

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. THOMAS FLORETA Y MARIANO, ACCUSED-APPELLANT.

Ponente: DICDICAN, J.

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DICDICAN, J.:

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[1]. The trial court's determination on the issue of credibility of witnesses and its consequent findings of facts must be given great weight and respect on appeal, unless certain facts or substance have been overlooked which, if considered, might affect the result of the case. This is so because of the judicial experience that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial[2].

Before us is an appeal from the Decision[3] rendered by Branch 231 of the Regional Trial Court of the National Capital Judicial Region located at Pasay City ("trial court") on March 18, 2013 in Criminal Cases Nos. R-PSY-11-04529-CR and R-PSY-11-04530-CR convicting herein accused-appellant Thomas M. Floreta ("accused-appellant") of violation of Sections 5 and 11 of Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 ("RA 9165"), in the following Informations which read:

Criminal Case No. R-PSY-11-04529-CR:

"That on or about the 11[th] day of December 2011, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, THOMAS FLORETA Y MARIANO, without authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to another one (1) heat-sealed transparent plastic sachet containing 0.07 gram of Methamphetamine Hydrochloride (shabu), a dangerous drug, without the corresponding license.

"Contrary to Law[4].

Criminal Case No. R-PSY-11-04530-CR:

"That on or about the 11[th] day of December 2011, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, THOMAS FLORETA Y MARIANO, without authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) self-sealing transparent plastic sachet containing 19.48 grams of Ephedrine hydrochloride, a dangerous drug.

"Contrary to Law[5]."

On January 24, 2012, upon being arraigned of the charges against him, the accused-appellant entered a plea of not guilty thereto[6]. Subsequently, a pre-trial was conducted by the trial court on March 8, 2012[7]. A trial on the merits of the instant case ensued thereafter.

The prosecution's recital of facts is as follows:

On December 11, 2011, a confidential informant reported to PO1 Roberto Cruz (PO1 Cruz) that a certain “Tamy” was selling illegal drugs around the areas of Manila and Makati[8]. The person described as “Tamy” turned out to be the accused-appellant in this case.

Armed with the said information, a buy-bust team was created which was composed of PO1 Cruz who acted as a poseur-buyer and PO1 Silvestre Carpeso (PO1 Carpeso) who was designated as his back-up. As a poseur-buyer, PO1 Cruz was tasked to buy Eighty-Thousand Pesos (Php80,000.00) worth of illegal drugs from Tamy[9]. He was also given a money marked with the letters “RL” representing the initials of Police Inspector Raymund Liguden who was the Chief of DAID-SOTG of Taguig City[10]. The team also sent the required Coordination Form[11] to the Philippine Drug Enforcement Authority (PDEA) for proper coordination.

Thereafter, the confidential informant called the accused-appellant and informed the latter that she had a friend who wanted to buy shabu. The confidential informant then handed the cellphone to PO1 Cruz and the latter asked if he could buy Eighty Thousand Pesos (Php80,000.00) worth of shabu from the accused-appellant. They then agreed to meet at a restaurant along Service Road, Roxas Boulevard, Pasay City where they would consummate the said transaction.

At around 9:30 in the evening of the same date, PO1 Cruz and the confidential informant arrived at the place that was agreed upon by the parties. Upon the arrival of the accused-appellant, however, he informed PO1 Cruz that the quality of the shabu which he got from his source was bad. The accused-appellant then offered another shabu amounting to One Thousand Pesos (P1,000.00) which, according to him, was of better quality[12]. PO1 Cruz agreed to buy the said shabu and he gave the accused-appellant two (2) Five Hundred Peso bills. After PO1 Cruz got hold of the shabu, he asked the accused-appellant if he could take a look at the other shabu which was of bad quality.

As soon as PO1 Cruz saw the said shabu, he immediately removed his cap which was the pre-arranged signal to his team that the sale was already consummated[13]. PO1 Cruz immediately arrested the accused-appellant and introduced himself as a police officer. The accused-appellant was likewise apprised of his constitutional rights. After the arrest of the accused-appellant, PO1 Cruz marked the illegal drug subject of the sale as RC-1-111211 while the plastic sachet in the possession of the accused-appellant was marked as RC-2-111211. PO1 Cruz also recovered the two (2) Five Hundred Peso bills from the accused-appellant. After the illegal drugs were confiscated, the accused-appellant was then brought to the South District Police Station in Taguig City.

Upon arrival at the police station, PO1 Cruz handed the person of the accused-appellant, as well as the items seized, to SPO3 Salvio R. De Lima (SPO3 De Lima) who then brought the items to the laboratory for examination. The Physical Science Report No. D-671-11S[14] prepared by Police Chief Inspector Abraham Verde Tecson (P/Chief Insp. Tecson) showed that, indeed, the plastic sachet that was handed to PO1 Cruz contained methamphetamine hydrochloride while the other plastic sachet found in the possession of the accused-appellant yielded positive results for ephedrine hydrochloride.

For his part, herein accused-appellant adduced in evidence his own testimony and that of his common-law spouse Mary Ann Salvador (Salvador).

The accused-appellant claimed that he was arrested on December 11, 2011 at around 11 o'clock in the morning[15]. He narrated that, while he was walking along Quirino Avenue, corner San Andres Street, Malate, Manila, two (2) armed men in civilian clothes suddenly approached him and took him inside a white Crosswind vehicle. While he was inside the vehicle, the accused-appellant asked the armed men why they took him but they

replied that it was only for verification purposes. The accused-appellant also recalled that there were other individuals inside the vehicle at that time and one of them was handcuffed. All of them were brought to the Southern Police District in Taguig City afterwards[16].

Upon arrival at the police station, the accused-appellant alleged that he was brought inside the prison cell and he was told to call his relatives to ask them to bring the amount of Fifteen Thousand Pesos (P15,000.00)[17]. The accused-appellant then told the police officers that he did not have the said amount of money.

Thus, at around 3 o'clock in the afternoon of the same day, the accused-appellant called Salvador to inform the latter that he was detained at the Southern Police District in Taguig City. When Salvador arrived at the police station, she spoke with PO1 Cruz who allegedly asked her to bring the amount of Fifteen Thousand Pesos (P15,000.00). However, Salvador told them that they did not have said amount of money.

The accused-appellant further asseverated that he was brought to the Barangay Hall of Barangay 76 of Pasay City[18] where the police officers ordered the barangay kagawad to sign some papers in his presence, despite his objections thereto.

On March 18, 2014, the court a quo rendered a Decision the dispositive portion of which reads:

“WHEREFORE, judgment is hereby rendered finding the accused THOMAS FLORETA y MARIANO guilty beyond reasonable doubt of the charges of Violation of Section 5, Article II, Republic Act 9165 in Criminal Case No. R-PSY-11-04529-CR and Violation of Section 11, Article II in Criminal Case No. R-PSY-11-04530-CR and is hereby sentenced to suffer the penalty of life imprisonment and is hereby ordered to pay a fine of Five Hundred Thousand Pesos (Php500,000.00) for the charge of Violation of Section 5, Article II, R.A. 9165 and also to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00) for the charge of Violation of Section 11, Article II, R.A. 9165

“The Officer-in-Charge is hereby directed to transmit the 0.07 gram of Methamphetamine Hydrochloride and the 19.48 grams of Ephedrine Hydrochloride confiscated from the accused to the PDEA for its proper disposition.

“SO ORDERED[19].”

Not satisfied with the foregoing decision, herein accused-appellant interposed the instant appeal before this Court raising the following errors that were purportedly committed by the trial court, to wit:

I.

THE CORT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSES CHARGED DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF R.A. NO 9165 AND ITS IMPLEMENTING RULES.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSES CHARGED DESPITE THE BROKEN CHAIN OF CUSTODY IN THE PRESERVATION OF THE CONFISCATED DRUGS.

In sum, the primordial issue brought before this Court for resolution is whether the court a quo erred in convicting herein accused-appellant beyond reasonable doubt of the charges against him.

After a careful and thorough review of the facts, together with the laws and jurisprudence applicable to this case, we sustain accused-appellant's conviction.

The accused-appellant contended that the trial court gravely erred in finding him guilty beyond reasonable doubt of violating Sections 5 and 11 of RA 9165. He maintained that the chain of custody of the pieces of evidence that were used against him was broken.

Verily, the crime of illegal sale and possession of shabu is penalized under Sections 5 and 11 of Article II of RA 9165 which, in part, provide:

“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 (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. xxx”

“Section 11. Possession of Dangerous Drugs. - 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x

“Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x

“(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine, or cocaine hydrochloride marijuana resin or marijuana resin oil, methamphetamine hydrochloride or 'shabu,' or other dangerous drugs such as, but not limited to, MDMA or 'ecstasy,' PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.”

To secure a conviction for illegal sale of dangerous drugs, the following elements must be established: (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. What is important in prosecutions for illegal sale of shabu is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence[20]. As applied in the instant case, the sale of illegal drugs was consummated when the accused-appellant sold the shabu to PO1 Cruz. Likewise, it was duly established that the marked money which was used to buy shabu from the accused-appellant was recovered from the latter. The laboratory report further proved that the plastic sachet seized from the accused-appellant, indeed, contained methamphetamine hydrochloride, a dangerous drug. All of aforementioned pieces of evidence were positively and categorically identified in court.

On the other hand, in illegal possession of a dangerous drug, the elements are: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug[21]. Clearly, the evidences submitted by the prosecution to convict the accused-appellant for illegal possession of prohibited drugs were all established in this case. The accused-appellant was found in possession of a substance with ephedrine hydrochloride, an item or object that is identified to be a prohibited or dangerous drug, that such possession by the accused-appellant is not authorized by law and that the accused-appellant freely and consciously possessed the dangerous drug.

Nonetheless, the accused-appellant insisted that the chain of custody of the seized items and evidence used against him was broken. This Court does not agree.

In the case of *People v. Kamad*[22], the Supreme Court enumerated the different links that the prosecution must establish with respect to the chain of custody in a buy-bust operation: first, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; second, the turn over of the illegal drug seized by the apprehending officer to the investigating officer; third, the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turn over and submission of the marked illegal drug seized by the forensic chemist to the court.

The prosecution was able to sufficiently establish the following circumstances showing an unbroken chain of custody over the shabu that was seized from herein accused-appellant: (1) PO1 Cruz marked the seized items right after the accused-appellant was apprehended; (2) the confiscated items were brought to the Taguig City Police Station and the same were personally turned over by PO1 Cruz to SPO3 De Lima; (3) SPO3 De Lima thereafter prepared a request for laboratory examination and turned over the said items to P/Chief Insp. Tecson; and (4) P/Chief Insp. Tecson conducted an examination of the seized items and prepared a report stating that the seized items tested positive for methamphetamine hydrochloride and ephedrine hydrochloride. P/Chief Insp. Tecson then turned over the subject specimens to the trial court.

The foregoing did not show any gap in the transfer of the seized items from one officer to another or even showed a scintilla of irregularity.

Furthermore, the accused-appellant asseverated that the non-presentation SPO3 De Lima was fatal in establishing the prosecution's case. We do not agree.

The non-presentation as witnesses of other persons such as the investigator or forensic chemist is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses[23].

It is also the contention of the accused-appellant that the inventory of the seized items was conducted in the absence of a duly elected official and a Department of Justice Representative. Section 21 of RA 9165, in part, reads:

“Section 21. xxx

“(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; xxx”

Verily, RA 9165 requires that there be an inventory of the confiscated prohibited drug and that the same be photographed immediately after seizure and confiscation thereof in the presence of the accused, representatives from the Department of Justice and from the media and any elected public official. Nonetheless, Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 (“Implementing Rules”) provides that:

“(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;" (Emphasis ours)

As can be gleaned from the language of Section 21 of the Implementing Rules, it is clear that the failure of the law enforcers to comply strictly with it is not fatal[24]. 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[25].

The procedural rule laid down in Section 21 of RA 9165 is not an iron-clad rule. Minor deviations from the said rule do not automatically exonerate the accused-appellant. It does not render accused-appellant's arrest illegal nor the evidence adduced against him inadmissible[26]. What is essential 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"[27].

In the case at bench, an astute perusal of the record would show that there was substantial compliance with the law and the integrity of the drugs seized from the accused-appellant was preserved. The prosecution was able to preserve the integrity and evidentiary value of the items which were seized from the accused-appellant. The concurrence of all the elements of the illegal sale and possession of prohibited drugs were proven by the prosecution. The chain of custody did not appear to be broken.

WHEREFORE, in view of the foregoing premises, the appeal filed in this case is hereby DENIED. The Decision rendered by Branch 231 of the Regional Trial Court of the National Capital Judicial Region stationed in Pasay City on March 18, 2013 in Criminal Cases Nos. R-PSY-11-04529-CR and R-PSY-11-04530-CR is hereby AFFIRMED in toto.

SO ORDERED.

Ybañez, and Paredes, JJ., concur.

[1] People of the Philippines v. Villamin, G.R. No. 175590, February 9, 2010.

[2] People of the Philippines v. Alberto, G.R. No. 179717, February 5, 2010.

[3] Rollo, Appendix "A", pages 61 - 70

[4] Record, Criminal Case No.R-PSY-11-04529-CR, page 1.

[5] Record, Criminal Case No.R-PSY-11-04530-CR, page 1.

[6] Record, page 17.

[7] Record, page 23.

[8] Record, Criminal Case No.R-PSY-11-04529-CR, page 6.

[9] TSN, May 3, 2012, page 8.

[10] TSN, May 3, 2012, page 10.

- [11] Record, page 13.
- [12] TSN, May 3, 2012, page 14.
- [13] TSN, May 3, 2012, page 14.
- [14] Record, Criminal Case No.R-PSY-11-04529-CR, page 7.
- [15] TSN, November 8, 2012, page 3.
- [16] TSN, November 8, 2012, page 4.
- [17] TSN, November 8, 2012, page 5.
- [18] TSN, November 8, 2012, pages 7 – 8.
- [19] Rollo, page 70.
- [20] People v. Bautista, G.R. No. 177320, February 22, 2012.
- [21] People v. Naquita, G.R. No. 180511, July 28, 2008.
- [22] G.R. No. 174198, January 19, 2010.
- [23] People v. Angkob, G.R. 191062, September 19, 2012.
- [24] People v. Pagkalinawan, G.R. No. 184805, March 3, 2010.
- [25] People v. Cerdon, G.R. No. 201111, August 6, 2014.
- [26] People v. Naquita, G.R. No. 180511, July 28, 2008.
- [27] Ibid.

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