

EIGHTEENTH DIVISION

[CA-G.R. CR. HC. NO. 01712, December 16, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ROBERT DELOS REYES EMETERIO, ACCUSED-APPELLANT.

D E C I S I O N

INGLES, G. T., J.:

Before us is an appeal^[1] seeking to annul and reverse the Judgment^[2] of the Regional Trial Court, Branch 57, Cebu City dated April 1, 2013 in Criminal Case No. CBU-94663 for Violation of Section 5, Article II of Republic Act No. 9165 which sentenced the accused-appellant as follows:

"WHEREFORE, finding guilt beyond reasonable doubt for Violation of Section 5, Article II of RA 9165 against accused ROBERT DELOS REYES EMETERIO, he is hereby sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00.

The three packs of *shabu* are forfeited in favor of the government.

SO ORDERED."

Herein appellant was charged per the following information,^[3] to wit:

"That on the 7th day of January, 2012, at around 7:15 o'clock in the evening, at Barangay Tunghaan, Minglanilla, 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 sell, deliver and distribute to a PDEA agent acting as poseur buyer three (3) heat-sealed transparent plastic pack of white crystalline substance, weighing 0.03 gram each, in consideration of the sum of six hundred (P600.00) pesos consisting of one (1) five hundred (P500.00) peso bill with serial number UX364248 as buy bust money, which when subjected for laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

Contrary to law."

Upon arraignment, accused pleaded not guilty to the crime charged. Thereafter, trial ensued.

The prosecution presented the following witnesses, namely: P/Chief INSP. RYAN ACE SALA,^[4] Intelligence Officer 1 (IO1) Sisa Cortez^[5] and Intelligence Officer 1 (IO1) Nicolas Gomez.^[6] The version of the prosecution as amply summarized by the Solicitor General in his brief,^[7] is as follows:

"Philippine Drug Enforcement Agency (PDEA) Regional Office 7 in Cebu City received several reports and confidential information regarding illegal drug activities of appellant.^[8] On January 7, 2012, after being informed of the matter, the Regional Director of PDEA 7 designated Intelligence Officer 1 (IO1) Nicolas Gomez to lead a buy-bust operation against appellant.^[9]

On even date, IO1 Gomez formed a team and held a briefing to conduct the buy-bust operation as directed.^[10] The team included IO1 Sisa Cortez and a confidential informant who were designated as poseur-buyers.^[11] IO1 Cortez marked the buy-bust money consisting of one P100.00 bill and one P500.00 bill with her initials "SC" at the upper right portion of the bills.^[12] IO1 Gomez as team leader prepared and signed the Authority to Operate^[13] and Pre-Operation Report.^[14]

The team proceeded by vehicle to Brgy. Tunghaan, Minglanilla, Cebu.^[15] Before they reached the buy-bust site, IO1 Cortez and the confidential informant alighted from the vehicle and walked to the apartment of appellant. The rest of the team stayed at the highway.^[16] The door of appellant's apartment was closed but the television was turned on, so the confidential informant called appellant.^[17] Appellant opened the window and the door. The confidential informant introduced IO1 Cortez as his friend. IO1 Cortez said that they want to buy shabu worth P600.00 and gave appellant the marked money. Appellant went inside the apartment and handed to IO1 Cortez three packs of white crystalline substance believed to be shabu.^[18]

IO1 Cortez made a missed call to IO1 Gomez, which was the pre-arranged signal,^[19] while appellant had gone inside the apartment and had closed the door. The rest of the team arrived at the target area, opened the door, and entered the apartment.^[20] IO1 Gomez arrested appellant while IO1 Cortez searched the body of appellant. She recovered from appellant's pocket the marked buy-bust money, additional money worth P1,270.00 and a black cellphone, which she later marked as "RN-4 01/7/12."^[21]

IO1 Gomez informed appellant of his constitutional rights and contacted a representative of the media and an elected public official to witness the inventory of seized items. The witnesses were Jaime Pardillo of DYRC from the media and Barangay Captain James Getuaban as an elected public official. The team conducted an inventory of seized items at the crime scene.^[22] IO1 Cortez marked the three packs of *shabu* as "BB-RN-1 01/7/12" up to "BB-RN-1-(3)^[23] 01/7/12" with her signature.^[24] She prepared the Certificate of Inventory^[25] and took photographs of the proceedings and the confiscated items.^[26] From the crime scene to the PDEA office, IO1 Cortez had in her custody the buy-bust money, the confiscated *shabu*, the black cellphone and the additional P1,270.00 recovered from appellant.^[27]

At the PDEA office, IO1 Jonar Cuayzon entered the entire incident in the PDEA Blotter, which was reflected in a Certification.^[28] IO1 Cortez prepared a letter request for laboratory examination.^[29] The PNP Regional Crime Laboratory 7 received through PO2 Cabahug a letter request from PDEA 7 and attached were the three packs containing white crystalline substance believed to be *shabu*.^[30]

Police Chief Inspector Ryan Ace Sala, Forensic Chemical Officer at the PNP Crime Laboratory at Cebu City, conducted a forensic examination on the three packs containing white crystalline substance for the determination of illegal drugs^[31] and prepared and signed Chemistry Report No. D-026-2012.^[32] Qualitative examination conducted on the specimens gave POSITIVE results to the tests for the presence of Methamphetamine Hydrochloride (*shabu*), a dangerous drug. PCI Sala delivered the three specimens to PO2 Joseph Bucayan, evidence custodian of the PNP Crime Laboratory.^[33]

The defense, on the other hand, presented the accused Robert Emeterio^[34] as its witness together with Niña Cruda.^[35] Their testimonies, as summarized by the trial court in its assailed judgment, are as follows:

"In a nutshell, accused's evidence revealed that on the date and time in question, he was together with his girlfriend Niña Cruda at a rented apartment in Minglanilla, Cebu. Then, somebody knocked and saw Bogto, a bystander of the place and known to him for eight months. He and Bogto who was alone talked. The latter wanted to buy *shabu* but accused told Bogto that he does not sell *shabu*. However, Bogto left the P600.00 on the table and left. Accused called Bogto to get the money but the latter did not hear the call. Nina Cruda got the money to be returned later on to Bogto. Minutes later, somebody knocked, so Cruda opened. PDEA agents entered and accused was told to cooperate. The officers asked Cruda of the *shabu*, which the latter answered there is none. During the body search on the accused, his cellphone and cash of over one thousand pesos were taken and the P600.00 was confiscated from Cruda. When brought outside the house, (the)^[36] money, three packs of *shabu* and his cellphone were on the table. Officer Cortez took photographs of the seized evidence and the inventory as well. The barangay official and (the representative)^[37] from the media arrived and photographs were taken. Accused and girlfriend Cruda were brought to the office for detention. However, on the following day, Cruda was released for absence of evidence against her. The charge is a fabrication."

Based on the foregoing, the Court *a quo* rendered its judgment, in the manner and tenor quoted above.

Hence, the instant appeal based on the following assignments of errors:

I

THE LOWER COURT ERRED IN NOT FINDING THAT ACCUSED-APPELLANT

HAD NO HAND AT ALL IN THE COMMISSION OF THE OFFENSE.

II

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT.

The instant appeal does not merit this Court's consideration.

Appellant contends that the court *a quo* erred in convicting him inasmuch as the prosecution failed to establish that a verification was made with regard the truth of the allegations in the report that herein appellant was engaged in rampant selling of *shabu* and maintains several runners. No test buys were conducted by the prosecution and the prosecution was also unable to present the previous criminal records of appellant.

Appellant likewise faulted the police officers for not securing a search warrant despite of the previous report of his alleged engagement in the illegal trade of drugs. The alleged informant was not also presented in court to testify on the details of the alleged buy-bust operation.

Appellant also argued that from the narration of the prosecution witnesses, it was clear that the media representative as well as the barangay captain were not present during the actual inventory as they were called in only after the same was done. There was also no representative from the DOJ contrary to Section 21 of Article II of R. A. No. 9165.

We do not agree with appellant.

The Supreme Court in the case of PEOPLE OF THE PHILIPPINES vs. FRANCISCO MANLANGIT y TRESBALLES,^[38] has ruled that:

"Contrary to accused-appellant's challenge to the validity of the buy-bust operation, the Court categorically stated in *Quinicot v. People* that a prior surveillance or test buy is not required for a valid buy-bust operation, as long as the operatives are accompanied by their informant, thus:

Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. **In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.**^[39]

The above ruling is reiterated by the Supreme Court in the case of PEOPLE OF THE PHILIPPINES vs. EDGARDO ADRID y FLORES,^[40] to wit:

"The Court has long held that the absence of a prior surveillance is neither a necessary requirement for the validity of a drug-related entrapment or buy-bust operation nor detrimental to the People's case. The immediate conduct of the buy-bust routine is within the discretion of the police officers, especially, as in this case, when they are accompanied by the informant in the conduct of the operation. We categorically ruled in *People v. Lacbanes*:^[41]

x x x In *People v. Ganguso*, it has been held that prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*, that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance. (citations omitted)

Of the same tenor is the holding in *People v. Dela Rosa*,⁴² We underscored the leeway given to the police officers in conducting buy-bust operations:

That no test buy was conducted before the arrest is of no moment for there is no rigid or textbook method of conducting buy-bust operations. For the same reason, the absence of evidence of a prior surveillance does not affect the regularity of a buy-bust operation, especially when, like in this case, the buy-bust team members were accompanied to the scene by their informant. The Court will not pretend to establish on a *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. The selection of appropriate and effective means of entrapping drug traffickers is best left to the discretion of police authorities."

In the case before us, it was duly established that the confidential informant was with IO1 Cortez when the buy-bust operation was conducted. The non-presentation of the confidential informant is not fatal to the prosecution's case. The presentation of an informant is not a requisite in the prosecution of drug cases. The failure to present the informant does not vitiate the prosecution's cause as his testimony is not indispensable to a successful prosecution for drug-pushing since it would be merely corroborative of, and cumulative with, that of the poseur-buyer who was presented in court and testified on the facts and circumstances of the sale and delivery of the prohibited drug.^[43]

Anent appellant's contention to the effect that the media representative as well as the barangay captain were not present during the actual inventory as they were called in only after the same was done and that there was no representative from the DOJ contrary to Section 21 of Article II of R. A. No. 9165, we likewise find the same bereft of merit. Indeed it is true that Section 21, Paragraph 1 of Article II of R.