

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO LOS BAÑOS III Y RAMIREZ, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

This is an appeal from the Judgment[1] dated 20 November 2012 of the Regional Trial Court of Negros Oriental, 7[th] Judicial Region, Br. 30, Dumaguete City convicting Francisco Los Baños III y Ramirez of violation of Section 5, Article II of RA 9165 in Crim. Case No. 20321.

THE ANTECEDENTS

By Resolution[2] dated 18 January 2011, the Assistant City Prosecutor of Dumaguete City, found probable cause to charge Francisco Los Baños III y Ramirez of Violation of Section 5, Article II of RA 9165, and accordingly, filed an Information,[3] the accusatory sheet of which reads pertinently, as follows,

“That on or about the 6[th] day of January 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did then and there willfully, unlawfully and feloniously deliver to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing 4.03 grams of Methamphetamine Hydrochloride, otherwise known as ‘SHABU’, a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. 9165.”

By its Order[4] dated 28 January 2011, the RTC, after a personal evaluation of the government prosecutor's resolution and its supporting evidence, found probable cause for the offense as charged in the information. In the same Order, the RTC issued a commitment order for the accused but fixed no bail since the government prosecutor did not recommend any.

On 9 February 2011, the Assistant City Prosecutor filed a motion to amend information and to admit amended information.[5]

By its Order dated 25 February 2011, the RTC, there being no objection from the defense counsel, granted the prosecution's amended information,[6] the accusatory sheet of which reads,

“That on or about the 6th day of January 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did, then and there willfully, unlawfully and feloniously deliver to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing 4.03 grams of Methamphetamine Hydrochloride, otherwise known as “SHABU”, a dangerous drug.

That the urine sample taken from the accused contains Methamphetamine and THC-metabolites, per Chemistry Report No. DT-002-11.

Contrary to Sec. 5, Art. II of RA 9165.” (Underscoring supplied)

Upon arraignment,[7] Francisco Los Baños pleaded not guilty to the offense charged in the amended information.

After the issues have been joined, trial on the merits ensued.

During the trial, the parties agreed to stipulate on the gist of the testimonies of the the prosecution witnesses, namely: (1) Police Chief Inspector Josephine S. Llana; (2) Barangay Kagawad Raul Aguilar, Neil Rio and DOJ Representative Anthony Chillius Benlot, and Atty. Dominador Cimafranca.

The version of the prosecution:

Hereunder are the gists of the testimonies of the prosecution witnesses:

“As to witness PCI Josephine S. Llana:

- That PCI Llana received from PO2 Glenn Corsame at 1531H or 3:31 o'clock in the afternoon of January 6, 2011 one (1) heat-sealed transparent plastic sachet with markings “FL-D” containing white crystalline substance which she re-marked as Specimen A, the dangerous drug subject of this case as embodied in a letter dated January 6, 2011 marked as Exhibit “A” with sub-markings for the prosecution;
- That PCI Llana conducted a laboratory examination on the said specimen received by her and when weighed contained 4.03 grams of white crystalline substance and her qualitative examination conducted on the said specimen gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drugs under RA 9165, her findings and conclusions of which she embodied in her submitted Chemistry Report No. D-003-11;
- That PCI Llana can identify the said Specimen A with its markings as the dangerous drug subject of this case marked as Exhibit “D” for the prosecution;
- That PCI Llana also conducted a laboratory examination on the urine sample taken from the living person of accused Francisco Los Baños III y Ramirez and her screening and confirmatory test conducted on the said specimen gave positive result to the test for the presence of Methamphetamine and THC-Metabolites, a dangerous drug under RA 9165, her findings and conclusions of which she indicated in her submitted Chemistry Report No. CDT No. 003-11 marked as Exhibit “1” with sub-markings for the prosecution;
- That PCI Llana delivered the said specimen together with her Chemistry Reports to this Court for the trial of this case on February 1, 2011, as evidenced by a receipt of this Court marked as Exhibit “C” with sub-markings for the prosecution;
- That PCI Llana, prior to her delivery of the said specimen to this Court for the trial of this case, kept the same in the evidence vault of the Negros Oriental Provincial Crime Laboratory, access of which she was the only one allowed to do so.

As to witness Brgy. Kag. RAUL AGUILAR:

- That Kag. Aguilar was a barangay kagawad of the Barangay where the incident in this case occurred on January 6, 2011;
- That Brgy. Kag. Aguilar was present during the conduct of the inventory held at the Task Force Kasaligan Office on said date in connection with this case at the Task Force Kasaligan Office;
- That Kag. Aguilar signed the Receipt of Property Seized marked as Exhibit “E” with sub-markings for the prosecution and his signature identified and marked therein as Exhibit “E-5”; and
- That the image of Kag. Aguilar appears in the photograph collectively marked as Exhibit “F” for the prosecution specifically Exhibit “F-1”.

As to witness NEIL RIO:

- That Neil Rio was a practicing media person at the time of the incident on January 6, 2011;
- That Neil Rio was present during the conduct of the inventory as a representative of the media held at the Task Force Kasaligan Office in connection with this case on said date;
- That Neil Rio signed the Receipt of Property Seized marked as Exhibit “E” for the prosecution and his signature identified and marked therein as Exhibit “E-2”; and
- That the image of Neil Rio appears in the photograph collectively marked as Exhibit “F” for the prosecution specifically Exhibit “F-2”.

As to witness ANTHONY CHILIUS BENLOT:

- That Anthony Benlot is an employee of the Department of Justice specially with the City Prosecution Office, Dumaguete City;
- That Anthony Chilius Benlot was present during the conduct of the inventory held on January 6, 2011 at the Task Force Kasaligan Office in connection with this case;
- That Anthony Chilius Benlot signed the Inventory/Receipt of Property Seized marked as Exhibit “E” with sub-markings for the prosecution and his signature identified and marked therein as Exhibit “E-1”; and
- That the image of Anthony Chilius Benlot appears in the photograph collectively marked as Exhibit “F” for the prosecution specifically Exhibit “F-2”.

As to witness head Agent Atty. DOMINADOR CIMAFRANCA:

- That Atty. Dominador Cimafranca was the Head Agent of the Local NBI Office, Dumaguete City on January 6, 2011;
- That Atty. Cimafranca was the team leader of the operation which led to the arrest of the accused on said date;
- That Atty. Cimafranca was present during the conduct of the inventory held in connection with this case at the Office of Task Force Kasaligan also on said date; and
- That Atty. Cimafranca signed the Inventory/Receipt of Drugs and Other Property Seized marked as Exhibit “E” with the sub-markings for the prosecution and his signature identified and marked therein as Exhibit “E-6”. [8]

Again, the parties agreed to stipulate on facts with respect to the gist of the testimony of IOI Julieta Amatang, which reads,

“1)

That IOI Julieta Amatang was a PDEA operative assigned with the Negros Oriental Provincial Office of the PDEA and was on duty on January 6, 2011;

2)

That IOI Amatang, on said date, specifically at 1320H received a coordination request from SPO2 Allen June Germodo for a possible buy-bust operation against a certain Francisco in Dumaguete City, wherein SPO2 Germodo was issued Coordination Control No. 0111-00015;

3)

That IOI Amatang was present during the conduct of the inventory held at the Task Force Kasaligan Office on said date in connection with this case;

4)

That IOI Amatong signed the Receipt of Property Seized marked as Exhibit “E” with sub-markings for the prosecution and her signature identified and marked therein as Exhibit “E-4”;

5)

That the image of IOI Amatong appears in the photograph collectively marked as Exhibit “F” for the prosecution specifically Exhibit “F-4”;

6)

That IOI Amatong recorded the occurrence of this incident in the PDEA blotter at 1445H of January 6, 2011; and

7)

That IOI Amatong issued a Certification of the excerpts upon the PDEA blotter AS entered on page 18 therein on January 6, 2011 stating the coordination received as well as her witnessing and receiving copy of the Certificate of Inventory against the arrested accused Francisco Los Baños, such Certification being marked as Exhibit “H” with sub-markings for the prosecution.”[9]

The prosecution presented the testimony of Police Officer Mark Jester[10] Ayunting, the summary of which reads, to wit:

On January 4, 2011, Task Force Commander Miguel Dungog received information about the illegal activities of Francisco Los Baños and thereupon, instructed one of the members of the task force to conduct surveillance and casing operation against him. He was not present when the information was conveyed to the task force commander but he participated in the entrapment operation which was conducted at around 1:30 in the afternoon of January 6, 2011. The briefing about the operation was done at around 12 noon of January 6, 2011 in the office of Task Force Kasaligan. In that briefing were Task Force Commander Miguel Dungog, Marlon Manzanaris, PO2 Corsame, PO2 Pedeglorio, SPO4 Ferrer and PO3 Tanis of the CDIG. Coordination with the PDEA was done thru police officer Allen June Germodo.

He, PO2 Corsame and their informant, who was designated as the poseur-buyer, proceeded to Pancit Malabon. He and PO2 Corsame went inside the restaurant while the informant waited outside for Francisco Los Baños. The other members of the team positioned themselves around the area. They agreed that the informant would scratch his head when Francisco Los Baños arrives. True enough, Francisco Los Baños arrived, and immediately thereafter, their informant scratched his head. They remained where they were seated, which was around five (5) meters away from where their informant and Francisco Los Baños were talking. Then, they saw Francisco Los Baños hand one (1) plastic sachet to the informant. The wall separating them from the informant and Francisco Los Baños is made of glass that is why they could see what was happening outside. A few seconds after the exchange, they rushed outside and held Francisco Los Baños. The informant gave the plastic sachet to PO2 Corsame, who then informed Francisco Los Baños the offense he committed and of his constitutional rights in Cebuano. He knew that Francisco Los Baños understood what PO2 Corsame said to him because the former said “yes”.

That, PO2 Corsame marked the suspected illegal drug at the crime scene with the initials “FL-D” which stands for “Francisco Los Baños-Delivery”. He heard the real name of the suspect from the suspect, himself, after PO2 Corsame asked what his name was. That, he can identify the marked sachet if shown to him, thru the markings thereon. Because of his training and experience as a police officer he knew that the heat-sealed sachet contains shabu.

He added that they were forced to conduct the inventory in the Office of Task Force Kasaligan because people started already to gather in the area. From the area, they proceeded to their office, bringing with them Francisco Los Baños. It took them ten (10) to fifteen (15) minutes to get to their office. Present at the inventory were Francisco Los Baños, the members of the arresting team, Chilius Benlot (DOJ representative), Neil Rio (media representative) and Kagawad Raul Aguilar (elected official). Police Officer Allen June Germodo prepared the certificate of inventory. He, on the other hand, took photographs. It was Police Officer Germodo who had the photographs printed at Aldea. That, he was present during the printing.

That, their informant handed the suspected illegal drug to PO2 Corsame who had custody thereof until its submission to the crime laboratory.

On cross, PO2 Ayunting admitted that they would arrest Francisco Los Baños as soon as he handed it to the latter the illegal drug. He re-iterated that even if he was inside the restaurant he could see a bit clearly the contents of the heat-sealed sachet. But he was not able to hear the conversation of their informant and Francisco Los Baños. From his vantage point, he saw Francisco Los Baños handing the plastic sachet with white substance inside it.

Next to be presented by the prosecution was PO3 Glenn M. Corsame[11] who corroborated the material points in the testimony of PO2 Ayunting. He added that the result of the surveillance done on Francisco Los Baños confirmed the information that the latter was engaged in selling dangerous drugs. He, likewise, affirmed the statement of PO2 Ayunting that no money exchanged hands during the operation. He, likewise, added that it was in the police station that Francisco Los Baños gave his middle name. He continued that PDEA representative Amatong was also present during the inventory and the witnesses to the inventory sign it. That, it was to PCInsp. Llena to whom the specimen was submitted. That, he signed the letter-request. That, the only time he was not holding the specimen was when he placed it on top of the table for the witnesses to see and examined it, and during the whole time it was being examined by the witnesses, he was just there. That, he made sure the specimen was not tampered with. And that while he was preparing the letter-request, the specimen was in his possession.

On cross, PO2 Corsame re-confirmed that no money exchanged hands during the operation and that what separated him and PO2 Ayunting from the informant and Francisco Los Baños is a glass wall not a glass window.

Version of the defense (testimony of Francisco Los Banos[12])

On January 6, 2011, at around one o'clock in the afternoon, he was walking towards the direction of the downtown area coming from his house in lower Luke Wright in Dumaguete City. Upon reaching Pancit Malabon, a person threw money in front of him and then, came along Glenn Corsame who wrestled him causing him to choke. Thereafter, they showed him something that looked like shabu and which came from PO2 Corsame. Then, he was made to ride on board a motorcyle. At the police station, the police officers forced him to divulge the name of his supplier in Dumaguete City. Not getting any answer from him, the police officers took pictures of him. Present at the police station were Mark Ayunting, Glenn Corsame and Doming Cimafranca. He does not know if, indeed, an inventory was conducted. That, the police officers told him that if he would not tell them who the author of he crime was, they would point to him as the owner of the specimen.

On cross, he denied knowing what was inside the sachet. That, he has never used shabu and that he has seen it only on the television. That, he was informed that his urine sample tested positive for shabu and marijuana.

THE RULING OF THE REGIONAL TRIAL COURT

The RTC believed the version of the prosecution and accordingly, convicted him of the violation of Section 5, Article II of RA 9165. The fallo of the judgment of conviction reads,

“WHEREFORE, in the light of the foregoing, the Court hereby finds the accused Francisco Los Baños III y Ramirez GUILTY beyond reasonable doubt of the offense of illegal delivery of 4.03 grams of shabu in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet containing 4.03 grams of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Francisco Los Baños III y Ramirez shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.”[13]

In sustaining the version of the prosecution, the RTC ratiocinated, that,

“The defense of the accused is predicated on bare denial and claim of frame-up. The accused denied that he delivered to a poseur-buyer the dangerous drug subject of this case. The accused claimed that the said dangerous drug was owned by the police officers. These defenses cannot stand unless the defense could show with clear and convincing evidence that the members of the anti-illegal operation team were inspired with ill motives or that they were not properly performing their duties. The defenses of denial and frame-up are invariably view with disfavor because such defenses can easily be fabricated and are common ploys in prosecutions for illegal sale and possession of dangerous drugs. Here, in the absence of evidence showing ill motives on the part of the buy-bust team, the denials and plea of frame-up by the accused deserve scant consideration in the light of the positive identification made by PO2 Corsame and PO2 Ayunting. Besides, omnia praesumuntur rite esse acta (All things are presumed to have done regularly.)

Comparing the defense version with that of the arresting/entrapping operatives as to what really happened on January 6, 2011, this Court finds the account of the prosecution witnesses more credible. Aside from the presumption that they, PO2 Corsame and PO2 Ayunting, regularly performed their duties, this Court notes that these prosecution witnesses gave a consistent and straightforward narration of what transpired on the day in question. The version depicted by the prosecution, through the testimonies of principal witnesses PO2 Corsame and PO2 Ayunting, the arresting/entrapping officers, could have only been described by persons who actually witnessed the event that took place on January 6, 2011. Only a trustworthy witness could have narrated with such clarity and realism what really happened on the date referred to.

The accused may point out that his arrest was illegal. However, the Supreme Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. It has also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court. Herein, the accused went into arraignment and entered a plea of not guilty. Thereafter, he actively participated in his trial. He is, therefore, deemed to have waived such alleged defect by submitting himself to the jurisdiction of this court by his counsel-assisted plea during his arraignment, by his participating actively in the trial and by not raising the objection before his arrangement (sic).

As to the issue of the disposition and preservation of the subject drugs in this case, the Court finds that the totality of the presented evidence leads to an unbroken chain of custody of the confiscated item from the accused. The records bear out that PO2 Corsame got the one (1) heat-sealed transparent plastic sachet of shabu from the confidential-informant poseur-buyer after he rushed with PO2 Ayunting to where the accused delivered the sachet to the informant. PO2 Corsame then marked the sachet with the initials “FL-D”. At the

Task Force Kasaligan Office, PO2 Corsame conducted an inventory of the seized item in the presence of the accused and the witnesses required by law and prepared the inventory receipt of drugs and property seized. Photographs were also taken of the accused with the seized item. The one (1) heat-sealed transparent plastic sachet containing white crystalline substance was immediately forwarded to the Negros Oriental Provincial Crime Laboratory for examination to determine the presence of dangerous drugs. The forensic chemist found that the white crystalline substance inside the one (1) heat-sealed transparent sachet was positive for methamphetamine hydrochloride (shabu), a dangerous drug. There can be no doubt that the one (1) heat-sealed transparent plastic sachet of shabu delivered and seized from the accused was the same one examined in the crime laboratory. Plainly, the prosecution has established the crucial link in the chain in the custody of the seized sachet of shabu, from the time it was first delivered and seized from the accused, until it was brought for examination. This court thus finds the integrity and the evidentiary value of the drug coming from the accused to have not been compromised.

The Court has scrupulously examined the testimonies of PO2 Corsame and PO2 Ayunting and found the same to be unequivocal, definite and straightforward. If there were inconsistencies in their testimonies or in contradiction with the defense version, the Court finds that they do not relate to the elements of the offense committed. Rather, they tend to focus on minor and insignificant matters. These inconsistencies or contradictions do not detract from the fact that PO2 Corsame and PO2 Ayunting identified the accused as the same person who delivered to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing 4.03 grams of shabu on January 6, 2011. PO2 Corsame and PO2 Ayunting were consistent in their narration as to WHO committed the crime, WHEN and HOW it was committed. These are the material facts in this case which had been sufficiently and convincingly established by the prosecution. The testimonies of PO2 Corsame and PO2 Ayunting creditably chronicled the material details in the commission of the crime in question. The Court finds the prosecution's version believable and is accord with reality, hence deserving full faith and credence.

The presumption of innocence accorded the accused had been overturned by the evidence presented by the prosecution. Contrary to the assertion of the accused, the prosecution has convincingly proved beyond reasonable doubt that the crime charged was committed. The inability of the accused to predicate his defense on anything other than his words alone ultimately condemn him to prison, especially in the light of the prosecution's evidence and witnesses, which accused had been incapable of impeaching.

All things considered, finding that the testimonies of the prosecution's witnesses bear the badges of truth, such that it is extremely difficult for a rational mind not to find them credible, coupled with the overwhelming documentary and object evidence of the prosecution, the Court in resolving the threshold issue in this case is convinced with moral certainty that the accused committed the crime charged."

By its Order[14] dated 29 November 2012, the RTC committed the person of Francisco Los Baños III y Ramirez to the Director of the Bureau of Corrections, New Bilibid Prisons in Muntinlupa City.

Hence, this appeal wherein Francisco Los Baños III y Ramirez now appellant makes this lone assignment of error, viz -

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

THE ARGUMENTS

The appellant's

The appellant claims innocence. He argues that the prosecution failed to establish his guilt beyond reasonable

doubt. In fact, he denies owning the illegal drug that was allegedly delivered to the police asset. He continues that it took the arresting police officers two (2) minutes to get to where he and the police asset were standing thus giving the police asset enough time to switch the item that was given to PO2 Corsame. He concludes that the police officers who were watching him and the police asset cannot say for certain that what was given to PO2 Corsame really came from him. What is more, the police officers who were positioned inside the restaurant admitted not hearing the conversation between him and the police asset so how would they know what transpired. "A conviction cannot be sustained if there is a persistent doubt on the identity of the drug."

The appellant adds that there was no testimony with respect to the handling of the illegal drug, that is, from the time it was handed over to the police officer until the time it was presented in court. The law requires that every person who touched or had custody of the illegal drug must be able to describe with moral certainty at what particular time they had possession of the illegal drug, under what condition they received it, from whom they received it and to whom they handed it over. In fine, the prosecution must be able to track down the movement of the illegal drug until its surrender to the court.

Based on the foregoing reasons, his acquittal is in order.

The appellee-People's:

The appellant was caught in flagrante delicto of delivering to the police asset one (1) heat-sealed pack which turned out, after laboratory examination, to be shabu. Contrary to the appellant's insistence, the integrity and identity of the illegal drug was properly preserved. The police officers who took part in the operation, particularly PO2 Corsame and PO2 Ayunting narrated with clarity the timeline of the events starting from the time they obtained information about the illegal activities of the appellant to the latter's arrest. They narrated how the integrity and identity of the illegal drug was preserved from the time it was confiscated until it was submitted to the crime laboratory. Next, in compliance with the directive, the police officers inventoried the illegal drug in the presence of the appellant and the personalities required to witness the inventory and to sign the inventory sheet.

As against the positive testimonies of the prosecution witnesses, the appellant's defense of denial must necessarily fail.

What is more, the appellant failed to prove that the police officers were impelled by ill-motive hence the charge against him. On this consideration, the presumption of regularity in the performance of official duty stands.

All told, the prosecution succeeded in proving the guilt of the appellant with moral certainty.

THE ISSUE

At the core of the controversy is the issue of whether the guilt of the appellant was proven beyond reasonable doubt.

OUR RULING

The appeal lacks merit.

Section 5, Article II of Rep. Act No. 9165 reads:

"SEC. 5. 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 sustain the RTC's finding that the appellant is guilty beyond reasonable doubt of the offense charged in the Information.

In this instance, the prosecution proved that the appellant illegally delivered a plastic sachet containing shabu to the police informant who acted as poseur-buyer. What is more, the subject drug was also proven to be positive for methamphetamine hydrochloride, as evidenced by "Chemistry Report No. D-003-11" conducted by the forensic chemist P/CI Josephine S. Llana of the PNP Crime Laboratory.

PO2 Ayunting narrated the events that took place on the afternoon the appellant was arrested. He testified in a direct and unequivocal manner on all the factual elements of the crime, thus:

“Q:

And did they meet?

A:

Yes, Sir.

Q:

Is that person whom your confidential informant met at that time present in court this morning?

A:

Yes, Sir.

Q:

Kindly point to him, Sir.

A:

The person wearing a yellow shirt sitting on the first row.

(Witness is pointing to a person wearing a yellow shirt who when asked of his name answered Francisco Los Baños.)

Q:

So what happened after your confidential informant and the accused, after they met, what happened?

A:

We observed, Sir and thereafter, Sir, we saw the suspect handed one (1) piece plastic sachet to the informant, Sir.

Q:

How far away were you when you saw the accused handing over a one (1) plastic sachet of shabu to the confidential informant?

A:

It was around five (5) meters, Sir.

x x x x

Q:

How could you see the transaction?

A:

The was was transparent glass, sir.

Q:

What did your confidential informant do after he received that one (1) transparent pack of shabu?

A:

After we saw that the suspect handed the plastic sachet, Sir, we immediately got outside of Pancit Malabon to arrest the suspect, Sir.

Q:

How long did it take you to go out and rush to their position from the time you saw the accused handed over the transparent plastic sachet to your confidential informant?

A:

Just seconds, Sir.

Q:

Who were with you?

A:

PO2 Corsame, Sir.

x x x x

Q:

What did you do to him since you saw handing over one (1) plastic sachet to the confidential informant?

A:

The informant gave the plastic sachet to PO2 Corsame, Sir, and it was PO2 Corsame who informed the suspect of his violation and his rights, Sir.”[15]

The foregoing statements were corroborated on material points by PO2 Corsame, the companion of PO2 Ayunting in the restaurant. He testified as follows,

“Q:

And can you see the confidential informant while you were inside the Pancit Malabon Restaurant?

A:

Yes, Sir.

Q:

How can you see him?

A:

The wall was a glass, Sir, a transparent glass, although we cannot hear what was the transaction all about but we can see the whole incident during the arrest of this person, Sir.

x x x x

Q:

And what did this person do?

A:

When his person arrived, Sir, we observed that they talked a little then at the same time this person handed a one (1) pack transparent plastic sachet containing crystalline granules to the confidential informant, Sir.

Q:

When you say they talked, who was the accused talking to?

A:

The confidential informant, Sir.

Q:

Is that person who approached the confidential informant present in Court this morning?

A:

Yes, Sir.

Q:

Kindly point to him, Sir?

A:

That person, Sir, alone in the first row wearing a yellow shirt (Witness is pointing to a person wearing a yellow shirt who when asked of his name answered Francisco Los Baños.)

Q:

Now you said that you saw the accused talking with the confidential informant and thereafter you saw the accused hand over one (1) pack to the confidential informant and that pack contains white crystalline granules, do you confirm that?

A:

Yes, Sir.

Q:

What happened next?

A:

After that, Sir, we stepped out from the Restaurant and announced our authority that we are police officers and arrested this person, Sir, later known as Francisco Los Baños III.

Q:

How long did it take you to rush outside and reach the accused and the confidential informant from the time that you saw him show that particular pack of white crystalline granules?

A:

Two (2) minutes, Sir, more or less, we stepped out after and during the arrival of this person and handed the sachet to the confidential informant after we clearly saw what he has handed, that was the time that we stepped from the Restaurant and arrested that person, Sir.

x x x x

Court:

Q:

You confiscated it?

A:

I got the plastic sachet from the informant, Your Honor, which earlier handed by Jun Los Baños.

Q:

You were the one who got or it was given to you?

A:

I was the one who got it from the civilian informant, Your Honor?

Pros. Nakao:

Q:

How did you obtain that particular sachet of shabu from the confidential informant?

A:

After we announced that we are police officers, Sir, after Ayunting held the hands of Francisco Los Baños, I also got the transparent plastic sachet from the hands of the informant then it was already in my possession, Sir.

Q:

So you asked it from the confidential informant? .

A:

Yes, Sir

Q:

And he gave it to you?

A:

Yes, Sir.

Q:

Were you able to examine the contents of that particular sachet?

A:

Yes, Sir.

Q:

What were its contents?

A:

It contains shabu, Sir.

Q:

How do you know that it was shabu?

A:

Thru my trainings and experience, Sir.

Q:

And can you describe how that particular sachet was packed when you saw it?

A:

It was heat-sealed, Sir.

Q:

Was there any break or tear or was it reseal or was that particular sachet open when you got it from the confidential informant?

A:

No, Sir.

Q:

You said that you arrested the accused for what offense?

A:

For delivery of dangerous drug, Sir.”[16]

Suffice it to say, the foregoing testimonies make the appellant's defense of denial weak and self-serving, moreso, that his defense is not substantiated by other evidence.

At this juncture, the question which needs to be addressed is this: Did the arresting police officers faithfully comply with the rule in the custody of the illegal drugs confiscated from the appellant? We answer in the affirmative.

Chain of Custody:

Let it be stressed at the outset that: “To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. (Emphasis supplied.)”[17] Pertinent on this matter is Section 1(b) of DDB Regulation No. 1, Series of 2002, which defines chain of custody, as follows:

“b.

'Chain of Custody' means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition;”

Indeed, the mandatory rule on the chain of custody is for the purpose of preserving and protecting the identity and integrity[18] of the drugs confiscated. On this note, those who have had temporary custody of the confiscated illegal drug and at what stage they had custody of the same, or, had anything to do with its movement from one place to another should be made known with certainty. Verily, the people involved in the custody and/or transit of the confiscated illegal drugs are mandated to report on what steps they took to ensure that the integrity and identity of the seized items has not been compromised. Elsewise stated, the law and the rules mandate for a scrupulous, restrictive custody of the confiscated illegal drugs. To illustrate the compulsory nature of this procedure is the ruling in *Martinez*,[19] wherein the Supreme Court acquitted the accused for failure by the prosecution to establish the corpus delicti. Therein the Supreme Court explained, that,

“The existence of the drug is the very corpus delicti of the crime of illegal possession of dangerous drugs and, thus, a condition sine qua non for conviction. In order to establish the existence of the drug, its chain of custody must be sufficiently established. The chain of custody requirement is essential 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. *Malillin v. People* was the first in a growing number of cases to explain the importance of chain of custody in dangerous drugs cases, to wit:

'As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.'”

On the other hand, we should, likewise, be mindful of the case of *People vs. Sultan*[20] wherein the Supreme Court made an exception to the strict compliance with the rule on the chain of custody, to wit:

However, Section 21 was not meant to thwart the legitimate efforts of law enforcement agents. Slight infractions or nominal deviations by the police from the prescribed method of handling the corpus delicti should not exculpate an otherwise guilty defendant. In fact, the Implementing Rules and Regulations of Rep. Act No. 9165 adequately reflects the desire of the law to excuse from the rigid tenor of Section 21 situations wherein slight infractions in methodology are present but the integrity and identity of the specimen remains

intact. It reads:

“Section 21. . . .

(a) . . . 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;”

Notwithstanding, the records in the instant case show that the prescribed procedure in the custody of the illegal drugs was more than substantially complied with. The records adequately reveal that the identity and integrity of the illegal drugs were protected and preserved when they changed hands,

First. The receipt for the confiscated/seized property shows that PO2 Corsame took the illegal drug from their confidential informant. He, then, marked it at the scene of the crime with “FL-D”.

The buy-bust team brought the appellant and confiscated item to the police station.

It may be well to note that the PDEA, thru its operative, IOI Julieta Amatong, had knowledge of what transpired prior to and after the operation.

PO2 Corsame from the time he got the illegal drug from their confidential informant, had custody and control thereof until its submission to the crime laboratory, viz -

“Pros. Nakao:How did you obtain that particular sachet of shabu from the confidential Informant?

A:

After we announced that we are police officers, Sir, after Ayunting held the hands of Francisco Los Baños. I also got the transparent plastic sachet from the hands of the informant then it was already in my possession, Sir.

Q:

So you asked it from the confidential informant?

A:

Yes, Sir.

Q:

And he gave it to you?

A:

Yes, Sir.

Q:

Were you able to examine the contents of that particular sachet?

A:

Yes, Sir.

x x x x

Q: So what did you do to that particular sachet at that point?

A: After knowing the identity of Jun Los Baños, Sir, and he answered Francisco Los Baños that was the time that I marked the transparent plastic, Your Honor.

Q: What were the markings on it? A: “FL-D”, Sir. Q: What does “FL-D” mean?

A: Francisco Los Baños – Delivery, Sir.

x x x x

Q:

I am showing you a sachet of shabu with markings “FL-D”, is this the same sachet of shabu that you obtained from the confidential informant?

A:

Yes, Sir.

Q:

The same sachet of shabu that you saw the accused hand over to the confidential informant?

A:

Yes, Sir.

Q:

And there is a marking here, “FL-D”, who placed this markings?

A:

I was the one, Sir.

Q:

Where did you place this markings?

A:

At the place of arrest, Sir.

x x x x

Q:

What was your participation in the conduct of the inventory?

A:

I was the seizing officer of that inventory, Sir.

x x x x

Q:

Now, after the inventory, what happened next?

A:

After the inventory, Sir, all the witnesses present were given a copy and after that, Sir, we made a letter-request intended for us to submit the confiscated item as well as drug test of the person arrested, Sir.

Q:

And was that confiscate[d] item submitted to the crime laboratory?

A:

Yes, Sir.

Q:

Who submitted it?

A:

I was the one, Sir.

x x x x

Q:

Now, prior to the delivery to the crime laboratory, who had custody over the one (1) heat-sealed transparent plastic sachet of shabu?

A:

It was in my possession, Sir.

Q:

And was there any other person who had access to it while it was in your possession?

A:

During the inventory, Sir, at the Task Force Kasaligan Office, there were other persons who touched that, Sir, but it was all the time on top of the table because the witnesses also wanted to see what was really the contents of that plastic sachet, Sir.

Q:

But all those time while the witnesses were examining those items, were you present?

A:

I was present, Sir.

Q:

Were you in control over the items?

A:

Yes, Sir.

Q:

Did you see to it that the evidence was not tampered?

A:

Yes, Sir.

Q:

While you were drafting the transmittal letter, where did you keep the evidence?

A:

It was in my possession, Sir.

Q:

No other person has access to it?

A:

No, Sir.

Q:

And you [saw] to it that the evidence was not tampered while it was in your possession?

A:

Yes, Sir.”[21]

Second. PO2 Corsame brought the request[22] for laboratory examination, which was prepared on the same date of confiscation and signed by SPO3 Douglas D. Ferrer, to the crime laboratory. The request described the specimen to be tested, as follows:

“One (1) pack of transparent plastic sachet with suspected shabu marked as “FL-D”.

Third. Police Chief Inspector Josephine S. Llana received[23] the laboratory request and the specimen from PO2 Glenn Corsame[24] on 6 January 2011 at 1531H.

The final Chemistry Report No. D-003-11 stated, to wit:

“Qualitative examination conducted on the above state specimen gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug under RA 9165.”

When presented in court, both PO2 Ayunting and PO2 Corsame identified the confiscated specimen as the same one delivered by the appellant to the police asset and which was marked by PO2 Corsame with the initials “FL-D”.

Fourth. After her examination of the specimen, P/CI Llana kept the same in the evidence vault of the Negros Oriental Provincial Crime Laboratory which she alone has access to.

Then, P/CI Llana, herself, delivered the specimen together with the letter-request and her chemistry reports to the RTC on 1 February 2011, and which were received[25] by the said court's Legal Researcher at 10:30AM of the same day.

Prescinding from the foregoing, there is no doubt that the identity and integrity of the confiscated specimen, the corpus delicti of the crime, were duly preserved.

Re: Compliance with Sec. 21 (1), Art. II of RA 9165

Aside from establishing the fact of delivery of one (1)-heat sealed sachet of shabu by the appellant to the police asset and faithful observance to the rule on the chain of custody of the confiscated illegal drug, the prosecution, likewise, successfully proved that the buy-bust team complied with Section 21, paragraph 1, Article II of RA No. 9165, contrary to the appellant's allegation.

Sec. 21 (1), Art. II of RA 9165, provides, that:

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.

This provision is further elaborated in Section 21(a), Article II of the IRR of RA No. 9165, which reads, as follows:

“The apprehending office/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, 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 ours)

In this instance, the buy-bust team observed the most basic requirements of the prescribed procedures. The evidence on record show that PO2 Corsame immediately placed markings on the illegal drug seized from the appellant. Tellingly, the time and place where the markings were made are indicated in the receipt.[26] Further, as borne in the records, specifically the Order dated 12 September 2012 of the RTC, the representative of the Dept. of Justice (Anthony Chilius Benlot), from the media (Neil Rio) and NBI (Atty. Dominador Cimafranca) and an elected barangay official (Brgy. Kagawad Raul Aguilar) witnessed the physical inventory[27] and signed the copies thereof. Not only the aforementioned personalities were present during the conduct of the inventory, present too, was PDEA operative IOI Julieta Amatong.[28] What is more, photographs[29] were taken of witnesses, namely: (1) Brgy. Kagawad Raul Aguilar [Exh. “F-1”]; (2) Media man Neil Rio [Exh. “F-2”]; (3) DOJ representative Anthony Chilius Benlot [Exh. “F-3”]; and PDEA operative IOI Julieta Amatong [Exh. “F-4”] while they were signing the inventory within the presence of the appellant. Visible, too, in these photographs is the confiscated item, which was placed on top of the table. Also, a photograph was taken of the marked specimen.[30]

To stress: “The integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.”[31] On this note, it is the appellant who bears the burden of proving that the integrity and identity of the illegal drugs subject of the present case was tampered or meddled with, but he failed to do so. Inasmuch as no evidence was presented by the appellant to show that the arresting officers acted in bad faith and gross negligence in the performance of their official duty, they are presumed to have acted in the regular performance of their official duty.

Penalty

Considering that the appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of Rep. Act No. 9165, the Regional Trial Court correctly imposed the penalty of life imprisonment and a fine of P500,000.00 for delivering and giving away to the police informant/poseur-buyer 4.03 grams of shabu.

WHEREFORE, the appeal is DISMISSED, the Judgment dated 20 November 2012 of the Regional Trial Court , 7[th] Judicial Region, Br. 30 of Dumaguete City in Crim. Case No. 20321 convicting the appellant Francisco Los Baños III y Ramirez of Violation of Section 5, Article II of R.A. 9165 is hereby AFFIRMED in toto.

SO ORDERED.

Lagura-Yap, M.B., and Lopez, J.Y., JJ., concur.

[1] Original Records, pp. 102-113.

[2] Original Records, pp. 7-8.

[3] Original Records, pp. 3-4.

- [4] Original Records, p. 34.
- [5] Original Records, p. 35.
- [6] Original Records, p. 36-37.
- [7] Certificate of Arraignment, Original Records, p. 40.
- [8] Order dated September 12, 2012, Original Records, pp. 76-78.
- [9] Order dated October 3, 2012, Original Records, pp. 93-94.
- [10] TSN taken on September 26, 2012.
- [11] TSN taken on October 3, 2012.
- [12] TSN taken on October 25, 2012.
- [13] At page 11 of the RTC judgment, Original Records, p. 112.
- [14] Original Records, p. 116.
- [15] TSN taken on September 26, 2012, pp. 7-9.
- [16] TSN taken October 3, 2012, pp. 6-10.
- [17] People of the Philippines v. Francisco Tresballes Manlangit, G.R. No. 189806, January 12, 2011.
- [18] Paragraph 1, Section 21, Article II of R.A. No. 9165

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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.

- [19] People of the Philippines v. Arnold Angeles Martinez, et. al. G.R. No. 191366, December 13, 2010.
- [20] People of the Philippines vs. Alioding Sultan, G.R. No. 187737, July 5, 2010.
- [21] TSN taken on October 3, 2012, pp. 9-17.
- [22] Exhibit "A", Folder of Exhibits.
- [23] Exhibits "A-1-a", Folder of Exhibits.
- [24] Id., "A-1-b".
- [25] Receipt marked as Exhibit "C", Folder of Exhibits.
- [26] Receipt of Property Seized, Folder of Exhibits.

[27] Ibid.

[28] Order dated, 3 October 2012, Original Records, pp. 93-94.

[29] Exhibit “F-1”, F-2”, “F-3” and “F-4”, Folder of Exhibits.

[30] Id., Exhibit “F-5”.

[31] People of the Philippines v. Manuel Resurreccion, G.R. No. 186380, October 12, 2009.

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