</sup> x x x (Emphasis, italics and underscoring supplied)

PO2 Lagmay, however, gave a different version when he testified in court. *First*, he claimed that it was he who arrested the accused-appellant. Thus:

Q: After that what then did you do after you were able to buy shabu?  
A: **I introduced myself as police officer and arrested him, sir.**  
Q: What about the pre-arranged signal?  
A: My pre-arranged signal by scratching my head, sir.  
Q: And then you introduced yourself as police officer and arrested him?  
A: Yes, sir.  
Q: How did you arrest him?  
A: **I held his hand, sir.**  
Q: And then?  
A: And I told him "Mga pulis kami", sir.<sup>[35]</sup> (Emphasis supplied)

*Second*, contrary to his statement in the *Pinagsamang Sinumpaang Salaysay* that he frisked accused-appellant and recovered the seized items from the latter's pocket, PO2 Lagmay testified on cross-examination that he ordered the accused-appellant to empty his pocket, *viz*:

Q: And then you introduced yourself as policeman?  
A: Yes, sir.  
Q: And you even used the word "Mga Pulis kami"?  
A: Yes, sir.  
Q: After that you did not say anything?  
A: Yes, sir.  
Q: You are not certain about that?