PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEMMA DACUMOS Y CANLAS, ACCUSED-APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Gemma Dacumos y Canlas (accused-appellant) appeals the Decision1 dated June 29, 2006 rendered by the Regional Trial Court, Branch 47, Bacolod City in Criminal Case No. 25170 and Criminal Case No. 2517[1]. In the former case, accused-appellant is convicted of Violation of Section 5, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act, while in the latter case the accused-appellant is convicted with Violation of Section 11, also under Article II of the Act.

The dispositive portion[2] of the decision, reads:

> WHEREFORE, finding accused Gemma Dacumos y Canlas guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 (Sale, Delivery, etc. of Dangerous Drug) in Criminal Case No. 25170 and of Violation of Section 11 (3), Article II of the same law (Possession of Dangerous Drug) in Criminal Case No. 25171, judgment is hereby rendered imposing upon her; (a) life imprisonment and to pay a fine of P500, 000.00 in Criminal Case No. 25170; and (b) an indeterminate prison term of Twelve (12) years and one (1) day, as minimum, to fourteen years, as maximum and to pay a fine of P300, 000.00 in Criminal Case No. 25171. She is also to suffer the accessory penalty prescribed by law. Costs against the accused.
>
> The two (2) sachets of shabu with combined weight of 0.02 gram (Sale) (Exhibit "B-3-A") and two (2) more sachets of shabu with a combined weight of 0.17 gram (Possession) (Exhibit "B-3-B") confiscated/seized from the accused being dangerous drugs and/or contraband are ordered confiscated and or forfeited in favor of the government and are to be forthwith turned over to the Philippine Drug Enforcement Agency (PDEA) for immediate destruction or disposal in accordance with law.

The Information[3] filed on August 3, 2003, against accused Gemma Dacumos y Canlas under Criminal Case No. 25170, alleges:

> That on or about the 22[nd] of April, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another; distribute, dispatch in transit or transport any dangerous drug, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur-buyer in a buy-bust operation, two heat-sealed transparent plastic packets containing methylamphetamine hydrochloride (shabu), having a total weight 0.02 gram, in exchange for a price of one (1) P100.00 in mark money bill with Serial No. DU993447, in violation of the aforementioned law.
>
> CONTRARY TO LAW.

The Information[4] also filed on August 3, 2003 against accused Gemma Dacumos y Canlas under Criminal Case No. 25171, alleges:

> That on or about the 2[nd] day of August, 2003, in the City of Bacolod, Philippines, and within the jurisdiction

> of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in her possession and under her custody and control two (2) elongated heat sealed plastic bags containing methylamphetamine hydrochloride or shabu having a total weight of 0. 17 gram, in violation of the aforementioned law.
>
> CONTRARY TO LAW.

The accused entered a “NOT GUILTY” plea during the arraignment[5] on December 5, 2003.

The evidence for the prosecution is summarized as follows:

On August 2, 2003 at around 1:00 o'clock in the afternoon, a police asset informed P/S Insp. Jonathan Lorilla (Lorilla) of the Bacolod City Police Office that a certain Gemma Dacumos of Purok Sigay, Brgy. 2, Bacolod City is engaged in drug activities. Lorilla immediately assembled a team composed of himself, SPO1 Eduardo Bantoto, PO2 Wilfredo C. Perez, PO2 Rolando Malte, PO2 Ronald Villeran, PO2 Claro Gordoncillo Jr., and PO1 Alain Sonido. Lorilla briefed the team members that a buy-bust operation shall be conducted and that he will be the poseur-buyer. A Php 100.00 marked money bill was prepared and recorded in the police blotter as the buy-bust money.

At 4:45 o'clock in the afternoon of the same date, the team proceeded to the place of operation. Lorilla, the police poseur-buyer was garbed in civilian attire, donning a cap. He (Lorilla), together with the asset was to meet the accused in front of the latter's house. The rest of the team were strategically located in the interior part of Purok Sigay. When they arrived in front of the house, the asset introduced Lorilla to the accused. The latter then asked Lorilla if they were going to buy shabu, to which they (Lorilla and asset) acceded. The accused asked how much, to which Lorilla replied that they would buy worth Php100.00. Accused asked for the money and Lorilla handed over the marked money. In return, the accused gave Lorilla two (2) small sachets of suspected shabu which the former got from a tin can that she was holding. Upon receipt of the two sachets of suspected shabu, Lorilla introduced himself as police officer and executed the pre-arranged signal. The accused was arrested and then informed of the reason for her arrest and of her constitutional rights to remain silent and to counsel.

Evidence for the defense is summarized hereunder:

Accused testified that in the afternoon of August 2, 2003 at around 4:30 o'clock she just woke from a nap because she was not feeling well. She heard unfamiliar voices outside her house. She noticed that the front door was open. A man went up the stairs to her bedroom. Feeling nervous (accused), she was not able to answer questions propounded to her (what was her name and whether she was “packing”). Accused was told by one of the policemen that she will be arrested if she will not tell them (policemen) who was selling drugs in their area. But then again, she did not respond because she did not know anyone selling in the area. The man and his companions searched the room without a warrant for about ten minutes and found nothing. The accused was handcuffed and brought to the sala where it was also searched. The accused was then asked by the policemen who were the persons selling drugs but she did not answer. Thereafter, the accused was brought to the Bacolod City Police Office. Accused denied the crimes of selling and possession of drugs filed against her.

After the trial, the RTC promulgated[6] its judgment of conviction dated June 29, 2006. Aggrieved, accused filed a Notice of Appeal[7] dated July 7, 2006.

The accused-appellant was transferred to the Correctional Institution for Women, Mandaluyong City on July 25, 2006.[8]

ASSIGNMENT OF ERRORS

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I

THE COURT A QUO ERRED IN CONVICTING GEMMA DACUMOS FOR VIOLATION OF SECTION 11 OF REPUBLIC ACT 9165 DESPITE FAILURE OF THE PROSECUTION TO PROVE THE IDENTITY OF THE CORPUS DELICTI.

II

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO ADDUCE EVIDENCE SUFFICIENTLY SHOWING GUILT BEYOND REASONABLE DOUBT.

Accused-appellant Gemma Dacumos argues that the testimonies of the police officers displayed a disregard of the statutory requirements of handling the evidence. The testimony of PSI Lorilla would show that there was no marking, inventory and taking of photographs of the alleged confiscated shabu. In the narration of facts there was no mention as to the identity of the person with whom the items were given while in transit from the area of incident to the police station. It is evident from its inception that the statute which the accused-appellant was sought to be implicated was itself breached and defied.

Accused-appellant claims that with the defective authentication of the origin of the items, the prosecution did not adequately show the preservation of the evidentiary value. The prosecution even opted to dispense with the testimonies showing the condition of the items when these were handed to the crime laboratory, that is, the manner of delivery, receipt, handling and disposal of the seized items. Likewise, the person who received the items at the crime laboratory prior to their delivery to the forensic chemist was not disclosed.

Accused-appellant contends that non-compliance with Section 21 of R.A 9165 is not necessarily fatal to the prosecution's cause as long such lapses are adequately recognized and justifiably explained and the evidentiary value of the seized items are preserved. In the case at bar, the non-compliance with Section 21 of R.A 9165 made by the police officers was never justifiably explained by the prosecution. The reluctance in ensuring the preservation of the corpus delicti renders the evidence presented inadequate to warrant the presumption of regularity of performance of public functions in overthrowing the presumption of innocence.

The Solicitor General in his Appellee's Brief counter argues that the prosecution was in fact able to preserve the integrity of the evidence. To secure a conviction for illegal sale of shabu, the following essential elements must be established: (a) the identities of the buyer and the seller; (b) the delivery of the thing sold and the payment thereof. What is material in prosecutions for illegal sale of shabu is the proof that the transaction or sale took place, coupled with the presentation in court of the corpus delicti as evidence.

The Solicitor General asseverates that in the instant case, the requisites for the illegal sale of shabu were competently proven by the prosecution: (1) the buyer was clearly identified as P/Insp. Jonathan Lorilla and the seller as accused-appellant Gemma Dacumos; (2) the object of the sale was shabu, weighing 0.02 gram; (3) the shabu was in fact delivered by the accused-appellant to the police poseur buyer and; (4) payment was made using the marked money which was given to accused-appellant during the buy-bust operation. The testimony of PSI Lorilla, the poseur buyer successfully proved the existence of all the elements of illegal sale of dangerous drugs.

On the other hand, in a prosecution for illegal possession of dangerous drugs, the following elements must be proven: (1) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (2) such possession is not authorized by law; (3) the accused freely and consciously possessed the drug. The elements of illegal possession were similarly proven by the prosecution. PSI Lorilla testified that after the purchase and sale of shabu, accused-appellant was arrested. Thereafter, PSI Lorilla seized the “tin” can from the

hand of the accused-appellant which contained two more elongated sachets of shabu. Undoubtedly, the seizure of the “tin” can from the accused-appellant was legally authorized as a search incidental to a lawful arrest for selling of dangerous drugs.

According to the Solicitor General the prosecution has also proven the corpus delicti because they have complied with the requirements set forth in Section 21 of R.A. 9165. During the trial, it was established that after the arrest of the accused-appellant, the two sachets of shabu confiscated from the accused-appellant were marked “JML”, which stands for the initials of Jonathan M. Lorilla and marked in evidence as exhibit “B-3-A”. The two elongated sachets of shabu which were confiscated from the accused-appellant were also marked as “JML” and further marked in evidence as exhibit “B-3-B”. The plastic sachets of shabu were personally delivered by the police poseur-buyer to the PNP Crime Laboratory for examination. When the illegal drugs were presented in court, it was positively identified by PSI Lorilla. Evidently, there is no evidence to show that the prosecution witnesses were motivated by any reason other than the performance of their official duty. All told, the prosecution successfully established accused-appellant's guilt and her conviction is in placed.

THE COURT'S RULING

The conviction of the accused-appellant stands.

It is the fundamental rule that factual findings of the trial courts involving credibility are accorded respect when no glaring errors, gross misapprehension of facts, and 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 the witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial.[9]

We apply the above-quoted rule in this instant appeal.

In Criminal Case No. 25170

In a successful prosecution for illegal sale of dangerous drugs, like shabu, the following elements must be established: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti or the illicit drug in evidence. The commission of the offense of illegal sale of dangerous drugs merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.[10]

A review of the records of this case reveals that the prosecution has proven all these elements.

The records show that accused-appellant was caught in flagrante delicto selling shabu, a dangerous drug, to the poseur-buyer (PSI Lorilla) on August 2, 2003 in Purok Sicay, Barangay 2, Bacolod City.

PSI Lorilla, (police poseur-buyer) testified that when they arrived at around 4:45 o'clock in the afternoon, he (PSI Lorilla) together with the asset went straight to the house of the accused-appellant. When they arrived thereat, the asset introduced PSI Lorilla to the accused-appellant. The latter then asked if they wanted to buy shabu to which the police poseur buyer replied in the affirmative. The accused-appellant asked for the money and the police poseur-buyer gave the marked money worth Php100.00. The accused-appellant in turn gave two (2) sachets of shabu which she took from a tin can that she was holding.[11] Immediately after the transaction, the poseur-buyer Lorilla introduced himself as a police officer and at the same time executed the pre-arranged signal as a sign that the transaction is already consummated.[12]

The testimony of the principal witness clearly established the elements of the crime: that an illegal sale of the dangerous drugs actually took place and that accused-appellant Gemma Dacumos was the seller thereof. Contrary to the allegations of accused-appellant, PSI Lorilla, gave straightforward accounts of the circumstances leading to the buy-bust operation. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by accused-appellant and the dangerous drug delivered to the former, the crime is considered consummated by the delivery of the goods.[13]

The accused-appellant was immediately brought to the AIDSOTF Office, Bacolod City for proper documentation. PSI Lorilla marked the sachet of shabu[14] sold by the accused-appellant, weighing 0.02 grams, with letter "JML" which stands for Jonathan M. Lorilla, the complete name of PSI Lorilla.[15]He prepared the Letter[16] Request for Laboratory Examination[17] and brought this to the PNP Crime Laboratory.[18] Per Chemistry Report No. D-422-2003[19] conducted by Police Senior Inspector Augustina Laranang Ompoy , who also testified in court, the specimen submitted for examination gave a positive result to Methamphetamine Hydrochloride, a dangerous drug.[20] PSI Lorilla identified the plastic sachet of shabu presented in court as Exhibit "B-3-A" as the one that was bought from the accused-appellant during the buy-bust operation.[21]

The contention of the accused-appellant that the prosecution did not comply with the provisions of Section 21 of R.A 9165 when they did not take photographs and inventory of the seized items and therefore the plastic sachets of shabu are inadmissible, is untenable. In the case of People of the Philippines, vs. Victor de Jesus y Garcia,[22] it was held that "a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. The Supreme Court said that the arresting officers' failure to conduct a physical inventory and to photograph the items seized from De Jesus will not render (his) arrest illegal or the items confiscated from him inadmissible in evidence as they were able to nonetheless preserve the integrity and the evidentiary value of the said items. This is what is of utmost importance as the seized items are what would be used in the determination of De Jesus' guilt or innocence.

Also, in the recent case of People of the Philippines v. Glenn Salvador y Balverde, et al.,[23] the Supreme Court said that failure of the prosecution to show that the police officers conducted the required physical inventory and photographed the objects confiscated does not ipso facto result in the unlawful arrest of the accused or render inadmissible in evidence the items seized. This is due to the proviso added in the implementing rules stating that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have not been preserved. What is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused.

We are convinced that the two sachets of shabu presented in court were those sold by the accused-appellant to the poseur buyer. The police had marked the sachets before bringing these to the crime laboratory. Consequently, the sachets of shabu were examined by the forensic chemist and presented in court as evidence to prove the existence and identity of the shabu sold during the buy-bust operation. The sequence of events would show that the chain of custody has been established. In our review, We find no gap in the chain of custody of the two sachets of shabu sold by accused and even the two other sachets of shabu consequently recovered from the latter's possession. The integrity and the evidentiary value of the confiscated items were properly preserved by the prosecution. These circumstances when considered are adequate to prove corpus delicti of the crime of sale and delivery of dangerous drug.

> The dangerous drug itself, the shabu, constitutes the very corpus delicti of the offense and in sustaining a conviction, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.

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> Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant.[24]

In Criminal Case No. 25171

Anent the prosecution for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; (3) the accused freely and consciously possesses the said drug.[25]

This Court is convinced that the accused-appellant is likewise guilty of violation of Section 11, Article II of R.A 9165 or Possession of Dangerous Drugs. According to PSI Lorilla, after their arrest of accused-appellant, he (PSI Lorilla) got the tin can which the accused-appellant was holding during the transaction. When PSI Lorilla opened it (tin can) he recovered two (2) elongated sachets of shabu.[26] The tin can[27] and the two sachets of shabu found inside it were marked by PSI Lorilla with “JML”, the latter's initials, right after the arrest of the accused-appellant.[28] In the Chemistry Report No. D-422-2003[29], the two (2) elongated sachets of shabu also yielded positive for methylamphetamine hydrochloride or “shabu”, a dangerous drug. The two (2) elongated sachets of shabu and the tin can with a printed word “Altoids” were identified in court by PSI Lorilla as those which were confiscated from accused-appellant as a result of the arrest.[30] Likewise, the forensic Chemical Officer (PSI Ompoy) said the two elongated sachets of shabu (Specimen B or Exhibit “B-3-B”) she presented in court were the ones that she examined as per request of PSI Lorilla.[31]

We apply the rule in People of the Philippines v. Linda Alviz, et. al,[32] where the Supreme Court said that as a result of the finding that a buy-bust operation actually took place and that Linda and Elizabeth were apprehended in flagrante delicto, the evidence gathered and presented by the prosecution on the occasion of their lawful arrest without warrant cannot be deemed as the “fruits of a poisonous tree,” but are admissible and competent proof of their guilt.

Denial is an inherently weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the light of positive identification of the appellant, as in this case. The defense of denial assumes significance only when the prosecution’s evidence is such that it does not prove guilt beyond reasonable doubt, which is not the case here. Verily, mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the prosecution witness who testified on affirmative matters.[33]

WHEREFORE, the Decision dated June 29, 2006 rendered by the Regional Trial Court (RTC) Branch 47, Bacolod City in Criminal Case No. 25170 and Criminal Case No. 25171, convicting accused-appellant Gemma Dacumos y Canlas of Violation of Section 5 and Section 11 respectively, of Article II of R.A 9165 as amended or the Dangerous Drugs Act is hereby AFFIRMED. With costs against the accused-appellant.

SO ORDERED.

Delos Santos J., Chairperson, and Lopez, JJ., concur.

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[1] Records, pp. 124-139.

[2] Records, pp. 138-139.

[3] Records, p. 1.

[4] Records, p. 8.

[5] Records, p. 20, “Certificate of Arraignment” in Criminal Case No. 25170 and records, p. 29, Certificate of Arraignment in Criminal Case No. 25171.

[6] Records p. 139.

[7] Records p. 141.

[8] Records, p. 140, Mittimus.

[9] People of the Philippines v. Linda Alviz y Yatco and Elizabeth Dela Vega, G.R. No. 177158, February 6, 2013.

[10] People of the Philippines v. Glenn Salvador y Balverde, et al,. G.R. No. 190621. February 10, 2014.

[11] TSN, p. 13, July 28, 2004.

[12] TSN, p. 14, July 28, 2004.

[13] People of the Philippines v. Marianito Gonzaga y Jomaya, G.R. No. 184952, October 11, 2010.

[14] Exhibit “B-3-A”, Formal Offer of Exhibits for the Prosecution, Records, p. 82.

[15] TSN, July 28, 2004, p. 16.

[16] Exhibit “A”; Records, p. 86.

[17] Supra note 15.

[18] TSN, July 28, 2004, p.20.

[19] Exhibit “B”, Records, p. 87.

[20] TSN, June 22, 2004, p. 7.

[21] Supra note 15.

[22] G. R. No. 198794, February 06, 2013.

[23] G.R. No. 190621, February 10, 2014.

[24] People of the Philippines, vs. Alberto Bacus Alcuizar, G.R. No. 189980, April 06, 2011 citing People v. Denoman, G.R. No. 171732, 15 August 2009, 596 SCRA 257, 267 citing People v. Robles, G.R. No. 177220, 24 April 2009, 586 SCRA 647, 655-656.

[25] People of the Philippines vs. Vicente Rom, G.R. No. 198452, February 19, 2014.

[26] TSN, July 28, 2004, p. 15; Formal Offer of Exhibits, Records p. 82, Exhibit “B-3-B”

[27] Exhibit “B-6”, Formal Offer of Exhibits, Records, p. 83.

[28] TSN, July 28, 2004, p. 17.

[29] Supra note 19.

[30] TSN, June 9, 2005, pp. 17-18; TSN, June 9, 2005, pp. 20-23.

[31] TSN, June 22, 2007, pp. 3, 6-7.

[32] Supra note 12.

[33] People of the Philippines v. Vicente Rom, G.R. No. 198452, February 19, 2014.

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