

## SECOND DIVISION

[ G.R. No. 190342, March 21, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CIPRIANO CARDENAS Y GOFRERICA, ACCUSED-APPELLANT.**

### DECISION

**SERENO, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated 19 February 2009 of the Court of Appeals (CA) Second Division in CA-G.R. CR-H.C. No. 02634, which affirmed the conviction of accused-appellant for violation of Section 5, Article II of Republic Act No. 9165 (R.A. 9165), the Comprehensive Dangerous Drugs Act of 2002. Appellant was convicted by the Regional Trial Court (RTC) of Quezon City, Branch 103 in Criminal Case No. Q-03-114312 for selling the prohibited drug methylamphetamine hydrochloride or *shabu*.<sup>[2]</sup>

#### The Facts

On 07 January 2003, an Information was filed against accused Cipriano Cardena y Gofrerica, alias "Ope," for violation of Section 5, Article II of R.A. 9165, allegedly committed as follows:

That on or about the 6<sup>th</sup> day of January, 2003 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero five (0.05) gram of white crystalline substance containing Methylamphetamine Hydrochloride otherwise known as "SHABU" a dangerous drug.

CONTRARY TO LAW.<sup>[3]</sup>

Upon arraignment, the accused pleaded "Not guilty" to the crime charged.<sup>[4]</sup>

#### ***Prosecution's Version of the Facts***

The evidence for the prosecution shows that around 12 p.m. of 06 January 2003, the Detection and Special Operations Division of the Criminal Investigation Division Group (DSOD-CIDG) in Camp Crame received a report from its confidential informant regarding the rampant selling of *shabu* by a certain Cipriano Cardenas (a.k.a. "Ope") at the Payatas Area in Quezon City. Acting on the information, a team was organized to conduct a buy-bust operation. Police Officer (PO) 3 Edgardo Palacio was head of the team and PO3 Rene Enteria was designated to act as the poseur-

buyer.<sup>[5]</sup> They marked a P100 bill with the initials "ERP" on the lower right portion of its dorsal side and used the money in the buy-bust operation.<sup>[6]</sup> The team agreed that upon the consummation of the sale, PO3 Enteria would throw away his cigarette to signal the moment at which the drug pusher would be arrested.<sup>[7]</sup>

The team proceeded to Lupang Pangako, *Barangay* Payatas, Quezon City to conduct the buy-bust operation. At the site, PO3 Enteria was guided by the confidential informant and closely followed by PO3 Palacio and two other team members. They chanced upon the accused wearing camouflage pants and standing near a small house located on a pathway.<sup>[8]</sup> Approaching the accused, the informant introduced the police officer as the person interested to buy *shabu*. PO3 Enteria was asked how much he wanted to buy, and he answered "P100." The accused then took out a clear plastic sachet containing a white crystalline substance from his pocket and handed it to PO3 Enteria. After handing the marked P100 bill to the accused, the police officer threw away his cigarette as a signal of the consummation of the buy-bust operation.<sup>[9]</sup>

PO3 Palacio and the rest of the team, who were just 15 meters away from the scene, immediately approached, arrested the accused, and frisked the latter. PO3 Palacio recovered two (2) other clear plastic sachets from the accused's right pocket. The three sachets were marked "CC-1," "CC-2" and "CC-3" - "CC" representing the initials of the accused, Cipriano Cardenas.<sup>[10]</sup> He was then brought to Camp Crame, where he was booked and investigated. The plastic sachets recovered from him were transmitted to the PNP Crime Laboratory for analysis upon the request of Police Chief Inspector Ricardo N. Sto. Domingo, Jr. of the DSOD-CIDG.<sup>[11]</sup> The results of the Initial Laboratory Report dated 07 January 2003<sup>[12]</sup> showed that the white crystalline substance contained in the three (3) heat-sealed plastic sachets tested positive for methylamphetamine hydrochloride, or *shabu*, with a total weight of 0.05 gram.<sup>[13]</sup>

On 07 January 2003, an Information for violation of Section 5, Article II of R.A. 9165, was filed against the accused.<sup>[14]</sup> The case was raffled to the Regional Trial Court (RTC), National Judicial Capital Region of Quezon City, Branch 103 and docketed as Criminal Case No. Q-03-114312.

### ***The Accused's Version of the Facts***

The accused had a different version of the facts surrounding his arrest. He claimed that around 3:00 p.m. of 06 January 2003, while he was walking home, four persons handcuffed him and forced him to board a vehicle.<sup>[15]</sup> He was taken to the CIDG office at Camp Crame, where he was informed that he was being arrested for selling *shabu*. While inside the investigation room, one of the men who arrested him gave the investigator a P100 bill. He claimed to have not seen the alleged *shabu* at the time of his arrest or even during the CIDG investigation or during the inquest at the public prosecutor's office.<sup>[16]</sup>

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

A full-blown trial was held by the RTC, before which were presented PO3 Palacio and PO3 Enteria as witnesses for the prosecution. For the defense, only the accused

testified in his defense. On 03 January 2007, the RTC promulgated a Decision<sup>[17]</sup> convicting him of the crime charged. The trial court gave credence to the testimonies and pieces of evidence presented by the prosecution. It ruled that the police operation had followed the normal course of a drug entrapment operation, and that the arresting officers presented as prosecution witnesses were credible based on their candid and honest demeanor. The RTC considered as absurd the allegation of the accused that he had been whimsically arrested by the police officers during the operation. It found as weak and inconceivable his uncorroborated denial of the charge.

The dispositive portion of the RTC Decision reads:

ACCORDINGLY, judgement is hereby rendered finding the accused CIRPIANO CARDENAS y GOFRERICA **GUILTY** beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 (drug pushing) as charged and he is hereby sentenced to a jail term of **LIFE IMPRISONMENT** and to pay a fine of P500,000.00.

The 3 sachets of *shabu* involved in this case are ordered transmitted to the PDEA thru the DDB for proper care and disposition as required by R.A. 9165.

SO ORDERED.

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

The accused appealed his conviction to the CA, which docketed the case as CA-G.R. CR-H.C. No. 2634. On 19 February 2009, the appellate court, through its Second Division, promulgated a Decision<sup>[18]</sup> affirming the trial court's conviction of the accused. It ruled that the prosecution was able to establish the necessary elements to prove the illegal sale of drugs under Section 5, Article II of R.A. 9165. It also found that the prosecution witnesses were credible when they testified on the custody and identity of the drugs confiscated from the accused. Thus, it affirmed *in toto* the RTC's Decision, which it found to be supported by the facts and law. The accused filed a Motion for Reconsideration, but it was denied by the appellate court for lack of merit.

### ***The Issues***

The accused elevated his appeal to this Court raising this lone issue:

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.<sup>[19]</sup>

The defense alleges that the arresting officers did not follow the required procedure for the handling of seized drugs in a buy-bust operation as stated in Section 21 of

the Implementing Rules and Regulations (IRR) of R.A. 9165.<sup>[20]</sup> It points out that there is a dearth of evidence to prove that the plastic sachets recovered from the accused were marked at the crime scene in his presence immediately upon confiscation thereof.<sup>[21]</sup> Thus, the defense argues that due to the arresting officers' noncompliance with the correct procedure, the accused is entitled to an acquittal.<sup>[22]</sup>

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

We **DENY** the appeal of the accused for lack of merit and accordingly affirm the assailed Decision of the CA.

Under Section 5 of R.A. 9165, the elements that must be proven for the successful prosecution of the illegal sale of *shabu* are as follows: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment.<sup>[23]</sup> The State has the burden of proving these elements and is obliged to present the *corpus delicti* in court to support a finding of guilt beyond reasonable doubt.<sup>[24]</sup>

In the instant case, the defense does not raise any issue with regard the sale and delivery of the illegal drugs for which the accused was arrested. The point of contention pertains to the noncompliance by the arresting officers with Section 21, Article II of the IRR implementing R.A. 9165 regarding the chain of custody of seized drugs. This is an important matter because, if proven, substantial gaps in the chain of custody of the seized drugs would cast serious doubts on the authenticity of the evidence presented in court and entitle the accused to an acquittal.

In *People v. Salonga*,<sup>[25]</sup> we held that it is essential for the prosecution to prove that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit. Its identity must be established with unwavering exactitude for it to lead to a finding of guilt. Thus, drug enforcement agents and police officers involved in a buy-bust operation are required by R.A. 9165 and its implementing rules to mark all seized evidence at the buy-bust scene. Section 21 (a), Article II of the IRR, states:

SECTION 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.

(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;

The defense wants to impress upon this Court that the arresting officers did not conduct a physical inventory of the items seized and failed to photograph them in the presence of the accused and of other personalities specified by Section 21 (a), Article II of the IRR of R.A. 9165.<sup>[26]</sup> It argues that this lapse on the part of the police officers involved in the buy-bust operation raise uncertainty and doubts as to the identity and integrity of the articles seized from the accused – whether they were the same items presented at the trial court that convicted him. Based on this noncompliance by the arresting officers, the defense prays for the acquittal of the accused.

We are not persuaded by these arguments.

The chain of custody is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition.

To protect the civil liberties of the innocent, the rule ensures that the prosecution's evidence meets the stringent standard of proof beyond reasonable doubt. We have held, however that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. In *People v. Ara*,<sup>[27]</sup> we ruled that R.A. 9165 and its IRR do not require strict compliance with the chain of custody rule:

As recently highlighted in *People v. Cortez* and *People v. Lazaro, Jr.*, RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that **what is essential is**