

SECOND DIVISION

[G.R. No. 193185, October 12, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO MONDEJAR Y BOCARILI, ACCUSED-APPELLANT.**

DECISION

SERENO, J.:

On 29 August 2006, an Information was filed against Ricardo Mondejar (accused-appellant) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165 in the following manner:

That on or about August 27, 2006, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell to a poseur-buyer ZERO POINT ZERO ONE ONE (0.011) GRAM of white crystalline substance placed in one (1) heat sealed transparent plastic sachet marked as "RMB" containing methylamphetamine hydrochloride known as "SHABU", a dangerous drug.

CONTRARY TO LAW.

The case was docketed as Criminal Case No. 06-246328 on 12 October 2006 and raffled to Branch 35 of the Regional Trial Court, Manila.

On 12 October 2006, accused-appellant pleaded not guilty to the offense charged upon arraignment in Filipino.

During trial, the prosecution presented the testimonies of Senior Police Officer 2 (SPO2) Federico Casuple and PO2 Elymar Garcia, while the defense presented accused-appellant himself as its sole witness.

The first prosecution witness was SPO2 Casuple, a police officer assigned at the Station Anti-Illegal Drug Special Operation Task Unit (SAID-SOTU), Police Station 2 of the Manila Police District. He testified that a female informant went to their office on 26 August 2006 to report that a certain person known by the alias "Danny" was selling illegal drugs at the Manila International Container Port ("MICP") in Tondo, Manila.^[1] In view thereof, the police officers prepared the corresponding Pre-Operation and Coordination Report.^[2] The police undertook surveillance at the site that night but they did not see accused-appellant. This was the only surveillance they conducted on the matter.^[3] The informant explained that accused-appellant sold drugs only in the daytime.^[4]

Accordingly, the police instructed the informant to report back to their office the next day should accused-appellant be seen around the area. The next day or on 27 August 2006, at around 1 p.m., the informant returned to their office to inform the police that accused-appellant was again selling drugs in the area.^[5] The Chief of the SAID designated SPO2 Casuple as the poseur-buyer and gave him P100^[6] which the latter marked "PS2" at the upper left corner.^[7] SPO2 Casuple then went to the site together with the informant, PO2 Roman Jimenez, and PO2 Garcia. SPO2 Casuple and the informant went on foot to look for accused-appellant. They were informed that he had already gone home. SPO2 Casuple relayed this information to his fellow police officers.

Thereafter, the informant reported that accused-appellant could be found at his home in Purok 2, Isla Puting Bato. As the area was just beside MICP, they decided to proceed to the said address.^[8] Upon reaching the place, the informant immediately recognized and approached accused-appellant, telling the latter that SPO2 Casuple wanted to buy "shabu" (methamphetamine hydrochloride). Accused-appellant asked how much SPO2 Casuple would buy, and the latter replied, "*piso*" or P100 worth.

SPO2 Casuple claimed that accused-appellant did not suspect anything and demanded immediate payment. SPO2 Casuple gave the money and immediately pressed the "call" key of his cellphone, as this was the pre-arranged signal to his fellow officers that the buy-bust operation had been consummated.^[9] SPO2 Casuple then introduced himself as a police officer. Soon his fellow officers arrived and they all brought accused-appellant to the police station.^[10] At the police station, SPO2 Casuple personally marked the confiscated item with the initials "RMB," which stands for accused-appellant's name (Ricardo Mondejar y Bocarili) and then handed it to the investigator.

SPO2 Casuple later testified that the investigator had requested a laboratory examination^[11] of the item which was then brought to the Crime Laboratory.^[12] SPO2 Casuple stated that after receiving the Chemistry Report^[13] on the item seized, he, together with PO2 Garcia, executed an "Affidavit of Apprehension/Poseur-Buyer."^[14]

On cross-examination, SPO2 Casuple admitted that they had not coordinated with the Philippine Drug Enforcement Agency (PDEA) regarding the buy-bust operation on 27 August 2006, as the box beside the word "Buy-Bust" was not checked in the Pre-Operation and Coordination Report.^[15] SPO2 Casuple confirmed that an inventory of seized items was prepared, but that he was unaware of whether a photograph of the plastic sachet confiscated from accused-appellant had been taken, because he "just turned over the plastic sachet to the investigator and he knows what to do."^[16] SPO2 Casuple also confirmed that he was aware of Section 21 of R.A. No. 9165, having been briefed that it refers to "planting of evidence against the accused."^[17]

PO2 Garcia, who was a "perimeter back up," testified that around 2:30 or 2:50 in the afternoon of 27 August 2006, they were deployed at the MICP compound at

Parola, Tondo, Manila by the Chief of the SAID, Senior Police Inspector (SPI) Arnulfo Ibanez for an anti-illegal drug operation.^[18] PO2 Garcia testified that he stayed inside the vehicle while SPO2 Casuple and the informant went around to look for accused-appellant. When SPO2 Casuple and the informant proceeded to Isla Puting Bato and entered an alley, PO2 Garcia stayed out of the street until he received the pre-arranged signal.^[19] Upon receiving the signal, he approached SPO2 Casuple and found him already accosting accused-appellant.^[20]

PO2 Garcia provided security for the arresting officer and brought accused-appellant to the SAID office. At the police station, PO2 Garcia witnessed SPO2 Casuple recover from accused-appellant the buy-bust money and "one small transparent plastic sachet containing white crystalline substance," which SPO2 Casuple marked with the letters "RMB."^[21] Later on cross-examination, PO2 Garcia confirmed that he did not have any personal knowledge of the ultimate source of the plastic sachet.^[22]

The prosecution presented an accomplished Pre-Operation Report/Coordination Sheet^[23] dated 26 August 2006 showing that the SAID

Chief, SPI Arnulfo Ibanez, had created a team consisting of six (6) police officers and three (3) confidential informants "to conduct police operation against @ Maribel, Charing, Gina, Danny, Lani involved in illegal drug activities in AOR." Specifically, the team was to undertake surveillance and casing to run from "1830H 26 Aug 06 to 1830H 27 Aug 06" in the area of operation specified as "Tindalo, Jas, Parola, Bambang, Del Pan Sts. Tondo, PS2 AOR." A facsimile copy of the Certificate of Coordination issued by the PDEA dated 26 August 2006 was also presented to show the coordination between PDEA and the police prior to the conduct of the buy bust.^[24] The prosecution also offered as evidence the Request for Laboratory Examination^[25] of the seized item marked "RMB" dated 27 August 2006 issued by Station Commander Police Superintendent Ricardo Layug, Jr. The written request was shown to have been delivered by PO2 Garcia to "SPI Reyes" of the Philippine National Police (PNP) Crime Laboratory. PNP Crime Laboratory Chemistry Report No. D-1007-06,^[26] which confirmed that the plastic sachet delivered to it had tested positive for methylamphetamine hydrochloride or "shabu", was likewise offered in evidence. It showed that the examination had been made by "Elisa G. Reyes, Police Senior Inspector, Forensic Chemical Officer," approved by the Chief of the Chemical Section of the Crime Laboratory, noted by the Police Chief Inspector, and sworn to before an administering officer.

The defense did not present any documentary evidence.

The defense presented the accused-appellant as lone witness. In his testimony, accused-appellant claimed that on 27 August 2006, at about 2:30 p.m., he was alone in Purok 2, walking along the alley which he estimated to be about three to four meters wide.^[27] He was leaving home with a basin about three feet in circumference^[28] and full of the corn he was going to sell.^[29] When he turned back, he saw that three police officers behind him were chasing someone.^[30] He knew they were police officers, because they were wearing blue t-shirts (as opposed to polo shirts) with collars and name tags stating their surnames.^[31] The unknown person being chased bumped accused-appellant, causing the latter to drop the basin

and accidentally spill the corn. The police tripped on the basin and had to stop the chase.^[32] Before they resumed the chase, SPO2 Casuple uttered invectives^[33] against accused-appellant, threatening to get back at the latter, should they fail to catch the person they were chasing.^[34] Accused-appellant claimed that the police officers were unable to overtake the person they were chasing. So they went back, picked him up, and showed him a plastic sachet while saying, *"Eto gagawin kong ebidensya laban sa iyo."*^[35]

Accused-appellant stated that apart from the failure of the police officers to catch the person they were after when they tripped on his basin of corn, he knew of no other reason why SPO2 Casuple would falsely testify against him. He claimed he did not file any countercharge against SPO2 Casuple, because he was unfamiliar with the law but, given the chance, he would do so.^[36]

On 9 April 2008, the trial court issued its Decision,^[37] the dispositive portion of which reads in part:

Wherefore, finding accused Ricardo Mondejar y Bocarili @ "Danny" GUILTY beyond reasonable doubt of the offense charged, he is hereby sentenced to suffer the penalty of life imprisonment; to pay a fine of Five Hundred Thousand (P500,000.00) Pesos; and the cost of suit.

On 22 May 2008, accused-appellant, through counsel Public Attorney's Office, filed a Notice of Appeal with the Court of Appeals (CA). In his Appellant's Brief, accused-appellant argued that the presumption of regularity in the performance of duty cannot, by itself, affect the constitutional presumption of innocence of the accused.^[38] Further, credence is given to police officers as prosecution witnesses unless there is evidence suggesting ill motives on their part or a deviation from the regular performance of their duties.^[39] Accused-appellant thereafter pointed out that the confiscated plastic sachet was not immediately marked at the place where it was allegedly seized; nor were photographs taken or inventories made in the presence of any elected public official, media, or representative from the Department of Justice, in contravention of Section 21 (1) of R.A. No. 9165.

On 18 December 2009, the CA issued its Decision,^[40] the dispositive portion of which reads:

WHEREFORE, premises considered, the instant appeal is denied for lack of merit, and accordingly, the assailed April 9, 2008 Decision of the trial court convicting Ricardo Bocarili Mondejar of violation of Section 5, Article II of R.A. No. 9165, including the penalties imposed against him, is hereby AFFIRMED IN TOTO.

SO ORDERED.

In its Decision, the CA held:

Under the circumstances, We see no break in trail of confiscation, marking, identification, custody, control, examination and disposition of the prohibited drugs, in the same manner that We find no confusion or uncertainty over the fact that the 0.011 gram of shabu that was marked at the police station, then tested and examined positive for shabu at the PNP Crime Laboratory, and eventually adduced in evidence in court against Mondejar is the same shabu that was seized from Mondejar during the entrapment operation. (Decision, pp. 10-11)^[41]

The CA held that accused-appellant's defense that he had merely been framed up failed to persuade. It cannot believe that the police would be so "brazenly unreasonable" as to subject accused-appellant to a false charge only because they failed to catch the person they intended to arrest when they tripped on his basin of corn.^[42]

Accused-appellant comes to this Court seeking a reversal of the CA Decision sustaining the trial court's finding that he is guilty beyond reasonable doubt of violation of Section 5 of R.A. No. 9165.

We rule to affirm the appealed Decision.

It has been held that in a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of credibility of witnesses and their testimonies.^[43] Since it was the trial court that had the opportunity to observe the witnesses' demeanor and deportment while testifying, the rule is that the trial court's assessment of their credibility is entitled to great respect,^[44] and even finality, unless facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.^[45]

In arriving at its Decision, the trial court reasoned:

The testimony of the accused is replete with material inconsistencies and incredible statements which render it unworthy of belief. Thus, at one point, he claims that when he was picked up by the police a plastic sachet was shown to him by PO2 Capsule and the latter told him it will be used as evidence against him. (TSN, October 9, 2007, p. 4). Later, however, he testified that the plastic sachet was shown to him only when he was brought to the City Hall for inquest. (TSN, October 9, 2007, p. 9). Being contradictory of each other, it is indicative of accused's propensity to prevaricate. (Decision, p. 4)

We have gone over the transcripts and note that the trial court was referring to the following portion of accused-appellant's testimony:

Q Now, you said that police officer Casuple showed you a plastic sachet and told you that they are going to use the plastic sachet to file a case against you, did I hear you right?