

EIGHTEENTH DIVISION

[CA-G.R. CR. HC. NO. 01585, January 30, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LESLIE BAHINA, ACCUSED-APPELLANT.

D E C I S I O N

INGLES, G. T., J.:

THE CASE

On appeal is the Judgment^[1] dated 12 November 2012 of the Regional Trial Court, 7th Judicial Region, Branch 57, Cebu City finding Leslie Bahina guilty beyond reasonable doubt for violation of Section 5, Article II of RA 9165 in Crim. Case No. CBU-86515.

THE CHARGE

On 13 July 2009, an Information^[2] was filed by the the Office of the City Prosecutor, Cebu City against Leslie O. Bahina for Violation of Section 5, Article II of RA 9165, the accusatory portion whereof reads:

“That on the 10th day of June 2009 at about 5:15 P.M. in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) medium plastic pack of white crystalline substance weighing 0.49 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.”

THE FACTS

Upon arraignment,^[3] Leslie Bahina with assistance of counsel pleaded not guilty to the charge filed against him.

Trial on the merits ensued.

By its Order^[4] dated 3 November 2009, the RTC dispensed with the testimony of the forensic chemist, Police Inspector Rendielyn L. Sahagun.

Thereafter, the prosecution presented the following witnesses on the stand, namely: PO1 Frederick Ybañez, PO3 Roy Carlo Veloso and PO2 Albert Luardo. The defense, on the other hand, presented Leslie O. Bahina, the accused, himself.

On 3 November 2009, the prosecution and the defense stipulated on the subject matter of the testimony of the forensic analyst, P/Insp. Rendielyn Sahagun, to the effect that the latter is an expert in the examination of dangerous drugs. The parties further stipulated that the letter requesting for the laboratory examination of the subject specimen consisting of one medium plastic pack of white crystalline substance believed to be shabu marked with "LOB-BB" was delivered by PO1 Ybañez and received by PO1 Jerry M. Antipona, who, in turn gave the same to P/Insp. Rendielyn Sahagun. Next, the parties stipulated that after receipt of the specimen, P/Insp. Ybañez conducted an examination thereof and the result of which were stated down in Chemistry Report No. D-557-2009^[5] marked as Exh. "C" dated 11 June 2009, which report indicated her findings that the submitted specimen was found positive for Methamphetamine Hydrochloride, a dangerous drug.

The version of the prosecution

The testimonies of the prosecution's witnesses, namely: PO1 Frederick Ybañez, PO3 Roy Carlo Veloso and PO2 Albert Luardo, all members of the buy-bust team, may be summed-up as follows:

After receiving and verifying the information received from their informant that a certain Leslie Bahina was engaged in illegal drugs trade, PO1 Ybañez, PO3 Veloso, PO2 Luardo and PO3 Pandong planned to conduct a buy-bust operation against Leslie Bahina. PO1 Ybañez was designated as poseur-buyer and PO3 Veloso, the driver, while the rest were assigned to secure the perimeter. That, the informant is a close friend of Leslie Bahina and is not a member of the arresting team. During the briefing it was agreed that PO1 Ybañez would buy P5,000.00 worth of shabu using the buy-bust money consisting of two (2)- P100 peso bills^[6] with serial Nos. WR 778477 and LE 896218 and marked with the initials "CSP" at the lower portion. Placed between these two marked P100 bills is a wad of papers. They prepared a pre-operation report^[7] and properly coordinated^[8] with the office of the Philippine Drug Enforcement Agency (PDEA). Their asset or informant talked with Leslie Bahina to discuss about the supposed interest to buy shabu. After the conversation between the informant and Leslie Bahina, the informant gave the phone to PO1 Ybañez. PO1 Ybañez told Leslie Bahina that he will be purchasing P5000.00 worth of shabu. That, Leslie Bahina suggested where they should meet up.

After the briefing, PO1 Ybañez and PO3 Veloso together with the informant went to the meeting place on board an unmarked vehicle, which is owned by PO2 Luardo. The other members, PO2 Luardo and PO3 Pandong rode a separate vehicle parked at the opposite side. At the agreed time, that is, around 5PM, Leslie Bahina did not arrive yet so the team waited. Fifteen (15) minutes later, Leslie Bahina arrived.

The informant alighted from the unmarked vehicle and approached Leslie Bahina. As these two were just at a hearing distance from the unmarked vehicle, the police officers inside heard the informant tell Leslie Bahina that the buyer was inside waiting. As soon as he heard this, PO1 Ybañez lowered the rear car window and gestured to Leslie Bahina to get inside, which the latter did. While inside, PO1 Ybañez asked Leslie Bahina if he brought the shabu. In reply, Leslie Bahina asked about the payment. PO1 Ybañez asked Leslie Bahina to first show the shabu. Leslie Bahina dipped his hand into his pants and took out a medium-pack containing white crystalline substance. After receiving this packet, PO1 Ybañez gave the payment and

before Leslie Bahina could count the money, PO1 Ybañez immediately executed the pre-arranged signal, which is "to touch his head". PO3 Veloso was at the driver's seat and was observing the going-ons. The informant stayed outside the vehicle.

That, while they were still inside the car, PO1 Ybañez marked the packet of white crystalline substance with his initials "LOB-BB". From receipt of the said packet until submission to the PNP Crime Laboratory, PO1 Ybañez had custody thereof.

PO3 Pandong read Leslie Bahina his constitutional rights.

PO2 Luardo took pictures of the following, to wit: the parking space,^[9] the car parked on the street with its windows closed;^[10] the store^[11] nearby; of PO1 Ybañez and Leslie Bahina sitting side by side inside the car,^[12] of PO1 Ybañez executing the pre-arranged signal;^[13] and packet^[14] containing the white substance placed beside the left thigh of Leslie Bahina;^[15] and he, too, was the one who recovered the buy-bust money. No photograph was taken of the buy-bust money.

PO1 Ybañez prepared the inventory^[16] while still inside the car. The inventory was signed by PO1 Ybañez and PO3 Pandong.

They brought Leslie Bahina to the police station. PO2 Luardo caused to record the arrest of Leslie Bahina in the police blotter^[17] wherein three different sets of time are indicated, to wit: 2:45PM is the time the arresting team left the office; 5:30PM, the time the arresting team arrived in the office after the operation; and 5:35PM, the time of arrest of Leslie Bahina.

PO1 Ybañez prepared the letter-request^[18] for the examination of the subject specimen. The said letter and the subject specimen were turned over to the PNP Crime Laboratory, and which were received by Officer Antipona. After submitting these items, PO1 Ybañez went back to their office for the proper documentation and preparation of their affidavit^[19] and to detain Leslie Bahina.

That, the pack of shabu presented in court is the same pack sold to PO1 Ybañez and marked by him with "LOB-BB" and photographed by PO2 Luardo.

There was no representative from the media and the Department of Justice, and any elective official during the preparation of the inventory. Thus, other than the police officers, no other person signed the inventory. This is because the buy-bust operation was conducted after 5PM – the fiscal's office was already closed at that time, no media was around, and no elected barangay official was available at that time, too. The DOJ was contacted but they did not make the request for their presence; at the barangay hall, there was only one person there; and as for the media, some of them are not cooperative and would only be present if the operation involves a large amount of illegal drugs.

The version of the defense

On the day of the supposed buy-bust operation, he just came from a drugstore to inquire about the price of the vitamin (Livolin) that he is taking so that he can

compare this price with the price of the same vitamin being sold in the other drugstores. He disembarked at the corner where the supposed meeting-sale would take place. As he was walking, a person, who was unknown to him, waylaid him and then held him by his left arm. This person called him "Les" and told him to go with him. They crossed the street where a white car was parked. Inside the car are two (2) persons who he cannot identify. He was able to notice these two (2) persons, both of whom are seated in the front, because he and the person who approached him passed at the back of the parked car. He also noticed another person standing at the right side of the back of the car. As the rear door of the car was opened, he peeped inside the car. The person who was standing, held him by his neck and then pushed him into the car. He sat in the car; and the person who pushed him sat beside him.

He learned later that it was PO1 Ybañez who pushed him inside the car; and the person who approached him was PO3 Pandong. That, the driver of the marked vehicle was PO3 Veloso and seated beside him was PO2 Luardo.

That, after he was frisked, PO3 Pandong asked him where he hid the shabu. As to his cellphone, PO1 Ybañez confiscated it from him, and until now, has not yet returned it to him. They left the place where the white car was parked and then proceeded to Jones Avenue, made a turn passing by Cebu Normal University. The police officers drove around passing along Jones Avenue, RR Landon Street. PO1 Ybañez asked him if he was bringing something with him, when he replied that he was not bringing anything, PO1 Ybañez told him that "if you don't have, then we have".

Then they went to Kamuning Street where they stayed for about an hour. Five minutes before 1PM, PO3 Veloso said that he was already hungry. They went to Jollibee where he bought lunch for himself and PO3 Veloso at the drive-thru. While the other police officers took theirs somewhere else. From Jollibee, they went to somewhere in the vicinity of Baseline Restaurant where there are trees and is quiet, and it was there that they ate their lunch. After taking their lunch, they went back to Kamuning Street, then proceeded to the NBI compound where they stopped again. While there, he saw PO3 Pandong going out a building with glass doors, which he believes is a pension house. PO3 Pandong was bringing a camera with zoom [lens]. PO3 Pandong then got in the car, sat beside the driver. Then, they left the place and proceeded back to RR Landon and stopped by the PDEA office, that was around 3PM. PO3 Pandong went inside the PDEA office bringing with him the camera. PO3 Pandong returned to the car. From the PDEA office they went back to Harrison Place. There, PO3 Veloso and PO3 Pandong disembarked from the car. PO3 Pandong positioned himself six (6) meters across from the car where he was seated and took pictures of him from there. During the time his pictures were being taken, PO1 Ybañez instructed him to which direction he should turn his head. PO1 Ybañez took pictures of him, too, with the former's mobile phone. After his pictures were taken, PO1 Ybañez told him that he is going to jail.

From Harrison Park, they went to Banilad, and stopped at a building where PO3 Veloso alighted from the car, and then came back. From Banilad, they went to the police station situated in Gorordo Avenue. When they arrived in the police station, he was placed inside a room where he was left alone. From where he was, he could hear laughter. He peeped through the door and saw police officers laughing and PO1 Ybañez scrutinizing a transparent pack. He was put inside the detention cell at past

5PM.

He cannot differentiate between shabu and alum. He only heard about the drug in the news reports. He does not know that illegal drugs are rampant in their vicinity because he is a home buddy and just loves to stay at home playing his guitar.

THE RULING OF THE REGIONAL TRIAL COURT

The RTC disposed the case in this wise, viz -

"WHEREFORE, premises considered, the Court finds accused Leslie Bahina guilty beyond reasonable doubt for Violation of Section 5, Article II of RA 9165 and is sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The pack of shabu is forfeited in favor of the government.

SO ORDERED."^[20]

In convicting Leslie Bahina, the RTC ratiocinated that:

"On the charge of sale of illegal drugs, the elements of identity of the seller and the buyer, the object and its consideration, delivery of the object and the payment plus the presentation of the corpus delicti in court. (*People vs. Gaspar*, G.R. No. 192816, July 6, 2011).

To substantiate the charge, the poseur-buyer officer Ybañez had testified in details the negotiations between officer Ybañez and the accused immediately prior to the sale of illegal drugs. On the actual transaction, officer Ybañez was able to buy one pack of shabu from the accused, who received the payment consisting of P200.00 for the shabu, he sold and delivered to officer Ybañez.

This Court finds the version of facts of the prosecution more credible to sustain than the version of facts of the accused denying any knowledge of the illegal sale.

'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. The presentation in court of the corpus delicti, the body or substance of the crime established the fact that a crime has actually been committed.' (*Ampatuan v. People*, G.R. No. 183676, June 22, 2011, 652 SCRA 615)

Accused's evidence admitted that he was with the arresting officers at Harrison Park, officer Ybañez examined the subject evidence and photos were taken while he was inside the car. Still, accused denied having sold or in possession of shabu, an item which he only heard. Thus, accused claimed that it is a planted evidence.

'The allegation of frame-up and extortion by police officers is a common and standard defense in most dangerous drug cases