

EIGHTEENTH DIVISION

[CA-G.R. CR HC No. 01253, July 31, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARVIN DULLANO, ACCUSED-APPELLANT.

D E C I S I O N

INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant, of the Decision^[1] dated December 5, 2007 of the Regional Trial Court, Seventh Judicial Region, Branch 13, Cebu City, which found accused-appellant guilty beyond reasonable doubt of Violation of Sections 5, 11, and 12 of Article II of RA No. 9165 or the Dangerous Drugs Act of 2002 in Criminal Case Nos. CBU-69140-42.

Version of the Prosecution

Around 12:30 AM of May 27, 2004, a buy bust team composed of PO2 Dindo Lumapak, PO3 Elmo Rosales, PO2 Cirilo Luage, and PO2 Gil Garcia of the Cebu City Police Office Drug Enforcement Unit was formed to entrap accused-appellant who was reported to be engaged in illegal drugs activities. During the briefing, the team members agreed that PO2 Lumapak would act as poseur-buyer and would be accompanied by a civilian asset who knew accused-appellant. It was also agreed that the pre-arranged signal was for PO2 Lumapak to make a call after the sale was completed. A P100.00 bill with serial number KN341865 was given to PO2 Lumapak and the civilian asset as buy-bust money.

Around 12:52 AM on the same day, the buy-bust team proceeded to the interior portion of Quijano Compound, V. Rama Avenue, Barangay Calamba, Cebu City. Upon reaching the area, accused-appellant approached PO2 Lumapak and the civilian asset. The civilian asset then introduced PO2 Lumapak to accused-appellant. The two of them told accused-appellant that they wanted to buy shabu. Accused-appellant handed one transparent sachet of shabu to PO2 Lumapak and in turn, the latter handed over P100.00 to accused-appellant. Subsequently, PO2 Lumapak made the pre-agreed signal to the other members of the buy-bust team to signify that the sale was consummated.

PO2 Lumapak identified himself as police officer to accused-appellant. Accused-appellant without warning punched PO2 Lumapak on the stomach to resist arrest and the two of them scuffled for a while. When PO3 Rosales and the rest of the buy-bust team arrived, they got hold of accused-appellant and held him down. PO2 Lumapak informed accused-appellant of his constitutional rights before placing him under arrest. Thereafter, accused-appellant was ordered to empty his pockets wherein three (3) sachets of shabu, and eight (8) pieces of drug paraphernalia were

confiscated. Immediately, PO2 Lumapak handed to PO2 Rosales, the investigator, the shabu and the rest of the contraband. At the Cebu City Police Station, PO3 Rosales marked the sachet of shabu with "AD" and the three sachets recovered from accused-appellant's pocket with "AD-1" to "AD-3" and the drug paraphernalia with "AD-1" to "AD-8". A request for laboratory examination was prepared. Said request together with the contraband items recovered from the buy-bust operation were handed over to PO2 Luague for delivery to the PNP Regional Crime Laboratory Office.

Police Senior Inspector Mutchit Salinas, Forensic Chemical Officer of the PNP Crime Laboratory 7 conducted a qualitative examination on the sachets recovered from accused-appellant. In the Chemistry Report^[2] No. D-560-2004, the four sachets tested positive for methamphetamine hydrochloride or shabu.

The Charge

In the Informations dated March 29, 2004, accused-appellant was charged with the crime of Violation of Sections 5, 11 and 12, of Article II of RA No. 9165, respectively, as follows:

CBU 69140^[3]

"That on or about the 27th day of March 2004, at about 12:53 AM in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, Arvin Dullano, with deliberate intent and without authority of law, did then and there sell, deliver or give away to a poseur buyer one pc small transparent plastic pack with white crystalline substance locally known as shabu containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW"

CBU 69141^[4]

"That at on or about the 27th day of March, 2004, at about 12:53 AM in the city of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, Arvin Dullano, with deliberate intent, did then and there have in his possession, use and control the following:

a) three (3) pcs. Small transparent plastic pack with white crystalline substance locally known as shabu, containing methylamphetamine hydrochloride, a dangerous drugs without license of prescription, from any competent authority.

CONTRARY TO LAW."

CBU 69142^[5]

"That on or about the 27th day of March 2004 at about 12:53 o' clock in the morning, in the city of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with

deliberate intent, did then and there have in his possession and control eight (8) pieces of rolled tin foils fit or intended for smoking, consuming, administering, ingesting or introducing any dangerous drug into the body.

CONTRARY TO LAW.”

Accused-appellant was arraigned and pleaded “not guilty” to the crimes charged against him.

Trial ensued. The prosecution presented the following as witnesses: PO2 Dindo Tumulak of the Mobile Patrol Group Crime Suppression Unit, Cebu City Police Office and Mutchit Salinas of the PNP Crime Laboratory. On the other hand, accused-appellant testified for his defense.

Version of Accused-appellant

Accused-appellant narrated that he met three persons who asked for his help to guide them to the market where shabu was sold in return for a sum of money. He approached Jeffrey, a friend whom he knew to be a drug pusher. Moments later, he was shocked when the three persons turned out to be police officers who purchased shabu from Jeffrey. After announcing that they were police officers, Jeffrey fled the area. Accused-appellant attempted to run but desisted when one of them poked a gun at him. He was then arrested and his pockets were searched. Nothing, however, was found on him.

The RTC Ruling:

Thereafter, on December 5, 2007, the RTC, Seventh Judicial Region, Branch 13, Cebu City rendered a Decision^[6] against accused-appellant, the pertinent portion of which reads:

“Wherefore, judgment is hereby rendered finding accused Arvin B. Dullano GUILTY beyond reasonable doubt of the following crimes:

1. Violation of Section 5, Article II, RA 9165 and sentences him to LIFE IMPRISONMENT, plus fine in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS;
2. Violation of Section 11, Article II, RA 9165 and sentences him to TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS imprisonment, plus fine in the amount of THREE HUNDRED THOUSAND (P300,000.00) PESOS;and
3. For violation of Section 12, Article II, RA 9165, and sentences him to SIX (6) MONTHS and ONE (1) DAY to ONE (1) YEAR imprisonment, plus fine in the amount of TEN THOUSAND (P10,000.00) PESOS.

The four (4) packets of shabu and shabu paraphernalia mentioned in the three informations are hereby ordered confiscated in favor of the government and destroyed pursuant to the provisions of RA 9165.

With cost against the accused in all these three(3) cases.

SO ORDERED.”

Aggrieved, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning as errors, thus:

I.

“THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE CORPUS DELICTI;

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE ELEMENTS FOR THE PROSECUTION FOR SALE OF ILLEGAL DRUGS WERE NOT ESTABLISHED.”

THIS COURT’S RULING:

I.

Chain of custody not broken

It is the submission of accused-appellant that the prosecution failed to comply with the indispensable requirement of proving the corpus delicti especially in this case where there are substantial gaps in the chain of custody of the seized drugs thereby raising doubts as to the authenticity of the evidence presented in court. Accused-appellant asserts that the chain of custody presented by the prosecution suffers from incompleteness and irregularities warranting his acquittal.

Anent the first link (recovery of the packs of shabu), accused-appellant posits that the confiscated packs of shabu and drug paraphernalia were not marked immediately in his presence after confiscation. Relying on *People vs Sanchez, GR No. 175823, October 15, 2006*, the Supreme Court emphasized the importance of marking in the presence of the apprehended violator immediately upon confiscation of the dangerous drugs. Accused-appellant points out that PO2 Lumapak turned over the confiscated items to the investigator but the marking was not done immediately after confiscation and no justification was made as well as to why the marking was made only at the police station. No testimony was made regarding any attempt to mark the evidence at the place of arrest considering the subject was a buy bust operation such that the police officers should have been prepared.

Since there were no markings done at the place of arrest, accused-appellant claims that there is now doubt or confusion as to which of the four packs of shabu were recovered during the buy-bust operation or the body search. The investigator would have a hard time distinguishing one from the other at the time of marking the sachets of shabu. No testimony was offered as to how the investigator segregated the one pack of shabu subject of the buy bust operation from the three packs recovered after the body search.

As to the second link (custody of drugs up to the police station), accused-appellant submits that the packs of shabu were not marked in the presence of accused-appellant and neither were these placed in a plastic container or in any other packaging material. After the marking, the investigator did not place it in any plastic container and seal it with adhesive tape. Since the sealing of seized substance was not made, accused-appellant contends that the prosecution needed to present every police officer, messenger, laboratory technician, and storage personnel who came into contact with the seized sachets or the entire chain of custody no matter how brief one's possession thereof. Each has to testify that the substance, though unsealed, had not been tampered with or substituted while in his care. In this case, this particular requirement was not complied with.

Accused-appellant also claims that there was a violation of the rules mandated by Section 21 of RA 9165. He avers that no inventory was prepared, signed, and provided to the accused in the manner provided by the said provision. Neither were photographs taken. Accused-appellant alleges that there is nothing in the testimonies of the prosecution witnesses that would suggest that an inventory and taking of photographs were made in his presence. *Citing People vs dela Cruz, GR No. 177222, October 29, 2008, People vs Dela Cruz, GR No. 181545, October 8, 2008, People vs Santos, Jr., GR No. 175593, October 17, 2007, People vs Nazareno, GR No. 174771, September 11, 2007, People vs Orteza, GR No. 173051, July 31, 2007 and Zarraga vs People, GR No. 162064, March 14, 2006* wherein the Supreme Court reversed the conviction of accused because of failure to comply with Section 21 of RA 9165, accused-appellant argues that non-compliance therewith entitles him to an acquittal.

Also, in the third link (up to the crime laboratory), accused-appellant argues that it is not clear as to how and when the packs of shabu were turned over to PO2 Lumapak by the investigator. There is suspicion as to this particular link because PO2 Lumapak attested that it was the investigator who had custody of the packs of shabu at the police station since he was the one who placed the markings thereon. But PO2 Lumapak testified that it was him and PO2 Luague who delivered the packs of shabu to the PNP Crime Laboratory and there was no testimony as to the transition of custody from the investigator to PO2 Lumapak.

Accused-appellant likewise declares that the forensic chemist, the last person in the chain of custody failed to testify on how the subject items were kept after being tested prior to presentation in court. Relying on *People vs Cervantes, GR No. 181494*, the High Court acquitted accused because of said deficiency.

We are not persuaded.

The core issue for resolution in this case is whether or not sufficient evidence exists to support the conviction of accused-appellant for violation of Sections 5, 11, and 12 of Article II of R.A. No. 9165.

In prosecutions for illegal possession and sale of dangerous drugs, the presentation in evidence of the seized drug, as an integral part of the corpus delicti, is most material. It is therefore vital that the identity of the illegal drugs be proved with moral certainty.

Ideally, the procedure on the chain of custody should be perfect and unbroken.