

NINETEENTH DIVISION

[CA-G.R. CR - HC NO. 01602, January 30, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANITA DURAN Y ACASO, ACCUSED-APPELLANT.

D E C I S I O N

LAGURA-YAP, J.:

Anita Duran y Acaso (accused-appellant) appeals the Judgment^[1] dated January 28, 2013 rendered by the Regional Trial Court, Branch 30, Dumaguete City in Criminal Case No. 20262 and Criminal Case No. 20263. In the former case, accused-appellant is convicted of Violation of Section 5, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act, while in the latter case the accused-appellant is convicted with Violation of Section 11, also under Article II of the Act.

The dispositive portion^[2] of the decision, reads:

WHEREFORE, in the light of the foregoing, the court hereby renders judgment as follows:

1. In Criminal Case No. 20262, the accused Anita Duran y Acaso is hereby found Guilty beyond reasonable doubt of the offense of illegal sale of 0.09 gram of shabu in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet containing 0.09 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 20263, the accused Anita Duran y Acaso is hereby found guilty beyond reasonable doubt of the offense of illegal possession of 10.40 grams of shabu in violation of Section 11, Article II of R.A 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The eight (8) heat-sealed transparent plastic sachets containing a total of 10.40 grams of shabu are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Anita Duran y Acaso, shall be credited with the full time during which she has undergone

preventive imprisonment, provided she agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

The Information^[3] filed on December 9, 2010, against accused Anita Duran y Acaso under Criminal Case No. 20262, alleges:

That on or about the 8th day of December 2010 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to a police poseur buyer who is together with a confidential informant one (1) heat sealed transparent plastic sachet containing 0.09 gram of Methamphetamine Hydrochloride, commonly called shabu, a dangerous drug.

CONTRARY TO LAW.

The Information^[4] also filed on December 9, 2010 against accused Anita Duran y Acaso under Criminal Case No. 20263, alleges:

That on or about the 8th day of December 2010 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there willfully, unlawfully and feloniously keep and possess eight (8) heat sealed transparent plastic sachets containing a total of 10.40 grams of Methamphetamine Hydrochloride, commonly called shabu, a dangerous drug.

CONTRARY TO LAW.

Accused entered a "NOT GUILTY" plea during the arraignment^[5] on March 4, 2011.

The evidence for the prosecution is summarized as follows:

Sometime in the last week of November 2010, PO2 Ayunting was informed by Michael Dungog, Commander of Task Force Kasaligan, received that one Anita Duran was engaged in the illegal selling of shabu at her residence in Barangay Cadawinonan Housing Project, Dumaguete City. In the evening of December 7, 2010, PO2 Ayunting was informed that the illegal activities of the accused as earlier reported were confirmed by the confidential informant who was willing to help them arrest the accused. In the early morning of December 8, 2010, PO2 Ayunting went to the Office of Task Force Kasaligan where he met the confidential agent. A meeting was made to hatch a plan for a buy-bust operation against the accused. The briefing was attended by SA Dungog, PO3 Magsayo and Atty. Cimafranca. At the briefing, it was agreed that PO2 Ayunting would act as the poseur-buyer and will be accompanied by the confidential informant. The pre-arranged signal would be for PO2 Ayunting to scratch his head once the transaction is completed. PO3 Magsayo was designated as the immediate police back-up together with the rest of the team. PO2 Ayunting prepared a Five Hundred Peso (Php500.00) bill with serial number "XA833888" to be used as the buy-bust money.

At around 7:45 o'clock A.M., of December 8, 2010, the team proceeded to the target area. PO2 Ayunting and the confidential informant rode on a motorcycle. PO2 Magsayo arrived first at the area and he together with his team immediately positioned themselves near the house of the accused. PO2 Ayunting and the confidential informant then approached the house where the accused was standing by the door. The confidential informant talked to the accused and told her that they wanted to buy shabu. The accused asked for the payment, whereupon PO2 Ayunting who was beside the confidential informant gave the Php500.00 marked money. The accused then gave the one (1) heat-sealed transparent plastic sachet to PO2 Ayunting who executed the pre-arranged signal by scratching his head. Within a few second, PO3 Magsayo arrived and the rest of the buy-bust team entered the house of the accused-appellant. The buy-bust team saw the sachets of shabu in the jar and in the table together with the buy-bust money. PO2 Ayunting and PO3 Magsayo informed the accused of the nature of her arrest and her constitutional rights.

Evidence for the defense is summarized hereunder:

Accused testified that on December 8, 2010, she was at the house of her sister located at Block 2, Lot 3, Cadawinonan Housing Project, Barangay Cadawinonan, Dumaguete City. She (accused) went there because her son sent her a text message to get his child for immunization. The accused arrived at her sister's house at around 7:30 o'clock in the morning. While accused was there, two police officers arrived and they went to the room where she was located. The police officers told the accused that they were arresting her. She was made to sit down as the police officers arranged the shabu. The police officers were able to get Php31, 000.00 owned by her sister who was a pensioner. The accused said that she heard the two officers had an agreement on what to do with the money. The accused denied that she was selling or was in possession of dangerous drugs at that time.

After the trial, the RTC promulgated^[6] its judgment of conviction dated February 8, 2013 against the accused. Aggrieved, she filed a Notice of Appeal^[7] dated February 22, 2013.

Accused-appellant was transferred to the Correctional Institution for Women on February 19, 2013.^[8]

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

Accused-appellant in her Appellant's Brief argues that the prosecution disregarded the procedural requirements laid down under Section 21 of R.A. 9165. Although the testimonies of the police witnesses shows that they marked and conducted an inventory in the seized items in the presence of the accused-appellant, however, there is no showing that the accused-appellant signed the inventory receipt. Furthermore, crucial in proving the chain of custody is the marking of the seized drugs immediately after the arrest of the accused. In the present case, the police officers who were the witnesses for the prosecution testified that when they marked the packets of shabu, it was not witnessed by a representative of the media and/or the DOJ and any elected official. Considering the foregoing lapses, there is therefore

nagging doubts as to whether the seized items were taken from the possession of the accused-appellant.

Accused-appellant says that the trial court relied on the testimony of PO2 Ayunting and PO3 Magsayo and in the same breadth banked on the presumption of regularity in the performance of duty. In *People vs. Garcia*^[9], the Supreme Court held that the presumption only arises in the absence of contrary details in the case that raise doubt in the regularity in the performance of duties. Whereas, in this case, the police officers failed to comply with the standard procedures prescribed by law and therefore there is no occasion to apply the presumption.

In sum, the totality of evidence in the present case failed to show the accused-appellant's conviction by the trial court for violations of Sections 5 and 11 of Article II of R.A. 9165, since the prosecution failed to prove beyond reasonable doubt all elements of the two offenses charged.

The Solicitor General in his Appellee's Brief acknowledges the same elements for illegal sale of dangerous drugs, and counter argues that these are present in this case. Prosecution witnesses testified in a clear and straightforward manner as to the events that transpired and even after the buy-bust operation. There was a meeting of the minds of the poseur-buyer and the accused-appellant as to the sale between them. The identities of the buyer and seller were clear: PO2 Ayunting was the poseur-buyer while accused-appellant was the seller. First, PO2 Ayunting was willing to buy shabu from the accused-appellant in the amount Php 500.00. Second, the parties agreed that PO2 Ayunting would pay Php 500.00 in exchange for a sachet of shabu. The delivery and payment were also sufficiently established when the accused-appellant handed to PO2 Ayunting the sachet and the buy-bust money was confiscated from the accused-appellant after the arrest.

The Solicitor General asseverates that the testimony of PO2 Ayunting is corroborated by the testimony of one of the back-up officers, PO3 Jerry Magsayo. Taken together, their testimonies provide a clear account of what transpired during the buy-bust operation. Further, the physical evidence on record supported the above findings. As borne out by the laboratory test, the specimens recovered from accused-appellant after her arrest yielded positive results to the presence of *Methamphetamine Hydrochloride*. With the testimonies of the prosecution witness and the physical evidence, the elements of the crime of illegal sale of dangerous drugs had been sufficiently established.

The Solicitor General says that the elements to sustain a conviction for illegal possession of dangerous drugs are also present in the instant case. The subsequent search on the accused-appellant after her arrest for selling shabu resulted to the confiscation of eight (8) more plastic sachets. In turn, such plastic sachets yielded positive results as to the presence of methylamphetamine hydrochloride. Accused-appellant in this case freely and consciously possessed the drug by placing the sachets of shabu inside a jar which was placed on top of the table in her house. Accused-appellant's possession of shabu other than those she sold to the poseur-buyer having been duly proven, her conviction of the crime of illegal possession of dangerous drugs must be sustained.

The Solicitor General posits the view that the prosecution was able to prove the *corpus delicti* of the case. The prosecution was able to preserve the integrity and

evidentiary value of the seized dangerous drugs. It is the contention of the accused-appellant that failure to comply with the requirements set forth under Section 21 of R.A. 9165 would render the seized items inadmissible is without merit. Failure to accomplish with some of the requirements pursuant to Section 21, Article II of R.A. 9165 will not exonerate accused-appellant. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused-appellant.^[10] The testimonies of the prosecution witnesses and the pieces of evidence presented would show that there was compliance with the requirements set forth in Section 21 of R.A. 9165. The contention of the defense that there was no signature of the accused-appellant in the inventory receipt is of no moment. As it was shown that the accused-appellant was present during the inventory along with the other witnesses.

All told, the elements of the crimes of illegal sale and illegal possession of dangerous drugs have been proven beyond reasonable doubt by the prosecution.

THE COURT'S RULING

In Criminal Case No. 20262

In the instant case, accused-appellant is charged with selling shabu, a dangerous drug. Selling is defined as any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.^[11]

To sustain a conviction under Section 5, Article II of R.A. 9165^[12], the Supreme Court held in the recent case of *People of the Philippines v. Merlita Palomares y Costuna*,^[13] the prosecution must establish 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. What is material in a 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 the *corpus delicti* or the illicit drug in evidence. The commission of the offense of illegal sale of dangerous drugs merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.

PO2 Ayunting (poseur-buyer) testified that when he arrived at the area, he saw PO3 Magsayo already in position in his designated area. He (PO2 Ayunting) did not see the rest of the team because they were hiding in their respective places. Upon knowing that everybody is in place as planned, PO2 Ayunting and the confidential informant proceeded to the house of the accused-appellant. When they arrived thereat, they saw the accused-appellant standing near her door. The confidential informant talked to the accused-appellant and told her that he wanted to buy shabu. PO2 Ayunting was just beside the accused-appellant when the confidential informant talked to the latter. The accused-appellant replied in the affirmative and the accused-appellant and the confidential informant went near the door. Thereafter, the accused-appellant asked for the payment and PO2 Ayunting gave the Php 500.00 marked money. The former then went inside her house.^[14] PO2 Ayunting said that because the door was open, she saw the accused-appellant got hold of the jar found on top of the table. She (accused-appellant) then poured it out and there were a