

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARVIN DULLANO, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant, of the Decision[1] dated December 5, 2007 of the Regional Trial Court, Seventh Judicial Region, Branch 13, Cebu City, which found accused-appellant guilty beyond reasonable doubt of Violation of Sections 5, 11, and 12 of Article II of RA No. 9165 or the Dangerous Drugs Act of 2002 in Criminal Case Nos. CBU-69140-42.

Version of the Prosecution

Around 12:30 AM of May 27, 2004, a buy bust team composed of PO2 Dindo Lumapak, PO3 Elmo Rosales, PO2 Cirilo Luage, and PO2 Gil Garcia of the Cebu City Police Office Drug Enforcement Unit was formed to entrap accused-appellant who was reported to be engaged in illegal drugs activities. During the briefing, the team members agreed that PO2 Lumapak would act as poseur-buyer and would be accompanied by a civilian asset who knew accused-appellant. It was also agreed that the pre-arranged signal was for PO2 Lumapak to make a call after the sale was completed. A P100.00 bill with serial number KN341865 was given to PO2 Lumapak and the civilian asset as buy-bust money.

Around 12:52 AM on the same day, the buy-bust team proceeded to the interior portion of Quijano Compound, V. Rama Avenue, Barangay Calamba, Cebu City. Upon reaching the area, accused-appellant approached PO2 Lumapak and the civilian asset. The civilian asset then introduced PO2 Lumapak to accused-appellant. The two of them told accused-appellant that they wanted to buy shabu. Accused-appellant handed one transparent sachet of shabu to PO2 Lumapak and in turn, the latter handed over P100.00 to accused-appellant. Subsequently, PO2 Lumapak made the pre-agreed signal to the other members of the buy-bust team to signify that the sale was consummated.

PO2 Lumapak identified himself as police officer to accused-appellant. Accused-appellant without warning punched PO2 Lumapak on the stomach to resist arrest and the two of them scuffled for a while. When PO3 Rosales and the rest of the buy-bust team arrived, they got hold of accused-appellant and held him down. PO2 Lumapak informed accused-appellant of his constitutional rights before placing him under arrest. Thereafter, accused-appellant was ordered to empty his pockets wherein three (3) sachets of shabu, and eight (8) pieces of drug paraphernalia were confiscated. Immediately, PO2 Lumapak handed to PO2 Rosales, the investigator, the shabu and the rest of the contraband. At the Cebu City Police Station, PO3 Rosales marked the sachet of shabu with “AD” and the three sachets recovered from accused-appellant’s pocket with “AD-1” to “AD-3” and the drug paraphernalia with “AD-1” to “AD-8”. A request for laboratory examination was prepared. Said request together with the contraband items recovered from the buy-bust operation were handed over to PO2 Luague for delivery to the PNP Regional Crime Laboratory Office.

Police Senior Inspector Mutchit Salinas, Forensic Chemical Officer of the PNP Crime Laboratory 7 conducted a qualitative examination on the sachets recovered from accused-appellant. In the Chemistry Report[2] No. D-560-2004, the four sachets tested positive for methamphetamine hydrochloride or shabu.

The Charge

In the Informations dated March 29, 2004, accused-appellant was charged with the crime of Violation of Sections 5, 11 and 12, of Article II of RA No. 9165, respectively, as follows:

CBU 69140[3]

“That on or about the 27[th] day of March 2004, at about 12:53 AM in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, Arvin Dullano, with deliberate intent and without authority of law, did then and there sell, deliver or give away to a poseur buyer one pc small transparent plastic pack with white crystalline substance locally known as shabu containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW”

CBU 69141[4]

“That at on or about the 27[th] day of March, 2004, at about 12:53 AM in the city of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, Arvin Dullano, with deliberate intent, did then and there have in his possession, use and control the following:

a) three (3) pcs. Small transparent plastic pack with white crystalline substance locally known as shabu, containing methylamphetamine hydrochloride, a dangerous drugs without license of prescription, from any competent authority.

CONTRARY TO LAW.”

CBU 69142[5]

“That on or about the 27[th] day of March 2004 at about 12:53 o' clock in the morning, in the city of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with deliberate intent, did then and there have in his possession and control eight (8) pieces of rolled tin foils fit or intended for smoking, consuming, administering, ingesting or introducing any dangerous drug into the body.

CONTRARY TO LAW.”

Accused-appellant was arraigned and pleaded “not guilty” to the crimes charged against him.

Trial ensued. The prosecution presented the following as witnesses: PO2 Dindo Tumalak of the Mobile Patrol Group Crime Suppression Unit, Cebu City Police Office and Mutchit Salinas of the PNP Crime Laboratory. On the other hand, accused-appellant testified for his defense.

Version of Accused-appellant

Accused-appellant narrated that he met three persons who asked for his help to guide them to the market where shabu was sold in return for a sum of money. He approached Jeffrey, a friend whom he knew to be a drug pusher. Moments later, he was shocked when the three persons turned out to be police officers who purchased shabu from Jeffrey. After announcing that they were police officers, Jeffrey fled the area. Accused-appellant attempted to run but desisted when one of them poked a gun at him. He was then arrested and his pockets were searched. Nothing, however, was found on him.

The RTC Ruling:

Thereafter, on December 5, 2007, the RTC, Seventh Judicial Region, Branch 13, Cebu City rendered a Decision[6] against accused-appellant, the pertinent portion of which reads:

“Wherefore, judgment is hereby rendered finding accused Arvin B. Dullano GUILTY beyond reasonable doubt of the following crimes:

1. Violation of Section 5, Article II, RA 9165 and sentences him to LIFE IMPRISONMENT, plus fine in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS;
2. Violation of Section 11, Article II, RA 9165 and sentences him to TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS imprisonment, plus fine in the amount of THREE HUNDRED THOUSAND (P300,000.00) PESOS;and
3. For violation of Section 12, Article II, RA 9165, and sentences him to SIX (6) MONTHS and ONE (1) DAY to ONE (1) YEAR imprisonment, plus fine in the amount of TEN THOUSAND (P10,000.00) PESOS.

The four (4) packets of shabu and shabu paraphernalia mentioned in the three informations are hereby ordered confiscated in favor of the government and destroyed pursuant to the provisions of RA 9165.

With cost against the accused in all these three(3) cases.

SO ORDERED.”

Aggrieved, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning as errors, thus:

I.

“THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE CORPUS DELICTI;

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE ELEMENTS FOR THE PROSECUTION FOR SALE OF ILLEGAL DRUGS WERE NOT ESTABLISHED.”

THIS COURT'S RULING:

I.

Chain of custody not broken

It is the submission of accused-appellant that the prosecution failed to comply with the indispensable requirement of proving the corpus delicti especially in this case where there are substantial gaps in the chain of custody of the seized drugs thereby raising doubts as to the authenticity of the evidence presented in court. Accused-appellant asserts that the chain of custody presented by the prosecution suffers from incompleteness and irregularities warranting his acquittal.

Anent the first link (recovery of the packs of shabu), accused-appellant posits that the confiscated packs of shabu and drug paraphernalia were not marked immediately in his presence after confiscation. Relying on *People vs Sanchez*, GR No. 175823, October 15, 2006, the Supreme Court emphasized the importance of marking in the presence of the apprehended violator immediately upon confiscation of the dangerous drugs. Accused-appellant

points out that PO2 Lumapak turned over the confiscated items to the investigator but the marking was not done immediately after confiscation and no justification was made as well as to why the marking was made only at the police station. No testimony was made regarding any attempt to mark the evidence at the place of arrest considering the subject was a buy bust operation such that the police officers should have been prepared.

Since there were no markings done at the place of arrest, accused-appellant claims that there is now doubt or confusion as to which of the four packs of shabu were recovered during the buy-bust operation or the body search. The investigator would have a hard time distinguishing one from the other at the time of marking the sachets of shabu. No testimony was offered as to how the investigator segregated the one pack of shabu subject of the buy bust operation from the three packs recovered after the body search.

As to the second link (custody of drugs up to the police station), accused-appellant submits that the packs of shabu were not marked in the presence of accused-appellant and neither were these placed in a plastic container or in any other packaging material. After the marking, the investigator did not place it in any plastic container and seal it with adhesive tape. Since the sealing of seized substance was not made, accused-appellant contends that the prosecution needed to present every police officer, messenger, laboratory technician, and storage personnel who came into contact with the seized sachets or the entire chain of custody no matter how brief one's possession thereof. Each has to testify that the substance, though unsealed, had not been tampered with or substituted while in his care. In this case, this particular requirement was not complied with.

Accused-appellant also claims that there was a violation of the rules mandated by Section 21 of RA 9165. He avers that no inventory was prepared, signed, and provided to the accused in the manner provided by the said provision. Neither were photographs taken. Accused-appellant alleges that there is nothing in the testimonies of the prosecution witnesses that would suggest that an inventory and taking of photographs were made in his presence. Citing *People vs dela Cruz*, GR No. 177222, October 29, 2008, *People vs Dela Cruz*, GR No. 181545, October 8, 2008, *People vs Santos, Jr.*, GR No. 175593, October 17, 2007, *People vs Nazareno*, GR No. 174771, September 11, 2007, *People vs Orteza*, GR No. 173051, July 31, 2007 and *Zarraga vs People*, GR No. 162064, March 14, 2006 wherein the Supreme Court reversed the conviction of accused because of failure to comply with Section 21 of RA 9165, accused-appellant argues that non-compliance therewith entitles him to an acquittal.

Also, in the third link (up to the crime laboratory), accused-appellant argues that it is not clear as to how and when the packs of shabu were turned over to PO2 Lumapak by the investigator. There is suspicion as to this particular link because PO2 Lumapak attested that it was the investigator who had custody of the packs of shabu at the police station since he was the one who placed the markings thereon. But PO2 Lumapak testified that it was him and PO2 Luague who delivered the packs of shabu to the PNP Crime Laboratory and there was no testimony as to the transition of custody from the investigator to PO2 Lumapak.

Accused-appellant likewise declares that the forensic chemist, the last person in the chain of custody failed to testify on how the subject items were kept after being tested prior to presentation in court. Relying on *People vs Cervantes*, GR No. 181494, the High Court acquitted accused because of said deficiency.

We are not persuaded.

The core issue for resolution in this case is whether or not sufficient evidence exists to support the conviction of accused-appellant for violation of Sections 5, 11, and 12 of Article II of R.A. No. 9165.

In prosecutions for illegal possession and sale of dangerous drugs, the presentation in evidence of the seized drug, as an integral part of the corpus delicti, is most material. It is therefore vital that the identity of the illegal drugs be proved with moral certainty.

Ideally, the procedure on the chain of custody should be perfect and unbroken. However, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain.[7] As explained in *People v. Cortez* G.R. No. 183819, July 23, 2009 and *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. The Supreme Court elucidated that what is material 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. Therefore, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs.[8]

In the instant case, the chain of custody did not suffer from serious flaws as accused-appellant argued. The recovery and handling of the seized drugs showed that, first, the buy bust money, the sachets of shabu and drug paraphernalia were seized from accused-appellant after the buy bust operation. After taking custody of the seized articles, PO2 Lumapak handed them over to PO3 Rosales, the investigator. These were then brought to the Cebu City Police Office where PO3 Gonzales marked the shabu with "AD" and the three sachets recovered from accused-appellant's pocket with "AD-1" to "AD-3" and the drug paraphernalia with "AD-1" to "AD-8". These pieces of evidence together with the request for laboratory examination were handed over to PO2 Luague and delivered by him to the PNP Regional Crime Laboratory Office 7 for examination. PSI Salinas conducted the qualitative examination on the sachets recovered from accused-appellant. The results yielded positive for shabu. PO2 Lumapak identified these in open court.

Records reveal that the subsequent transfers of the seized substances show that the integrity and evidentiary value of these items were properly preserved by the apprehending officers from the time said items were seized from accused-appellant to the time these were transferred to the police officer, to the investigator, to the forensic chemical officer and finally, to the court a quo. Consequently, there can be no doubt that the drugs seized from accused-appellant are the same substances examined in the crime laboratory and presented in court.

Generally, non-compliance with Sec. 21 will not render an accused's arrest illegal or the items seized or confiscated from the accused inadmissible. In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of chief concern in drug cases then is the requirement that the prosecution prove that what was seized by police officers is the same item presented in court. This identification, as the Supreme Court has held in the past, must be established with moral certainty and is a function of the rule on chain of custody. 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.[9]

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

"(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 is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which reads:

“(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.”

Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[10] Here, the prosecution was able to show that the chain of custody was never broken. The requirements of the law have been substantially established in this case. What is more, 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. The accused has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers.[11] Accused-appellant failed in this respect.

Anent the alleged defect in the inventory of the items confiscated from accused-appellant ie. signing of the inventory receipt without those required by law to be present or not immediately signing the inventory receipt at the place of confiscation, such infirmities do not automatically warrant the accused's acquittal. We are guided by *Yolly Teodosio vs. Court of Appeals and People of the Philippines*[12], wherein the Supreme Court made light of the

argument that the prosecution's case was weakened by the fact that the police officers did not issue a receipt for the confiscated drugs and declared that issuing such a receipt is not essential to establishing a criminal case for selling drugs as it is not an element of the crime. And, as to the immediate marking of the seized illegal drug upon confiscation, the Supreme Court explained that RA No. 9165 does not specify a time frame for the immediate marking or where the marking should be done. To be able to create a first link in the chain of custody, what is required is that the marking must be made in the presence of the accused and upon immediate confiscation. But immediate confiscation had no exact period. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.[13] The marking in this case was immediately done in the presence of accused-appellant at the police station. Indeed, there was substantial compliance by the arresting officers with the required procedure on the custody of seized illegal drugs.

Too, police stations and barangays are usually not equipped with cameras. The failure on the part of the police officers to take pictures cannot be considered fatal because the prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs.[14] Contrary to accused-appellant's submission, there is nothing in Republic Act No. 9165 or in its implementing rules, which mandates each and everyone who came into contact with the seized drugs to testify in court. "As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand." In *People vs Amansec*,[15], the Supreme Court held that the non-presentation as witnesses of other persons such as the evidence custodian or the officer on duty, is not a crucial point against the prosecution. The matter of

presentation of witnesses by the prosecution is not for the court to decide. It is discretionary with the prosecution how to present its case and it has the right to choose whom it wishes to present as witnesses. Hence, the forensic chemist's testimony can be disregarded in this case.

Section 21 thereof need not be followed with pedantic rigor and that what is essential is the preservation of the integrity and evidentiary value of the seized items since it would be utilized in the determination of the accused-appellant's guilt or innocence." Moreover, jurisprudence is abundant with pronouncements that non-compliance with Section 21 will not necessarily render an accused-appellant's arrest as illegal or the items seized from him as inadmissible.[16] It bears to stress that there was substantial compliance with the required procedure on the custody and control of the confiscated items, thus showing that the integrity of the seized evidence was not compromised. We refer to the succession of events established by evidence, to the overall handling of the seized item to the test results obtained. The chain of custody of the subject drugs was not broken as revealed by the factual circumstances of this case. In *People v. Del Monte*[17], the Supreme Court elucidated:

"We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the courts. x x

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight - evidentiary merit or probative value - to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case."

Verily, procedural lapses in the handling and identification of the seized items, as well as the unexplained discrepancy in their markings, collectively raise doubts on whether the items presented in court were the exact same items that were taken from an accused when he was arrested. These constitute major lapses that, standing unexplained, are fatal to the prosecution's case. However, Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165, i.e., "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." [18] *People vs Sanchez* [19], clarified that this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds. It was also held in *Sanchez*, that in such case, the prosecution must show that the integrity and evidentiary value of the evidence seized have been preserved. In the case at bar, such conditions were met.

II.

Elements of illegal sale and possession of dangerous drugs established

Accused-appellant asserts that the prosecution failed to prove all the elements of illegal sale of dangerous drugs because the consideration is doubtful. While PO2 Lumapak testified that he was supplied with a P 100.00 bill, there was no testimony that the serial number was pre-recorded before the buy-bust operation. No documentary evidence was submitted to prove that the serial number was indeed recorded prior to the bust nor was it machine-copied. Accused-appellant also insists that there was no pre-arranged signal made because PO2 Lumapak was punched in the stomach by accused-appellant. No explanation was made by the police officers as to

how the consummation of the sale was made. Thus, accused-appellant asserts that there is serious doubt that the transaction actually took place between the poseur-buyer and accused-appellant in the absence of a pre-operation report submitted to the PDEA. Also, accused-appellant declares that there was no authority to operate from such agency considering that the police officers had reasonable amount of time in submitting the pre-operation report before the buy-bust operation. There was no such evidence presented in court. In effect, accused-appellant asseverates that the presumption of regularity in the performance of official duties cannot overcome the presumption of innocence of the accused. While the seized drugs may be admitted in evidence, they cannot be given probative weight. Further, accused-appellant avers that for him to show proof of any improper motive for the arresting officers to implicate him in this drugs case is akin to burdening him to prove his innocence and disprove his guilt which is improper. The duty to prove the guilt of accused belongs to the prosecution. The burden must be discharged by the prosecution on the strength of its own evidence and not on the weakness of that for the defense. On such ground, he should be exonerated.

We reject accused-appellant's contentions.

It appears that accused-appellant's defense is mere denial which should likewise fail in light of the positive identification and declarations made by the prosecution witnesses. Well-settled is the rule that greater weight is given to the positive testimony of the prosecution witnesses rather than the denials of the accused.[20] Mere denial just like alibi is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. To merit credibility, denial must be buttressed by strong evidence of non-culpability. It is well-settled that positive identification, where categorical, consistent and not attended by any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[21] Accused-appellant's alibi that he was merely asked for guidance where to buy shabu in the area was not substantiated by any competent witness.

In the case at bar, PO2 Lumapak who acted as poseur buyer proved how the buy bust operation was conducted with pedantic rigor leading to the seizure of the contraband and his subsequent arrest. The sale of shabu was consummated with accused-appellant handing over to PO2 Lumapak one (1) transparent sachet after receiving the buy-bust money. After his lawful arrest, he was ordered to empty his pocket and three (3) sachets were recovered from him along with eight (8) pieces of drug paraphernalia. PO2 Lumapak's testimony proves that a buy bust operation took place, thus:

PO2 Lumapak

Q:

Mr. Witness, you stated that you were designated as the poseur buyer?

A:

Yes Maam.

Q:

You then accompanied the asset of yours to the place of the incident?

A:

Yes Maam.

Q:

This asset of yours was the one who approached a certain Mentong, am I correct?

A:

Yes Maam.

Q:

Where was this Mentong situated when your asset approached him?

A:

In that place.

Q:

Along the area.

A:

In the area.

Q:

Inside a compound.?

A:

Yes.

Q:

When your asset negotiated with this Mentong, you, of course, was very near?

A:

Yes Maam.

Atty. Caballes

Q:

And you spoke with this particular Mameng?

A:

I spoke after we have a conversation.

Q:

And your conversation was regarding the buying of shabu?

A:

The conversation was about the asset and the suspect. We talked about when he gave me the shabu and I gave him that (sic) this is the money. I gave the money after he gave to me the shabu.

Q:

Mr. witness, prior to your and Mentong having this conversation, the asset was the one having negotiation with the suspect?

A:

Yes

Q:

And you negotiated about five minutes?

A:

Two minutes.

A:

Did you hear what the asset told Mentong?

Q:

No I cannot hear.

A:

Although you were near, you cannot hear?

Q:

They were murmuring.

Pros. Sanchez

We request the interpreter to interpret.

Court

They were talking in whispers.

Atty Caballes

Q:

It was your asset who told you that Mentong was already ready to receive your money?

A:

No, Mentong approached me.

Q:

Mentong approached you?

A:

Yes

Q:

You said later on that this Mentong handed you something in exchange for that buy money (sic)?

A:

Yes.

Q:

That buy money, Mr. Witness, do you recall if it had markings or you cannot recall?

A:

Yes Maam, I can recall based on the serial number of the money, it was KW 341863.

Q:

Meaning to say that particular buy money was not.... you just remembered the serial number?

A:

It was being blottered.

Q:

Now after this accused handed you something in exchange for that particular buy money, you then effected arrest, am I correct?

A:

No Maam. I execute a pre-arranged signal just “missed call” to my back up.

Q:

In spite of the fact that he executed a missed call?

A:

I introduced myself as a police officer and he punched my stomach.

Q:

And after punching you in the stomach you missed call?

A:

No.

Q:

This particular something which Mentong handed to you, you naded over to your investigator?

A:

Yes.

Q:

And your investigator was the one who made the markings?

A:

Yes Maam.”[22]

The prosecution proved all the elements of the illegal sale of shabu: (1) identity of the buyer and seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as

evidence.[23] Notably, accused-appellant was convicted by the court a quo on the basis of the evidence resulting from the buy-bust operation undertaken by police operatives. During the trial, the police officers who conducted the buy-bust operation testified in a categorical manner regarding the consummation of the sale of the shabu to the poseur buyer.

Likewise, a review of the records shows that the prosecution has established the presence of all the elements of the crime of illegal possession of shabu. To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (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; and (3) the accused freely and consciously possessed the said drug.[24] Here, the prosecution sufficiently proved that the three sachets of drugs found in his pocket were his and thus, under his full control. Accused-appellant also had no legal authority to possess such drugs. Further, mere possession of a prohibited drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satisfactory explanation of such possession.[25] Accused-appellant's bare denial does not suffice to prove his lack of knowledge or possession or animus possidendi of the seized drugs.

Verily, in the absence of proof of motive to falsely impute a crime as serious as drug pushing against accused-appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over accused-appellant's self-serving and uncorroborated denial.[26] The presumption holds true for the police officers in this case, as accused-appellant could not provide a credible and believable account on why he was being falsely accused. An allegation of frame-up and extortion by the police officers is a common and standard defense in most dangerous drugs cases. It is, however, viewed by this Court with disfavor, for such defenses can be easily concocted and fabricated. To prove such defenses, the evidence must be clear and convincing. In the case in controversy, there is nothing in the records to suggest that the police officers were ill-motivated to fabricate a case against accused-appellant. Accused-appellant failed to adduce convincing proof that the prosecution witnesses had any malicious or ulterior motive when they testified, or that the evidence submitted by the prosecution had been tampered with.

In sum, proof beyond reasonable doubt, as found by the RTC was established against accused-appellant. Finding no showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied, we find no cogent reason to overturn the trial court's judgment.

Penalties

With respect to the penalties imposed for violation of Section 5, Article II of Republic Act No. 9165, we affirm the penalty imposed by the trial court. Under Republic Act No. 9165, the unauthorized sale of shabu carries with it 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), regardless of the quantity and purity of the substance involved.[27]

On the penalty imposed for violation of Section 11, Article II of Republic Act No. 9165, the penalty of imprisonment of 12 years and 1 day to 20 years and a fine ranging from P300,000.00 to P400,000.00 are to be imposed, if the quantities of dangerous drugs are less than five (5) grams of shabu. Following the provisions of Republic Act No. 4103, otherwise known as the "Indeterminate Sentence Law" (ISLAW) the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum and a fine of P300,000.00 is appropriate. Thus, we agree with the trial court in imposing such penalty.

We likewise affirm the penalty of six months and one year imprisonment plus fine in the amount of P10,000.00 imposed by the trial court for Violation of Section 12 of Article II of RA No. 0165.

WHEREFORE, the appeal is DENIED. The Decision dated December 5, 2007 of the Regional Trial Court, Seventh Judicial Region, Branch 13, Cebu City, in Criminal Case Nos. CBU-69140-42 is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Maxino, and Francisco, JJ., concur.

- [1] Rollo, p. 40.
- [2] Exhibit C, Folder of Exhibits.
- [3] Records, p. 1.
- [4] Records, p. 19.
- [5] Records, p. 38.
- [6] Rollo, p. 28.
- [7] People vs Amansec, GR No. 186131, December 14, 2011.
- [8] People v. Daria, G.R. No. 186138, September 11, 2009.
- [9] People v. Garcia, G.R. No. 173480, February 25, 2009.
- [10] People v. Kamad, G.R. No. 174198, January 19, 2010.
- [11] People v. Macatingag, G.R. No. 181037, January 19, 2009.
- [12] G.R. No. 124346, June 8, 2004.
- [13] People vs Gum-oyen, 585 SCRA 678.
- [14] People vs Llamado, GR No. 185278, March 13, 2009.
- [15] GR No. 186131 December 14, 2011.
- [16] People vs Teodoro, GR No. 185164, June 22, 2009.
- [17] G.R. No. 179940, April 23, 2008.
- [18] People vs Garcia, GR No.173480, February 25, 2009.
- [19] G.R. No. 175832, October 15, 2008.
- [20] People v. Chua, GR No. 133789, August 23, 2001.
- [21] People vs Ranin, 555 SCRA 297.
- [22] TSN, February 23, 2006, pp. 7-10.
- [23] Cruz vs People, GR No. 164580, February 6, 2009.
- [24] People vs Alcuizar, GR No. 189980, April 6, 2011.
- [25] People vs Sembrano, GR No. 185848, August 16, 2010.

[26] People v. Llamado, G.R. No. 185278, March 13, 2009.

[27] People vs Bernabe, GR No. 180505, June 29, 2010.

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