

## SECOND DIVISION

**[ G.R. NO. 173051 (FORMERLY G.R. NO. 161678),  
July 31, 2007 ]**

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERARDO  
ORTEZA, APPELLANT.**

### DECISION

**TINGA, J.:**

Gerardo Orteza was charged before the Regional Trial Court of Tarlac City, Branch 64, with illegal sale of *shabu* in violation of Section 5, Article II of Republic Act No. 9165<sup>[1]</sup> (R.A. No. 9165). The Information dated 20 November 2002 against him reads:

#### INFORMATION

The undersigned Assistant Provincial Prosecutor (detailed), upon his inquest investigation, accuses GERARDO ORTEZA y Orteza, a resident of Block 9, San Nicolas, Tarlac City and presently detained at Camp Macabulos, Tarlac City of the crime of Violation of Section 5, Article II of Republic Act 9165, (Dangerous Drug of 2002), committed as follows:

That on November 19, 2002, at around 9:00 o'clock in the evening, at Tarlac City and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally sell, dispense and deliver .063 gram of Methamphetamine Hydrochloride, known as Shabu, a dangerous drug, to poseur buyer SPO1 Rodolfo Ramos for P100.00, without being authorized by law.

CONTRARY TO LAW.<sup>[2]</sup>

Upon arraignment, appellant entered a plea of not guilty.<sup>[3]</sup> During trial, the prosecution adopted the Joint Affidavit of Arrest<sup>[4]</sup> dated 20 November 2002 executed by PO2 Allan J. Lagasca, PO3 Daniel I. Lingsay, SPO1 Rodolfo L. Ramos, and SPO4 Pascual M. Delos Reyes as their testimonies. Delos Reyes and Lagasca appeared in court and confirmed their statements in the Joint Affidavit.<sup>[5]</sup>

According to the Joint Affidavit, a team comprised of the above-mentioned police officers was formed to conduct a buy-bust operation at Block 9, San Nicolas, Tarlac City on 19 November 2002 to apprehend suspected drug peddlers. The suspects have previously been under a week-long surveillance after the police officers received reports about their illegal activities.<sup>[6]</sup>

The team with its back-up arrived at the place at around nine o'clock in the evening of said date. The appointed poseur-buyer SPO1 Ramos, together with the informant,

approached the two (2) suspects Leng Leng and Buboy while the back-up team positioned itself nearby. SPO1 Ramos purchased one (1) sachet of *shabu* for One Hundred Pesos (P100.00) from Buboy. Then, SPO1 Ramos gave the pre-arranged signal. Immediately, the rest of the team rushed to the scene and placed the two (2) suspects under arrest. After a body search, the marked money was recovered from Buboy and another sachet of *shabu* was confiscated from Leng Leng. Thereafter, the suspects were brought to Camp Macabulos where Buboy identified himself as Gerardo Orteza.<sup>[7]</sup>

Later upon examination, Engr. Marcene Agala of the Regional Crime Laboratory, Camp Olivas, San Fernando, Pampanga, confirmed that the two (2) sachets recovered from the scene were positive for methamphetamine hydrochloride.<sup>[8]</sup>

As lone witness for the defense, appellant testified that on 19 November 2002 at around 5:30 p.m., he was about to enter the house when he was halted by PO2 Lagasca. Then, Lagasca allegedly forced him to go with him. Lagasca supposedly asked appellant not to make a scene as he would be freed later on. Subsequently, appellant was taken to Camp Macabulos. Appellant denied selling *shabu*. He denied ever speaking to SPO1 Ramos, the poseur-buyer. He also denied knowing a certain Leng Leng.<sup>[9]</sup>

After trial, the trial court rendered a Decision<sup>[10]</sup> dated 4 April 2002, disposing as follows:

WHEREFORE, premises above considered finding the guilt of the accused proven beyond reasonable doubt by the Prosecution for violation of Section 5, Article II of Republic Act [No.] 9165, this Court sentences Gerardo Orteza y Orteza to [a] penalty of life imprisonment to death and a fine ranging from Ph[P]500,000.00 to Ph[P]10,000,000.00 cost against the accused.

SO ORDERED.<sup>[11]</sup>

The judgment of conviction was elevated to the Court for automatic review. In a Resolution<sup>[12]</sup> dated 8 November 2005 of the Court in G.R. No. 161678,<sup>[13]</sup> the case was transferred to the Court of Appeals pursuant to the Court's ruling in *People v. Efren Mateo*.<sup>[14]</sup>

Before the Court of Appeals, appellant argued that the trial court erred: (1) in giving credence to the testimonies of the prosecution witnesses; and (2) in finding him guilty of violating Section 5, Article II of R.A. No. 9165. <sup>[15]</sup>

Except for some modifications, the Court of Appeals in a Decision<sup>[16]</sup> dated 28 February 2006, in CA-G.R. CR No. 01813, affirmed the decision of the trial court. The dispositive portion of the decision reads:

**WHEREFORE**, in light of the foregoing premises, the decision appealed from is hereby **AFFIRMED** save for a **modification** in the imposed penalty which is now fixed at life imprisonment and a fine of P500,000.00.

SO ORDERED.<sup>[17]</sup>

The Court of Appeals held that the requisites of the crime of illegal sale of prohibited drugs were borne out by the evidence on record. The identity of appellant as the seller was established by the positive testimonies of the members of the buy-bust team; the test conducted on the crystalline substance sold by appellant showed that it was positive for *shabu*; third, the exchange between the poseur-buyer and appellant was for a consideration and in fact the marked money was recovered from appellant when a body search was conducted on his person.<sup>[18]</sup>

Although the poseur-buyer was not presented in court, the appellate court ruled that the unswerving and compatible testimonies of the two members of the buy-bust team, who were eyewitness to the transaction, sufficed to pin down appellant.<sup>[19]</sup> Against these positive declarations, appellant only professed bare denials which cannot sway judgment when unsupported, the appellate court noted.<sup>[20]</sup>

The Court of Appeals however modified the penalty imposed considering the trial court's failure to specify the actual penalty to be suffered by appellant and the amount of fine he was supposed to pay. Instead, it sentenced appellant to suffer the penalty of life imprisonment and pay a fine of P500,000.00.<sup>[21]</sup>

Appellant is now before the Court reiterating his contention that the prosecution was not able to establish with moral certainty the actual transaction or sale of *shabu* as a fact. He maintains that the non-presentation of the poseur-buyer is fatal to this case as the two police officers who testified were, by their own admission, located at a distance and could not hear the alleged conversation between appellant and the poseur-buyer.<sup>[22]</sup> Through his Manifestation (In Lieu of Supplementary Brief) dated 9 August 2006,<sup>[23]</sup> appellant stated that he had exhaustively argued all the relevant issues in his Accused-Appellant's Brief filed before the Court of Appeals and that the filing of a supplemental brief might result in a repetition of the same arguments. Thus, he manifested that he was adopting the Accused-Appellant's Brief as Supplemental Brief.<sup>[24]</sup> The Office of the Solicitor General manifested that it was no longer filing a supplemental brief.<sup>[25]</sup>

There is merit in the appeal.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. It is the burden of the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. Corollarily, the prosecution must rest on its own merits and must not rely on the weakness of the defense. In fact, if the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence in its own behalf. In which case, the presumption of innocence shall prevail and hence, the accused shall be acquitted. However, once the presumption of innocence is overcome, the defense bears the burden of evidence to show reasonable doubt as to the guilt of the accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest each upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as

to every proposition of proof requisite to constitute the offense.<sup>[26]</sup>

In a prosecution for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. <sup>[27]</sup> What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.<sup>[28]</sup>

The Court believes that the prosecution was not able to establish with certainty all the elements necessary for the conviction of appellant for illegal sale of *shabu*.

First, there appears nothing in the records showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim*, <sup>[29]</sup> i.e., any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. It negates the presumption that official duties have been regularly performed by the police officers.

In *People v. Laxa*,<sup>[30]</sup> where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti*.

The Court made a similar ruling in *People v. Kimura*,<sup>[31]</sup> where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.

More recently, in *Zarraga v. People*,<sup>[32]</sup> the Court held that the material inconsistencies with regard to when and where the markings on the shabu were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*.

Significantly, Engr. Agala, the chemical engineer who conducted the laboratory test on the two (2) sachets, testified in part as follows:

ON CROSS-EXAMINATION  
BY ATTY. ABRENICA

x x x  
x

Q - Likewise, you did not conduct the fingerprint examination