

THIRD DIVISION

[G.R. No. 185381, December 16, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANILO CRUZ Y CULALA, ACCUSED-APPELLANT.**

DECISION

VELASCO JR., J.:

The Case

This is an appeal from the June 20, 2008 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01621 entitled *People of the Philippines v. Danilo Cruz y Culala*, which affirmed the July 28, 2005 Joint Decision^[2] in Criminal Case Nos. 12563-D and 12564-D of the Regional Trial Court (RTC), Branch 267 in Pasig City. The RTC found accused-appellant Danilo Cruz guilty of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The charges—sale and possession of illegal drugs—against appellant stemmed from the following Informations:

**Criminal Case No. 12563-D
(Violation of Sec. 5 [Sale], Art. II of RA 9165)**

That on or about the 24th day of June, 2003, in the Municipality of Taguig, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to poseur buyer PO3 Danilo B. Arago, a total of 0.05 gram of white crystalline substance, contained in one (1) heat-sealed transparent plastic sachet, for and in consideration of the amount of P200.00, which substance was found positive to the tests for Methamphetamine Hydrochloride, also known as "shabu", a dangerous drug, in violation of the above-cited law.

Contrary to law.^[3]

**Criminal Case No. 12564-D
>(Violation of Sec. 11 [Possession], Art. II of RA 9165)**

That on or about the 24th day of June, 2003, in the Municipality of Taguig, Metro-Manila, Philippines and within the jurisdiction of this

Honorable Court, the above-named accused, not being authorized by law, to possess or otherwise use any dangerous drug, did, then and there willfully, unlawfully and knowingly have in his possession, custody and control, a total of 0.04 gram of white crystalline substances, contained in two (2) heat-sealed transparent plastic sachets, which substances were found positive to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

Contrary to law.^[4]

When arraigned on July 30, 2003, appellant pleaded "not guilty" to the charges against him.

At the pre-trial conference, the prosecution and the defense stipulated on: (1) the identity of appellant; (2) the jurisdiction of the trial court over the person of appellant and the subject matter of the cases; (3) the date, place, and fact of the arrest; (4) the existence of the subject specimens; (5) the fact that a request was made by the arresting officers for the examination of the confiscated items; (6) the fact that the forensic chemist, Police Senior Inspector (P/SInsp.) Hermosila S. Ferminadoza, examined the specimens and issued a laboratory report thereon; (7) the fact that the examining forensic chemist did not know from whom the alleged specimens were taken; and (8) the fact that the subject specimens tested positive for *shabu*. After the stipulations were made, the testimony of the forensic chemist was dispensed with.

During the trial, the prosecution presented, as its witnesses, Police Officer 3 (PO3) Danilo B. Arago, PO3 Arnulfo J. Vicuña, and PO2 Remegio R. Aguinaldo, all members of the Anti-Illegal Drugs Special Operations Task Force of the Taguig City Police. On the other hand, the defense presented, as its witnesses, appellant Cruz, Ma. Luz Encarnacion, and Ronaldo de la Paz.

The Prosecution's Version of Facts

On June 24, 2003, at about 11 o'clock in the evening, a police informant came to the Drug Enforcement Unit of the Taguig City Police and reported that a certain Danilo Cruz alias "Boy" was dealing in illegal drugs at his residence at 75 MLQ Street, Tambak, Wawa, Taguig, Metro Manila. The office chief, P/SInsp. Romeo Delfin Paat, immediately formed a buy-bust team composed of PO3 Arago, acting as poseur-buyer, PO3 Vicuña, PO2 Aguinaldo, and two other police officers. P/SInsp. Paat gave PO3 Arago two (2) one hundred peso bills which were then marked with the poseur-buyer's initials, "DBA," on the upper corner.

At around 11:45 in the evening, the buy-bust team and the informant set out for their operation. The informant and PO3 Arago went to the house of alias "Boy," while their companions stayed nearby. When alias "Boy" came out after being called, the informant introduced PO3 Arago to him as "Mike," a friend and "*eskorer*." PO3 Arago then asked alias "Boy," "*Pare, meron ka ba dyan?*" to which alias "Boy" replied, "*Magkano ba?*" PO3 Arago answered, "*Kasang dos lang.*" Alias "Boy" gave PO3 Arago a plastic sachet containing a white crystalline substance in exchange for the PhP 200 marked money. Thereupon, PO3 Arago wiped his face with a white towel as the pre-arranged signal for PO2 Aguinaldo and PO3 Vicuña to come out of hiding

and arrest "Boy."

Appellant attempted to flee but PO3 Arago held him by the arm, while PO2 Aguinaldo recovered the marked money from him. When PO3 Arago ordered appellant to empty his pockets for any concealed weapons, PO2 Aguinaldo retrieved two (2) more plastic sachets containing white crystalline substance. PO3 Arago inscribed his signature and the appellant's initials "DCC" on the sachet given him by appellant, while PO2 Aguinaldo inscribed those found in appellant's pockets as "DCC-1" and "DCC-2."

The police officers then brought appellant to the police station for investigation.

The transparent plastic sachets seized during the buy-bust operation were forwarded to the Philippine National Police (PNP) Crime Laboratory, Southern Police District Crime Laboratory Office, Fort Andres Bonifacio, Taguig, for examination. P/SInsp. Fermindoza conducted a qualitative examination on the specimens, which tested positive for Methamphetamine Hydrochloride or *shabu*, a dangerous drug. Physical Science Report No. D-747-03 dated June 25, 2003 she issued showed the following results:

SPECIMEN SUBMITTED:

Seven (7) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

A1 ("DCC") = 0.05 gram
A2 ("DCC-1") = 0.02 gram
A3 ("DCC-2") = 0.02 gram

x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x

FINDINGS:

Qualitative examination conducted on the above-stated [specimens] gave POSITIVE result to the tests for the presence of Methamphetamine Hydrochloride, a dangerous drug. x x x

CONCLUSION:

[Specimens] A1 through A7 contain Methamphetamine Hydrochloride, a dangerous drug.^[5] x x x

Version of the Defense

Appellant recounted that, on June 24, 2003, at around 11:00 in the evening, while inside his house playing *cara y cruz* with his friends Alberto Cruz, Cesar dela Cruz,

Ronaldo dela Paz, and Antonio Dionisio, police officers barged in looking for a certain Liza, his former live-in partner. He told the intruders that he did not know Liza's whereabouts and that only his children were in the adjacent room.

PO3 Arago and PO2 Aguinaldo boxed the appellant in anger. PO3 Arago then searched his house but found nothing. Afterwards, they were all brought to the police headquarters, but his friends were released after 30 minutes. He was the only one charged with violation of Secs. 5 and 11 of RA 9165.

The two other defense witnesses corroborated the testimony of appellant: Ma. Luz Encarnacion testified about the incident that transpired inside appellant's house on June 24, 2003, while Ronaldo dela Paz attested to appellant's being brought to the police station.

Ruling of the Trial Court

After trial, the RTC convicted appellant. The dispositive portion of the Joint Decision reads:

WHEREFORE, in view of the foregoing considerations, this Court acting as a Special Drug court in the above-captioned cases hereby decide in this wise:

1.) **DANILO CRUZ y Culala *alias* Boy**, accused in Criminal Case No. 12563-D for Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165, is hereby sentenced to suffer LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (PhP 500,000);

2.) The same **DANILO CRUZ y Culala *alias* Boy**, accused in Criminal Case No. 12564-D for Violation of Section 11, 2nd paragraph, No. 3, Article II of Republic Act No. 9165, is further sentenced to suffer Twelve (12) years and One (1) day, and to pay a fine of Three Hundred Thousand Pesos (PhP 300,000), without subsidiary imprisonment in case of insolvency;

x x x x

On the other hand, the Jail Warden of Taguig City Jail where accused Danilo Cruz y Culala *alias* Boy is presently detained is hereby ordered to forthwith commit the person of convicted Danilo C. Cruz to the New Bilibid Prisons, Bureau of Corrections in Muntinlupa City, Metro Manila.

x x x x

Costs de officio.

SO ORDERED.^[6]

On appeal to the CA, appellant disputed the trial court's finding of his guilt beyond reasonable doubt of the crimes charged. He contended that the testimonies of the prosecution witnesses were full of inconsistencies and, hence, should not have been

relied upon by the court in its decision. Further, he argued that the police officers failed to conduct prior surveillance and to observe the proper procedure in the custody of the seized prohibited items pursuant to RA 9165.

Ruling of the Appellate Court

On June 20, 2008, the CA affirmed the judgment of the RTC. It ruled that all the elements of the crimes charged were duly established by the prosecution.

The dispositive portion of the CA decision reads:

WHEREFORE, the Appeal is hereby **DISMISSED**. The assailed Joint Decision of the Regional Trial Court, Branch 267 of Pasig City dated 28 July 2005 in Criminal Case Nos. 12563-D and 12564-D, finding accused-appellant Danilo Cruz, guilty of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED**.

SO ORDERED.^[7]

Appellant filed a timely notice of appeal of the CA decision.

The Issues

Accused-appellant assigns the following errors:

I.

The court a quo gravely erred in giving credence to the prosecution witnesses' materially inconsistent testimonies.

II.

The court a quo gravely erred in convicting the accused-appellant for violation of Sections 5 and 11 of Republic Act No. 9165 despite the failure of the prosecution to overthrow the constitutional presumption of innocence in his favor.

Our Ruling

The appeal has no merit.

Buy-Bust Operation Was Valid

A buy-bust operation is a form of entrapment that is resorted to for capturing persons who are predisposed to commit crimes. The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.^[8]