

## THIRD DIVISION

[ G.R. No. 179029, August 09, 2010 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIMON  
PAGADUAN Y TAMAYO, APPELLANT.**

### DECISION

**BRION, J.:**

We review the decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01597 which affirmed *in toto* the decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 27, Bayombong, Nueva Vizcaya, in Criminal Case No. 4600, finding appellant Felimon Pagaduan y Tamayo (*appellant*) guilty beyond reasonable doubt of illegal sale of *shabu*, under Section 5, Article II of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

### BACKGROUND FACTS

The prosecution charged the appellant before the RTC with violation of Section 5, Article II of R.A. No. 9165 under an Information that states:

That on or about December 27, 2003 at about 4:30 o'clock (*sic*) in the afternoon, in the Municipality of Solano, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously sell, trade, dispense, deliver and give away 0.01 gram, more or less, of methamphetamine hydrochloride (*shabu*), a dangerous drug, as contained in a heat-sealed transparent plastic sachet to PO3 Peter C. Almarez, a member of the Philippine Drug Enforcement Agency (PDEA) who posed as a buyer of *shabu* in the amount of P200.00, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.<sup>[3]</sup>

The appellant pleaded not guilty on arraignment. Trial on the merits, thereafter, followed.

The evidence for the prosecution reveals the following facts.

After having received information that the appellant was selling illegal drugs in Nueva Vizcaya, Captain Jaime de Vera called, on his cellular phone, PO3 Peter Almarez and SPO1 Domingo Balido - who were both in Santiago City - and informed them of a planned buy-bust operation. They agreed to meet at the SSS Building near LMN Hotel in Bayombong, Nueva Vizcaya.<sup>[4]</sup> On their arrival there, Captain de

Vera conducted a briefing and designated PO3 Almarez as the *poseur* buyer. Thereafter, Captain de Vera introduced PO3 Almarez to the police informant (*tipster*),<sup>[5]</sup> and gave him (PO3 Almarez) two P100 bills (Exhibits "D" and "E") which the latter marked with his initials.<sup>[6]</sup>

After this briefing, the buy-bust team went to Bintawan Road, Solano, Nueva Vizcaya to conduct the entrapment operation.<sup>[7]</sup> PO3 Almarez and the informant rode a tricycle, while Captain de Vera and SPO1 Balido followed on board a tinted van.<sup>[8]</sup> The buy-bust team arrived at the target area at around 4:30 p.m., and saw the appellant already waiting for the informant. The informant approached the appellant and introduced PO3 Almarez to him as a buyer. PO3 Almarez told the appellant that he needed *shabu* worth P200, and inquired from him (appellant) if he had a "stock." The appellant replied in the affirmative, and then handed one heat-sealed transparent plastic sachet containing white crystalline substance to PO3 Almarez. PO3 Almarez, in turn, gave the two pre-marked P100 bills to the appellant.<sup>[9]</sup> Immediately after, PO3 Almarez made the pre-arranged signal to his companions, who then approached the appellant. Captain de Vera took the marked money from the appellant's right pocket, and then arrested him.<sup>[10]</sup> PO3 Almarez, for his part, marked the sachet with his initials.<sup>[11]</sup> Thereafter, the buy-bust team brought the appellant to the Diadi Police Station for investigation.<sup>[12]</sup>

At the police station, Captain de Vera prepared a request for laboratory examination (Exh. "C").<sup>[13]</sup> The appellant was transferred to the Diadi Municipal Jail where he was detained.<sup>[14]</sup> Two days later, or on December 29, 2003, PO3 Almarez transmitted the letter-request, for laboratory examination, and the seized plastic sachet to the PNP Crime Laboratory, where they were received by PO2 Fernando Dulnuan.<sup>[15]</sup> Police Senior Inspector (*PSI*) Alfredo Quintero, the Forensic Chemist of the PNP Crime Laboratory, conducted an examination on the specimen submitted, and found it to be positive for the presence of *shabu* (Exh. "B").<sup>[16]</sup>

On the hearing of August 13, 2004, the prosecution offered the following as exhibits:

Exhibit "A" - the shabu confiscated from the appellant

Exhibit "B" - the report by the PNP Crime Laboratory

Exhibit "C" - the request for laboratory examination

Exhibits "D" and "E" - the buy-bust money

Exhibit "F" - the request for laboratory examination received by Forensic Chemist Quintero

The defense presented a different version of the events, summarized as follows:

At around 4:30 p.m. of December 27, 2003, Jojo Jose came to the appellant's house and informed him that Captain de Vera was inviting him to be an "asset." The

appellant and Jojo boarded a tricycle and proceeded to the SSS Building where Captain de Vera was waiting for them.<sup>[17]</sup> As the tricycle approached the Methodist Church along Bintawan Road, Jojo dropped his slippers and ordered the driver to stop. Immediately after, a van stopped in front of the tricycle; Captain de Vera alighted from the van and handcuffed the appellant. Captain de Vera brought the appellant inside the van, frisked him, and took P200 from his pocket.<sup>[18]</sup> Afterwards, Captain de Vera took the appellant to the SSS Building, where he (Captain de Vera) and the building manager drank coffee. Captain de Vera then brought the appellant to the Diadi Municipal Jail where he was detained for almost two days.<sup>[19]</sup>

On the morning of December 29, 2003, the appellant was transferred to the Provincial Jail. He signed a document without the assistance of a lawyer after being told that it would result in his immediate release.<sup>[20]</sup>

The RTC, in its decision<sup>[21]</sup> of August 16, 2005, convicted the appellant of the crime charged, and sentenced him to suffer the penalty of life imprisonment. The RTC likewise ordered the appellant to pay a P500,000.00 fine.

The appellant appealed to the CA, docketed as CA-G.R. CR-H.C. No. 01597. The CA, in its decision<sup>[22]</sup> dated May 22, 2007, affirmed the RTC decision.

The CA found unmeritorious the appellant's defense of instigation, and held that the appellant was apprehended as a result of a legitimate entrapment operation. It explained that in inducement or instigation, an innocent person is lured by a public officer or private detective to commit a crime. In the case at bar, the buy-bust operation was planned only after the police had received information that the appellant was selling *shabu*.

The CA also held that the failure of the police to conduct a prior surveillance on the appellant was not fatal to the prosecution's case. It reasoned out that the police are given wide discretion to select effective means to apprehend drug dealers. A prior surveillance is, therefore, not necessary, especially when the police are already accompanied by their informant.

The CA further ruled that the prosecution was able to sufficiently prove an unbroken chain of custody of the *shabu*. It explained that PO3 Almarez sealed the plastic sachet seized from the appellant, marked it with his initials, and transmitted it to the PNP Crime Laboratory for examination. PSI Quintero conducted a qualitative examination and found the specimen positive for the presence of *shabu*. According to the CA, the prosecution was able to prove that the substance seized was the same specimen submitted to the laboratory and presented in court, notwithstanding that this specimen was turned over to the crime laboratory only after two days.

In his brief,<sup>[23]</sup> the appellant claims that the lower courts erred in convicting him of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt. He harps on the fact that the police did not conduct a prior surveillance on him before conducting the buy-bust operation.

The appellant further contends that the prosecution failed to show an unbroken chain of custody in the handling of the seized drug. He claims that there was no

evidence to show when the markings were done. Moreover, a period of two days had elapsed from the time the *shabu* was confiscated to the time it was forwarded to the crime laboratory for examination.

The Office of the Solicitor General (OSG) counters with the argument that the chain of custody of the *shabu* was sufficiently established. It explained that the *shabu* was turned over by the police officers to the PNP Crime Laboratory, where it was found by the forensic chemist to be positive for the presence of *shabu*. The OSG likewise claimed that the appellant failed to rebut the presumption of regularity in the performance of official duties by the police. The OSG further added that a prior surveillance is not indispensable to a prosecution for illegal sale of drugs.<sup>[24]</sup>

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

After due consideration, we resolve to **acquit** the appellant for the prosecution's failure to prove his guilt beyond reasonable doubt. Specifically, the prosecution failed to show that the police complied with paragraph 1, Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act.

#### **The Comprehensive Dangerous Drugs Act: A Brief Background**

R.A. No. 9165 was enacted in 2002 to pursue the State's policy to "safeguard the integrity of its territory and the well-being of its citizenry particularly the youth, from the harmful effects of dangerous drugs on their physical and mental well-being, and to defend the same against acts or omissions detrimental to their development and preservation."

R.A. No. 9165 repealed and superseded R.A. No. 6425, known as the Dangerous Drugs Act of 1972. Realizing that dangerous drugs are one of the most serious social ills of the society at present, Congress saw the need to further enhance the efficacy of the law against dangerous drugs. The new law thus mandates the government to pursue an intensive and unrelenting campaign against the trafficking and use of dangerous drugs and other similar substances through an integrated system of planning, implementation and enforcement of anti-drug abuse policies, programs and projects.<sup>[25]</sup>

#### **Illegal Sale of Drugs under Section 5 vis-à-vis the Inventory and Photograph Requirement under Section 21**

In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti*, i.e., the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction.<sup>[26]</sup> To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the *same* illegal drug actually recovered from the appellant; otherwise, the prosecution for

possession or for drug pushing under R.A. No. 9165 fails.<sup>[27]</sup>

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

(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[.]

This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads:

(a) The apprehending officer/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, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; 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[.]

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>[28]</sup> The records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure despite its mandatory terms. The deficiency is patent from the following exchanges at the trial:

PROSECUTOR [EMERSON TURINGAN]:

Q: After you handed this buy-bust money to the accused, what happened next?

[PO3 ALMAREZ:]