



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 207392

Present:

CARPIO, J.
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

-versus-

RAMIE ORTEGA Y KALBI, a.k.a
AY-AY,
Accused-Appellant.

Promulgated:

JUL 02 2014

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DECISION

PEREZ, J.:

We resolve the appeal filed by Ramie Ortega y Kalbi a.k.a Ay-ay (appellant) assailing the 19 November 2012 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00910-MIN which affirmed the Regional Trial Court's (RTC) 15 April 2010 Decision in Criminal Case No. 5659 (21355) finding the accused guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

¹ Rollo, pp. 3-16; Penned by Associate Justice Edgardo A. Camello with Associate Justices Renato C. Francisco and Oscar V. Badelles concurring.

Factual Antecedents

Appellant was charged before RTC, Branch 13, Zamboanga City for violation of Section 5, R.A No. 9165 in an information that reads:

That on or about February 12, 2005, in the City of Zamboanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drugs, did then and there willfully, unlawfully and feloniously, SELL AND DELIVER to PO2 JAAFAR H. JAMBIRAN, a member of the PNP, who acted as buyer, two (2) heat sealed transparent plastic sachet each containing white crystalline substance having a total weight of 0.0206 gram, which when subjected to qualitative examination gave positive result to the tests for the presence of worth of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.²

On 14 April 2005, appellant, assisted by his counsel, pleaded not guilty to the crime charged. Trial thereafter ensued.

The apprehending officers also filed a case against appellant's wife Merlinda Ortega (Len-len) and their cases were jointly heard. The case against Len-len was, however, dismissed after she filed a Demurrer to Evidence³ which the trial court granted in an Order⁴ dated 22 October 2008. The trial court ruled that the evidence against Len-len was inadmissible for being a product of an invalid search.

Version of the Prosecution

On 12 February 2005 at 2:10 P.M., a confidential informant tipped the Zamboanga City Police Office, Anti-Illegal Drugs Special Operations Task Force: *Tumba Droga* that a married couple named Ay-ay and Lenlen were selling *shabu* in their residence at Seaside, Lower Calarian, Zamboanga City.

A team was formed to conduct a buy-bust operation and PO2 Jaafar Jambiran (PO2 Jambiran) was tasked to act as the poseur-buyer, with PO3 Alvin Ajuji (PO3 Ajuji) as his immediate back-up. Five others were included in the team to serve as perimeter security.

² Records, p. 1.

³ Id. at 115-119.

⁴ Id. at 128-131.

At 3:10 P.M., the team proceeded to the target area with PO2 Jambiran riding in tandem with the informant on his motorcycle while the rest of the team followed on board an L-300 van.

Upon arrival at the *locus criminis*, PO2 Jambiran and the informant walked towards appellant's house. The informant pointed to the appellant, who was then seated on a bench outside his house. The informant asked appellant, in Tausug dialect, if he has stuff or *shabu* since PO2 Jambiran wanted to purchase some of the stuff. Appellant replied by asking how much is he buying, to which informant answered ₱200.00. PO2 Jambiran gave the marked two (2) one hundred peso (₱100.00) bills in exchange for two (2) plastic sachets of *shabu*, which appellant took from his right pocket. PO2 Jambiran scrutinized the items sold to him and afterwards executed the pre-arranged signal of removing his hat. This prompted PO3 Ajuji to rush to the scene while PO2 Jambiran grabbed appellant's hand and introduced himself as a policeman.

Forthwith, PO2 Jambiran informed appellant of his constitutional rights and the fact the he violated R.A. No. 9165. After handcuffing appellant, PO3 Ajuji conducted a body search on appellant and found two (2) one hundred peso (₱100.00) bills inside his right pocket. When appellant's wife Len-len appeared, PO3 Ajuji also searched her and found another two (2) plastic sachets of *shabu* in her right pocket. Using her cellphone, PO2 Hilda Montuno (PO2 Montuno) took pictures of appellant and Len-len before bringing them to the Zamboanga City Police Office.

At the Zamboanga City Police Office, PO2 Jambiran turned over to the investigator, PO3 Allan M. Benasing (PO3 Benasing), two (2) plastic sachets of *shabu* taken from appellant, which he consequently marked with his initials "JJ." PO3 Ajuji, on the other hand, turned over the marked money and the two (2) other plastic sachets of *shabu* taken from Len-len, which he also successively marked with his initials "AA." PO2 Montuno also turned over the photographs she has taken of the appellant. These were all received pursuant to Complaint Assignment Sheet No. 1894. Upon receiving all the evidence, PO3 Benasing also placed his initials "AB." PO3 Benasing then prepared a request for laboratory examination for the plastic sachets, personally forwarded the request to the Crime Laboratory Office and these were received by the duty Police Non-Commissioned Officer (PNCO) thereat by placing the stamp of the said office at 4:00 PM of the same day.

On 14 February 2005, Police Senior Inspector Melvin Ledesma Manuel (PSI Manuel), a forensic chemist of the PNP Crime Laboratory, Camp Batalla, JRT Lim Boulevard, Zamboanga City examined the contents of the plastic sachets and issued Chemistry Report No. D-045-2005. The report yielded positive findings for methamphetamine hydrochloride or *shabu*. Chemistry Report No. D-045-2005 was co-signed by Police Chief Inspector (PCI) Constante Sunio Sonido.⁵

Version of the Defense

Appellant denied the accusations against him. He claimed that on 12 February 2005, policemen suddenly entered their house and accused him and his wife of selling *shabu*. He alleged that they were forced to hold plastic sachets at gunpoint while they were being photographed. Thereafter, he and his wife were brought and detained at the police station.⁶

Ruling of the RTC

On 15 April 2010, the trial court rendered a Decision⁷ finding the accused guilty beyond reasonable doubt of the offense charged. Appellant was sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00.). The trial court ruled that the evidence of the prosecution successfully established the elements of illegal sale of drugs as accused was caught red-handed in a valid buy-bust operation. It noted that the defense of denial offered by the accused cannot overturn the presumption of regularity in the performance of official duties accorded to the apprehending officers.

The Ruling of the Court of Appeals

On intermediate appellate review, the CA affirmed in *toto* the ruling of the RTC. The appellate court agreed with the RTC in giving weight to the testimonies of the prosecution witnesses and in holding that the apprehending officers complied with the proper procedure in the custody and disposition of the seized drugs.

⁵ *Rollo*, pp. 4-5.

⁶ *Id.* at 5-6.

⁷ *Records*, pp. 140-149.

Issue

Whether the court-*a-quo* gravely erred in finding the appellant guilty beyond reasonable doubt of the crime charged.⁸

Our Ruling

The appeal is bereft of merit.

In the prosecution of a case of illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.⁹

After a careful evaluation of the records, we find that these elements were clearly met. The prosecution's evidence positively identified the buyer as PO2 Jambiran and the seller as appellant. Likewise, the prosecution presented in evidence the two sachets of *shabu* as the object of the sale and the ₱200.00 as consideration thereof. Finally, the delivery of the *shabu* sold and its payment were clearly testified to by prosecution witnesses.

Appellant's defense which is anchored principally on denial cannot be given credence. It does not have more evidentiary weight than the positive assertions of the prosecution witnesses. Appellant's defense is unavailing considering that he was caught in *flagrante delicto* in a legitimate buy-bust operation. This Court has ruled that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.¹⁰

Appellant submit that the trial court failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs

⁸ CA rollo, p. 16; Brief for Accused-Appellant.

⁹ *People v. Delos Santos*, G.R. No. 186470, 27 September 2010, 631 SCRA 350, 364 citing *People v. Guiara*, G.R. No. 186497, 17 September 2009, 600 SCRA 310, 322-323.

¹⁰ *People v. Hernandez*, G.R. No. 184804, 18 June 2009, 589 SCRA 625, 642.

as embodied in Section 21, paragraph 1, Article II, R.A. No. 9165.¹¹ Appellant alleged that there was lack of inventory and the marking of the items was not done in his presence, a representative of media, the Department of Justice (DOJ) and an elected official.¹² Further, he averred that the confiscated items were only examined two days after it was submitted for laboratory examination. Appellant maintained that such failure casts doubt on the validity of his arrest and the identity of *shabu* allegedly seized and confiscated from him, forwarded by the apprehending officers to the investigating officer, to the crime laboratory for examination and later presented in court.

Relevant to appellant's case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

(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[.]

The last part of the aforequoted issuance provided the exception to the strict compliance with the requirements of Section 21 of R.A. No. 9165. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal

¹¹ (1) The apprehending 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[.]

¹² *Rollo*, p. 7.

requirements on the handling of the seized item” is sufficient.¹³ This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.¹⁴ What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.¹⁵ In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.¹⁶

Here, the prosecution witnesses testified on the chain of custody over the seized drugs. After the buy-bust operation was completed, PO2 Jambiran marked the items seized from appellant with his initials “JJ”.¹⁷ PO2 Montuno took pictures of the appellant spouse holding the plastic heat-sealed sachets from them. This fact was even admitted by accused-appellant in his testimony. PO3 Benasing testified that he was the duty officer of the case to whom PO2 Jambiran turned-over the seized items. He alleged that he placed his initials “AB-1” and “AB-2” thereon.¹⁸ He thereafter prepared a Request for Laboratory Examination (Exhibit “A”) and had this delivered and received by the PNP Crime Laboratory.¹⁹ The items were examined by PSI Manuel and his Chemistry report showed that the specimens tested yielded positive for methamphetamine hydrochloride or *shabu*.²⁰ These same items were later on presented and identified during the trial of the case.

¹³ *People v. Cortez*, G.R. No. 183819, 23 July 2009, 593 SCRA 743, 764.

¹⁴ *People v. Jose Almodiel*, G.R. No. 200951, 5 September 2012, 680 SCRA 306, 323; *People v. Campos*, G.R. No. 186526, 25 August 2010, 629 SCRA 462, 468 citing *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 436-437.

¹⁵ *People v. Magundayao*, G.R. No. 188132, 29 February 2012, 667 SCRA 310, 338; *People v. Le*, G.R. No. 188976, 29 June 2010, 622 SCRA 571, 583 citing *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 133 further citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 448; *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 437.

¹⁶ *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 467 citing *People v. Rosalda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 520-521 further citing *People v. Rivera*, G.R. No. 182347, 17 October 2008, 569 SCRA 879, 897-899.

¹⁷ TSN, 26 June 2006, p. 22; Testimony of PO2 Jambiran

¹⁸ TSN, 19 September 2006, p. 7; Testimony of PO3 Benasing.

¹⁹ Id. at 9.

²⁰ TSN, 15 august 2005, p. 11; Testimony of PSI Manuel.

Thus, through these testimonies, the prosecution has clearly shown that the chain of custody has been unbroken.

Further, even if there was no categorical statement on the part of the prosecution witnesses that a physical inventory was prepared, as claimed by appellant, it was testified on that the Complaint/Assignment sheet prepared by PO2 Jambiran and the police report prepared by PO3 Benasing reflected the details of items seized. Likewise, PSI Manuel was able to explain why the plastic sachets turned over to the PNP Crime Laboratory were examined by him only two days after these were delivered.

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellant bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.²¹ Appellant in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.²² In fact, he did not even question the credibility of the prosecution witnesses. He anchored his appeal primarily on the alleged broken chain of the custody of the seized drugs.

Finally, Section 5 of R.A. No. 9165 provides the penalty for the illegal sale of dangerous drugs, viz:

Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

We affirm the penalty imposed on appellant as this conforms to the above-quoted provision of the law.

²¹ *People v. Miranda*, 560 Phil. 795, 810 (2007).

²² See *People v. Macabalang*, 538 Phil. 136 155 (2006).

On the basis of the aforesaid disquisition, we find no reason to modify or set aside the Decision of the RTC, as affirmed by the CA.


WHEREFORE, the appeal is **DENIED** and the 19 November 2012 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00910-MIN is hereby **AFFIRMED**.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



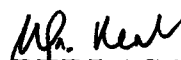
ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice