

## **SPECIAL EIGHTEENTH DIVISION**

**[ CA-G.R. CR. NO. 02009, September 30, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MAXIMO V. TANUDTANUD, 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 Judgment<sup>[1]</sup> dated July 17, 2012 of the Regional Trial Court, Seventh Judicial Region, Branch 57, Cebu City in Crim Case No. CBU-89713 which found accused-appellant guilty beyond reasonable doubt of Violation of Sec. 11, Article II of RA No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

#### **The Facts**

##### *Version of the Prosecution*

On August 2, 2010, SPO1 Deogenes Carillo received a tip from a confidential informant that illegal drug activities were rampant at Sitio Lacaron, Barangay Pitao, San Fernando, Cebu. At around 10:20 in the evening of the same day, SPO1 Carillo and the confidential informant proceeded to the area to conduct a surveillance.

The confidential informant informed SPO1 Carillo that he saw accused-appellant playing tong-its with a gun tucked at his waist. SPO1 Carillo approached accused-appellant and saw him carrying a .357 caliber firearm. SPO1 Carillo then arrested accused-appellant. However, he resisted arrest by poking his gun on SPO1 Carillo. A scuffle subsequently ensued. With the help of bystanders, accused-appellant was subdued. Accused-appellant's firearm and five (5) live ammunitions were confiscated. Then accused-appellant was brought to the police station where PO3 Marjukin Misuari was assigned as desk officer at that time.

Upon arrival at the police station, accused-appellant was subjected to a mandatory body search. Two plastic sachets containing white crystalline substance were recovered from accused-appellant's right pocket. SPO1 Carillo marked the seized plastic sachets with accused-appellant's initials "MVT-1" and "MVT-2". Thereafter, SPO1 Carillo delivered the letter request for examination together with the seized plastic sachets to the PNP crime laboratory for chemical analysis. As per Chemistry Report<sup>[2]</sup> No. D-706-2010, P/Insp Atienza found the specimen positive for shabu.

#### **The Charge**

In the Information<sup>[3]</sup> dated August 5, 2010 filed against him, accused-appellant was charged with the crime of Violation of Section 11, Article II of RA No. 9165 as follows:

*"That on the 2<sup>nd</sup> day of August 201 at about 10:20 o'clock in the evening, at Barangay Poblacion South, San Fernando, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) heat sealed transparent plastic pack of white crystalline substance weighing 0.02 gram each, which when subjected for laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.*

*CONTRARY TO LAW."*

Accused-appellant was arraigned and pleaded "not guilty" to the crime charged.

Trial ensued. The prosecution presented the following as witnesses: P/Insp. Mary Sheila Atienza, SPO1 Deogenes Carillo and PO3 Marjukin Misuari. On the other hand, the defense presented accused-appellant as its lone witness.

### ***Version of Accused-appellant***

Accused-appellant narrated that on August 2, 2010, he was in Lacaron, San Fernando, Cebu and was playing cards at around 7:00 PM. Around 9:00 PM, five unknown persons arrived and two of them suddenly pointed their firearms at accused-appellant. One of them was brought to the roadside where a vehicle was also parked. Accused-appellant attempted to struggle but was handcuffed and brought to the police station. He claimed that he was asked about a certain Marlon Sabayton whom he does not know but was said to be engaged in selling illegal drugs. Accused-appellant denied being frisked. Nothing was recovered from his person and he denied being in possession of the two plastic packs containing shabu.

### **The RTC Ruling:**

Thereafter, on July 17, 2012, the RTC, Seventh Judicial Region, Branch 57 rendered Judgment against accused-appellant, the pertinent portion of which reads:

*"In its totality, the degree of proof to secure a conviction has been attained.*

*'The law requires only moral certainty or that degree of proof which produces conviction in an unprejudiced mind.'* (People vs Bacalzo, 195 SCRA 557)

*WHEREFORE, in view of the foregoing, accused Maximo Tanudtanod is hereby convicted beyond reasonable doubt of Violation of Section 11, Article II of RA 9165 and is sentenced to suffer the penalty of twelve (12) years and one (1) day to fifteen (15) years and to pay a fine of P 300,000.00.*

*Accused is credited for the period during his preventive imprisonment.*

*The two packets of shabu are forfeited in favor of the government.*

*SO ORDERED."*

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

I.

"THAT THE COURT A QUO ERRED IN GIVING OVER-RELIANCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THEIR GLARING INCONSISTENCIES AND CONTRADICTIONS;

II.

THAT THE COURT A QUO ERRED IN CONVICTING MAXIMO V. TANUDTANUD FOR VIOLATION OF SECTION 11 OF REPUBLIC ACT 9165 DESPITE FAILURE OF THE PROSECUTION TO PROVE THE IDENTITY OF THE CORPUS DELICTI;

III

THAT THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO ADDUCE EVIDENCE SUFFICIENTLY SHOWING GUILT BEYOND REASONABLE DOUBT  
."

**THIS COURT'S RULING:**

I.

Inconsistencies in the  
testimonies of the prosecution witnesses

It is the submission of accused-appellant that the court a quo erred in giving utmost credence to the testimonies of the prosecution witnesses because of their apparent contradictions and inconsistencies. According to accused-appellant, SPO1 Deogenes Carillo testified that Maximo Tanudtanud was arrested in possession of firearms and five (5) live ammunitions. However, accused-appellant points out that there was no ammunition reflected in the police blotter and identified by PO3 Marjukin Misuari. In his attempt to cover up such discrepancy, the prosecution witness suddenly overturned his earlier testimony and averred that four (4) live ammunitions were

brought to him. The conflict in testimonies was left unexplained, thereby casting serious doubt on the veracity of the charge against accused-appellant. Since the inconsistency refers to the apprehension for possession of firearms and live ammunition and the recovery of prohibited drug, accused-appellant asserts that such circumstance is material and vital. He maintains that there were material and unexplained inconsistencies between the testimony of the two principal prosecution witnesses relating not to inconsequential details but to the alleged transaction itself warranting his acquittal.

***Accused-appellant's argument is misplaced.***

The record reveals that the testimonies of the prosecution witnesses are positive, credible and categorical. Time and time again, the Court has ruled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime. To emphasize, as long as the testimonies of the witnesses corroborate each other on material points, the minor inconsistencies therein cannot destroy their credibility<sup>[4]</sup>. The alleged inconsistencies and/or flaws pointed out by accused-appellant in the instant case are insufficient to overturn the judgment of conviction against him since those testimonies are consistent on material points. It bears to stress that in order to secure a reversal of the appealed judgment, such inconsistencies should pertain to that crucial moment when accused-appellant was caught in possession of shabu and not merely peripheral matters.

The inconsistencies referred to by accused-appellant are inconsequential. He capitalized on the discrepancy as to the number of ammunitions allegedly found on his person. However, such inconsistency does not pertain to the elements of the crime charged against accused-appellant. It should be emphasized that what is important is that the prosecution was able to establish the key elements needed for a conviction.

Verily, accused-appellant was convicted by the court a quo on the basis of the evidence established by the prosecution. During the trial, SPO1 Deogenes Carillo who arrested accused-appellant testified in a straightforward manner regarding accused-appellant's possession of shabu. He identified accused-appellant as the one who was found in possession of sachets of shabu from his right front pocket when he was frisked at the police station. The testimonies on record show that the prosecution witnesses were able to testify positively and categorically that accused-appellant was in possession of the dangerous drugs. Likewise, the prosecution was able to account that the evidence recovered from accused-appellant with the pertinent markings were the same evidence presented in court.

II.

Identity of the  
corpus delicti

Accused-appellant insists that the prosecution failed to prove the elements of the offense charged against him. He emphasizes the utmost importance in preserving the identity and integrity of the corpus delicti.

***Accused-appellant's contention is untenable.***

The records have shown that the prosecution has established the presence of all the elements of the crime of illegal possession of shabu. To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.<sup>[5]</sup>

First, while accused-appellant was subjected to a body search at the police station immediately after his arrest, accused-appellant was caught in possession of two sachets of shabu, a dangerous drug. Second, accused-appellant failed to show that he was authorized by law to possess said sachets of shabu. Third, accused-appellant freely and consciously possessed the sachets of shabu. He failed to prove that he has no knowledge of such shabu confiscated from him. Accused-appellant's bare denial does not suffice to prove his lack of knowledge or possession or *animus possidendi* of the seized drugs.

The pertinent testimony of SPO1 Carillo sufficiently depicts the circumstances surrounding the arrest of accused-appellant being caught in *flagrante delicto* in possession of shabu, as follows:

“Q: You said you were conducting a surveillance. Why were you conducting a surveillance?

A: Because sitio Lacaron is a place which is rampant of illegal drugs and my assignment is in San Fernando and I was the chief of intelligence.

Q: And while you were conducting surveillance, was there an unusual incident at that time?

A: There were many reports that sitio Lacaron and Barangay Pitalo were rampant of illegal drugs and I conducted surveillance.

Q: What happened next when you were conducting the surveillance?

A: My confidential agent tipped to me that there was Imuk Tanudtanud sitting playing tong-its at Sitio Lacaron, Brgy. Pitalo, San Fernando. My companion tipped to me that there was firearm on his waist.

Q: After knowing that information coming from your confidential agent, what did you do?

A: I immediately went to the area and then I confronted a certain Imuk Tanudtanud and I saw in his waist a firearm and I got the firearm and introduced myself as police officer.

Q: So when you confronted this Imuk Tanudtanud, do you mean to say that you are already familiar with this person prior to this incident?

A: Yes sir, because of many reports that Imuk Tanudtanud is engaged in robbery and illegal activities in San Fernando town, in Brgy. Balungag and Magsiko.

Q: In short, this Maximo V. Tanudtanud in which you referred as Imuk Tanudtanud is already notorious in that place?

A: Yes sir.