

THIRD DIVISION

[G.R. No. 194580, August 31, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ADRIANO PASCUA Y CONCEPCION, ACCUSED-APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

This is an appeal from the July 16, 2010 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03563, which affirmed the August 21, 2008 Decision^[2] of the Regional Trial Court (RTC), Branch 21 in Malolos, Bulacan, in Criminal Case No. 3936-M-2003. the RTC found accused Adriano Pascua guilty of violating Sec. 5, Art. II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

An Information charged the accused with the following:

That on or about the 13th day of October, 2003, in the municipality of Meycauayan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport [a] dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride weighing 0.084 gram.^[3]

During his arraignment, the accused pleaded not guilty. The parties stipulated on the following facts during the trial:

- (1) That there was a request for laboratory examination (Exhibit "A") covering two (2) sachets of regulated drugs (Exhibits "C" and "C-1");
- (2) That pursuant to the request, an examination was conducted on the specimens seized; and
- (3) That the examination conducted by Forensic Chemical Officer Nelson Sta. Maria found the subject specimens positive for methamphetamine hydrochloride or *shabu* (Chemistry Report No. D-768-2003, Exhibit "B").^[4]

Version of the Prosecution

The CA summarized the facts from the records as follows:

On 13 October 2003, PO1 Tadeo of the PNP Station, Meycauayan, Bulacan, received a phone call from a concerned citizen saying that there was rampant selling of illegal drugs in Banga, Meycauayan, Bulacan. When the information was relayed to the Chief of Police, the latter instructed the police officers to form a team which would conduct a buy-bust operation. The team was composed of PO1 Tadeo, who would act as the poseur-buyer in the said operation, and his back-up officers PO1 Michael Sarangaya, PO1 Frederick Viesca and PO1 Philip Santos.

After the pre-operational report was made, the buy-bust team, together with the asset, proceeded to the target area which was a club located at Banga, Meycauayan, Bulacan. PO1 Tadeo was given two pieces of P100-bills, and he marked the same with his initials "WCT."

Thereafter, the back-up officers positioned themselves at the other side of the street, while PO1 Tadeo and his asset went inside the club. Upon entering the same, PO1 Tadeo noticed that there was somebody transacting with their suspect. Afterwards, PO1 Tadeo was introduced by the asset to their suspect, alias Joel, as the next buyer of *shabu*. PO1 Tadeo then asked alias Joel if he had P200.00 worth of *shabu*, to which the latter replied in the affirmative. PO1 Tadeo thus handed alias Joel the marked P100-bills, while the latter in turn gave PO1 Tadeo a plastic sachet containing white crystalline substance. PO1 Tadeo, thereafter, dialed the number of one of his back-up officers and made a missed call from his cellphone, which was the pre-arranged signal for his back-up team. Consequently, the other members of the entrapment team entered the premises and arrested the person whom they first saw buying suspected drugs from alias Joel, who they identified later on as Robert Carmelo, and likewise obtained from him a plastic sachet containing white crystalline substance. Thereafter, they arrested alias Joel, who was later on identified as accused-appellant Adriano Pascua.

After placing the necessary markings, the two (2) plastic sachets containing white crystalline substance recovered from the accused-appellant Pascua and Robert Carmelo were submitted to the PNP Crime Laboratory for analysis. Consequently, Forensic Chemist Nelson Sta. Maria issued Chemistry Report No. D-768-2003 which stated that the seized specimen yielded positive for Methamphetamine Hydrochloride, also known as "*shabu*", a dangerous drug.^[5]

Version of the Defense

As synthesized by the CA, the defense offered the following version of what transpired:

On 13 October, 2003, at around 11:00 a.m., accused-appellant was resting in his home. Suddenly, he heard a noise and saw two uniformed

men holding short guns while destroying the door of his house. He instantly felt afraid because just recently, two of his brothers were killed in an ambush, hence this prompted him to run away and pass -through the back door of his house. While running, he fell into the river, but he managed to swim and climb up the cliff. He continued running until he noticed two men in a motorcycle chasing him. When the men caught up with him, they grabbed him by the hand and told him that he was being arrested. The accused-appellant asked them for what offense he was being arrested, but he was instead told by the men that he better take a bath since he fell into a river and he [did] not smell good, after which they would bring him to the police headquarters. The armed men thus forcibly brought him inside their vehicle, where he saw another person handcuffed. The men subsequently brought both of them at the police headquarters in Meycauayan, Bulacan. At the police station, the accused-appellant [begged] the police officers not to charge him with violation of Section 5, Article II of Republic Act No. 9165, since said offense was not bailable. One of the police officers then told him that he would be charged with violation of Section 11 instead, but he should bring five (5) grams of *shabu* with him. The accused-appellant, however, replied that he did not have any *shabu*. The police officers thereafter locked him up in the Municipal Hall and, the next day, charged him at the fiscal's office with violation of Section 5, Article II of R.A. 9165. Subsequently, the police officers brought him back to his house and told him to give them money and *shabu*. Accused-appellant again replied that he did not have any money and *shabu* in his possession. The police officers then entered his house and searched it thoroughly, without showing him any search warrant. After conducting the search, the accused-appellant was brought back to the police station.

On the other hand, Robert Carmelo narrated that, on 13 October 2003, at around 11:00 a.m., he was at his house at Bangcal Extension, Meycauayan, Bulacan, when somebody forcibly entered it and hit him in the stomach with a 45-caliber gun. He was then forcefully taken outside and was made to ride in an ambulance. They passed by a bridge and stopped as the men riding with him alighted from the vehicle and entered another house. Thereafter, a chase ensued as the occupant of the house ran away. Subsequently, the men were able to arrest the person they were chasing and likewise was able to lead him inside the vehicle. Carmelo and the other person arrested were brought to the Municipal Hall, where they were immediately charged with Violation of Section 11, Article II of R.A. 9165 and Section 5 of the same law, respectively. Carmelo only found out that the other person arrested with him was accused-appellant Pascua when they were already inside the jail.

Teresita "Bheng" de Belen, an assistant at the videoke bar located in front of accused-appellant's house who claimed to have witnessed the incident, corroborated the testimonies of accused-appellant and Carmelo.

[6]

Ruling of the Trial Court

The RTC found the accused guilty of the offense charged. It found that the evidence of the prosecution established the elements of illegal sale of drugs as the accused was caught *in flagrante delicto* via a buy-bust operation. On the other hand, the RTC noted that the defense merely offered denial as its defense while failing to overturn the presumption of regularity in the performance of official duties accorded to the buy-bust team.

The dispositive portion of the RTC Decision reads:

WHEREFORE, all the foregoing premises considered, this Court finds and so holds that the prosecution was able to establish by proof beyond reasonable doubt the guilt of accused Adriano Pascua y Concepcion of the crime charged. Consequently, he is hereby sentenced, there being no attending circumstances, to serve the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos.

x x x x

SO ORDERED.^[7]

Ruling of the Appellate Court

On appeal, accused averred that the trial court erred in finding him guilty beyond reasonable doubt despite the prosecution's non-compliance with Sec. 21 of RA 9165 on the chain of custody of seized drugs. He alleged that the prosecution failed to prove the integrity of the seized drug. He also raised as error his conviction based solely on the testimony of Police Officer 1 Willie Tadeo (PO1 Tadeo).

The People, represented by the Office of the Solicitor General (OSG), countered that the integrity and chain of custody of the seized item was duly established during the trial. It was further argued that not all those who came into possession of the seized drugs have to be presented as a witness as long as the chain of custody was not broken and the seized drugs were properly identified.

Moreover, the OSG argued that the failure of the prosecution to comply with Sec. 21 of RA 9165 did not overcome the application of the presumption of regularity in the performance of regular duty accorded to the police officers involved in the buy-bust operation. The OSG furthermore argued that the defense of bare denial cannot be given greater evidentiary weight than the positive declarations of the complainant. It added that no evidence was shown that the police officers in the buy-bust operation had any ill motive to make false charges against the accused.

The CA affirmed the ruling of the RTC. The *fallo* of the CA Decision reads:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DISMISSED, and the appealed decision is AFFIRMED in toto.^[8]