TENTH DIVISION

[CA-G.R. CR-HC NO. 06674, March 27, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR MASANGKAY Y ZAPANTA, ACCUSED-APPELLANT.

D E C I S I O N

DIMAAMPAO, J.:

Repugned in this *Appeal* is the *Decision*[1] dated 17 January 2014 of the Regional Trial Court, Fourth Judicial Region, Antipolo City, Branch 73, for violation of Sections 5(1) and 11(2), Article II, Republic Act (RA) No. 9165,[2] in Criminal Case Nos. 03-25753 and 03-25754. The court *a quo* adjudged, as follows:

> "WHEREFORE, premises considered, accused Cesar Masangkay y Zapanta is hereby found guilty beyond any shadow of doubt of the offense charged in the Informations and is sentenced to the penalty of Life Imprisonment in Criminal Case No. 03-25754 with a fine of Php500,000.00 and in Criminal Case No. 03-25753, the same accused is hereby sentenced to suffer an Imprisonment of Twelve (12) years and One (1) day to Twenty (20) years with a fine of Php300,000.00 as provided for under Sec. 11(,) Par. (3) of RA 9165, as amended. Cesar Masangkay y Zapanta is to be immediately committed to the National Bilibid Prisons for immediate service of his sentence.
>
> The seized specimens subject of the instant cases are ordered destroyed in the manner provided for by law.
>
> SO ORDERED."[3]

The *Informations* inculpating accused-appellant Cesar Masangkay y Zapanta (MASANGKAY) for violation of Sections 5(1) and 11(2), Article II, R.A 9165 set forth the following accusatory averments:

> Criminal Case No. 03-25753
>
> "That on or about the 10th day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess/use any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat sealed transparent plastic sachet containing 0.30 gram of white crystalline substance, which after the corresponding labo-ratory examination conducted by the PNP Crime Laboratory on the white crystalline substance gave positive result to the tests for methylamphetamine hydrochloride, also known as shabu, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW."[4]

Criminal Case No. 03-25754

"That on or about the 10th day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to PO1 Robert Cañgan (sic) who acted as a poseur-buyer, one (1) heat sealed transparent plastic sachet containing 0.13 gram of white crystalline substance, for and in consideration of the sum of P200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave positive result to the tests of Methylamphetamine hydrochloride, also known as shabu, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW."[5]

Arraigned, MASANGKAY pled not guilty to the charge.[6] Thereafter, joint trial ensued.

The prosecution endeavored to demonstrate the inculpatory allegations in this wise:

The Antipolo City Police Station received a telephone call and a letter from a concerned citizen relative to the illegal drug activities of MASANGKAY at C. Lawis Extension, Antipolo City. A surveillance was conducted by PO1 Robert Gangan (PO1 Gangan); he and PO3 Eduardo Capuyan (PO3 Capuyan) were tasked to plan a buy bust operation against MASANGKAY. PO1 Gangan was designated as the poseur-buyer with PO3 Capuyan, as back-up. The operation was blottered and the buy-bust money was correspondingly marked. Thereafter, PO1 Gangan and PO3 Capuyan proceeded to the target area on board a tricycle. The police officers saw MASANGKAY driving a tricycle accompanied by a Jonathan Valle. PO1 Gangan called and waved at MASANGKAY, who stopped his vehicle. PO1 Gangan approached MASANGKAY and handed him the buy-bust money. He told MASANGAKAY that he wanted to buy *shabu.* In response, MASANGKAY handed to PO1 Gangan a plastic sachet containing white crystalline substance. PO1 Gangan immediately apprehended MASANGKAY and recovered the marked money. In a trice, he bodily searched MASANGAY and found another plastic sachet of white crystalline substance from the latter's right pocket. PO1 Gangan ordered PO3 Capuyan to arrest MASANGKAY's companion, Jonathan Valle, and recovered from the latter one plastic sachet of white crystalline substance. The duo were informed of their constitutional rights, and then brought to the police station for investigation. At the police station, PO1 Gangan marked the seized items and delivered the specimens to the crime laboratory. The specimens yielded positive for methylam-phetamine hydrochloride also known as *shabu,* a dangerous drug.[7]

Railing against the prosecution's imputations, the defense recounted a different version—

On the date of the incident, MASANGKAY was driving his tricycle together with his

son, Mike Nico to buy medicine when PO1 Gangan suddenly flagged them down at P. Olivares St. He asked MASANGKAY about a certain person named "*Ulo*". PO1 Gangan threatened MASANGKAY for incarceration if he would not reveal *Ulo's* whereabouts. When MASANGKAY failed, he was brought to the police station and was charged with sale and illegal possession of dangerous drugs.[8]

Weighing the divergent theories of the prosecution and the defense, the court *a quo* rendered the assailed judgment of conviction.

Nonplussed, MASANGKAY (now, appellant) seeks refuge before Us asseverating that the court *a quo* gravely erred—

I

IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THAT THE PURPORTED TWO (2) PLASTIC SACHETS OF SHABU WERE THE VERY SAME ITEMS CONFISCATED.

II

IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH THE COMPLETE CHAIN OF CUSTODY.

III

IN DISREGARDING THE ACCUSED-APPELLANT'S VER-SION.

The Appeal is barren of merit.

Appellant quibbles with the prosecution's failure to establish the proper chain of custody of the *shabu* allegedly seized from him, in violation of Section 21 of RA No. 9165. *First,* there was neither a photograph taken nor a physical inventory conducted by the arresting officer. *Second,* the seized items were marked sans the presence of appellant and/ or his representative. *Third,* the marking of the confiscated items was not done at the scene of the incident. *Fourth,* the testimonies of the prosecution witnesses are at odds with the one who delivered the seized items to the crime laboratory for forensic examination.

Appellant's disputations deserve short shrift.

Case law teaches Us that the failure of the prosecution to show that the police officers conducted the required physical inventory and take photograph of the objects confiscated does not *ipso facto* render inadmissible in evidence the items seized. There is a proviso in the implementing rules stating that when it is shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused.[9] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[10]