

FIRST DIVISION

[G.R. No. 188330, August 25, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO J. ROSIALDA, ACCUSED-APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

The Case

This is an appeal from the February 17, 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 02968, which affirmed the Decision^[2] dated April 27, 2007 of the Regional Trial Court (RTC), Branch 164 in Pasig City, finding accused-appellant Rogelio Rosialda guilty of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*. The RTC sentenced accused-appellant to life imprisonment and imposed upon him a fine of PhP 500,000, with the accessory penalties provided under Sec. 35 of RA 9165.

The Facts

On March 27, 2003, the Mayor's Special Action Team, City Hall Detachment, Pasig City Police, received information from Brgy. Councilor Antonio Santos of Brgy. Rosario, Pasig City, that one, alias "Bong," was selling *shabu* (methylamphetamine hydrochloride) in the vicinity. Santos gathered his information from an informant. The police then constituted a team in coordination with the Philippine Drug Enforcement Agency to conduct a buy-bust operation against alias "Bong." Police Officer 1 (PO1) Roland A. Panis was designated poseur-buyer, who was supplied with a one hundred peso (PhP 100) bill as buy-bust money, with which he marked his initials "RAP."

Accompanied by Santos' informant, the police went to Sampaguita Street, Jabson Site, Brgy. Rosario, Pasig City to conduct the buy-bust operation. Upon reaching the place, the informant led PO1 Panis to Bong, while the other police officers stood back waiting for the designated signal from the poseur-buyer. After the introductions, Bong asked PO1 Panis and the informant what they wanted, and the two said they wanted "to score," a code that meant to purchase *shabu*. Upon being asked, PO1 Panis replied he wanted PhP 100 worth of *shabu* while handing Bong the marked PhP 100 bill. When handed a plastic sachet of white crystalline powder, PO1 Panis then signaled the other policemen that the buy-bust had been carried out, and they converged on PO1 Panis, the informant, and Bong. PO1 Panis then held Bong's hand and introduced himself as a police officer while informing him of his violation and apprising him of his constitutional rights. Thereafter, PO1 Panis marked the plastic sachet as "Exh A RAP 3/27/03."

At the police station, Bong was identified as accused-appellant Rogelio Rosialda.

There, too, PO1 Panis then turned over the plastic sachet to Police Senior Inspector Rodrigo Villaruel, who prepared a laboratory examination request, addressed to the Eastern Police District Crime Laboratory Office. A certain PO1 Mariano brought the plastic sachet with the examination request to the crime laboratory where it was received by a certain PO1 Chuidian. The contents of the plastic sachet were then examined by Police Inspector (P/Insp.) Lourdeliza Gural, who prepared the corresponding Chemistry Report No. D-548-03E, with the following findings:

FINDINGS

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for the presence of Methylamphetamine hydrochloride, a dangerous drugs (Exh. "C")^[3]

Thus, the following Information^[4] dated March 28, 2003 was filed against Rosialda for violation of Sec. 5, Article II of RA 9165:

On or about March 27, 2003 in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Roland A. Panis, a police poseur buyer, one (1) small heat-sealed transparent plastic sachet, containing 0.03 gram of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.

The case before the RTC was docketed as Criminal Case No. 12267-D entitled *People of the Philippines v. Rogelio Rosialda y Jamot @ Bong*.

At his arraignment, Rosialda pleaded not guilty. Pre-trial ensued where, notably, the parties stipulated on the following facts:

- (1) on the existence of the specimen (white crystalline substance contained in the plastic sachet marked as "Exh A RAP 3/27/03");
- (2) that a request for the examination of the specimen was made;
- (3) that P/Insp. Gural examined the same and, as a result, issued Chemistry Report No. D-548-03E;
- (4) that P/Insp. Gural had no personal knowledge from whom the specimen was taken; and,
- (5) that the examination led to the identification of the specimen as methylamphetamine hydrochloride or *shabu*.

During the trial proper, the prosecution presented as witnesses PO1 Panis, and three other police officers to corroborate his testimony: PO1 Janet Sabo, PO3 Arturo San Andres, and Senior Police Officer 1 Amilassan Salisa, all from the Pasig City Police Station, City Hall Detachment. P/Insp. Gural was not presented as a witness during the hearing.

The defense, on the other hand, presented as witnesses accused-appellant Rosialda, Frances Diana Rosialda, and Silflor C. Velasco.

Rosialda testified that on March 24, 2003 at about 2:00 p.m., he was smoking beside their house when several people ran past the area. After a while, two (2) armed men followed, approached him, and asked whether he knew the persons who were running in front of them. He answered in the negative, whereupon, he was restrained and frisked at gun point. Nothing illegal was recovered from his person. Continuing, Rosialda related that he was then taken to the Rizal Medical Center where he was made to sign a document. Then he was brought to the police station at the Pasig City Hall and there was detained. He was informed that he would be charged with violation of Secs. 5 and 11 of RA 9165. He was then told by PO1 Panis to just settle the case.

The defense's second witness, Frances Rosialda, Rosialda's daughter, corroborated her father's testimony regarding his apprehension, except as to the date. She testified that her father was taken on March 27, 2003, not March 24, 2003.

The third witness, Velasco, also corroborated the testimony of the Rosialda on his being arrested. But the witness testified also that the incident happened on March 27 and not March 24, 2003.

Subsequently, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, the court finds accused Rosialda y Jamot @ Bong GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of life imprisonment and a fine of Five Hundred Thousand (Php500,000.00) Pesos, with the accessory penalties provided for under Section 35 of the said law.

The plastic sachet containing shabu (Exhs "D" and "D-1") is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.

With costs against the accused.

SO ORDERED.

From the above decision, accused-appellant filed a Notice of Appeal^[5] dated April 30, 2007.

The appeal was docketed before the CA as CA-G.R. CR No. 02968. Eventually, the CA rendered the assailed decision affirming Rosialda's conviction, the *fallo* of which

reads:

WHEREFORE, premises considered, the Appeal is hereby **DENIED**. The challenged Decision is **AFFIRMED** in toto.

In its Decision, the CA found that the elements of the crime were present in the case. Moreover, it found that Rosialda's defense of frame-up was not proved, holding that for the defense of frame-up to prosper, clear evidence of ill-motive on the part of the arresting officers must be shown on why they would impute false charges against the accused. The CA found that the self-serving allegations of Rosialda were insufficient. In addition, the appellate court cited the doctrine that the defense of frame-up, like *alibi*, has been generally viewed by the Court with disfavor as it is easily concocted.

Anent Rosialda's claim of inconsistencies in the testimonies of the prosecution witnesses, the CA found them to be minor ones which did not affect the veracity of the testimonies.

Rosialda also questioned the admissibility of the Chemistry Report, arguing that since issuing officer P/Insp. Gural was not presented as a witness, said report is inadmissible. The CA dismissed such argument ruling that there was no need to present P/Insp. Gural, given the stipulations entered into by the parties at the pre-trial of the case. Moreover, the CA enunciated that the findings in the report are entries in official records made in the course of official duty, and as such, they are *prima facie* evidence of the facts stated in the report.

The issue of the police officers' non-compliance with Sec. 21, Article II of RA 9165 was also raised by Rosialda before the CA. However, relying on *People v. Pringas*,^[6] the CA ruled that the failure to comply with Sec. 21 does not render the arrest of the accused illegal nor the items seized/confiscated inadmissible, for as long as there is a justifiable ground for such failure, and the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer.

Finally, as to the chain of custody of the seized item, the CA found that the facts and evidence presented show that such chain was unbroken from the time the sale was consummated, the marking of the specimen, and until it was delivered to the Eastern Police District Crime Laboratory Office for examination to the surrender of the specimen to the trial prosecutor who offered it to the RTC as evidence.

Hence, the instant appeal.

The Issues

Unconvinced, Rosialda raises in his Supplemental Brief the following issues for our consideration:

1. Whether there was ill-motive on the part of the arresting officer to give credence to the accused's allegation that he was framed; and,

2. Whether the chain of custody of the alleged illegal drugs was indeed unbroken.

The Ruling of the Court

The appeal is bereft of merit.

The first paragraph of Sec. 5, Art. II of RA 9165 penalizes the selling of dangerous drugs, thus:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

In *People v. Darisan*,^[7] the Court enumerated the elements of the crime of sale of dangerous drugs:

In a prosecution for illegal sale of dangerous drugs, the following elements must first be 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.

One with the RTC and the CA, we find the above elements present and proved beyond reasonable doubt in the instant case through the evidence and testimonies presented by the prosecution.

The first element was proved by the testimonies of the police officers who conducted the buy-bust operation. For clarity, we quote the testimony of poseur-buyer PO1 Panis:

DIRECT EXAMINATION

ProsecutorMr. Witness, you are a member of Mayor Special Action Bautista: Team (sic)?

PO1 Yes, sir.

Panis:

Q: As a member of Mayor Special Action Team, will you tell us what you usually do?

A: We are task[ed] to apprehend person of people (sic)