

## EIGHTEENTH DIVISION

[ CA-G.R. CR-HC. NO. 01614, February 26, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY ALOVERA Y CORDOVA ALIAS "GERMAN", ACCUSED-APPELLANT.**

### D E C I S I O N

**INGLES, G. T., J.:**

This is an appeal from the Decision<sup>[1]</sup> dated November 8, 2010 rendered by the Regional Trial Court Sixth Judicial Region Branch 17, Roxas City in Criminal Case No. C-107-03, the dispositive portion of which, states:

"WHEREFORE, premises considered, accused Jimmy Alovera is found guilty beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165, and he is hereby sentenced to suffer life imprisonment and to pay a fine of P500,000.00. He shall be credited in the service of this sentence with the period of his preventive detention.

The subject dangerous drug must be turned over to the PDEA for destruction or burning immediately.

SO ORDERED."

#### **The Antecedent Facts**

Accused-appellant Jimmy Alovera y Cordova alias "German" was charged with violation of Section 5, Article II of Republic Act No. 9165 in an Information<sup>[2]</sup> dated April 28, 2003, the accusatory portion of which, states:

"That on or about the 18<sup>th</sup> day of July 2002, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to a PNP poseur buyer two (2) heat-sealed transparent plastic packets containing Methamphetamine Hydrochloride (shabu), with a total weight of 0.04 grams, a dangerous drug, without the authority to sell and distribute the same.

CONTRARY TO LAW."

When arraigned on July 8, 2003, the accused, duly assisted by counsel and with the Information read to him in a dialect understood and spoken by him, pleaded not guilty to the offense charged against him.<sup>[3]</sup> Pre-trial was terminated on December 16, 2003.<sup>[4]</sup> Thereafter, trial on the merits ensued.

## **Evidence for the Prosecution**

### *PCI Angela Baldevieso*

On July 20, 2002, PCI Angela Baldevieso received a letter request for the laboratory examination of certain confiscated items. Both specimens yielded positive for methamphetamine hydrochloride or shabu.<sup>[5]</sup>

### *SPO1 Gaudencio Azarcon:*

On July 18, 2002, SPO1 Gaudencio Azarcon's team was instructed to verify the rampant selling of illegal drugs at corner Illieta and McKinley. With him were SPO1 Anisco, PO3 Acielo and PO2 Buenvenida.

At 11:00 o'clock in the evening of that date, when the team reached the target place, Jimmy Alovera was seen seeming to wait for some buyer. SPO1 Azarcon and PO2 Buenvenida approached the suspect if they could buy shabu at worth P200.00. Alovera took the money. He drew two sachets from his pocket and gave it to SPO1 Azarcon.<sup>[6]</sup>

### *SPO3 Rolando Anisco:*

On July 18, 2002, at around 11:00 o'clock in the evening, SPO3 Rolando Anisco was part of the team who went to Barangay McKinley corner Illieta Street for a buy-bust operation. He acted as back-up along with PO2 Antonio Buenvenida.<sup>[7]</sup>

## **Evidence for the Defense**

### *Jimmy Alovera:*

On July 18, 2002, at 11:00 o'clock in the evening, Jimmy Alovera went home after drinking with his friends. On his way home, when he reached the corner of McKinley Street, all of a sudden a person appeared who pointed his gun and told him not to move.

While in a standing position with his hands raised, another person appeared who frisked Alovera's body and boxed his abdomen. Alovera knelt down from the impact. He received another blow on the left side of the body with his head hitting the pavement. The person said he had shabu. Thereafter, he was brought to the police station.<sup>[8]</sup>

### *Alan Bugtong:*

On July 18, 2002, Alan Bugtong went home from a reception along with his drummer via a tricycle. Upon arrival at McKinley Street corner Illieta Street, he saw Jimmy Alovera emerging from Illieta Street area<sup>[9]</sup> who was met by a person who came from the back of the tricycle where Bugtong was riding.<sup>[10]</sup> The person poked a firearm against Alovera who raised his hands in response.

Another person suddenly arrived. He frisked Alovera but he parried his hands. Alovera was boxed in the abdomen and dropped to the ground on his knees. He was

again punched at the side and dropped his head to the ground. The person turned his back. When he turned around, he said the shabu was there. Alovera was handcuffed and boarded in a tricycle. The person who poked a gun at Alovera approached them to ask what they were doing in the area then they were told to go away.<sup>[11]</sup>

### **Findings of the Regional Trial Court**

On November 8, 2010, the trial court rendered its Decision convicting the accused-appellant, to wit:

“After a careful scrutiny of the evidence on record, the Court finds that the prosecution had established by clear and convincing evidence the guilt of the accused beyond reasonable doubt. The Court finds credible the testimony of police officers Azarcon and Anisco that Azarcon transacted with accused Alovera with the latter receiving two P100.00 bills from Azarcon and the handing to the police officer two sachets of suspected shabu on July 18, 2002, at 11:00 P.M., at the corner of Ellieta and McKinley Streets, Roxas City. The shabu weighing a total 0.04 grams was found positive for the test of Methamphetamine Hydrochloride as testified to by the forensic chemist.

The defense of denial by the accused is a self-serving negative evidence, and thus inferior to the categorical and positive testimonies of prosecution witnesses. It is well-settled that testimonies of police officers are entitled to full faith and credit on the presumption that they have performed their duties in a regular manner in the absence of any countervailing evidence.

In sum, the prosecution has fully established the consummation of the sale of shabu between the poseur-buyer and the accused, who had no authority to sell, and that the substance recovered from the accused proved positive to the test of methamphetamine hydrochloride. Indeed, the foregoing elements have been clearly established and shown by prosecution evidence to the point of moral certainty.

WHEREFORE, premises considered, accused Jimmy Alovera is found guilty beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165, and he is hereby sentenced to suffer life imprisonment and to pay a fine of P500,000.00. He shall be credited of this sentence with the period of his preventive detention.

The subject dangerous drug must be turned over to the PDEA for destruction or burning immediately.

SO ORDERED.”

The accused-appellant promptly filed a Notice of Appeal<sup>[12]</sup> on January 24, 2011, which was given due course by the trial court per Order dated July 25, 2011<sup>[13]</sup>.

This Court received the records of this case on April 23, 2013.<sup>[14]</sup> On May 6, 2013,

the Court issued a Notice to File Brief<sup>[15]</sup>. Appellant Alovera submitted his brief<sup>[16]</sup> on December 13, 2013, while the appellee, through the Office of the Solicitor General, filed its brief<sup>[17]</sup> on April 30, 2014. Then, in a Resolution dated January 20, 2015, this case was declared submitted for decision.<sup>[18]</sup>

## **Assignment of Errors**

### ***Counter-Argument for the Appellee***

The appellee argues that the trial court was correct in convicting the accused-appellant. The elements of the crime of sale of illegal drugs under Sec. 5, Art. II of R.A. 9165 have been proven beyond reasonable doubt through the positive testimonies of SPO1 Azarcon and SPO3 Anisco. The testimonies of appellant and his corroborating witness, Alan Bugtong, do not put a dent on such overwhelming evidence against appellant.

The appellee further submits that if indeed the appellant is innocent, the police officers who conducted the buy-bust operation must have been moved by improper or ulterior motive. The appellant has not offered any evidence of such motive.

The appellee likewise submits that the integrity and identity of the specimens have been preserved. Section 21 of R.A. No. 9165 has been complied with. As for the marking of the specimens marking, it is settled that the failure to do it immediately upon seizure is not fatal. The same is true for the purported delay in the transmittal of the seized drugs to the crime laboratory for forensic examination.

## **Ruling of the Court**

The elements necessary in every prosecution for the illegal sale of shabu are: (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.<sup>19</sup> Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the "actual commission by someone of the particular crime charged."<sup>[20]</sup> The corpus delicti in cases involving dangerous drugs is the presentation of the dangerous drug itself.

In cases of illegal sale of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the corpus delicti. In *People v. Alcuizar*<sup>[21]</sup>, the Supreme Court held:

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.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,22 which implements the Comprehensive Dangerous Drugs Act of 2002, defines "chain of custody" as follows:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Malillin v. People*,<sup>[23]</sup> the Supreme Court explained the importance of the chain of custody:

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

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 in 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