

FIRST DIVISION

[G.R. No. 164580, February 06, 2009]

**NORGIE CRUZ Y CASTRO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review filed by petitioner Norgie Cruz y Castro (petitioner) seeking to set aside the Decision^[1] dated 31 March 2004 of the Court of Appeals in CA-G.R. CR No. 26300 which affirmed with modification the Joint Decision^[2] dated 10 May 2001 of the Regional Trial Court, Branch 72, Malabon City, Metro Manila (RTC-Branch 72) in Criminal Cases Nos. 22086-MN to 22087-MN.

The Facts

On 16 November 1999, a confidential informant went to the office of the Drug Enforcement Group (DEG) of the Malabon Police Station and informed the DEG operatives that he might be able to set up a sale of *shabu* with a drug pusher residing at Barangay Potrero, Malabon City. A surveillance team, composed of SPO1 Alberto Nepomuceno (SPO1 Nepomuceno), SPO1 Mario Saddoy (SPO1 Saddoy), PO1 Rodolfo Cruz (PO1 Cruz), and PO1 Allan Fernandez,^[3] was formed to validate and confirm the informant's claim. The following day, the informant reported that he was able to arrange the sale of *shabu* with the drug pusher at the Dunkin' Donuts establishment along MacArthur Highway near the Bonifacio Monument in Kalookan City. A buy-bust team, with SPO1 Nepomuceno designated as poseur-buyer, was formed to entrap the drug pusher. SPO1 Nepomuceno was issued P8,400 worth of marked money. The informant accompanied SPO1 Nepomuceno to the Dunkin' Donuts establishment and the rest of the team followed and took strategic positions to observe the transaction. Team member PO1 Cruz saw a person, later identified as petitioner, who talked to the informant and SPO1 Nepomuceno. Petitioner, the informant, and SPO1 Nepomuceno boarded the latter's vehicle and they proceeded to Reparo Street, Malabon City. The rest of the team followed.^[4] Along Reparo Street, PO1 Cruz saw petitioner meet a teenager carrying a child, then petitioner pulled out two sachets from the child's diaper and handed the sachets to SPO1 Nepomuceno. SPO1 Nepomuceno handed to petitioner the marked money. Thereafter, the buy-bust team approached and arrested petitioner and retrieved the two sachets which turned out to be *shabu*.^[5] SPO1 Saddoy recovered the marked money from petitioner.^[6] The police officers informed petitioner of his constitutional rights and proceeded to question him. Later, petitioner led the police officers to his residence at No. 1, MacArthur Highway, Malabon City. Petitioner retrieved a large package containing *shabu* from a hole dug into the stairway of his house which was

turned over to PO1 Cruz.^[7]

On 22 November 1999, petitioner was charged with Illegal Sale of *shabu* and Illegal Possession of *shabu* in Criminal Cases Nos. 22086-MN and 22087-MN before the RTC-Branch 72. Petitioner posted bail in both cases and was provisionally released from detention on 29 November 1999. Upon arraignment, petitioner pleaded not guilty to both charges. Trial ensued.

Trial Court's Ruling

The RTC-Branch 72 rendered judgment on 10 May 2001 convicting petitioner of both charges. He was sentenced to suffer imprisonment ranging from six months of *arresto mayor* as minimum to four years, two months and one day of *prision correccional* as maximum in Criminal Case No. 22086-MN (illegal sale), and six years of *prision correccional* as minimum to ten years of *prision mayor* as maximum in Criminal Case No. 22087-MN (illegal possession).

The trial court ruled that the totality of the evidence adduced by the prosecution strongly established that petitioner was neither licensed nor authorized to possess and sell *shabu*.

Ruling of the Court of Appeals

On appeal docketed as CA-G.R. CR No. 26300, the Court of Appeals rendered judgment on 31 March 2004 affirming petitioner's conviction in Criminal Case No. 22086-MN but acquitting him in Criminal Case No. 22087-MN. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Joint Decision dated May 10, 2001 of the RTC, Branch 72, Malabon, Metro Manila in Criminal Cases Nos. 22086-MN to 22087-MN is partly **AFFIRMED with MODIFICATION**.

In Criminal Case No. 22087-MN, for violation of Section 16, Article III, RA 6425 as amended by RA 7659, for illegal possession of regulated drugs, accused-appellant is hereby **ACQUITTED**.

In Criminal Case No. 22086-MN, for violation of Section 15, Article III, RA 6425 as amended by RA 7659, for illegal sale of regulated drugs, accused-appellant's conviction is hereby **AFFIRMED with MODIFICATION** in that the penalty should be 6 months of *arresto mayor* to 4 years and 2 months of *prision correccional*.^[8]

The Court of Appeals ruled that the commission of the offense of illegal sale of prohibited drugs required merely the consummation of the sale which happens the moment the buyer received the drugs from the seller. What is material is the proof that the sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. And since the quantity of drugs confiscated from petitioner was only 3.39 grams and 4.09 grams, and there was no aggravating or mitigating circumstance, the Court of Appeals modified the penalty imposed by the trial court to "six months of *arresto mayor* to four years and two months of *prision correccional*."

The Court of Appeals, however, reversed the finding of the trial court convicting petitioner of illegal possession of *shabu*. The Court of Appeals ruled that while the warrantless arrest, being the consequence of a successful buy-bust operation, was valid and legal in all respects, the ensuing search and seizure in petitioner's house was already illegal as the same was effected without a warrant. A search as an incident to a lawful arrest is allowed provided that the search is made contemporaneous to the arrest and within a permissible area of search. However, the search here was conducted at the point where the arrest was already terminated. It was only after petitioner volunteered information that the police officers proceeded to petitioner's house. Consequently, the *shabu* obtained from petitioner's house is excluded as evidence and the charge of illegal possession had no leg to stand on.

The Court's Ruling

This Court will delve only on the criminal case which convicted petitioner of illegal sale of *shabu* since he was acquitted in Criminal Case No. 22087-MN for illegal possession of *shabu*.

In the present petition, petitioner contends that the assailed Court of Appeals' decision was not in accord with law and jurisprudence. He argues that the prosecution failed to rebut his allegations that the failure to present the poseur-buyer, as the prosecution's best witness, constitutes a fatal flaw in the prosecution's evidence. He insists that the testimony of the poseur-buyer is material and indispensable when the accused denies having committed the prohibited act. Petitioner claims that no competent witness was presented to establish that he sold and delivered a prohibited drug to another and that he knew that what he had sold and delivered was a dangerous drug. Petitioner further points out that the buy-bust money that was used in the buy-bust operation was not presented.

We disagree.

A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. For the successful prosecution of the illegal sale of *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.

[9] Thus, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

The failure of the poseur-buyer to testify on the actual purchase is not fatal to the prosecution's cause.^[10] SPO1 Nepomuceno, the poseur-buyer, was already assigned in Iloilo City, Region VIII, when the cases were being tried. However, SPO1 Saddoy and PO1 Cruz saw the illicit transaction as both of them positioned themselves at the barber shop opposite the Dunkin' Donuts establishment.^[11] PO1 Cruz witnessed the whole transaction where the marked money was exchanged for two sachets of *shabu*. He was positioned at Reparo Street where he saw the exchange of *shabu* and the marked money along Reparo Street.^[12] SPO1 Saddoy, on the other hand, was