

## **TWENTIETH DIVISION**

**[ CA G.R. CEB CR HC NO. 01391, November 18, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PONCIANO DIBABAO GARSOLA, ACCUSED-APPELLANT.**

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

**QUIJANO-PADILLA, J.:**

This is an appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> of Branch 57 of the Regional Trial Court of Cebu City dated March 25, 2011 in Criminal Cases Nos. CBU-81487 and CBU-81488, finding accused-appellant guilty beyond reasonable doubt for Violation of Section 5<sup>[3]</sup> of Article II of R.A. 9165, otherwise known as the "The Comprehensive Dangerous Drugs Act of 2002", while acquitting him in Criminal Case No. CBU-81488.

#### **The Facts**

The case originated from the filing of two (2) separate Informations<sup>[4]</sup> dated October 25, 2007 against accused-appellant, which read:

#### **CBU-81487**

"That on or about the 23rd day of October, 2007 at about 8:30 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) small heat sealed plastic pack of white crystalline granules, weighing 0.04 gram, locally known as shabu, containing Methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW."<sup>[5]</sup>

#### **CBU-81488**

"That on or about the 23<sup>rd</sup> day of October, 2007 at about 8:30 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control eight (8) heat sealed transparent plastic sachets of white crystalline substance, weighing a total of 0.32 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.”<sup>[6]</sup>

Upon arraignment<sup>[7]</sup> on January 15, 2008, the accused-appellant, duly assisted by counsel, pleaded not guilty to the crimes charged.

Thereafter, trial on the merits ensued.

### **The Version of the Prosecution<sup>[8]</sup>**

The facts as summarized by the plaintiff-appellee in its Brief<sup>[9]</sup> are as follows:

PDEA-7, Cebu City received reports regarding selling of shabu by Ponciano Garsola, the herein accused.

Acting on the tip, a team was formed to conduct a buy bust operation on October 23, 2007.

Prior to jump off, a briefing was conducted relative to the name of the subject, area or place of operation, assignment of respective roles, like IA Levi Ortiz with the informant as the poseur-buyer and the rest of the team members as backup, preparation of the buy bust money of P100 (Exh. “F”) bearing serial no. AE 536292 for the one packet of shabu, which money was handed by agent Ortiz to the informant before proceeding to the area for the informant to negotiate in order to avoid the danger that accused may refuse if agent Ortiz made the transaction. The authority to operate (Exh. “H”) was prepared and the pre-signal of taking off the cap was agreed.

IA Levy Ortiz, the informant, IO David Mark Maramba with other PDEA agents, and a driver proceeded to the target place, in Ermita, Cebu City.

Agent Ortiz with the informant proceeded to an alley while the rest were posted ten (10) meters away. The subject (accused) was playing with the video carrera machine. The informant conversed with the accused and introduced Ortiz to the accused. The latter said the price of the shabu is P400.00. It was the informant, who had the P100.00 bill since IA Ortiz gave it to the former in case the accused would not transact with him. When the informant handed the P100.00, Ortiz the poseur buyer was still reaching for the additional amount of P300.00 to complete the P400.00 when accused delivered the shabu (Exh. “B-1”) to the informant. Ortiz executed the pre-arranged signal, placed the accused under arrest and informed him of his rights and violation. While still at the scene the shabu sold and delivered by the accused to the informant was turned over by the latter to Ortiz.

A body search conducted on the accused yielded to the confiscation of another eight (8) packets of shabu (Exh. “B”). The shabu sold and those recovered were separately placed in plastic packs. Ortiz marked the shabu sold as “PG-1” and for the recovered eight packs of shabu, the markings “PG-2” to “PG-9” To determine the presence of illegal drugs, a letter request (Exh. “H”) was prepared and together with seized illegal drugs, the same were delivered by agent Maramba. The Certificate of Inventory (Exh. “D”) was duly signed by media representative Earl Rallos of DYSS, Cebu and Edgar de la Calzada, a barangay councilor and photographs (Exh. “E” to

"E-3") of the seized evidence and signing of the inventory were taken.

P/Sr. Insp. Mutchit Salinas an expert who examined the items, found the same to be positive for methamphetamine hydrochloride, a dangerous drug, per Chemistry Report No. D-1039-2007 (Exh. "C").<sup>[10]</sup>

### **The Version of the Accused-Appellant**

The defense presented two witnesses, the accused-appellant himself and Mr. Rizalde Silvano. From the testimony of the accused-appellant and as summarized in his Brief<sup>[11]</sup>, the following incident transpired: On the day of his arrest, at around 8:00 p.m., he came from his house on his way to the billiard hall.<sup>[12]</sup> While accused-appellant was walking, a police officer pulled out his firearm and apprehended him. The police officer frisked him but recovered nothing in his person.<sup>[13]</sup> Then accused-appellant was made to board a vehicle with another police officer and brought to a certain place near Cebu Normal University.<sup>[14]</sup> He was asked to become an asset, but he refused, as for him, life is so short.<sup>[15]</sup> Inside a room, accused-appellant was asked to sign a document but he refused.<sup>[16]</sup> He was ordered to go to another room and on top of a table were a plastic pack of shabu and P100.00 bill.<sup>[17]</sup> The police took pictures of him and he was made to wear a short with PDEA Detainee print on it.<sup>[18]</sup> Accused-appellant denies having sold shabu to IA Ortiz and asserts that no drugs were recovered from him<sup>[19]</sup>.

While in jail, he befriended Rizaldy Silvano, a PDEA asset, who he requested to testify, which in fact he did, in favor of the accused-appellant after the latter learned from Silvano that the latter was present during the buy bust operation on October 23, 2007 and it was from a certain "Ramas" that Silvano bought the item.<sup>[20]</sup>

After the Defense rested its case, the parties were directed to file their respective memoranda.

### **The Ruling of the Regional Trial Court**

In a Decision<sup>[21]</sup> dated March 25, 2011, the Regional Trial Court found the accused-appellant guilty beyond reasonable doubt of the crime penalized under Sections 5, Article II of RA 9165. In the assailed decision, the trial court found the evidence presented by the prosecution to be sufficient to establish the elements of the crimes charged. The trial court likewise found the chain of custody of the seized illegal drugs to have remained unbroken. The decretal portion of the decision reads:

"WHEREFORE, for all the foregoing, accused Ponciano Garsola is hereby sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00, for Violation of Section 5, Article II of RA 9165.

However, the accused is acquitted on reasonable doubt of the charge of possession of shabu under Section 11, Article II of RA 9165.

The pack of shabu, subject of sale and the eight packs of shabu, subject of possession are forfeited in favor of the government.

SO ORDERED.”<sup>[22]</sup>

Aggrieved with the decision, the accused-appellant timely filed this appeal<sup>[23]</sup> and raised the following as assignment of errors, *to wit*:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT 9165, DESPITE PROSECUTION'S FAILURE TO ESTABLISH AND PRESERVE THE INTEGRITY AND IDENTITY OF THE CORPUS DELICTI OF THE OFFENSE CHARGED.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.<sup>[24]</sup>

**This Court's Ruling**

The Appeal is meritorious. We cannot sustain accused-appellant's conviction for illegal sale of dangerous drugs, as this Court hereby acquits Garsola in view of the prosecution's failure to prove his guilt beyond reasonable ground.

We have repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. We have reviewed such factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.<sup>[25]</sup>

It is well-settled that an appeal in a criminal case opens the whole case for review. This Court is clothed with ample authority to review matters, even those not raised on appeal, if we find them necessary in arriving at a just disposition of the case. Every circumstance in favor of the accused shall be considered. This is in keeping with the constitutional mandate that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt.<sup>[26]</sup>

In the present case, Garsola's guilt was not proved beyond reasonable doubt. The prosecution failed to establish that the shabu examined by the crime lab forensic chemist, and later presented in court, was the same item allegedly recovered from Garsola. In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.<sup>[27]</sup> Evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from appellant; otherwise, the prosecution for possession of illegal drugs under R.A. No. 9165 fails.<sup>[28]</sup>

In drug-related prosecutions, the State not only bears the burden of proving the elements of the offenses of sale and possession of methamphetamine hydrochloride

under R.A. 9165, but also carries the obligation to prove the *corpus delicti*, the body of the crime, to discharge its overall duty of providing the guilt of the accused beyond reasonable doubt. The prosecution fails to comply with the indispensable requirement of proving *corpus delicti* not only when it is missing but also when there are substantial gaps in the chain of custody of the seized drugs which raise doubts on the authenticity of the evidence presented in court.<sup>[29]</sup>

Moreover, there are links that must be established in the chain of custody, namely: "first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer, third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court".<sup>[30]</sup>

Hence, it is imperative that the identification of the drug seized from the accused must be established by a proper chain of custody. This is to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. In this case, the integrity of the drug allegedly recovered from Garsola was fatally compromised.

*First*, the marking was only made at the PDEA office and not immediately upon confiscation.

In this regard, Section 21(a) of the Implementing Rules and Regulations of RA 9165 provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody** over said items; (Emphasis supplied).

The failure of the prosecution to show that the police officers conducted the required physical inventory and photographed the objects confiscated does not *ipso facto* result in the unlawful arrest of the accused or render inadmissible in evidence the item seized. This is due to the *proviso* added in the implementing rules stating that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have not been preserved.<sup>[31]</sup> "What is crucial is that the integrity and evidentiary value of the seized items are preserved