

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JHONNY SILVA Y ANTONIO, ACCUSED-APPELLANT.

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

This is an appeal from the Decision[1] dated 3 May 2012 of the Regional Trial Court of Masbate City, Branch 45, in Criminal Case No. 13748 finding accused-appellant Jhonny A. Silva GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165[2] (sale of prohibited drugs). The decretal portion of the said Decision reads:

"WHEREFORE, in view of the foregoing, the Court finds herein accused JHONNY SILVA Y ANTONIO GUILTY beyond reasonable doubt of Violation of Section 5 of Republic Act No. 9165 (Illegal Sale of Dangerous Drug[s]) and accordingly sentences him to suffer the penalty of life imprisonment.

The accused is likewise ordered to pay a fine of P500,000.00.

Conformably to Article 5 of the Revised Penal Code, it is requested to the Chief Executive thru the Department of Justice that after the accused shall have served eleven-(11) year period of detention, he shall be granted a parole.

The Bureau of Jail Management and Penology (BJMP) of Masbate City is directed to immediately bring and turn-over said Jhonny Silva to the custody of the National Penitentiary at Muntinlupa City.

Cost against the accused.

SO ORDERED."[3]

THE ANTECEDENTS

The indictment of Accused-Appellant Jhonny Silva (hereafter Appellant) stemmed from the Information[4] filed against him which pertinently reads:

CRIMINAL CASE NO. 13748

(Information dated 17 March 2009 for Violation of
Sec. 5, Article II, of RA 9165)

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That on or about march 13, 2009 at 11:00 'clock in the morning at Crossing, Brgy. Bacolod, Municipality of Milagros, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously sell Dangerous Drugs Methamphetamine Hydrochloride locally known as "SHABU" placed in nine (9) transparent plastic container[s] with the following markings, to wit:

A(AZC-1) = 0.01 gram

F(AZC-6) = 0.01 gram

B(AZC-2) = 0.02 gram

G(AZC-7) = 0.01 gram

C(AZC-3) = 0.01 gram

H(AZC-8) = 0.01 gram

D(AZC-4) = 0.01 gram

I(AZC-9) = 0.01 gram

E(AZC-5) = 0.01 gram

equivalent to 0.23 gram

valued at P8,000.00 and two (2) pieces of P1,000.00 as marked money

CONTRARY TO LAW.

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When arraigned, Appellant pleaded "not guilty" to the charge against him.[5] Both the Prosecution and the Defense made the following stipulations and admissions: 1.) the identity of Appellant and; 2.) the jurisdiction of the court a quo.[6] Thus, on 21 October 2009, pre-trial was deemed terminated.

Trial ensued thereafter, with the Prosecution presenting 1.) Special Police Officer (SPO) 1 Antonio Z. Clemente; 2.) Police Officer (PO) 3 Jose Almero, Jr., (police officers who arrested Appellant) and; 3.) Police Senior Inspector (PSI) Vernon Rey Santiago (Forensic Chemist who examined the plastic sachets taken from Appellant which allegedly contain shabu).

On the other hand, the Defense presented Appellant himself.

THE FACTS

(As culled from the Records)

The Prosecution's version is synthesized by the Office of the Solicitor General as follows:[7]

"At 9:00 A.M. on March 13, 2009, the Milagros, Masbate Police Station received information from asset Ricky Verano, Sr., that appellant contacted him to sell or deliver shabu to Verano. The police officers of the station then formed a buy-bust team composed of PSI Eliot Vasquez as team leader and PO3 (sic) Clemente, Senior Police Officer 1 (SPO1) Richard Cortes, PO3 Reymond Laurio, PO3 Jose Almero, PO1 Tyron King Ether [as members]. Verano acted as poseur-buyer and received a one thousand peso bill and two (2) five hundred peso bills for use as marked money.

The buy-bust team and Verano then proceeded at 10:45 P.M. of the same day to the target area in Brgy. Crossing, Milagros where they immediately saw appellant and a certain Henry Dalinog. The asset approached the two while the rest of the buy-bust team watched from a distance. The asset gave the marked money to appellant who then handed him plastic sachets containing substance suspected to be shabu. At this juncture, the police officers approached them, with PO3 (sic) Clemente and PO1 Almero arresting appellant. In the ensuing body search, they recovered from his right pocket the P2,000.00 marked money. Likewise, nine (9) sachets containing suspected shabu were recovered from the poseur-buyer.

The buy-bust team then brought appellant and the recovered plastic sachets to their office for investigation and

documentation. The recovered sachets, marked as "ACC-1 to ACC-9," were then brought to the Philippine National Police (PNP) Crime Laboratory in Masbate City for qualitative examination, with the sale yielding positive results for methamphetamine hydrochloride." [8]

In his Brief, [9] Appellant's version of the facts is as follows:

"On 13 March 2009, at around 9:00 o'clock in the morning, JHONNY SILVA rented Henry Dalinog's "habal-habal" so he could fetch his student in Masbate City. At around 11:00 o'clock in the morning, he and Henry stopped over at Crossing, Milagros, because the latter invited him to have breakfast in a carenderia. After eating, they rested for a while, when suddenly, two (2) men in civilian clothes approached and pointed a gun at them then they ordered them to raise their hands. They were also handcuffed and searched and when nothing illegal was found in their possession, they were brought to the Milagros Police Station. Jhonny asked the reason for his arrest and was told that a person complained about him. At the police station, he and Henry were again searched and were further ordered to dismantle the motorcycle because the police were searching for something. When nothing was found, the motorcycle was reassembled then the two (2) men were brought inside a room and were again searched but nothing was found. Jhonny finally said that they should be allowed to go home because his family was waiting for him but he was told that he cannot leave the place. The police pointed a folded bond paper on top of the table and said that it was recovered from him. The police ordered him to unfold the paper but Jhonny refused so the former opened the same, showed the contents and forced him to hold it. Jhonny, however, refused to do the same so he was brought inside a cell.

At around 6:00 o'clock in the evening, Jhonny was told that he will be brought to [the] Capitol Building in Masbate City. They arrived thereat at around 9:00 o'clock in the evening and went to the Provincial Prosecutor's Office, where he was told to get a lawyer if he knew one. Jhonny said he knew Atty. Tambago, so he was accompanied to the latter's house. Upon their arrival, he told Atty. Tambago that he was needed at the Provincial Prosecutor's Office, and the latter followed. Thereafter, Jhonny signed some papers and was brought to the Masbate City Police Station. the police station, however, refused to hold him in prison because he was not yet arrested, so he was brought to Milagros Police Station." (TSN, 14 September 2011, pp. 1-9) [10]

On 3 May 2012, the court a quo rendered the assailed Decision.

Aggrieved, Appellant appealed the Decision of the court a quo raising the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES.

III

THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL. [11]

THIS COURT'S RULING

Appellant principally argues that the court a quo erred in convicting him despite the Prosecution's alleged failure to prove his guilt beyond reasonable doubt. In contending that he should be acquitted, Appellant banks on the alleged procedural lapses committed by the police officers who failed to mark the seized drugs at the scene of the crime and to conduct a physical inventory of the same in the presence of the accused or his counsel, a representative from the media, the Department of Justice and any elected public official, resulting in the failure of the Prosecution to establish the corpus delicti of the crime charged. Appellant further insists that his acquittal at bar is justified since the Prosecution failed to prove that the integrity and evidentiary value of the drugs had been adequately preserved through an unbroken chain of custody.

The appeal fails.

It bears stressing that criminal prosecutions involving violations of Sections 5 and 11, Article II of R.A. No. 9165 depend largely on the credibility of the police officers who conducted the buy-bust operation. We likewise take note of the well-entrenched rule that the findings of fact of the trial court as well as its calibration of the evidence of the parties, its assessment of the credibility and probative weight of the witnesses, and its conclusion based on its findings are accorded by the appellate court high respect, if not conclusive effect.[12] Given the opportunity to observe the witness on the stand, the trial judge is in a vantage position to assess the demeanor of the witnesses and determine if they are telling the truth or not.[13] Hence, the findings of the lower court on this point are accorded great respect and will not be reversed on appeal, unless it overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case.[14]

Ostensibly, Appellant raised in the present appeal the alleged failure of the arresting officers to strictly comply with the requirements of Section 21, paragraph 1, Article II of RA No. 9165. On account thereof, Appellant posits that his conviction for illegal sale and possession of dangerous drugs must be set aside.

To clarify, Section 21, paragraph 1, Article II of RA No. 9165 provides for the custody and disposition of the confiscated illegal drugs, to wit:

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- 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;

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In relation thereto, Sec. 21 (a) of the Implementing Rules and Regulations of RA No. 9165, provides:

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(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 . . . (Boldface supplied for emphasis)

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Granting arguendo that the buy-bust team failed to strictly implement the post-operational requirements of the seized drugs as stated under Section 21 of RA 9165, the above-mentioned provision of the Implementing Rules and Regulations of said Republic Act offers some flexibility with regard to the custody and disposition of the confiscated illegal drugs. Even jurisprudence has it that non-compliance with the procedures under Section 21 (a), Article II of RA No. 9165 shall not invalidate the legitimate drug operation conducted by the police operatives.[15] On this point, the pronouncement of the Supreme Court in *People vs. Dela Rosa*[16] is instructive, thus:

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Even granting arguendo that the prosecution failed to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to the aforesaid guidelines, the same is not fatal and does not automatically render appellant's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as it would be utilized in the determination of the guilt or innocence of the accused.

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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.[17] In *People v. Dela Cruz*,[18] the Supreme Court pronounce:

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As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

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Upon thorough perusal of the entire records of this case, We rule that the Prosecution has established with certainty that the police indeed complied with the required unbroken chain in the handling and custody of the subject drugs confiscated from Appellant and that the integrity and evidentiary value of the said items were preserved, viz:

- a.) on 13 March 2009, Appellant was apprehended by the police (composing of SPO1 Clemente and PO3 Almero, Jr., among others) after an informant, who was acting as a poseur-buyer, received from Appellant nine (9) heat-sealed sachets of shabu.[19] Immediately upon arrest, the police officers were able to recover the Two (2) Thousand (Php2,000.00) pesos marked money[20] used to buy the drugs from Appellant;
- b.) PO3 Almero, Jr., took pictures of the marked money and the nine (9) plastic sachets allegedly containing shabu at the crime scene.[21] The marked money and the nine (9) plastic sachets remained in the possession of

PO3 Almero, Jr., until he and his fellow officers reached the Milagros Police Station.[22] At the police station, SPO1 Clemente individually marked the nine (9) plastic sachets of shabu with his initials "AZC".[23]

c.) the seized drugs were personally brought by SPO1 Clemente and PO3 Almero, Jr., to the Police Provincial Crime Laboratory at Masbate City with the accompanying Request for Laboratory Examination;[24]

d.) together with the Request for Laboratory Examination, the nine (9) plastic sachets were received by PSI Santiago of the Provincial Crime Laboratory for testing;[25]

e.) upon receipt of the subject drugs, the same was examined by PSI Santiago, who found the same to be positive for shabu, a dangerous drug, as evidenced by Chemistry Report No. D-04-09;[26]

f.) the seized drugs were turned over to the custody of the Prosecution and when they were presented during trial, PO3 Almero, Jr., identified the nine (9) plastic sachets containing shabu seized from Appellant.[27]

Appellant further contends that the police officers arrested him without securing a warrant of arrest, thus, his arrest was unlawful, making the sachets of shabu allegedly seized from him inadmissible in evidence.

We disagree.

It must be noted that Appellant was arrested in an entrapment operation where he was caught in flagrante delicto selling shabu. An arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court, which specifically provides that:[28]

"SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;"

In the case of *People vs. Sembrano*,[29] the Supreme Court held:

"A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation, such as the one involving appellant, deserves judicial sanction. Consequently, the warrantless arrest and warrantless search and seizure conducted on the person of appellant were allowed under the circumstances. The search, incident to his lawful arrest, needed no warrant to sustain its validity. Thus, there is no doubt that the sachets of shabu recovered during the legitimate buy-bust operation, are admissible and were properly admitted in evidence against him" (Emphasis supplied)

In the instant case, after the Milagros police received information from their civilian agent regarding Appellant's criminal activity, an entrapment plan was then set up. The buy-bust operation was made particularly to test the truthfulness of the civilian agent's tip and to immediately arrest the culprit if the report is found to be true. The Prosecution's evidence positively showed that Appellant agreed to sell shabu to the civilian agent worth Php2,000.00 and was caught red-handed by the police. Thus, contrary to Appellant's contention, the warrantless arrest of the Appellant was legal and within the confines of law. Similarly, the plastic sachets of shabu seized from Appellant during the legitimate buy-bust operation is admissible and was properly admitted in evidence against him.

Given the foregoing disquisition, We find no solid ground to reverse the ruling of the court a quo considering that Appellant's guilt for illegal sale of dangerous drugs was proven by the People beyond any iota of doubt. Hence, We uphold Appellant's conviction.

WHEREFORE, the instant appeal is DISMISSED. The Decision dated 3 May 2012 of the Regional Trial Court of Masbate City, Branch 45, in Criminal Case No. 13748 is hereby AFFIRMED.

SO ORDERED.

Veloso (Chairperson) and Antonio-Valenzuela, JJ., concur.

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- [1] Penned by Judge Manuel L. Sese, Rollo, pp. 30-40
- [2] Otherwise known as the Comprehensive Dangerous Act of 2002.
- [3] Rollo, p. 40
- [4] filed by 4th Assistant Provincial Prosecutor Ferdinand A. Alforte, Records, p.1
- [5] On 22 July 2009. Records, p. 21
- [6] See Pre-Trial Order dated 21 October 2009, Records, pp. 32-34
- [7] See Appellees' Brief, Rollo, pp. 70-84
- [8] Rollo, p. 105
- [9] Appellant's Brief, Id., pp. 58-79
- [10] Rollo, pp. 64-65
- [11] Id., p. 61
- [12] People vs Leonor, G.R. No. 132124, June 08, 2004
- [13] People vs. Alzaga, G.R. No. 144937. February 26, 2004
- [14] See People vs Hajili, G.R. Nos. 149872-73, March 14, 2003
- [15] See Zalameda vs People, G.R. No. 183656, September 04, 2009. See also People vs Campomanes G.R. No. 187741, August 08, 2010
- [16] G.R. No. 185166. January 26, 2011.
- [17] People v. Pagkalinawan, G.R. No. 184805, March 3, 2010, 614 SCRA 202, 218, citing People v. Naquita, 560 SCRA 430, 448 (2008).
- [18] G.R. No. 181545, October 8, 2008, 568 SCRA 273, citing Lopez v. People, G.R. No. 172953, April 30, 2008, 553 SCRA 619.
- [19] TSN dated 10 March 2010, p. 7
- [20] Exhibit "E", Records, p. 70
- [21] Exhibit "I" and "I-1". TSN dated 10 March 2010, p. 16
- [22] TSN dated 10 March 2010, pp. 8-9
- [23] "AZC" which stands for Antonio Zurbito Clemente, See Rollo, p. 82. TSN dated 10 March 2010, p. 10
- [24] Exhibit "A", Records, p. 40. TSN dated 10 March 2010, p. 10

[25] TSN dated 7 September 2010, p. 6

[26] Exhibits "D", Records, p. 13

[27] TSN dated 7 September 2010, p. 4

[28] See *People vs Almodiel* G.R. No. 200951, September 05, 2012

[29] G.R. No. 185848, August 16, 2010

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