

EIGHTEENTH DIVISION

[CA-G.R. CR. HC. NO. 01477, November 27, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALICE
PACA Y TAÑAG, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

THE CASE

Accused-appellant Alice T. Paca was charged with Violation of Section 5, in relation to Section 26, Article II of Republic Act No. 9165^[1] in an Information dated January 23, 2009, quoted below:

"That on or about the 21st day of January 2009, at about 3:25 o'clock in the afternoon, more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping with Darwin Garcia who is still-at-large, and who will be separately prosecuted as soon as apprehended, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer one (1) pc. small size heat sealed transparent plastic pack of white crystalline substance, weighing 0.03 gram, locally known as "shabu", containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW."

Trial ensued after she pleaded not guilty. Subsequently, the court *a quo* issued a Judgment^[2] dated February 22, 2012, finding accused-appellant guilty of the offense charged, the decretal portion of which is quoted as follows, to wit:

"WHEREFORE, in view of the foregoing, the Court finds accused ALICE PACA Y TAÑAG guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00.

The packet of shabu is forfeited in favor of the government. Its disposal is held in abeyance due to the separate charge of Darwin Garcia.

SO ORDERED."

THE ANTECEDENT

At around 1:00 pm on January 21, 2009, an informant appeared before the Regional Office VII of the Philippine Drug Enforcement Agency (PDEA) in Cebu City and told PO3 George B. Cansancio (PO3 Cansancio) and FO3 Rayford A. Yap (FO3 Yap) that a certain Darwin Garcia, allegedly a big-time drug pusher operating in Brgy. Pasil and other neighboring barangays in Cebu City, had approached the informant to look for a buyer of shabu, in exchange for a commission.^[3]

A briefing was conducted and then eventually a team was created which included PO3 Cansancio as the poseur-buyer and FO3 Yap to conduct a buy-bust or entrapment operation against Darwin Garcia and his cohorts.^[4] FO3 Yap marked with his initials "RY" a Php500.00 bill (Serial no. EZ 514660) which was turned over to PO3 Cansancio. The plan to conduct a buy-bust operation was logged in the PDEA blotter^[5] and an Authority to Operate^[6] was prepared.

After the informant contacted Darwin Garcia through text messages, the informant together with PO3 Cansancio, FO3 Yap and the driver proceeded to the area. Later, Garcia together with accused-appellant arrived and approached the informant. As agreed upon, Garcia demanded the money from the informant and PO3 Cansancio and the latter handed down the buy-bust money. After Garcia received the pre-marked Php500.00 bill, he asked the accused-appellant for the pack of shabu. Accused-appellant then handed a plastic pack to Darwin Garcia who, in turn, gave the said item to PO3 Cansancio.^[7]

PO3 Cansancio executed the pre-arranged signal by dropping the face towel signifying that the transaction had been consummated. Upon noticing the approaching PDEA officers, Garcia pushed PO3 Cansancio who attempted to hold him. The former quickly entered the backdoor of a nearby residential house and exited at the entrance portion of the same, bringing with him the buy-bust money bill. Since the place is a squatter area, the chase proved futile.^[8]

Accused-appellant attempted to escape but was captured. FO3 Yap informed appellant of her offense and her constitutional rights.^[9] The inventory could not be prepared at the *situs criminis* since several persons gathered at the area and some even threw stones at the members of the buy-bust team. PO3 Cansancio then brought the shabu to the office.^[10]

Barangay Councilor Elsa Iso and media representative Virgilio Salde, Jr. of Bombo Radyo witnessed the inventory and both signed the Certificate of Inventory as witnesses. The shabu, subject of the sale, was marked "ATP-DG-01-21-09" by PO3 Cansancio with his signature. Two photographs were taken, showing each of the two witnesses signing the Certificate of Inventory, together with accused-appellant and a person identified as PDEA officer Jess Tabanao and the plastic pack subject of the inventory.^[11] The incident of arrest and the seized illegal drug were reflected in the police blotter.^[12]

Thereafter, PO3 Cansancio personally delivered the plastic pack to the Philippine National Police (PNP) Regional Crime Laboratory in Cebu City for laboratory examination. As per examination conducted by P/Supt. Mutchit Salinas, the forensic chemical officer, the specimen submitted contained methamphetamine hydrochloride, a dangerous drug.^[13] The finding was reflected in a Chemistry Report No. D-060-2009 dated January 22, 2009 and was signed by the said forensic officer.

In controverting the charge, the accused-appellant posited that she was watching a television show inside her house when there were persons running. She peeped through the door but the police officers asked her about the whereabouts of Darwin Garcia. After giving a negative answer, she locked the door. FO3 Yap was about to hit her with his firearm. She was subsequently handcuffed and brought to the station of the officers. She was placed inside a detention cell and was taken out and investigated later at nighttime. Afterward, she learned that she was charged of selling dangerous drugs.

In convicting the accused, the RTC found and ruled as follows, thus:

“The Court does not entertain doubts as to the chain of custody of the shabu, its identity, integrity and the evidentiary value of the same. The shabu that was sold to agent Cansancio had all the time in his possession since the shabu, subject of sale was handed to him, placed the markings until it was delivered by him to the PNP Crime Laboratory. The letter request and the shabu were received by officer Antopina of said laboratory. It was examined by P/Supt. Salinas and finally produced in court. In addition, presumption lies in its favor. Integrity of the evidence is presumed to be preserved unless there is showing of bad faith, ill-will or proof that the evidence has been tampered with. Hence, the appellant on this case has the burden to show that the evidence was tampered or meddled with.

In totality, the prosecution was able to obtain the degree of proof to sustain a conviction. The law requires only moral certainty or that degree of proof which produces conviction in an unprejudiced mind.

Wherefore, in view of the foregoing, the Court finds accused Alice Paca Y Tanag guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00”^[14]

Hence, this appeal, where accused-appellant ascribed to the court *a quo* a single assigned error, to wit:

WHETHER OR NOT THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE PALPABLE FAILURE OF THE PROSECUTION TO PROVE THE ELEMENTS OF THE OFFENSE CHARGED AND TO ESTABLISH THE IDENTITY OF CORPUS DELICTI WITH MORAL CERTAINTY.

THIS COURT'S RULING

The appeal has no merit.

In its Brief,^[15] accused-appellant argued that the prosecution failed to establish that she and Darwin Garcia acted in conspiracy considering that the subject of the buy-bust is Darwin Garcia and there was no mention of accused-appellant Alice Paca being included in their watch list of drug traders. Accused-appellant added that the informant transacted with Darwin Garcia and it was him who demanded and received the money as payment of shabu. Hence, she should have been acquitted by the court *a quo*.

Such postulate deserves scant consideration. For one, the Supreme Court has enumerated the elements of the crime of illegal sale of dangerous drugs:

- “(i) identity of the buyer and the seller
- (ii) object and consideration of the sale; and
- (iii) delivery of the thing sold and the payment therefor.

What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. Clearly, the commission of the offense of illegal sale of dangerous drugs, like shabu, merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale beyond moral certainty.”^[16]

In the case at bench, all three (3) essential elements are present.

First, the testimonies of PO3 Cansancio and FO3 Yap indisputably show that PO3 Cansancio was the purchaser as he was designated as the poseur-buyer in the buy-bust operation conducted on January 21, 2009 at Magsaysay St., Brgy. Pasil, Cebu City while Darwin Garcia was the seller.

Second, the object of the sale was the 0.03 gram of shabu in the amount of P500.00.

Third, PO3 Cansancio gave to Darwin Garcia, upon the latter's demand, the pre-marked P500.00 money bill as payment or consideration for the sale. Right then and there, accused-appellant handed to Darwin Garcia the plastic pack containing the shabu, the object of the transaction, and Darwin Garcia, in turn, delivered the shabu, or the thing sold, to PO3 Cansancio who received the same.

As correctly argued by the prosecution, the *corpus delicti* of the crime, or the shabu inside the plastic pack subject of the sale, was presented as evidence in the proceedings *a quo* and was properly identified by PO3 Cansancio, through the marking in the plastic pack, as the same item that appellant gave to Darwin Garcia and which the latter handed to PO3 Cansancio.^[17]

Besides, accused-appellant's assertions that she was a mere laundrywoman of Darwin Garcia and that she just happened to be present during the incident doing some errands for Darwin without necessarily being made aware about his illegal trade are far from convincing.^[18]

It is worth noting that the Information against accused-appellant shows that she was charged for violating Section 5, in relation to Section 26, Article II of R.A. No. 9165. Section 26 thereof specifically provides:

Section 26. Attempt or Conspiracy. - Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

- (a) Importation of any dangerous drug and/or controlled precursor and essential chemical;
- (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
- (c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;
- (d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and
- (e) Cultivation or culture of plants which are sources of dangerous drugs.

Elsewise stated, accused-appellant was charged with the crime of illegal sale of dangerous drugs, committed in conspiracy with Darwin Garcia. The Information has it that appellant connived with, confederated together with, and helped Darwin Garcia in selling, delivering, or giving away shabu to a poseur-buyer.

In a catena of cases, the Supreme Court enunciated that "conspiracy is always predominantly mental in composition because it consists primarily of a meeting of minds and intent. By its nature, conspiracy is planned in utmost secrecy. Hence, for collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime as only rarely would such agreement be demonstrable since, in the nature of things, criminal undertakings are rarely documented by agreements in writing.

But the courts are not without resort in the determination of its presence. The