

SECOND DIVISION

[G.R. No. 190640, January 12, 2011]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LUIS PAJARIN Y DELA CRUZ AND EFREN PALLAYA Y TUVIERA, APPELLANTS.

DECISION

ABAD, J.:

This case is about the need for the prosecution and all law enforcement agencies involved in illegal drugs operations to ensure proper observance of the rules governing entrapment of peddlers of prohibited substances.

The Facts and the Case

The City Prosecutor of Manila charged the accused Luis Pajarin and Efren Pallaya before the Regional Trial Court (RTC) of Manila in Criminal Cases 05-237756 and 05-237757 with violation of Section 5 in relation to Sections 26 and 11 (3) in relation to Section 13, respectively, of Article II of Republic Act (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The prosecution presented PO2 Nestor Lehetemas, member of the buy-bust team and PO2 James Nolan Ibañez, the *poseur*-buyer. They testified that on June 1, 2005 at around 10:00 p.m., an informant arrived at their Station Anti-Illegal Drugs (SAID) with the report that drugs would be sold on P. Ocampo and Dominga Streets the next day at around 5:00 pm. As the *poseur*-buyer, PO2 Ibañez marked a P500.00 bill with SAID on top of its serial number.

On June 2, 2005 the buy-bust team went to the site of the operation on board a Tamaraw FX which they parked near Dominga Street. The informant pointed to the two accused, Luis Pajarin and Efren Pallaya. They stood 10 to 20 steps away beside a red scooter. PO2 Ibañez and the informant approached them. After the informant introduced PO2 Ibañez as an interested buyer, the police officer bought *shabu* from the two, using the marked P500.00 bill. Pajarin opened the compartment of the red scooter and took from it one heat-sealed transparent plastic sachet containing a white crystalline substance. When Pallaya asked for the money, PO2 Ibañez handed it to him. Then Pajarin gave one plastic sachet containing the suspected *shabu* to the officer, who raised his right hand as a pre-arranged signal. PO2 Ibañez's companions immediately rushed to the group. PO2 Ibañez grabbed Pallaya. Pajarin tried to escape but PO2 Lehetemas got hold of him.

The police searched the red scooter's compartment and recovered another plastic sachet containing the same substance. They then brought the accused to their station. The arresting officers turned over the seized suspected *shabu* to PO3 Roel Young who marked the plastic sachet seized from the scooter with the letters "ETP," and the sachet Pajarin handed over with the letters "LDGP." Chemistry Report D-

369-05 showed that upon examination of the submitted specimen, the same yielded positive result for *Methylamphetamine hydrochloride*, a regulated drug.

The defense had a completely different version. Pajarin said that at around 2:00 p.m. of June 2, 2005 he was at Pallaya's house, repairing the latter's motor pump. As he left the house and got into the street, someone hit his helmet, grabbed him, and dragged him into a Tamaraw FX. They then brought him back to Pallaya's house where four police officers got in and brought Pallaya out with them after about three minutes. The officers brought the two accused to the police station where they were investigated. PO2 Ibañez showed Pajarin a plastic sachet which he supposedly recovered from Pajarin's scooter. Pajarin denied owning the sachet. It was a police officer who drove the scooter to the police station.

For his part, Pallaya testified that on June 2, 2005 he was taking a bath at the fourth floor of his four-storey house when he heard knocking at the door. When he opened it, he was surprised to see four men there, claiming to be police officers. They broke open the doors of the house from the ground to the third floor. The officers ordered him to dress up and forced him to go with them. Pallaya asked for a warrant of arrest or a search warrant but he got no response from them. They made him board a Tamaraw FX where Pajarin sat. They then brought the accused to the police station.

On March 31, 2008 the RTC found both accused guilty of the crime charged and imposed on them the penalty of life imprisonment and a fine of P500,000.00 in Criminal Case 05-237756. In Criminal Case 05-237757, the RTC sentenced Pajarin to suffer 12 years and 1 day to 17 years and 4 months of imprisonment and to pay a fine of P300,000.00. The RTC absolved Pallaya of this second offense.

On appeal to the Court of Appeals (CA) in CA-G.R. CR-HC 03291, the latter rendered a decision dated September 30, 2009, affirming the RTC decision, hence the present appeal to this Court.

The Issues Presented

Accused Pajarin and Pallaya raise two issues:

1. Whether or not the CA erred in not excluding the evidence of the seized *shabu* on the ground that the prosecution failed to prove their integrity by establishing the chain of custody of the same until they got to the trial court; and
2. Whether or not for this reason the CA erred in affirming their conviction.

The Rulings of the Court

Appellants chiefly argue that the police officers involved in the buy-bust operation failed to comply with Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. 9165, which requires them to take immediate inventory of and photograph the seized item in the presence of the accused or his representative or responsible third persons mentioned but always taking care that the integrity and evidentiary value of the seized articles are preserved.

The Court has held in numerous cases that the failure of the police to comply with