

TWENTY-THIRD DIVISION

[CA-G.R. CR HC NO. 01037-MIN, February 27, 2015]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARHASSAN HASSAN Y BASANUL, ACCUSED-APPELLANT,**

SALMA HASSAN Y IBRAHIM A.K.A. AUNTIE^[1] (AL), ACCUSED.

DECISION

SANTOS, J [2].:

Addressed here is an appeal from the Decision^[3] dated November 11, 2011 of the Regional Trial Court, Branch 13, Zamboanga City (trial court), finding accused-appellant Arhassan Hassan guilty beyond reasonable doubt of violation of Section 5, ^[4] Article II of Republic Act No. 9165,^[5] otherwise known as Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the assailed Decision reads:

WHEREFORE, the foregoing considered, this Court finds accused, ARHASSAN HASSAN y BASANUL, GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and hereby sentences him to suffer a penalty of LIFE IMPRISONMENT, and pay a FINE of FIVE HUNDRED PESOS (Php 500,000.00) without subsidiary imprisonment in case of insolvency.

Meanwhile, let this case against SALMA HASSAN be ARCHIVED and an Alias Warrant of Arrest be issued against her.

SO ORDERED.^[6]

In an Information dated October 5, 2004, accused-appellant together with co-accused Salma Hassan were charged with violation of Section 5, Article II of RA 9165 which reads:

That on or about October 4, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together. Mutually aiding and assisting one another, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and feloniously SELL and DELIVER to PO1 RONALD C. CORDERO, PNP, Anti-Illegal Drug Special Operation Task Force, one (1) small heat-sealed transparent plastic pack containing white crystalline substance weighing 0.0161 gram, which when subjected to qualitative examination gave positive result to the test for METHAMPHETAMINE HYDROCHLORIDE (SHABU), all accused know that the same is a dangerous drug.

CONTRARY TO LAW.^[7]

On June 14, 2007, accused-appellant was arraigned and pleaded not guilty to the crime charged.^[8] Accused Salma Hassan, on the other hand, remained at-large.^[9]

The Antecedents

The prosecution presented the following witnesses: SPO1 Amado Mirasol, Jr., PO3 Ronald Cordero and P/C Insp. Mercedes Diestro. The testimony of PO2^[10] Arlan Delumpines, the investigator who investigated the case, was dispensed with in view of the few stipulations of the parties.^[11]

On October 4, 2004 at 3:00 o'clock in the afternoon, a confidential informant went to the Zamboanga City Police Station to inform SPO1 Amado Mirasol, Jr. (SPO1 Mirasol, Jr.) of an alleged drug peddler at the PPA local wharf. SPO1 Mirasol, Jr. informed their City Director, P/Supt. Mano Yanga, of the information who instructed him to pursue an operation against the drug peddler. SPO1 Mirasol, Jr. formed a buy-bust team where he is the team leader and the back-up, PO3 Ronald Cordero (PO3 Cordero) as the poseur buyer, SPO1 Roberto Roca (SPO1 Roca) and PO2 Hilda Montuna (PO2 Montuna) as perimeter security. During the briefing, SPO1 Mirasol, Jr. told PO3 Cordero that their pre-arranged signal to show that the sale transaction has been consummated is to transfer the white towel placed on his left shoulder to his right shoulder. SPO1 Mirasol, Jr. thereafter gave PO3 Cordero a P100.00 peso bill with Serial Number PW058979^[12] as the money to be used in the buy-bust.^[13]

After the briefing, at about 4:30 o'clock in the afternoon, the team went to the PPA wharf. PO3 Cordero went ahead on board his motorcycle with the confidential informant, while SPO1 Mirasol, Jr., SPO1 Roca and PO3 Montuna rode an L-300 vehicle. PO3 Cordero's motorcycle parked near a particular tower at the wharf while the L-300 vehicle parked in front of the Bureau of Customs.^[14]

Thereafter, the confidential informant pointed to PO3 Cordero a man standing beside an old dump truck about four meters away from them. PO3 Cordero and the confidential informant approached the man. The confidential informant introduced PO3 Cordero as a buyer. The man, who PO3 Cordero later learned to be accused-appellant Arhassan Hassan, asked "*Pila sin?*" (How much?) in the tausug dialect. PO3 Cordero replied "*Isang piso lang*" (One peso only) to which accused-appellant said "*Sibih da*" (Only a small amount). Thereafter, accused-appellant went underneath the dump truck about three meters away and shouted "*Rang, awun buyer*" (Rang, we have a buyer). A woman shouted back asking "*Pila sin?*" (How much?) to which accused-appellant answered P100.00 only. PO3 Cordero subsequently saw the woman take one piece of small heat-sealed transparent plastic sachet from her pocket and give it to accused-appellant. The latter went back to PO3 Cordero and handed the plastic sachet to him. PO3 Cordero scrutinized the plastic sachet first and afterwards gave the P100.00 peso bill to accused-appellant.^[15]

After realizing that the small plastic sachet is a suspect illegal drug, PO3 Cordero executed the pre-arranged signal by transferring the white towel placed in his left shoulder to his right shoulder. He then placed the plastic sachet to his front pocket

and told accused-appellant that he is a police officer.^[16] When SPO1 Mirasol, Jr. saw the pre-arranged signal, he rushed to the crime scene and assisted PO3 Cordero in arresting accused-appellant who was then struggling. While arresting accused-appellant, the team saw the woman who earlier handed the small plastic sachet to accused-appellant, run away from the dump truck towards where the fast craft of the Basilan Lines was docked. PO3 Cordero thereafter told SPO1 Mirasol, Jr. in the chavacano dialect: "*Poy, ase apas kunakel mujer kay uban kel deste hombre*" (Poy, run after that woman because that is the companion of this man).^[17] SPO1 Mirasol, Jr. ran after the woman who subsequently threw a medium heat-sealed transparent plastic sachet on the ground, and managed to get away. SPO1 Mirasol, Jr. picked up the medium plastic sachet and noticed that the same is also a suspected illegal drug. SPO1 Mirasol, Jr. went back to PO3 Cordero and asked accused-appellant who is the woman, to which he replied that she is his wife and her name is Salma Hassan.^[18]

The team thereafter brought accused-appellant together with the two plastic sachets to the police station. Upon arrival therein, PO3 Cordero marked the small plastic sachet retrieved from accused-appellant with "RC" which stands for "Ronald Cordero" and turned it over to PO2 Arlan Delumpines (PO2 Delumpines), the investigator of the case.¹⁹ On the other hand, SPO1 Mirasol, Jr. marked the medium plastic sachet which he picked up on the ground with "AM" which stands for "Amado Mirasol" and also gave it to PO2 Delumpines.^[20] PO2 Delumpines later prepared the Request for Laboratory Examination of the suspected illegal drugs^[21] and the Affidavits^[22] of SPO1 Mirasol, Jr. and PO3 Cordero.

On the same day, the two plastic sachets were brought to the PNP Crime Laboratory Services, Governor Lim Avenue, Zamboanga City.^[23] Based on Chemistry Report No. D-383-2004^[24] prepared by P/C Insp. Merceditas Diestro (P/C Insp. Diestro), the forensic chemist who conducted a qualitative examination on the two specimens submitted, show that the same are positive for the presence of methamphetamine hydrochloride or commonly known as shabu, a dangerous drug. The small heat-sealed transparent plastic sachet with marking "RC AD-1" contained 0.0161 gram of shabu while the medium heat-sealed plastic sachet with marking "AM AD-2" contained 0.5566 gram of shabu. She affixed her initials on the specimen as "MD" and "MD-1," respectively.

On the other hand, accused-appellant, in defense of himself, testified in order to establish the following:

Accused-appellant is a porter at the PPA wharf who earns an income P100.00-P200.00 a day. At times, he lived at the docking place of Basilan Lines and sometimes, he sleeps inside the Doña Ramona vessel.^[25]

On October 4, 2004 at around 2:30 o'clock in the afternoon, accused-appellant was with his co-workers Anding, Nurasan, Eddie Boy, Ramil and Boyboy loading ice case to the Doña Ramona vessel at the pier of Zamboanga City. After their work and after the vessel has left, accused-appellant and his companions rested at the docking area of Basilan Lines. After they rested, the group left the docking area. Thereafter, the group saw four men in civilian attire chasing two persons: one male and one female. Accused-appellant saw that the four men were not able to catch the two

persons. Subsequently, somebody pointed at accused-appellant and said that he is with the persons they are chasing. Few moments later, the four men, with short firearms tucked to their waist, approached accused-appellant's group and handcuffed him. Accused-appellant's companions did not say anything because they were afraid they will be arrested as well and they afterwards run away. Later, one of the men frisked accused-appellant, took his wallet, opened it and returned it to him. They thereafter told accused-appellant to go with them. When accused-appellant asked them where they will take him, they told him that they have questions for him.^[26]

The four men brought accused-appellant to the police station and it was there that the latter learned that they were police officers. The men again told accused-appellant to pinpoint the whereabouts of the two persons they were chasing earlier because allegedly, he knows them. When accused-appellant denied it, one of the men again frisked him, took his wallet, went to his back and thereafter told him that he has a shabu in his possession. Accused-appellant retorted that the shabu is not his because he is not a drug peddler but a mere laborer at the pier who is working to feed his family. The men warned accused-appellant that if he cannot pinpoint the two persons, they will incarcerate him.^[27]

Accused-appellant further claimed that at the time of the incident, his wife named Minang Hassan is not with him because she was then in their house at Sta. Catalina. He further testified that he told his wife to look for his friends who can testify in his favor but his wife told him that she can no longer locate them. He also claimed that he does not know a woman named Salma Hassan.^[28]

After both parties rested their case, the trial court rendered the assailed Decision^[29] dated November 11, 2011 convicting accused-appellant of the crime charged.

Aggrieved, accused-appellant is now before this Court seeking the reversal of his conviction.

The Issue

In his Brief,^[30] accused-appellant raised his sole assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.^[31]

On March 12, 2013, the Office of the Solicitor General (OSG) filed an Appellee's Brief^[32] refuting the arguments of accused-appellant in his Appellant's Brief. Thereafter, the case was submitted for decision.^[33]

This Court's Ruling

Sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug. Of foremost importance is that the identity of the dangerous drug must be established beyond reasonable doubt.^[34] Jurisprudence abound that the existence of the dangerous drugs, being the very *corpus delicti* of the crime, is a condition *sine qua non* to sustain a judgment of

conviction beyond reasonable doubt.^[35] The reason behind this rule was stated in the case of *People v. Alcuizar*:^[36]

The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. **This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant;** otherwise, the prosecution for possession under Republic Act No. 9165 fails. (Emphasis supplied)

The chain of custody requirement performs the function in ensuring that unnecessary doubts on the identity of the *corpus delicti* are removed.^[37] In *Lopez v. People*,^[38] the Supreme Court explained the sufficient compliance of the chain of custody rule, in this wise:

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 witnesses' 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." (Emphasis supplied)

Ideally, the procedure on the chain of custody should be perfect and unbroken. However "a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain."^[39] It has been consistently held by the Supreme Court that "what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, because the same will be utilized in ascertaining the guilt or innocence of the accused."^[40]

The Supreme Court, in applying the above rulings, enumerated the following links that must be established in the chain of custody of a seized illegal drug: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.^[41]