PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABDURASAD SALIM Y HASIM, A.K.A. "MARCIAL," ACCUSED-APPELLANT.

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

This is an appeal from the Decision of the Regional Trial Court (RTC), Branch 13, Zamboanga City promulgated on October 26, 2011, convicting Abdurasad Salim y Hasim (appellant) a.k.a. "Marcial" in Criminal Case No. 5631 (21290) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as "The Comprehensive Dangerous Drug Act of 2002."

The Facts

On January 12, 2005, an Information[1] dated January 11, 2005 was filed against appellant, which reads as follows:

> That on or about the 10[th] day of January 2005, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully, and feloniously SELL and DELIVER to PO1 JAMAL L. AKIRAN, PNP, presently assigned with the Philippine Drug Enforcement Agency (PDEA) Zamboanga City, who acted as the poseur buyer, one small heat-sealed transparent plastic bag containing white crystalline substance weighing 0.0371 gram which when subjected to qualitative examination gave positive result to the test for the presence of METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing well that the same is a dangerous drug.

When arraigned on March 30, 2005, appellant pleaded "not guilty" to the charge. Trial on merits then ensued. The prosecution presented three (3) witnesses, namely: (1) Forensic Chemist P/Sr. Insp. Marco Donato Ponce De Leon (Forensic Chemist De Leon); (2) PO1 Jamal L. Akiran (Akiran); and (3) PO2 Jamal T. Makiji (Makiji), who tried to establish the following facts:

On January 10, 2005, about three o'clock in the afternoon, P/Chief Romeo Espero, Jr. (Espero) of the Philippine Drug Enforcement Agency (PDEA), Region 9, stationed at Upper Calarian, Zamboanga City, received information from a confidential informant that a certain "Marcial" was selling shabu at Tambis Lane, San Jose, Zamboanga City. He relayed the information to PDEA's Regional Director, P/Chief Insp. June Jamolo (Regional Director Jamolo), who instructed him to take immediate action. So a team,[2] composed of Espero, Akiran, PO1 Ritchell Baya (Baya), SPO3 Edgar Fernandez, SPO1 Jesus Formento, and PO1 Ibrahim Ladja, was organized right away to conduct a buy-bust operation. Akiran was designated as the poseur buyer, who would have to scratch his head as the pre-arranged signal for consummation of sale of illegal drugs, while Baya was designated as Akiran's immediate back-up and/or arresting officer.[3] The buy-bust team coordinated with the Zamboanga police officers.

Then, the buy-bust team, on board a Toyota Revo, proceeded to the target area and parked in San Jose road, near

Tambis Lane, in front of the Biel Transportation Bus Line station at about four o'clock in the afternoon.[4] Akiran and the confidential informant then alighted from the car, walked towards Tambis lane and waited for appellant there. The rest of the team strategically positioned themselves near the target area.

When appellant appeared, he was introduced by the confidential informant to Akiran. Then Akiran asked appellant for PHP 500.00 worth of shabu and handed the marked PHP500.00 bill with serial number QV042058 to appellant. In exchange, appellant gave Akiran a sachet containing a white crystalline substance. Akiran examined the sachet, placed the same in his pocket and scratched his head to signify the purchase of the alleged shabu. Immediately, the rest of the police officers rushed towards appellant, identified themselves as PDEA officers, arrested appellant and at the same time informed appellant of his violations and rights. Abaya conducted a body search on appellant and recovered the marked PHP 500.00 bill inside appellant's right pocket. Thereafter, the seized items and the appellant were brought to the PDEA office in Calarain, Zamboanga City.

At the office, Akiran marked the sachet with his initials "JLA" (stands for Jamal L. Akiran) and turned it over to Makiji. Makiji also marked the sachet with his initials "JTM" (stands for Jamal T. Makiji). Then Makiji prepared a letter request, which he brought with him together with the seized items to the Philippine National Police (PNP) Crime Laboratory in Cawa-Cawa, Zamboanga City on the following day. SPO2 Ubah received5 the seized items with the letter request.

In a Chemistry Report D-013-2005[6] dated January 11, 2005, Forensic Chemist De Leon declared that the chemical examination of the crystalline substance weighing 0.0371 grams contained in the sachet yielded a positive result for methamphetamine hydrochloride, otherwise known as shabu, a dangerous drug. He then marked[7] the sachet of shabu with D-013-2005 and signed below the marking.

Testifying as witness for the defense was appellant himself, who tried to establish an entirely different version:

About 1:45 in the afternoon of January 10, 2005, appellant, a jeepney driver, was parking the jeepney at the Boulevard of Zamboanga City when his friend named "Husin," the family name of whom he did not[8] know, called and asked to accompany him to look for a boarding house. They agreed to meet at the Boulevard. But before meeting Husin, appellant went to see Roger first. Roger (whose family name he did not know, too) was the owner of the Tamaraw jeepney appellant was driving for a year, more or less.[9] Appellant requested Roger for time off in order to accompany Husin, and then turned over to Roger the jeepney's key.

Hours later, or about three o'clock in the afternoon,[10] appellant and Husin reached Acacia Drive, Barangay Baliwasan, and found a boarding house for Husin in that place. Acacia Drive is on the right side of San Jose Road going to Baliwasan [Grande] and across Acacia Drive is the Biel Transportation Bus Line station.[11] According to appellant, a woman, who was sweeping as they passed by, pointed to them the said boarding house. After viewing the place, Husin immediately paid PHP 1,500.00 to the house caretaker for the month's rental. Then, appellant and Husin left the place and parted ways, both going to opposite direction - Husin to Suterville in order to prepare his things for the transfer, while appellant headed to Baliwasan Chico.

Appellant walked through Tambis lane, a shortcut going to Baliwasan Chico road. Along the way, he saw two jeepney drivers drinking Coke. Recognizing one of the faces, he stopped upon invitation, and drank Coke with them.

Suddenly, five (5) armed men came and started firing guns. Appellant could not run because he got scared. Then the same armed men held appellant, introduced themselves as PDEA officers, and arrested appellant. Appellant resisted the arrest but the PDEA officers forced him to go aboard their vehicle. Thereafter, appellant was brought to the PDEA office, where he was repeatedly asked to pinpoint the seller of the prohibited drugs at Tambis lane.

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On October 26, 2011, the RTC convicted[12] appellant for violation of Section 5, Article II of R.A. 9165 and accordingly sentenced him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (PHP 500,000.00), without subsidiary imprisonment in case of insolvency.

Aggrieved, appellant appealed his conviction to this Court with the following assignment of errors, to wit:

> 1. WHETHER OR NOT ALL THE ELEMENTS OF THE CRIME HAVE BEEN PROVEN TO MERIT A FINDING OF GUILT BEYOND REASONABLE DOUBT; and
>
> 2. WHETHER OR NOT COMPLIANCE TO SECTION 21 OF R.A. NO. 9165 MAY BE GIVEN CREDIBLE WEIGHT TO OVERTURN THE JUDGMENT OF CONVICTION IN THE INSTANT CASE.[13]

Ruling of the Court

Appellant questions his conviction for the crime charged, claiming his guilt was not proved beyond reasonable doubt. He contends that reasonable doubt exists on the identity and integrity of the sachet of shabu when the transmission of the same to the crime laboratory for examination was delayed. He claims non-compliance by the prosecution with Section 21 of R.A. 9165 on the chain of custody of seized drugs.

We sustain appellant's conviction.

Illegal sale of shabu established beyond reasonable doubt.

> Section 5 of Republic Act No. 9165 provides as follows:
> Section 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 (PHP 500,000.00) to Ten million pesos (PHP 10,000,000.00) 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 such transactions.

To prove illegal sale of shabu, the following elements must be present: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. And, to secure conviction, it is material to establish that the transaction or sale actually took place, and to bring to the court the corpus delicti as evidence.[14]

Here, the elements of the crime charged were adequately established. Akiran, who acted as the poseur buyer, established the fact of sale by his straightforward testimony about what transpired during the buy-bust operation held on January 10, 2005. The corpus delicti – the shabu sold – had been properly marked, presented, and identified in court by the police officers. Akiran positively identified the appellant as the one who sold the sachet of shabu to them and the one who actually received the marked money. Makiji corroborated the testimony of Akiran.

Accordingly, We hold that the prosecution had indeed successfully adduced proof, which established beyond reasonable doubt the guilt of appellant for the crime charged.

Chain of custody sufficiently established.

Records apparently show that the chain of custody over the alleged shabu was not broken, and that the alleged shabu was properly identified before the trial court. As correctly appreciated by the trial court, appellant was arrested as the result of a legitimate buy-bust operation. To reiterate, during the buy-bust operation, Akiran received from appellant the sachet containing the prohibited drug. On the other hand, Abaya recovered the PHP

500.00 marked money from appellant's pocket. At the office, Akiran marked the sachet of shabu as "JKA." Makiji also marked the same sachet as "JKL." After preparing the letter request, Makiji personally delivered the items to the crime laboratory for forensic examination. The contents of the seized sachet was tested by Forensic Chemist De Leon and verified to be methamphetamine hydrochloride (shabu). Finally, during trial, the marked sachet of shabu was clearly identified by Akiran, Makiji, and Forensic Chemist De Leon.

Indeed, the foregoing facts confirmed that the PDEA officers complied with the procedure in the custody of the seized drug. We see no doubt that the sachet marked "JLA" and "JTM," which was submitted for laboratory examination and later on found to be positive for shabu, was the same one sold by appellant to the poseur-buyer Akiran during the buy-bust operation.

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[15] It is a fundamental rule that findings of the trial courts, which are factual in nature and which involve credibility, are accorded respect when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.[16]

The fact that the sachet of shabu was not immediately transmitted to the laboratory office is of no moment,for Section 21, Article II of R.A. 9165 provides a twenty-four-hour period within which to submit the seized prohibited drugs to the Forensic Laboratory, to wit:

> Section 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. –
> x x x x
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination; [Emphasis supplied]

It is important to note that the buy-bust operation was conducted at about four in the afternoon of January 10, 2005 and that the seized sachet of shabu was later brought to PDEA office at about four-thirty of the same day. The same sachet was delivered to PDEA office the following day at about ten in the morning. Apparently, there was no "delay" to speak about since the prohibited drug was submitted to the crime laboratory for examination in less than 24 hours from seizure.

Even granting that the police officers failed to strictly comply with Section 21 of R.A. 9165, Our conclusion would not be any different. We still sustain appellant's conviction. In People v. Pringas,[17] the Supreme Court held that non-compliance by the buy-bust team with Section 21 is not necessarily fatal, and its non-compliance will not automatically render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[18]

Like the RTC, We hold that the integrity and the evidentiary value of the shabu seized from appellant was not compromised and that the prosecution was able to establish that the illegal drug presented in court was the very same specimen sold by appellant at the crime scene.

What is more, the Supreme Court had recognized that strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times

attend to all the niceties of the procedures in the handling of confiscated evidence.[19]

Defense of denial cannot prevail over
the positive and credible testimony of
the prosecution witnesses.

Appellant denies selling shabu and insists that he was only arrested and held in prison because he could not pinpoint the seller of prohibited drugs at Tambis lane.[20]

We find appellant's defense of denial incredible and a feeble attempt to exculpate him from the wrongdoing he is accused of. In the first place, it is unrefuted that appellant was at the crime scene the moment the crime was committed. Second, appellant's testimony regarding his presence at the crime scene is quite unpersuasive. As may be recalled, appellant said he was walking through Tambis lane (the crime scene) when two jeepney drivers invited him to drink Coke, and so he joined them in drinking Coke. If what was said was indeed true, then appellant could have easily made the two drivers testify that he did not sell shabu but drank Coke with them. Unfortunately, neither one of the drivers was presented in court. Third, appellant failed to show that it was not physically impossible for him to commit the crime. He simply denied selling shabu to Akiran, claimed that nothing was recovered from him after his arrest at the crime scene, and alleged that he was held and put to jail by PDEA officers because he cannot pinpoint the seller of prohibited drugs at Tambis lane.

In People v. Quiamanlon,[21] the Supreme Court held that a bare denial is an inherently weak defense and has been invariably viewed by the Court with disfavor, for it can be easily concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165. It ruled that in the absence of any intent on the part of the police authorities to falsely impute such crime against the accused, the presumption of regularity in the performance of duty stands.

At this point, We stress further the settled rule in cases involving violations of the Dangerous Drugs Act that credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[22] In the instant case, evidence on record clearly shows that appellant was involved in a buy-bust operation and was actually caught in flagrante delicto. Thus, appellant's participation, as witnessed by the PDEA officers, cannot be doubted.

Verily, We uphold the RTC's ruling that the positive and credible testimonies of the prosecution witnesses prevailed over appellant's self-serving denial. The presumption prevails because the defense failed to present clear and convincing evidence showing that the PDEA officers did not properly perform their duty or that they were motivated by an evil desire to falsely impute the crime charged to appellant.

Penalty.

Under Section 5 of Republic Act No. 9165, the unauthorized sale of shabu, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (PHP 500,000.00) to Ten Million Pesos (PHP 10,000,000.00). Pursuant, however, to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine, instead of death, shall be imposed.[23]

The court a quo, absent any aggravating or mitigating circumstance, was therefore correct in prescribing life imprisonment and fine of PHP 500,000.00 against appellant.

WHEREFORE, in the light of all the foregoing, We AFFIRM the decision dated October 26, 2011 of the Regional Trial Court, Branch 13, Zamboanga City.

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SO ORDERED.

Lloren, J., Ch., and Santos, JJ., concur.

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[1] Records, p. 1.

[2] TSN, August 30, 2005, p. 8.

[3] Exhibits, p. 5.

[4] TSN, August 30, 2005, pp. 10-11.

[5] TSN, August 10, 2005, p. 9.

[6] Exhibits, p. 2.

[7] TSN, August 10, 2005, p. 13.

[8] TSN, September 16, 2010, p. 8

[9] TSN, September 16, 2010, p. 4.

[10] TSN, September 16, 2010, p. 14.

[11] TSN, September 16, 2010, pp. 16-17.

[12] Rollo, pp. 25-34.

[13] Rollo, p. 11.

[14] People v. Amarillo, G.R. 194721, August 15, 2012.

[15] Ampatuan v. People, G.R. No. 183676, June 22, 2011 citing People v. Villamin, G.R. No. 175590, February 9, 2010, 612 SCRA 91, 106; People v. Macatingag, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 366 citing People v. Hajili, 447 Phil. 283, 295-296 (2003).

[16] Ampatuan v. People, G.R. No. 183676, June 22, 2011 (citations omitted).

[17] People v. Pringas, G.R. No. 175928, August 31, 2007.

[18] People v. Pringas, G.R. No. 175928, August 31, 2007.

[19] People v. Lorena, G.R. No. 184954, January 10, 2011 citing People v. Pagaduan, G.R. No. 179029, August 9, 2010.

[20] TSN, May 28, 2010, p. 16.

[21] G.R. No. 191198, January 26, 2011.

[22] David v. People, G.R. No. 181861, October 17, 2011 citing People v. Fabian, G.R. No. 181040, March 15, 2010, 615 SCRA 432, 443.

[23] People v. Agulay, G.R. No.181747, September 26, 2008.

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