

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRIMO
“PERRY” PALOMARES Y OCAMPO,
ACCUSED-APPELLANT.**

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

Assailed before US via an appeal[1] is the Judgment[2] dated July 25, 2013 of the Regional Trial Court of Naga City, Branch 27 finding accused-appellant guilty in Criminal Case No. 2011-0416 for Violation of Section 5, Article II, R.A. 9165, the decretal portion thereof states, viz –

"WHEREFORE, the Court finds the accused GUILTY beyond reasonable doubt of the crime of illegal sale of methamphetamine hydrochloride or "shabu" as charged. He is hereby sentenced to suffer Life imprisonment, to pay a fine in the amount of Pesos: Five Hundred Thousand (P500,000.00) and to pay the cost of suit.

The subject methamphetamine hydrochloride "shabu" is hereby confiscated for turn-over to the Philippine Drug Enforcement Agency for its proper disposition in accordance with law.

SO ORDERED."

Feeling aggrieved, accused-appellant comes to US challenging the said Decision and assigning the following errors as allegedly committed by the court a quo, to wit:

"FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT APPRECIATING THE DEFENSE OF INSTIGATION RAISED BY THE ACCUSED APPELLANT.

SECOND ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT IN SPITE OF THE FAILURE OF THE PROSECUTION TO PROVE THE CORPUS DELICTI OF THE CRIME, TAKING INTO ACCOUNT THE UNRELIABILITY OF THE CHAIN OF CUSTODY OF THE DRUGS."[3]

The record shows that on October 26, 2011, accused-appellant was arraigned and pleaded "not guilty"[4] to an Information for Violation of Section 5, Article II, R.A. 9165[5] the accusatory portion whereof reads as follows –

"That on or about September 27, 2011, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did, then and there, willfully, unlawfully and criminally sell, dispense, deliver and/or distribute to a poseur-buyer in the person of PO1 Vidal DC Bacolod, one (1) medium size transparent heat-sealed plastic sachet, containing white crystalline substance tested and determined to be Methamphetamine Hydrochloride popularly known as "shabu", a dangerous drug, weighing 4.017 grams, more or less in violation of the above-cited law.

ACTS CONTRARY TO LAW."

To establish the guilt of accused-appellant, the prosecution presented four (4) witnesses namely: P/Insp. Jun

Fernandez Malong, Intelligence Officer 1 (IO1) Ken Fontanilla Villafuerte, Andres Panis, Jr. and Intelligence Officer 1 (IO1) Vidal Bacolod.

The prosecution's evidence tends to establish the following facts:

Accused-appellant Primo Palomares was in the PDEA watch list of suspected prohibited drug dealers. Following a routine surveillance, the PDEA was able to confirm his illegal drug dealings.

On September 27, 2011, a buy-bust operation to entrap accused-appellant was planned by the PDEA. Intelligence Officer 1 Vidal DC Bacolod (IO1 Bacolod, for brevity) was designated as the poseur buyer while Intelligence Officer 1 Ken Villafuerte (IO1 Villafuerte, for brevity) acted as back-up arresting officer. The rest of the team was assigned as perimeter security. IO1 Bacolod through their confidential informant arranged a deal between him and accused-appellant for the purchase of P25,000.00 worth of "shabu". Thereafter, the confidential informant told the buy-bust team that accused-appellant wanted to effect the transaction at Zam's Apartelle. At 9:00 o'clock in the evening of even date, accused-appellant arrived at Room No. 5 of Zam's Apartelle and demanded to see the money first. After seeing that the money was ready, he left the apartelle and returned after an hour with the sachet of "shabu" and the transaction proceeded. A "missed call" was made by IO1 Villafuerte to one of the back-up arresting officers to signal that the transaction was already consummated. The rest of the buy-bust team then rushed to the room where the transaction took place and accused-appellant was arrested.

Subsequently, the confiscated item was marked by IO1 Bacolod with "VDB 09/27/11" and was photographed at Room No. 5 of the apartelle. They brought accused-appellant to the police station for inventory of the confiscated item to avoid further trouble. On their way to the police station, the confiscated item was in the possession of IO1 Bacolod. After the inventory, it was placed in the evidence box of the office. Thereafter, the specimen was brought to the Camarines Sur Crime Laboratory for examination. Chemistry Report No. D-132-2011 showed that the subject specimen tested positive for the presence of methamphetamine hydrochloride. Consequently, a case for Violation of Section 5, Article II of R.A. 9165 was filed against accused-appellant.

The defense, for its part, presented an entirely different version. The testimonies of accused-appellant and his wife, Lani Palomares tend to establish the following:

On September 27, 2011 at around 4:00 o'clock in the afternoon, accused-appellant received a phone call from a confidential agent of the PDEA named Mike. The latter asked him if he knew a certain Rafao Domato and asked him a favor to buy 25 grams of "shabu" from the said person. The plan hatched with the PDEA was to purchase drugs from Domato and bring the latter to the hotel.

At the hotel, he was with Mike in one room while the PDEA agents occupied another room. Since the money was already ready, he left the hotel to negotiate with Domato but the negotiations did not proceed according to plan because the latter hesitated to go with him to the hotel. He informed Mike about Domato's reservation and the former told him to instead purchase 15 grams of "shabu" to be divided into three sachets. After an hour, Mike called him up and asked him to return to Zam's Hotel. When he returned to the hotel, Mike was then sniffing "shabu" and he joined him. Sensing that Mike was already very high on drugs, he told him that if he could bring half of the money to Domato, he might be able to convince the latter to go with him to the hotel. His real plan, however, was to get away from Mike and go home. He went out of the room and while walking towards his motorcycle, he heard a loud sound. Mike went out of the room, pointed his gun at him and ordered him to lie down on the floor. Mike tapped the door of the adjoining room occupied by the PDEA agents. While lying down on the floor, he was handcuffed and pulled inside the room being occupied by the PDEA agents. When they recognized him, they asked about Mike's whereabouts and about what happened to them in the other room. After he was arrested, he was brought to the police station.

Lani Palomares, on the other hand, stated that her husband, accused-appellant, was a friend of the PDEA asset Mike since 2011. At around 5:00 o'clock in the afternoon of September 27, 2011, accused-appellant told her that he had some errands for Mike and he would be home late. Mike prodded her husband to go to Zam's Apartelle and he cooperated with Mike so he would not get the ire of the PDEA since he already had a pending drug case before Branch 19 of RTC Naga City.

Subsequently, a case for Violation of Section 5, Article II of R.A. No 9165 was filed against accused-appellant.

On July 25, 2013, the trial court promulgated its assailed Decision finding accused-appellant guilty as charged, hence, this appeal.

After a careful perusal of the record of this case, WE accord more weight to the prosecution's evidence.

In his brief, accused-appellant maintains that the evidence presented by the prosecution is insufficient to justify his conviction. He claimed that he was a victim of police frame-up because he was instigated by IO1 Bacolod to commit the crime. Accused-appellant points to the following circumstances as evidence which supposedly create reasonable doubt as to the allegation of the prosecution that a buy-bust operation was conducted: 1) the plan to commit the crime emanated from IO1 Bacolod who instructed the confidential informant to arrange a deal between him and the PDEA for the purchase of P25,000.00 worth of "shabu"; and 2) the police officers have every reason to instigate him to commit the crime for as admitted by IO1 Villafuerte, he was among those who served a search warrant on him at one time, but, he eluded arrest, so they wanted him to be arrested and finally charged in court.

WE are not persuaded by the arguments advanced by accused-appellant.

Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker.[6] A buy-bust operation is a form of entrapment that is resorted to for trapping and capturing felons who are pre-disposed to commit crimes. The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.[7]

In determining the occurrence of entrapment, two tests have been developed: the subjective test and the objective test. Under the "subjective" view of entrapment, the focus is on the intent or predisposition of the accused to commit a crime. Under the "objective" view, on the other hand, the primary focus is on the particular conduct of law enforcement officials or their agents and the accused's predisposition becomes irrelevant. The government agent's act is evaluated in the light of the standard of conduct exercised by reasonable persons generally and whether such conduct falls below the acceptable standard for the fair and honorable administration of justice.[8]

In order to determine the validity of a buy-bust operation, the "objective" test has been consistently applied by courts in this jurisdiction. In applying the "objective" test, the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, to wit, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. It further emphasized that the "manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense." [9]

In the present case, it has been sufficiently established that the police officers used entrapment to nab

accused-appellant. The testimony of Intelligence Officer 1 Bacolod categorically shows that a typical buy-bust operation as a form of entrapment was made, viz –

"Q

: Can you tell what happened when you were inside that apartelle together with agent Villafuerte and your confidential informant?

A

: We have(sic) a transaction between us and Primo Palomares to buy shabu, sir.

Q

: You made mention the word transaction, can you please explain what do you mean by you have a transaction, transaction between you and the accused in this case?

A

: It means that we are going to buy shabu from Primo Palomares, that was the transaction, sir.

Q

: What was your purpose in supposedly buying shabu from the accused in this case?

A

: That was the plan, entrapment against Primo Palomares.

Q

: And so what happened with your plan?

A

: During the briefing, I pose(sic) as poseur buyer and assigned agent Villafuerte as my back up arresting officer and the rest of the team was the perimeter security and back up arresting officers also sir.

Q

: Tell us, how did the plan or how did your plan of entrapment turn out or came about?

A

: I instructed the confidential informant to arrange the deal between us and Primo Palomares that we are going to buy shabu worth P25,000.00 and the place was at Sam's Apartelle.

Q

: Can you tell us how did this confidential informant communicate with Primo Palomares because you made mention that you were offering to buy P25,000.00 worth of shabu from Primo Palomares?

A

: The confidential informant knows Primo Palomares that Primo Palomares is selling illegal shabu sir.

Q

: Was your confidential agent able to contact Primo Palomares?

A

: Yes sir.

Q

: What happened?

A

: Then Primo Palomares wanted that the transaction be at Sam's Apartelle.

Q

: By the way, have you seen this Primo Palomares?

A

: Yes sir.

xxxxxx

Q

: How did Primo Palomares communicate his intention to you?

A

: Through cellphone sir, the confidential informant served as the broker between us and Primo Palomares.

Q

: While this communication through cellular phone between Primo Palomares and your confidential agent was going on, where were you?

A

: We were at Sam's Apartelle already sir.

Q

: How about the confidential informant?

A

: He was also there.

Q

: What happened next?

A

: At around 9:00 p.m. of September 27, 2011, Perry Palomares appeared to us and he wants(sic) to see the money first before he gives to us the item.

Q

: When you say Perry Palomares appeared to you, what do you mean by that?

A

: He came to us sir.

Q

: Where?

A

: At Sam's Apartelle.

Q

: What happened next?

A

: Then I let him see the money and he said he will come back to get the item.

Q

: What happened after that?

A

: Then at around 10:00 p.m. Of September 27, 2011, Perry came along with the item, the sachet of shabu.

Q

: When the accused Perry Palomares came bringing along the supposed sachet of shabu, was he alone?

A

: Yes sir.

Q

: What happened when he came back with the shabu?

A

: He gave to me the sachet of shabu and in return I handed to him the buy bust money.

Q

: At that time when you received from him the supposed sachet of shabu and you likewise handed to him the buy bust money, were you two alone?

A

: The confidential informant, agent Villafuerte and Palomares, we were four inside the room sir.

Q

: What happened after you exchanged money and shabu?

A

: Agent Villafuerte made a missed call to our team sir that the sale is(sic) already consummated sir.

Q

: At the time that agent Villafuerte made a missed call, where was he in relation to you?

A

: He was beside me sir.

Q

: So what happened after that?

A

: We introduced ourselves to Primo Palomares that we are agents and we arrested him."[10]

Clearly, accused-appellant was neither cajoled nor induced into selling the drugs to the police officers. In fact, the confidential informant merely made contact with him to tell him that the poseur-buyer wanted to purchase P25,000.00 worth of shabu. When so informed, he readily agreed to the transaction. He even demanded to see the money first before he made the delivery of the prohibited drug in question. After confirming that the money was ready, it was only then that he returned to the apartelle already with the shabu . He handed it to IO1 Bacolod and took the marked money as payment therefor. The said circumstances are inconsistent with accused-appellant's claim of instigation. Add to these are the facts that he is in the PDEA watch list of suspected illegal drug dealers and his illegal trade activities had been confirmed by police surveillance. Apparently, the feigned offer to buy on the part of the police officers was merely a ploy to entrap him. There was utter lack of showing that the informant or the police officers prodded accused-appellant to sell the illegal drug to them.

It bears stressing that in determining the guilt of the accused for the sale of dangerous drugs, the prosecution is obliged to establish the following essential elements: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the 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 evidence of corpus delicti.[11] All these were duly proven by the prosecution.

What more, accused-appellant's denial and claim that he was framed-up or instigated by IO1 Bacolod into committing the crime for which he was charged cannot stand unless the defense could show with clear and

convincing evidence that the members of the buy-bust team were moved by ill motives or that they did not properly perform their duties. These defenses are invariably viewed with disfavor because they can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs.[12]

WE, therefore, very well agree with the following finding of the trial court, thus –

"The defense of the accused that there was instigation and he was framed-up by the confidential informant does not persuade the Court. The prosecution was able to establish that what transpired was a buy-bust operation. Jurisprudence teaches us that a buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drugs pushers. In a buy-bust operation, the idea to commit a crime originated from the offender without anybody inducing or prodding him to commit the offense. The defense of frame-up, which has been held as a shop-worn defense of those accused in drug-related cases, is viewed by the Court with disfavor. Like the defense of alibi, frame-up is an allegation that can easily be concocted. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials. Absent any proof of motive to falsely accuse him of such grave offense, the presumption of regularity in the performance of official duty shall prevail. In this case, the accused even admitted that he has been using shabu, and during the time he was apprehended at Zam's hotel, he was acting as a middleman between another person who owns the drugs he named as Rafao Domato and the poseur-buyer agent Bacolod."

In further seeking his acquittal, accused-appellant also points to the prosecution's failure to establish every link in the chain of custody to prove the identity of the corpus delicti with moral certainty. He alleges that the inventory of the confiscated drug was made in the police station when it should and could have been done in the same place where he was arrested in violation of Paragraph 1, Section 21, Article II of R.A. No. 9165. Brgy. Chairman Andres Panis, Jr., who signed the inventory sheet, was not also present during the buy-bust operation and did not witness the conduct thereof. He was made to sign the inventory sheet at the police station when the inventory was already completed.

Accused-appellant asserts that the prosecution likewise failed to explain what happened to the specimen after it was turned over to PO1 Breboneria of the crime laboratory, who, in turn, delivered the said drug to the forensic chemist. Thus, there is an unexplained gap in the chain of custody since the identity of the person who had custody and safekeeping of the drug after examination and pending its presentation in court was not revealed by the prosecution.

WE are not swayed.

The Implementing Rules and Regulations (IRR) of RA 9165 provide, viz:

"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. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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 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 x x x. (Emphasis supplied.)

Clearly, non-compliance with the foregoing provisions of Sec. 21 of the IRR does not render an accused's arrest illegal or make the items seized inadmissible. What is imperative 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." [13]

In the extant case, the failure of the prosecution to show that the police officers conducted the required physical inventory of the evidence confiscated in accordance with the rules is not fatal. As the record will bear out, after the transaction between accused-appellant and the poseur-buyer was consummated at Zam's Apartelle, the police officers arrested the accused. At the apartelle, the confiscated drug was subsequently marked and photographed together with the marked money. Thereafter, the buy-bust team brought accused-appellant to the nearest police station where the inventory and the request for laboratory examination of the confiscated drug were made. Photographs were again taken while the inventory was being made. The request for laboratory examination and the marked item were subsequently delivered by IO1 Bacolod to the crime laboratory and were received by PO1 Breboneria. [14] The specimen was then turned over to the forensic chemist for testing. After series of laboratory examinations were made, the confiscated drug proved positive for methamphetamine hydrochloride. Thereafter, the specimen was resealed and marked by the forensic chemist for safekeeping by their evidence custodian, PO1 Carlo Canet. It was retrieved from the said evidence custodian by the forensic chemist on the day it was presented in court for identification. [15]

Contrary to accused-appellant's claim, it has been shown that there is no loophole or gap in the chain of custody of the subject illegal drug from the time it was seized from accused-appellant to the time it was offered in evidence in court. It is also worth noting that there is nothing in Republic Act No. 9165 or in its implementing rules, which requires each and everyone who came into contact with the seized drug 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 drug seized, it is not indispensable that each and every person who came into possession of the drug should take the witness stand." [16]

Finally, the defense claims that the trial court should have not given credence to the testimony of Barangay Chairman Andres Panis, Jr.. The said barangay officer was not present when the buy-bust operation was conducted. In fact, he testified that he was merely requested by IO1 Bacolod to witness and sign the inventory sheet at the police station.

It should be stressed that Barangay Chairman Panis was presented not to testify on the buy-bust operation but only to prove that an inventory of the seized item was made at the police station. [17] The conduct of the buy-bust operation was duly established by the prosecution through the police officers presented.

In fine, this Court finds no reason to overturn the finding of the trial court.

With respect to the penalty imposed on accused-appellant, WE find the same to be in order. Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and a fine ranging from P500,000.00 to P1,000,000.00 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.

WHEREFORE, on account of the foregoing considerations, the appealed Decision dated July 25, 2013 of the

Regional Trial Court, Branch 27, Naga City in Criminal Case No. 2011-0416 is hereby AFFIRMED.

SO ORDERED.

Tijam, (Chairperson), and Reyes-Carpio, JJ., concur.

[1] Record p. 200.

[2] Ibid, pp. 179-186.

[3] Rollo, pp. 19-20.

[4] Record, p. 53.

[5] Ibid, p.1.

[6] See People vs. Victorio Pagkalinawan, G.R. No. 184805, March 03, 2010 citing People vs. Doria, G.R. No. 125299, January 22, 1999.

[7] See People vs. Arsenio Cortez, G.R. No. 183819, July 23, 2009.

[8] Ibid.

[9] Supra. See note 6.

[10] See TSN dated November 7, 2012, pp. 8 -14

[11] See People vs. FRANCISCO MANLANGIT G.R. No. 189806, January 12, 2011

[12] See People vs. Aisa Musa, et al., G.R. No. 199735, October 24, 2012.

[13] See People vs. Francisco Manlangit G.R. No. 189806, January 12, 2011; People vs Roy Pampillona, G.R. No. 186527, June 29, 2010; People vs. Arsenio Cortez, G.R. No. 183819, July 23, 2009.

[14] See TSN dated November 7, 2012, pp. 9-34.

[15] See TSN dated January 17, 2012, pp. 11-21 and 27-29.

[16] See People vs. Marco P. Alejandro, G.R. No. 205227, April 07, 2014.

[17] See TSN dated September 20, 2012, p. 3.

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