

794 Phil. 509

## SECOND DIVISION

[ G.R. No. 211608. September 07, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MENARDO BOMBASI Y VERGARA, ACCUSED-APPELLANT.**

## DECISION

### **DEL CASTILLO, J.:**

This is an appeal from the October 31, 2013 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05504, which affirmed the November 3, 2011 Decision<sup>[2]</sup> in Criminal Case No. 5639-Spl of the Regional Trial Court (RTC), Branch 93 of San Pedro, Laguna. The RTC convicted Menardo Bombasi y Vergara (appellant) of violation of Section 5,<sup>[3]</sup> Article II of Republic Act (RA) No. 9165 or The Comprehensive Dangerous Drugs Act of 2002.

On February 23, 2006, an Information was filed before the RTC charging appellant with violation of Section 5 of RA 9165 committed as follows:

That on or about the 23<sup>rd</sup> day of January 2006, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court the said accused without any legal authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to a police poseur buyer one (1) small heat-sealed plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE or Shabu weighing zero point zero six (0.06) gram in exchange for two (2) pieces One Hundred Peso (P100.00) marked-bills with Serial Nos. EF500410 and AB635979.

CONTRARY TO LAW.<sup>[4]</sup>

On November 13, 2006, appellant, with the assistance of counsel, was arraigned and pleaded "NOT GUILTY." Thereafter, a pre-trial conference was held during which the

parties stipulated on the existence of the letter request for laboratory examination of a small heat-sealed transparent plastic sachet<sup>[5]</sup> and Chemistry Report No. D-023-06<sup>[6]</sup> showing the specimen examined is positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. Thus, the testimony of Forensic Chemist Police Chief Inspector Lorena R. Tria (PCI Tria) was dispensed with.

### ***Version of the Prosecution***

On January 23, 2006 at about 9:00 p.m., an asset-informant came to the office of the San Pedro Police Station, San Pedro, Laguna and reported to SPO1 Melchor dela Peña (SPO1 Dela Peña) about the drug pushing activity of appellant at Amante Street, Brgy. Cuyab, San Pedro, Laguna. SPO1 Dela Peña relayed the information to their chief who ordered PO1 Jifford Signap (PO1 Signap) and SPO1 Alejandro Ame (SPO1 Ame) to conduct a surveillance within the area. Upon learning of the location of the house of appellant, the two went back to their office and informed their chief. Whereupon, the chief called a briefing and formed a buy-bust team composed of PO1 Signap as the poseur-buyer, while SPO1 Dela Peña, SPO1 Ame and SPO1 Arnel Gonzales (SPO1 Gonzales) acted as perimeter security. After discussing the procedure and preparation of two pieces of 100-peso bills, the team accompanied by the informant immediately proceeded to the house of appellant. Thereat, the informant introduced PO1 Signap to appellant as a prospective buyer of *shabu*. PO1 Signap gave the two 100-peso bills to appellant who, in turn, handed to the former a small plastic sachet containing substance suspected to be *shabu*. After the exchange, PO1 Signap went out of the house to call his back-up. However, when they returned, appellant was no longer inside the house. Instead, they arrested two persons inside from whom two plastic sachets of *shabu* were recovered. PO1 Signap marked the sachet subject of the sale with "MB," corresponding to the initials of appellant. After preparing the request for laboratory examination of the suspected specimen, SPO1 Ame brought the specimen to the Philippine National Police (PNP) Crime Laboratory. Per Chemistry Report No. D-023-06, the specimen submitted and examined contains methamphetamine hydrochloride, a dangerous drug.

### ***Version of the Defense***

Appellant denied the accusation against him claiming that in the evening of January 23, 2006, he was at home with his wife watching television when he saw policemen pass by their house and arrest Ariel Aranda and Sergio Bagtas. He also denied that PO1 Signap bought *shabu* from him. His wife, Cresencia Bombasi, corroborated him.

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

The RTC found appellant guilty as charged and sentenced him to suffer the penalty of life imprisonment and pay a fine of P500,000.00.

From this judgment, appellant appealed to the CA.

### ***Ruling of the Court of Appeals***

By Decision dated October 31, 2013, the CA affirmed the judgment of conviction of the RTC against appellant. The appellate court held that the elements for the crime of illegal sale of prohibited drugs under Section 5, Article II of RA 9165 were satisfied. The CA found substantial compliance with the requirements set forth in Section 21 of RA 9165. It emphasized that although there was no photograph taken on the seized item, nonetheless, the integrity and evidentiary value of the same was maintained.

Hence, the instant appeal.

In a Manifestation<sup>[7]</sup> dated July 28, 2014, appellant just adopted his Brief filed before the CA as his Supplemental Brief while appellee manifested that it is no longer filing a Supplemental Brief.

In his quest for acquittal, appellant claims that the integrity of the subject *shabu* was not ensured and its identity was not established with moral certainty.

### **The Court's Ruling**

The appeal is meritorious.

We fully agree with appellant that the prosecution failed to establish the identity of the prohibited drug which constitutes the *corpus delicti* of the offense, an essential requirement in a drug-related case.

We quote pertinent portions of the testimony of PO1 Signap, the poseur-buyer who marked the seized illegal drug:

- Q. Mr. Witness, the last time you testified you stated that you were able to buy shabu or methamphetamine hydrochloride from Meynard Bombasi, do you recall having testified on that?
- A. Yes, ma'am.

- Q. And this methamphetamine hydrochloride was contained in a small plastic sachet?
- A. Yes, ma'am.
- Q. If the specimen or the object of your buy bust operation will be shown to you will you be able to identify it?
- A. Yes, ma'am.
- Q. How?
- A. Because of the markings, ma'am.
- Q. Who placed the markings on the plastic sachet?
- A. I was the one, ma'am.
- Q. Do you still recall what markings did you place?
- A. Yes, ma'am
- Q. What markings?
- A. M.B., ma'am.
- Q. Which stands for?
- A. Meynard Bombasi, ma'am.<sup>[8]</sup>

From the foregoing exchange, we inescapably note the prosecution's failure to give even a simple indication that the substance that was being presented in court was identified to be the same substance sold by appellant. In fact it was not presented or shown to the witness for the intended identification.

Still on the matter of identifying the illicit substance, we further note the glaring inconsistency which the lower courts wittingly overlooked. We refer to the testimony of PO1 Signap vis-a-vis the entries in the Request for Laboratory Examination dated January 23, 2006<sup>[9]</sup> and the Chemistry Report No. D-023-06 dated January 24, 2006.<sup>[10]</sup>

Recall that PO1 Signap categorically testified that he marked the seized substance placed in a small heat-sealed transparent plastic sachet with appellant's initial "M.B." However, when the same substance was brought to the PNP Crime Laboratory for examination, per written request, the specimen submitted bore a different marking "MB-B." Precisely, this is the

same substance with the corresponding marking that was examined by PCI Tria and eventually offered in court as evidence which undoubtedly is not the same substance marked by the poseur-buyer. Worse, there was no explanation given on the discrepancy in the markings.

To recapitulate, for a successful prosecution of the offense of illegal sale of dangerous drugs like *shabu*, the prosecution is bound not only to establish the following elements: (1) identity of the buyer and the seller, the object and consideration of the sale and (2) the delivery of the thing sold and the payment therefor<sup>[11]</sup> but also it is equally essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.<sup>[12]</sup> This requirement is found wanting in this case. It is evident that the identity of the *corpus delicti* has not been properly preserved and established by the prosecution. We therefore find that the prosecution has not been able to prove the guilt of appellant beyond reasonable doubt. The presumption of regularity in the performance of official duty invoked by the prosecution and relied upon by the courts *a quo* cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.<sup>[13]</sup>

**WHEREFORE**, the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05504 affirming the Decision of the Regional Trial Court of San Pedro, Laguna, Branch 93 in Criminal Case No. 5639-SPL is **REVERSED and SET ASIDE**. Appellant Menardo Bombasi y Vergara is **ACQUITTED** on ground of reasonable doubt.

The Director of the Bureau of Corrections is ordered to cause the immediate release of appellant, unless the latter is lawfully held for another cause, and to inform this Court of the action taken within 10 days from notice.

**SO ORDERED.**

*Carpio, (Chairperson), Mendoza, and Leonen, JJ., concur.*  
*Brion, J., on leave.*

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<sup>[1]</sup> CA *rollo*, pp. 88-95; penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

<sup>[2]</sup> Records, pp. 153-156; penned by Judge Francisco Dizon Paño.

<sup>[3]</sup> Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

<sup>[4]</sup> The Information was amended to correct the name of the accused from Meynardo to Menardo; TSN, July 8, 2009, p. 7.

<sup>[5]</sup> Exhibit "C."

<sup>[6]</sup> Exhibit "D."

<sup>[7]</sup> In lieu of Supplemental Brief.

<sup>[8]</sup> TSN, September 17, 2008, p. 2.

<sup>[9]</sup> Exhibit "C."

<sup>[10]</sup> Exhibit "D."

<sup>[11]</sup> *People v. Unisa*, 674 Phil. 89, 108 (2011).

<sup>[12]</sup> *People v. Ladip*, 729 Phil. 495, 515 (2014), citing *People v. Salonga*, 617 Phil. 997, 1010 (2009).

<sup>[13]</sup> *Valdez v. People*, 563 Phil. 934, 954 (2007).

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