

## **SPECIAL NINETEENTH DIVISION**

**[ CA-G.R. CR - HC NO. 01075, July 15, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, - VERSUS -  
JAY PEDILLA OYOHROY<sup>[1]</sup>, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**LAGURA-YAP, J.:**

Jay Pedilla Oyohoy (accused-appellant) appeals the Judgment<sup>[2]</sup> dated June 11, 2009 rendered by the Regional Trial Court, Branch 57, Cebu City in Criminal Case No. CBU-69371 and Criminal Case No. CBU-69372. In the former case, accused-appellant is convicted of Violation of Section 5, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act, while in the latter case the accused-appellant is convicted with Violation of Section 11, also under Article II of the Act.

The dispositive portion<sup>[3]</sup> of the decision reads:

Finding the guilt of the accused beyond reasonable doubt, accused Jay Pedilla Oyohoy is sentenced to suffer the following penalties:

1. life imprisonment and a fine of Php 500,000.00 for Violation of Section 5, Article II of R.A. 9165 and
2. twelve (12) years and one (1) day to fifteen (15) years and a fine of Php300,000.00 for violation of Section 11, Article II of RA 9165.

The seventeen (17) packs of shabu (Exhs. "B" to "D") are forfeited in favor of the government.

SO ORDERED.

The Information<sup>[4]</sup> filed on April 22, 2004, against accused Jay Pedilla Oyohoy under Criminal Case No. CBU-69371, alleges:

That on or about the 20<sup>th</sup> day of April, 2004, at about 2:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Jay Oyohoy y Pedilla, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer:

\*one transparent plastic pack of white crystalline substance weighing 0.03 gram\*

locally known as "SHABU" CONTAINING Methylamphetamine hydrochloride, (a) dangerous drug/s.

CONTRARY TO LAW.

The Information<sup>[5]</sup> also filed on even date against accused Jay Pedilla Oyohoy under Criminal Case No. CBU-69372, alleges:

That on or about the 20<sup>th</sup> day of April, 2004, at about 2:30 P.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, Jay Oyohoy y Pedilla, with deliberate intent, did then and there have in his/her possession and under his/her possession and under his/her control the following:

\*fourteen (14) transparent plastic pack (sic) of white crystalline substance containing (a) total weight of 0.42 grams;

\*two (2) transparent plastic pack of white crystalline substance weighing 1.30 grams\*

locally known as "SHABU" containing methamphetamine hydrochloride, a dangerous drug/s, without being authorized by law.

CONTRARY TO LAW.

The accused entered a "NOT GUILTY" plea during the arraignment<sup>[6]</sup> on May 19, 2004.

The evidence for the prosecution is summarized as follows:

On April 19, 2004, at about 4:00 o'clock in the afternoon, PO1 Uldarico Lamosao, received an information from a confidential agent that there was a person engaging in illegal drug activity in Barangay Tisa, Labangon, Cebu City. P/Sr. Inspector Lorenzo B. Trajano then instructed PO1 Lamosao to verify the information. On that date, PO1 Lamosao went to the area and he saw the accused engaging in illegal drug activity.

The following day, April 20, 2004, at about 10:00 o'clock in the morning, P/Sr. Inspector Lorenzo B. Trajano planned a buy-bust operation. He formed the buy-bust team composed of PO1 Lamosao, PO1 Miro, PO1 Dela Peña, PO1 Eborlas and PO3 Lumayag. PO1 Lamosao was designated as the poseur-buyer and was provided with a P100.00 bill with serial number R454353 and it was marked with the initials of "LBT".

At about 2:00 o'clock in the afternoon of April 20, 2004, the buy-bust team proceeded to Brgy. Tisa, Cebu City, to conduct the buy-bust operation. Upon reaching the target area at around 2:30 P.M., PO1 Lamosao proceeded to the house of the accused while the other members of the team strategically positioned themselves in the vicinity. PO1 Lamosao together with the confidential agent met and negotiated with the accused. PO1 Lamosao received the shabu from the accused and the latter received the marked money from the former. After the transaction, PO1 Lamosao executed the pre-arranged signal by removing his bull cap.

When the buy-bust team saw the pre-arranged signal, they rushed to the scene where the poseur-buyer and the accused were. The accused was arrested and frisked. He was informed of his constitutional rights. As a result of the search, the team recovered from the accused's back pocket, the buy-bust money, fourteen (14) small plastic packs, two (2) medium plastic packs, all of which contained white crystalline substance. Thereafter, the accused was brought to the police station. The plastic pack, which was the subject of the buy-bust operation was marked as "BB", while the fourteen (14) plastic packs and the two (2) plastic packs were marked as "JO-1 to JO-14 and JO-1 and JO-2", respectively.

The evidence for the defense is summarized hereunder:

Accused Jay Oyohoy, 28 years old, single, jobless, is a resident of Basak, Pardo, Cebu City. He testified that on April 20, 2004, at around 2:30 in the afternoon, he was in the house of his Uncle Sevellejo at Labangon, Cebu City. The accused was feeding the chickens when three persons went inside the yard looking for "Raffy". Policemen with armalite and firearms arrived. While his hands were placed at the back, a policeman inserted his hands inside his (accused) right pocket. The policeman then got from his (accused) pocket a plastic sachet of shabu. The accused said that he did not know where the sachet of shabu came from.

After the trial, the RTC promulgated<sup>[7]</sup> its judgment of conviction dated June 25, 2009 against the accused. Aggrieved, he filed a Notice of Appeal<sup>[8]</sup> dated June 29, 2009.

On July 15, 2009, the trial court issued an order (Mittimus) transferring the person of the accused-appellant to the New Bilibid Prison, Muntinlupa City.<sup>[9]</sup>

## ASSIGNMENT OF ERRORS

### I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

### II

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL.

### III

THE TRIAL COURT GRAVELY ERRED IN RULING THAT THE CHAIN OF CUSTODY OF THE PACK OF SHABU WAS DULY ESTABLISHED, RETAINING ITS INTEGRITY AND EVIDENTIARY VALUE.

The accused-appellant Jay argues in his Brief that the testimonies of the two prosecution witnesses are doubtful. PO1 Dela Peña declared that the information that the accused was engaged in illegal drug trade was relayed by a concerned citizen through a telephone call, while PO1 Lamosao declared that it was their confidential informant who came to their office and relayed the information. PO1

Lamosao, the poseur buyer, declared that PO1 Miro was in possession of all the packs of white crystalline substance that were recovered from the accused-appellant, including the one sold in the buy-bust operation. However, Officer Miro declared that it was Officer Lamosao who was in possession of the item allegedly sold in the buy-bust operation from the scene up to the police station. Officer Lamosao turned it over only to Officer Miro at the police station. It is settled that when the testimonies of two key witnesses cannot stand together, the inevitable conclusion is that one or both must be telling a lie, and their story a mere concoction.<sup>[10]</sup>

According to the accused-appellant the records of the case would reveal that the alleged sale transpired in the alley where there are several houses and during broad daylight. At any rate, if indeed, petitioner was a peddler, he would know the perils inherent in his illegal trade and would not simply peddle prohibited drugs openly along a busy street. Carrying out an illicit business under these circumstances is contrary to common experience, given the clandestine nature of illegal drug dealings.

The accused-appellant says that there is doubt as to the existence of the buy-bust money. The buy-bust money was allegedly lost for an unjustifiable reason. The prosecution could not offer a justifiable explanation why the buy-bust money got lost. Therefore, the receipt of the buy-bust money remains unsubstantiated. While the presentation of the buy-bust money is not indispensable in the prosecution of a drug case, its non-presentation raises doubt on the occurrence of a buy-bust operation.

The accused-appellant contends that the prosecution failed to follow the chain of custody rule as provided for in R.A 9165. First, the shabu allegedly confiscated was not marked immediately upon seizure. Second, there were no photographs taken of the seized shabu. Third, there is no showing that a PDEA representative, members from the media and representative from the DOJ were present when the markings were made. Fourth, no inventory was made in the presence of the accused-appellant, his counsel and other persons required by law to be present. Fifth, the prosecution failed to identify the persons who handled the the shabu.

The accused-appellant says that his defense of frame-up remains unrebutted. The *court a quo* did not accord weight on this defense because of the pre-conceived notion that denial is weak. The *court a quo* lost sight of the settled rule that the evidence of the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

In a number of cases that the Supreme Court has decided, it acquitted the accused for failure of the arresting officers to faithfully follow the statutory requirements under Section 21 of R.A 9165. It stressed the importance of complying with the prescribed statutory procedure and that penal law should be construed strictly against the government, and liberally in favor of the accused.

The Solicitor General in his Brief counter argues that in the case of *People v. Darisan*,<sup>[11]</sup> the Supreme Court held that in the prosecution for illegal sale of drugs, the following elements must first be established: 1. proof that the transaction took place; and 2. the presentation in court of the corpus delicti or the illicit drug as

evidence. In a prosecution for illegal possession of a dangerous drug, it must be shown that 1. the accused was in possession of an item or an object identified to be a prohibited or regulated drug; 2. such possession is not authorized by law, and 3. the accused was freely and consciously aware of being in possession of the drug.

In the instant case, the prosecution was able to establish all of the above stated elements. PO1 Lamosao testified that after receiving the plastic pack of shabu from the accused and after he gave the marked money to the latter, PO1 Lamosao executed the pre-arranged signal. The police officers arrested the accused and was informed of his constitutional rights. PO1 Lamosao and PO1 Miro consistently testified that after the arrest, PO1 Miro frisked the accused and the former recovered from the latter's back pocket the buy-bust money, fourteen (14) small plastic packs, and another two (2) medium plastic packs all of which contained white crystalline substance. The substance inside the plastic packs were later on found to be positive for methylamphetamine hydrochloride.

The Solicitor General asseverates that the records are bereft of any evidence that would show that accused had the legal authority to possess the plastic packs containing methylamphetamine hydrochloride. It has been held in many jurisprudence that mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* to convict an accused absent a satisfactory explanation of such possession.

The Solicitor General says that the accused-appellant's defense of frame up deserves scant consideration vis-a-vis the positive identification by PO1 Lamosao, PO1 Ricardo Dela Peña and PO1 Januario Miro. The police officers enjoy in their favor the presumption of regularity in the performance of their duties. Accused-appellant failed to adduce clear and convincing evidence to support his defense of frame-up. Other than the accused-appellant's bare allegations, there is no other evidence to support his defense. Bare denials, cannot prevail over the direct and positive testimony of the witness pointing to accused as perpetrator of the offense and cannot overcome the presumption that the police officer performed their duties regularly.<sup>[12]</sup>

The Solicitor General explains that the inconsistencies pointed out by the accused-appellant are only minor in details. In *People vs. Fernando*,<sup>[13]</sup> the Supreme Court said that discrepancies in minor matters do not impair the essential integrity of the prosecutor's evidence. What is important is that the testimonies agree on the essential facts and that the respective versions corroborate and substantially coincide with each others to make a consistent and coherent whole.

Finally, the Solicitor General asserts that the failure on the part of the police operatives to comply with the requirements set forth under paragraph 1, Section 21, Article II of R.A. 9165 is not fatal. The prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs. The Supreme Court has held in several cases that non-compliance with Section 21, Article II of R.A. 9165 will not render an accused's arrest illegal or the items seized inadmissible.<sup>[14]</sup> In the instant case, the integrity of the drugs seized from the accused-appellant was preserved. The chain of custody of the drugs was not broken. The prosecution was able to account for each and every link in the chain of custody over the shabu, from the moment it was retrieved from the buy-bust operation up to the time it was