

TWENTY-SECOND DIVISION

[CA-G.R. CR HC NO. 00945-MIN, January 10, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSIE AMODIA Y ZABALA, ACCUSED-APPELLANT,

D E C I S I O N

LOPEZ, J.:

This is an appeal under Rule 122 of the Revised Rules of Criminal Procedure filed by accused-appellant Rosie Amodia y Zabala, seeking the reversal of the April 5, 2011 Judgment^[1] of Branch 40^[2] of the Regional Trial Court of Cagayan de Oro City in Criminal Case No. 2003-1123, finding her guilty beyond reasonable doubt for Violation of Section 5, par. 1, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Factual Antecedents

Accused-appellant Rosie Amodia y Zabala was indicted for Violation of Section 5(illegal sale of dangerous drugs), par. 1, Article II of R.A. 9165 in an Information^[3] which reads as follows:

That on November 29, 2003, at 12:45 o'clock early dawn more or less, at Agora Road/Claro M. Recto Highway, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there willfully, unlawfully and feloniously sell, give away to another and distribute one (1) jumbo pack heat-sealed transparent plastic cellophane of Methamphetamine hydrochloride locally known as *shabu*, weighing 1.6 grams, a dangerous drug, in consideration of P4,500, Philippine currency.

Contrary to and in Violation of Section 5, Article 2 of R.A. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

Upon arraignment, accused-appellant pleaded not guilty to the offense charged.^[4] Thereafter, the case was set for pre-trial conference.

At the pre-trial, the parties stipulated on the expertise of PS/Insp. April Carbajal-Madroño as the forensic chemical officer of the PNP Crime Laboratory. Likewise, the parties agreed that the only issue to be resolved by the court is whether or not the accused-appellant has violated Section 5, par. 1, Article II of R.A. 9165.^[5]

However, on July 2, 2007, upon agreement of the parties, a Supplemental Pre-Trial Order^[6] was issued by the court *a quo* whereby the parties stipulated on the following matter of facts:

1. The letter-request dated November 29, 2003, signed by PS/Insp. Robert Baesa, (Exh. "A"),^[7] addressed to the PNP Crime laboratory office, for the examination of the urine sample of accused-appellant, and the rubber stamp "Received" therein (Exh. "A-1").
2. The letter-request dated November 29, 2003, addressed to the PNP Crime laboratory, signed by PS/Insp. Robert Baesa, (Exh. "B"),^[8] for the examination of one jumbo packed heat-sealed transparent plastic cellophane containing white crystalline substance marked as Exhibit "A", and the rubber stamp "Received" therein (Exh. "B-1"), and the signature of the requesting officer (Exh. "B-2").
3. The letter-request dated November 29, 2003, addressed to the PNP Crime laboratory, signed by PS/Insp. Robert Baesa, (Exh. "C"),^[9] for the examination of one (1) living body of Rosie Amodia y Zabala for both hands for ultraviolet powder marked as Exhibit "B" and two (2) pieces One Hundred (P100.00) Peso bill marked-money with Serial No. CV506526 and Serial No. EA922278; and the rubber stamp "Received" therein (Exh. "C-1"), and signature of the requesting officer (Exh. "C-2").
4. The Chemistry Report No. D-778-2003 dated November 29, 2003, signed by PS/Insp. April Garcia Carbajal, (Exh. "D")^[10] showing the specimen submitted for laboratory examination is one jumbo packed heat-sealed transparent plastic cellophane containing white crystalline substance (Exh. "D-1"), the findings and conclusion showing that the specimen is positive for the presence of Methamphetamine hydrochloride (*shabu*), a dangerous drug (Exh. "D-2" and "D-3"), and the signature of PS/Insp. April Garcia Carbajal (Exh. "D-4").
5. The one (1) sachet of white crystalline substance (Exh. "E"), the subject matter of Chemistry Report No. D-778-2003, the plastic sachet containing white crystalline substance.
6. The Chemistry Report No. DT-778-2003 dated November 29, 2003, signed by PS/Insp. April Garcia Carbajal, (Exh. "F")^[11] showing the specimen submitted for laboratory examination is a 60 ml. urine sample taken from the living person of Rosie Amodia y Zabala (Exh. "F-1"), the findings and conclusion showing that the specimen is positive for the presence of Methamphetamine hydrochloride (*shabu*), a dangerous drug (Exh. "F-2" and "F-3"), and the signature of PS/Insp. April Garcia Carbajal (Exh. "D-4").
7. The Chemistry Report No. C-136-2003 dated November 29, 2003, signed by PS/Insp. April Garcia Carbajal, (Exh. "G")^[12] showing the specimen submitted for laboratory examination is the living person of Rosie Amodia y Zabala and two (2) pieces One Hundred (P100.00) Peso bill marked-money with Serial No. CV506526 and Serial No. EA922278 (Exh. "G-1"), the findings and conclusion showing that both specimens are positive for the presence of bright orange ultraviolet fluorescent powder (Exh. "G-2" and "G-3"), and the signature of PS/Insp. April Garcia Carbajal (Exh. "G-4").

8. The Sketch of the dorsal and palmar sides of the hands of the accused (Exh. "H")^[13] which were taken on November 29, 2003, the palmar right hand (Exh. "H-1"), the palmar left hand (Exh. "H-2"), sketch of the dorsal hands of the accused (Exh. "I")^[14] the dorsal right hand (Exh. "I-1"), the dorsal left hand (Exh. "I-2").
9. The two (2) P100 bills, subject matter of Chemistry Report No. C-136-2003 bearing Serial No. CV506526 (Exh. "J-1") and Serial No. EA922278 (Exh. "J-2").
10. The parties have agreed to dispense with the testimony of PS/Insp. April Garcia Carbajal.

Thereafter, trial on the merits proceeded.

It was established by the prosecution that about 7:00 o'clock in the evening of November 28, 2003, the Office of the Regional Intelligence and Investigation Division (RIID), Camp Alagar, Lapasan, Cagayan de Oro City received an information from its civilian agent/informant that a certain person *alias* "Rose Bud" from Ozamis City, a courier-pusher of *shabu* arrived and is staying at Agora, Lapasan, Cagayan de Oro City.

Acting upon the said information, PS/Insp. Robert Baesa (PS/Insp. Baesa), the Team Leader of RIID-SOG 10, planned for the entrapment of the suspect. The confidential informant was asked to order *shabu* from "Rose Bud" worth Four Thousand Five Hundred Pesos (P4,500.00) and the same confidential informant was asked to act as the poseur-buyer. Accordingly, the confidential informant contacted "Rose Bud" through text messages and they agreed on the venue of the transaction which would be at Metro Bank located at Agora Road/Claro M. Recto Highway, Lapasan, Cagayan de Oro City at 12:00 o'clock midnight.

As planned, at about 11:00 o'clock in the evening of November 28, 2003, PS/Insp. Baesa gave the confidential informant the buy-bust money of P4,500.00 including the two (2) pieces P100.00 bill marked-money with Serial Nos. CV506526 and EA922278. Thereafter, PS/Insp. Baesa and his team composed of PO3 Cedric C. Bentuzal (PO3 Bentuzal), PO3 Fernan P. Labrador (PO3 Labrador), PO3 Cabillar, PO3 Arocha, PO2 Jabiniao and PO2 Torres went to the agreed location and they positioned strategically about three (3) to five (5) meters away from the poseur-buyer pretending to be bystanders.

At about 12:45 in the morning of November 29, 2003, a woman arrived and alighted from a "*trisikad*" and approached the poseur-buyer. The poseur-buyer handed the P4,500.00 marked-money to "Rose Bud" and the latter upon receiving the same counted the money. Immediately thereafter, "Rose Bud" got something from her right pocket and handed it to the poseur-buyer. When the transaction was completed, the pre-arranged signal was then given by the poseur-buyer and the team immediately rushed towards "Rose Bud" and arrested her. The poseur-buyer handed to PO3 Bentuzal a heat-sealed transparent cellophane containing a white crystalline substance while the marked-money was confiscated from "Rose Bud".

"Rose Bud" was then brought to RIID Office for investigation and it was learned that her real name is Rosie Amodia y Zabala, accused-appellant herein. Upon arrival at the RIID Office, PO3 Bentuzal, who was in possession of the heat-sealed transparent

cellophane and the marked-money which were turned over to his possession at the crime scene, likewise handed the seized items to Investigator Bacal for markings. After the confiscated items were marked and were correspondingly countersigned by Investigator Bacal, PO3 Bentuzal retrieved them again and took hold of the items until they were brought to the PNP laboratory. In the meantime, the necessary letter-requests for the laboratory examination of the accused-appellant and the confiscated items were made. Thereafter, PO3 Bentuzal and PO1 Suganog brought the accused-appellant and the confiscated items to the PNP crime laboratory for examination.

The laboratory examination of the heat-sealed transparent plastic sachet containing white crystalline substance yields positive result for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug, as shown in the Chemistry Report No. D-778-2003.^[15] Likewise, the urine examination of the accused-appellant yields positive result for the presence of methamphetamine hydrochloride as shown in Chemistry Report No. DT-778-2003.^[16] The laboratory examination of accused-appellant's palmar aspects of both hands also shows positive result for the presence of bright orange ultraviolet fluorescent powder while the two (2) P100.00 bills marked- money likewise show positive result for the presence of bright orange ultraviolet fluorescent powder as shown in Chemistry Report No. C-136-2003.^[17]

The foregoing facts or circumstances surrounding the arrest of accused-appellant were testified to by arresting officers PO3 Bentuzal and PO3 Labrador of the RIID-SOG 10. The accused-appellant, on the other hand, waived her right to adduce and present her evidence.^[18]

After due proceedings, the court *a quo* rendered the assailed decision on April 5, 2011, finding the accused guilty beyond reasonable doubt of the crime charged. The dispositive portion of the assailed Judgment reads:

WHEREFORE, the foregoing considered, the prosecution having established all the elements of the crime of illegal sale of a dangerous drug, the Court hereby finds the accused, Rosie Amodia y Zabala GUILTY beyond reasonable doubt of the crime of Violation of Sec. 5, par. 1, Article II of R.A. 9165, and hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P500,000.00. The sachet of *shabu* described in the Information is ordered confiscated in favor of the Government to be disposed of in accordance with law and regulations. No pronouncement as to costs.

SO ORDERED.

Hence, the present appeal.

Assignment of Error

Accused-appellant assigned the lone error thus:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS (sic) GUILT BEYOND REASONABLE DOUBT.

This Court's Ruling

We sustained accused-appellant's conviction.

Accused-appellant contends that the elements of the crime charged against her were not established and as such, her constitutional presumption of innocence was not overcome by the prosecution for the following reasons, namely, the elements of sale were not established; that there was an unexplained failure on the part of the apprehending officers to faithfully comply with Section 21 of R.A. No. 9165; and that there exists a nagging doubt that the evidence offered in court is the same as that one allegedly sold by her.

Accused-appellant argues that the prosecution utterly failed to establish that an actual transaction transpired on November 29, 2003 between her and the unidentified confidential informant acting as the poseur-buyer and who was not even presented in court. The details of alleged transaction were not sufficiently and clearly shown which created a serious doubt on whether the alleged buy-bust transaction indeed occurred. Likewise, from the testimonies of the arresting officers, it was evident that the procedures under Section 21 of R.A. No. 9165 were not strictly and dutifully complied with. There was no inventory made and no photograph taken after the alleged operation. The sachet of the *shabu* allegedly turned over by the confidential informant to PO3 Bentuzal was not marked immediately. Hence, for non-compliance of the procedures provided by law, the integrity of the evidence against her is of doubtful character and she should be acquitted of the crime charged.

On the other hand, plaintiff-appellee through the Office of the Solicitor General (OSG) posits that contrary to appellant's assertion, the guilt of appellant was sufficiently established with moral certainty. It argues that all the elements necessary for the conviction for the illegal sale of *shabu* were proven beyond reasonable doubt. The identities of the seller and the buyer together with the *corpus delicti* of selling *shabu* have been duly established. Accused-appellant was caught in the very act of selling *shabu*, a prohibited drug. All these factual findings were not rebutted by accused-appellant considering that she even failed to present any acceptable evidence that can be made as basis to disregard the factual findings of lower court. Against the strong, positive and substantial evidence presented by the prosecution, accused-appellant chose not to present any evidence at all.

The OSG further argues that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render the accused-appellant's arrest illegal or the items seized or confiscated from her inadmissible. In this case, there was a substantial compliance with the law and the integrity of the illegal drugs seized was properly preserved. Likewise, the non-presentation of the poseur-buyer is not fatal and does not entitle her acquittal because the testimony of the poseur-buyer would at best be corroborative only to the testimony of the arresting officers.

We agree with the OSG.

In the prosecution of sale of dangerous drugs, the following elements must concur: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*.^[19]