

## SECOND DIVISION

[ G.R. No. 174198, January 19, 2010 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ZAIDA KAMAD Y AMBING, ACCUSED-APPELLANT.**

### DECISION

**BRION, J.:**

We review the decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> (CA) in CA-G.R. CR-H.C. No. 00505 which affirmed *in toto* the decision<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 259, Parañaque City<sup>[4]</sup> in Criminal Case Nos. 02-1236-7 finding Zaida<sup>[5]</sup> Kamad y Ambing (*accused-appellant*) guilty beyond reasonable doubt of illegal sale of *shabu* under Section 5, Article II of Republic Act No. 9165 (RA 9165) or the *Comprehensive Dangerous Drugs Act of 2002*.

Along with her boyfriend Leo Ramirez y Acosta (*Leo*) who was charged for illegal possession of *shabu*, the accused-appellant was charged under an Information<sup>[6]</sup> that reads:

The above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously give away, distribute and sell to a customer for P300.00 pesos one (1) small heat sealed transparent plastic sachet containing crystalline substance (*shabu*) weighing 0.20 gram, which when examined were found positive for Methamphetamine Hydrochloride (*shabu*), a dangerous drug, in violation of the above-cited law.

#### **CONTRARY TO LAW.**

The accused-appellant pleaded not guilty on arraignment. Trial on the merits thereafter ensued.

The prosecution's version of events is summarized below.

On October 16, 2002, the Philippine National Police (PNP) Drug Enforcement Unit of the Southern Police District, Fort Bonifacio, Taguig (*Taguig police*) received information from an asset that a certain "Zaida" was engaged in the illegal sale of *shabu* at Purok IV, Silverio Compound in Parañaque City. The Taguig police formed a buy-bust team composed of P/Insp. Antonio Parillas,<sup>[7]</sup> PO3 Christopher Maulit<sup>[8]</sup> (*PO3 Maulit*), PO1 Manfoste,<sup>[9]</sup> SPO2 Arthur Velasco, and SPO2 Ernesto Sanchez<sup>[10]</sup> (*SPO2 Sanchez*), as members. SPO2 Sanchez acted as *poseur-buyer* and received three (3) one hundred peso bills for use as marked money.

After surveillance of the area, the buy-bust team and their asset proceeded at around 10:00 p.m. of October 16, 2002 to the target area where they immediately saw the accused-appellant and Leo. The asset and SPO2 Sanchez approached the two while the rest of the buy-bust team watched from a distance. The asset introduced SPO2 Sanchez as a buyer of *shabu* and the accused-appellant asked him how much he would buy. SPO2 Sanchez asked for P300.00 worth of *shabu* and gave the marked money; the accused-appellant thereafter handed him a plastic sachet containing a substance suspected to be *shabu*. SPO2 Sanchez lighted a cigarette to give the pre-arranged signal for the buy-bust team to approach. SPO2 Sanchez arrested the accused-appellant and recovered from her the P300.00 marked money. The buy-bust team arrested Leo who was found in possession of one (1) plastic sachet also suspected to contain *shabu*.

The buy-bust team took the accused-appellant and Leo and the recovered plastic sachets to their office for investigation. The recovered plastic sachets, marked as "ES-1-161009" and "ES-2-161002," were then brought to the PNP Crime Laboratory for qualitative examination; the tests yielded positive results for *methamphetamine hydrochloride*.<sup>[11]</sup>

The defense expectedly presented a different version of events.

The accused-appellant<sup>[12]</sup> denied the charge and claimed that she and Leo were framed-up. At around 2:30 p.m. of October 16, 2002, the accused-appellant and Leo went to Leo's cousin's house. Since Leo's cousin was not yet at home, she and Leo waited. After waiting for an hour, four (4) men wearing civilian clothes and carrying firearms entered the house and introduced themselves as police officers. The accused-appellant and Leo were frisked, but nothing was found in their possession. The police officers asked the accused-appellant where she kept the *shabu*; she replied that she was not selling *shabu*. Afterwards, she and Leo were taken to the police headquarters where they were again frisked and asked the same question to which they gave the same response. The police detained Leo and the accused-appellant for about a day and later brought them to the Prosecutor's Office for inquest without showing them any *shabu*.

### **THE RTC RULING**

After consideration of the evidence, the RTC decreed:

**WHEREFORE, PREMISES CONSIDERED,** finding **both accused GUILTY** beyond reasonable doubt, this Court hereby sentences Zaida Kamad to life imprisonment and to pay a fine of P500,000.00 for Violation of Section 5, Art. II, RA 9165 ...

x x x x

SO ORDERED.<sup>[13]</sup>

The accused-appellant appealed the RTC decision to the CA, attacking the RTC's reliance on the presumption of regularity that the RTC found to have attended the

conduct of the buy-bust operation by the police. She argued that no presumption of regularity could arise considering that the police violated NAPOLCOM rules by using an asset; the rules prohibit the deputation of private persons as PNP civilian agents.

[14] The accused-appellant also pointed out the material inconsistencies in the testimony of the prosecution witnesses that cast doubt on their credibility, namely: (a) the uncertainty of SPO2 Sanchez regarding the time the buy-bust team was dispatched to the target area; (b) the confusion of PO3 Maulit on the identity of the team leader of the buy-bust team; (c) the admitted mistake of PO3 Maulit that only the recovered plastic sachet was marked "ES" (standing for the initials of SPO2 Sanchez), while the marked money was marked "MF" (standing for the initials of P/Insp. Mariano F. Fegarido as commanding officer); and (d) the contradictory statements of PO3 Maulit who testified that it was Leo who sold the *shabu* and that of SPO2 Sanchez who testified that it was the accused-appellant who sold him the *shabu*.

### **THE CA RULING**

The CA rejected the defense arguments and affirmed *in toto* the RTC findings. The CA ruled that the prosecution satisfactorily established the accused-appellant's guilt based on the positive testimony of SPO2 Sanchez on the conduct of the buy-bust operation; his testimony bore badges of truth. Accordingly, the CA found the accused-appellant's uncorroborated denial undeserving of any weight. The CA brushed aside as a minor inconsistency the uncertainty in the testimony of SPO2 Sanchez on the time the buy-bust operation took place. The CA also brushed aside the violation of the NAPOLCOM rules on the ground that the accused-appellant was arrested in *flagrante delicto* for illegal sale of *shabu* committed in the presence of the prosecution witnesses who were police officers. Moreover, the CA held that the use of assets to aid police officers in buy-bust operations has been judicially recognized. The CA found that while the asset brokered the *shabu* transaction, he had no role in the apprehension of the accused-appellant and in the search and seizure of the *shabu* from the accused-appellant.

### **THE ISSUE**

The only issue in this case is whether the accused-appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165 for the illegal sale of 0.20 gram of *shabu*.

### **THE COURT'S RULING**

We draw attention at the outset to the unique nature of an appeal in a criminal case; the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.[15] We find the present appeal meritorious on the basis of such review.

As a general rule, the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight and will not be disturbed on appeal. This rule, however, admits of exceptions and does not apply where facts of weight and

substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied.<sup>[16]</sup> After due consideration of the records of this case, the evidence adduced, and the applicable law and jurisprudence, we hold that a deviation from the general rule is warranted.

In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.<sup>[17]</sup> Proof of the *corpus delicti* in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court. This is a condition *sine qua non* for conviction as the drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist. As we discuss below, the special characteristics of prohibited drugs necessitate their strict identification by the prosecution.<sup>[18]</sup>

Our examination of the records shows that while the prosecution established through the testimony of SPO2 Sanchez that the sale of the prohibited drug by the accused-appellant took place, we find that both the RTC and the CA failed to consider the following infirmities in the prosecution's case: (1) the serious lapses in the RA 9165 procedure committed by the buy-bust team in handling the seized *shabu*; and (2) the failure of the police to comply with the chain of custody rule in handling the seized *shabu*, resulting in the prosecution's failure to properly identify the *shabu* offered in court as the same *shabu* seized from the accused-appellant on October 16, 2002.

### **Non-compliance with the prescribed procedure under Section 21, Article II of RA 9165**

In *People v. Garcia*,<sup>[19]</sup> we emphasized the prosecution's duty to adduce evidence proving compliance by the buy-bust team with the prescribed procedure laid down under paragraph 1, Section 21, Article II of RA 9165. This provision reads:

- 1) The apprehending 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.** [emphasis supplied]

The Implementing Rules and Regulations of RA 9165 under its Section 21(a) provides further details on how RA 9165 is to be applied, and provides too for a saving mechanism in case no strict compliance with the requirements took place. Section 21(a) states:

- (a) The apprehending office/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, 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.** [Emphasis supplied.]

Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.<sup>[20]</sup> Hence, the rules on the measures to be observed during and after the seizure, during the custody and transfer of the drugs for examination, and at all times up to their presentation in court.

In this case, SPO2 Sanchez testified on the seizure and the handling of the seized *shabu*. The records show that his testimony and the identification he made in court constitute the totality of the prosecution's evidence on how the police handled and preserved the integrity of the seized *shabu*. Significantly, SPO2 Sanchez merely stated in his testimony that:

Q: What else transpired when Zaida gave something to you and you, being the poseur buyer, gave the money to Zaida?

A: We brought them to our office.

x x x x

Q: What did you do with those plastic sachets containing white crystalline substance?

A: We brought them to the SPD Crime Lab for examination.<sup>[21]</sup>

Thus, he failed to provide specific details on how the seized *shabu* was marked although the evidence shows that the *shabu* was marked as "ES-1-161009" before it was sent to a forensic laboratory. His testimony also failed to state whether the marking of the *shabu* was done immediately after its seizure (as Section 21 of RA 9165 requires) or during the investigation. His testimony likewise failed to disclose if a physical inventory and photography of the seized items had taken place, or if they had, whether these were undertaken in the presence of the accused or his counsel, or a representative from the media and the Department of Justice, and of an elective official.

**In sum, his testimony failed to show how the integrity and evidentiary value of the item seized had been preserved; no explanation was ever given**