

SECOND DIVISION

[G.R. No. 188905, July 13, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSE
NANDI Y SALI, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the October 23, 2008 Decision^[1] of the Court of Appeals (CA), which affirmed *in toto* the August 2, 2007 Decision^[2] of the Regional Trial Court (RTC), Branch 103, Quezon City, finding accused Rose Nandi guilty beyond reasonable doubt of having committed the crime of Violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002, and sentencing her to suffer the penalty of life imprisonment.

Accused Rose Nandi was arrested in a buy-bust operation and was eventually indicted in an Information dated July 10, 2003, the accusatory portion of which reads:

That on or about the 9th day of July 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 three (0.03) gram of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

During the trial, the prosecution presented its evidence which basically hinged on the testimony of the poseur-buyer and documentary exhibits pertaining to the buy-bust operation.

It appears from the prosecution evidence that on July 9, 2003, at around 7:00 o'clock in the evening, Chief of Police Colonel Ratuita of Police Station 3, Talipapa, Quezon City, received an information that someone was selling shabu along Tandang Sora Avenue. Col. Ratuita immediately formed a buy-bust operation team composed of SPO4 Brigido Ann, its team leader, and members, PO1 Cecil Collado (PO1 Collado), PO1 Mendi, and PO1 Virgilio Bernardo. PO1 Collado, designated as the poseur-buyer, prepared the Five Hundred Pesos (P500.00) marked money with his initials "CCC" on the face of the bill. SPO4 Brigido Ann, in the meantime, prepared a pre-operations report and recorded the formation of the buy-bust team in the dispatch book, including the important details of the buy-bust operation.

At around 11:00 o'clock in the evening, the team, together with the informant, proceeded to Tandang Sora Avenue, Quezon City and positioned themselves around Culiat High School where the alleged shabu sale was to take place. The informant first talked with the accused and later called and introduced PO1 Collado as the buyer. The accused asked how much PO1 Collado was buying and the latter replied that he wanted Two Hundred Pesos (P200.00) worth of shabu. PO1 Collado handed over the marked money to the accused, and, in return, the latter gave a small transparent plastic sachet. After examining the contents thereof, PO1 Collado scratched his head. As this was the pre-arranged signal, the other team members rushed towards them and apprehended the accused. PO1 Collado told her that she was being arrested for selling drugs, frisked her, recovered from her the marked money, and then informed her of her rights.

The accused was immediately taken to Police Station 3 in Talipapa, Quezon City, where an inquest paper was prepared and the recovered items, handed over to the investigator. The documents and the recovered specimen were then taken to the crime laboratory, where Forensic Chemist Bernardino M. Banac, Jr., conducted a three-step examination consisting of a physical test, a chemical test and the confirmatory test on the sample from the sachet attached to the letter-request. The sample tested positive for shabu, and this finding was contained in Chemistry Report No. D-604-03. Forensic Chemist Banac, Jr. also placed the marking "D-604-03/BMB" on the plastic sachet, on the brown envelope and on the masking tape that sealed the plastic sachet.

The accused, on the other hand, vehemently denied that she sold shabu and that she was arrested in a buy-bust operation. She recounted that on July 9, 2003, at about 7:00 o'clock in the evening, she was in the Muslim Compound of Barangay Culiat, Tandang Sora, Quezon City. She simply went there to submit her pictures to her cousin, a certain Kenex Bagundan, for a possible job application abroad. She said that she used to work as a domestic helper in Saudi Arabia and in the United Arab Emirates.

According to her, after leaving the house of her cousin and while waiting for a ride home, a man dragged her to a parked vehicle. Inside the vehicle, there were several police officers who told her not to shout and not to make any noise. Fearing for her life, she did what she was told. She further asserted that they first drove to different places before she was finally taken to the police station. Upon arriving at the station, she was frisked by a police officer and her personal things like cellular phone, pieces of jewelry and money were confiscated.

Furthermore, her requests for a female police officer had been refused and police officers asked her to give the amount of One Hundred Thousand Pesos (P100,000.00) for her release. Since she was not able to call her relatives, she told them that she did not have any money. She also insisted that it was not PO1 Collado who arrested her as he merely accompanied her during the inquest. She also claimed that it was only during the inquest that she first saw the plastic sachet allegedly seized from her.

On August 2, 2007, the trial court rendered judgment finding the accused guilty as charged and imposed upon the accused the penalty of life imprisonment. The dispositive portion of the RTC decision^[3] reads:

ACCORDINGLY, judgment is rendered finding the accused ROSE NANDI Y SALI, GUILTY, beyond reasonable doubt of violation of Section 5 of RA 9165 (for selling shabu) as charged and she is hereby sentenced to suffer a jail term of LIFE IMPRISONMENT and to pay a fine of P500,000.00.

The shabu in this case weighing 0.03 gram is ordered transmitted to PDEA thru DDB for disposal as per RA 9165.

SO ORDERED.

On October 23, 2008, the RTC decision was affirmed *in toto* by the Court of Appeals. In sustaining it, the appellate court stated that the prosecution was able to establish all the elements of the crime of illegal possession of a dangerous drug which are: 1] the offender was in possession of an item or an object identified to be a prohibited or regulated drug; 2] such possession is not authorized by law; and 3] the accused was freely and consciously aware of being in possession of the drug.

The RTC was of the view that the testimony of the prosecution witnesses evinced a more logical and acceptable series or flow of events culminating in the commission of the offense. The accused committed the offense charged as she was caught red-handed selling shabu, an illicit drug, in a buy-bust operation. The appellate court believed that the arrest of the accused was lawful and beyond reproach, and the confiscation of the illicit drugs and the marked money from her possession was not tainted with any irregularity.

Aggrieved, the accused questioned the affirmation of her conviction before this Court raising the following arguments:

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE ACCUSED-APPELLANT'S CONVICTION BEYOND REASONABLE DOUBT OF THE CRIME OF VIOLATION OF SECTION 5, ARTICLE II, R.A. NO. 9165.

The accused maintains that the prosecution failed to establish beyond reasonable doubt the essential elements of the offense with which she was charged. Primarily, the Information filed against her stated that the shabu had a weight of 0.03 gram. [4] In contrast, Forensic Chemist Bernardino M. Banac, Jr., reported that it weighed 0.23 gram.

Secondly, although the P500.00 peso bill used as buy-bust money was photocopied and marked, it was done long after the supposed operation. There is, therefore, no certainty that it was the same bill used during the operation.

Thirdly, the apprehending team failed to comply with Section 21 of the Implementing Rules of Republic Act (R.A.) No. 9165 when it did not immediately conduct a physical inventory of the seized items and did not photograph the same in her presence or in the presence of her representative or counsel, a representative from media and the Department of Justice (DOJ), or an elected public official. Such failure casts doubt on the identity of the article seized as there was no assurance

that it was the very same one submitted to the forensic chemist and found to be positive for shabu. Moreover, PO1 Collado himself admitted that he was not present when the subject item was transferred to the crime laboratory. Hence, a break in the chain of custody of the seized object seems apparent.

In addition, there were numerous inconsistencies in the testimony of PO1 Collado, the poseur-buyer.

THE COURT'S RULING

The general rule is that passing judgment upon the credibility of witnesses is best left to the trial courts since the latter are in a better position to decide the question, having heard and observed the witnesses themselves during the trial. This rule, however, admits of exceptions such as when facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied.^[5]

In the case at bench, the Court finds that certain facts of substance have been overlooked, which if only addressed and appreciated, would have altered the outcome of the case against the accused. Accordingly, a departure from the general rule is warranted.

It is well-settled that in prosecution of cases of 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. Proof of the *corpus delicti* in a buy-bust situation requires not only the actual existence of the transacted drugs but also the certainty that the drugs examined and presented in court were the very ones seized. This is a condition *sine qua non* for conviction since 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."^[6]

The Court has scrutinized the evidence on record but found it wanting with respect to the identification of the seized drug itself. Nebulous can only be the description of the evidence on how the contraband was handled before and after the alleged seizure.

Section 21 of the Implementing Rules of R.A. No. 9165 prescribes the procedure on the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, given the severity of the penalties imposed for violations of said law, viz.:

Sec. 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. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory so confiscated, seized and/or surrendered, for disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of