

SECOND DIVISION

[G.R. No. 181545, October 08, 2008]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARK DELA CRUZ, APPELLANT.

D E C I S I O N

TINGA, J.:

Subject of this appeal is the 12 September 2007 decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02534, affirming the 24 August 2006 judgment^[2] of the Regional Trial Court (RTC), Branch 120 of Caloocan City, finding appellant Mark Dela Cruz y Batac guilty of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

Appellant was charged with illegal sale of *shabu* in an Information dated 18 July 2003, committed as follows:

That on or about the 16th day of July 2003 in Caloocan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without having been authorized by law, did then and there wil[l]fully, unlawfully and feloniously sell and deliver to one PO2 EUGENE C. AMOYO, who posed as buyer, two (2) pcs. of small transparent plastic sachets containing 0.08 gram, total weight of Methylamphetamine Hydrochloride (*shabu*) for [t]wo (2) pcs of One Hundred Peso Bill with SN DF950395 and KY384741 knowing the same to be a dangerous drug.

CONTRARY TO LAW.^[3]

Appellant entered a plea of not guilty upon arraignment. During the pre-trial conference, the parties stipulated that P/Insp. Ericson L. Calabocal conducted a qualitative examination on two (2) heat-sealed transparent plastic sachets evidenced by Physical Science Report No. D-845-03 dated 17 July 2003. It was further stipulated that said witness had no personal knowledge as to the facts and circumstances surrounding the arrest of appellant, as well as the source of the subject specimens.^[4]

Trial ensued. Witnesses for the prosecution narrated that in the evening of 16 July 2003, a male informant came to the office of the Northern Police District on Tanigue Street, Kaunlaran Village, Caloocan City. In the presence of PO3 Gilbert Velasco (PO3 Velasco) and PO2 Eugene Amoyo (PO2 Amoyo), the informant complained about the rampant selling of *shabu* by a certain Mac-Mac. Said information was relayed to P/Chief Inspector Rafael Santiago who immediately instructed PO3 Velasco to form a buy-bust team. The team was composed of PO3 Velasco, PO2 Amoyo, PO3 Joel Borda (PO3 Borda), PO2 Loreto Lagmay, PO1 Renato Ameng, PO1

Allan Reyes and PO1 Joel Cosme. PO2 Amoyo was the designated poseur-buyer. Two (2) pieces of P100.00 bills were prepared as boodle money. The initials "ECA" were placed on the bills.

The buy-bust team underwent a briefing and then proceeded to the target area on board two (2) separate vehicles. They arrived at a parking lot along Hipon Liit in Dagat-dagatan at 7:30 p.m. PO2 Amoyo, PO3 Velasco and PO3 Borda, along with the informant, waited beside a coconut tree for Mac-Mac.

After two hours, appellant arrived with two male companions. The informant approached appellant and introduced PO2 Amoyo to him as a buyer of P200.00 worth of *shabu*. Appellant left for a while to get the *shabu* from his companions, who were standing 7 meters away from the group. He returned ten (10) minutes later and handed two (2) plastic sachets to PO2 Amoyo, who, in exchange, handed over the boodle money.

After the exchange, PO2 Amoyo raised his left hand to signal the other members of the buy-bust team that the transaction had already been concluded. PO3 Velasco and PO3 Borda immediately arrested appellant while PO2 Amoyo ran after appellant's companions. There was an exchange of gunfire between PO2 Amoyo and an unidentified companion but the latter was able to escape unscathed. PO2 Amoyo kept the two (2) plastic sachets in his pocket.

A spot investigation was conducted on appellant. It was revealed that the two (2) male companions were identified as Amay and Tabo. Appellant was then brought to the police headquarters. PO2 Amoyo placed his markings "ECA-BB-1" and "ECA-BB-2" on the plastic sachets before turning them over, together with the buy-bust money, to SPO4 Jorge Tabayag. PO2 Amoyo also prepared a request for laboratory examination addressed to the Philippine National Police (PNP) Crime Laboratory.

The two (2) plastic sachets containing white crystalline substance were found positive for *shabu*. Said finding was indicated in Physical Science Report No. D-845-03^[5] prepared by Forensic Chemist and Police Inspector Erickson L. Calabocal of the PNP Crime Laboratory Group.

Appellant presented a different version of the facts. He testified that at 8:30 p.m. on 16 July 2003, he was sitting in the plaza located on Hipon Liit St., Dagat-dagatan, Caloocan City. He was waiting for his brother to deliver his boots when the policemen arrived and were looking for an alias Amay. Appellant then heard a gunshot and saw Amay firing the shot. Appellant ran towards his house. Later, the policemen went to his house and handcuffed him. When appellant asked why he was being arrested, the policemen claimed that appellant knew Amay. Appellant denied selling *shabu* and asserted that the case was filed against him when he refused to give information about Amay.

Appellant's testimony was corroborated by his brother, Balweg Dela la Cruz, who stated in court that appellant instructed him to get his boots and bring them to the plaza at around 8:30 p.m.^[6] As he was about to leave the house, Balweg saw his brother being arrested by two policemen. He heard from other people that the policemen were asking appellant if he knew of a man named Amay.^[7]

In finding appellant guilty, the trial court ruled that there was a meeting of minds between the poseur-buyer and appellant as to the delivery of *shabu* in exchange for P200.00. The dispositive portion of said judgment reads:

Premises considered, this Court finds accused **MARK DELA CRUZ Y BATAC** "GUILTY" beyond reasonable doubt for Violation of Sec. 5, Article II of [R.A. No.] 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the penalty of Life Imprisonment and a fine of Five Hundred Thousand (P500,000.00) Pesos.

The two (2) plastic sachets containing 0.04 gram each of Methylamphetamine Hydrochloride is hereby ordered confiscated in favor of the government to be turned over to the Philippine Drug Enforcement Agency (PEDEA) [sic] for proper disposition.

SO ORDERED.^[8]

On 15 September 2006, appellant appealed to the Court of Appeals via a notice of appeal.^[9]

On 12 September 2007, the Court of Appeals rendered judgment affirming the RTC's decision in Criminal Case No. 68601.^[10] The appellate court gave weight to the testimony of the poseur-buyer as well as to the Physical Science Report in concluding that the illegal sale of *shabu* was perpetrated by appellant. The appellate court rejected appellant's defense of frame-up for failure to substantiate such allegation and in light of the presumption of regularity accorded to police officers in the performance of their official duties. Anent the alleged failure of the police officers to observe the procedure laid down under Section 21 of R. A. No. 9165, the appellate court held that such failure is not fatal as the circumstances in the instant case show that the integrity pertaining to the custody of the seized *shabu* was not compromised notwithstanding that the same were marked only during the investigation held at the police station.^[11]

After obtaining an unfavorable decision, appellant filed a notice of appeal before this Court.^[12]

On 9 April 2008, this Court required the parties to simultaneously file their supplemental briefs.^[13]

In two separate manifestations, both parties expressed their intention not to file any supplemental brief since all the issues and arguments have already been raised in their respective Briefs.^[14]

Appellant maintains that the prosecution was not able to establish the moral certainty required by law to prove his guilt beyond reasonable doubt. He contends that his defenses of alibi and denial were supported not only by his testimony but by that of other witnesses. He questions the identity of the *shabu* allegedly confiscated from him as the marking was made only in the police station in front of the investigating officer, contrary to the requirement laid down in Section 21 (1) of RA No. 9165. He also assails the forensic laboratory examination result in that it was not covered by a certification in violation of Section 21 (3) of the same law. He

stresses that the prosecution must not simply rely on the presumption of regularity for it cannot by itself support a judgment of conviction.^[15]

In its appellee's brief,^[16] the Office of the Solicitor-General (OSG) supports the conviction of appellant. It argues that appellant was caught *in flagrante delicto* selling *shabu* in a legitimate buy-bust operation. It claims that the elements necessary in the prosecution of the illegal sale of drugs were duly established by the prosecution, namely: the appellant, as seller of the *shabu*, and the poseur-buyer were identified; and the *shabu* confiscated from appellant and the money used to buy it were also presented in court. The OSG emphasizes that the sachets of *shabu* presented in court were the same sachets confiscated from appellant and subjected to laboratory examination. It justifies the non-observance of Section 21 (1) of R. A. No. 9165 since the *corpus delicti* of the illegal sale of drugs was duly established during trial. It adds that after the confiscation of the sachets of *shabu* from appellant, they were immediately submitted for laboratory examination to the PNP Crime Laboratory.^[17]

The appeal is meritorious.

The elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.^[18]

The common issue that crops out of a buy-bust operation, like in this case, is whether the drug submitted for laboratory examination and presented in court was actually recovered from appellant. The Court is cognizant of the fact that an entrapment operation is open to possibilities of abuse. It is by this same thrust that the chain of custody rule was adopted by the Court. In *Lopez v. People*,^[19] we had the occasion to expound on the chain of custody rule, thus:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the