

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO EDROZO Y ACTUB, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

Before Us is an Appeal[1] filed by Romulo Edroso y Actub (Edroso) assailing the Judgment[2] of Branch 40, Regional Trial Court (RTC), Special Drugs Court, Cagayan de Oro City, convicting him of the offense of selling a prohibited drug under Section 5, Paragraph 1, Article II of Republic Act No. 9165 otherwise known as the Dangerous Act of 2002, the dispositive portion of which states:

WHEREFORE, the foregoing considered, the Court finds accused Romulo Edroso y Actub GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of life imprisonment and a fine of P500,000.00. The period of his preventive detention shall be credited in his favor. The shabu is hereby ordered confiscated in favor of the government for proper disposal.

SO ORDERED.

The facts of the case are as follows:

On April 9, 2003, SPO3 Eddie Akut received a tip from a confidential agent that Edroso is selling prohibited drugs.[3] Akut then constituted a buy-bust team.[4]

When the team arrived in the target area, the confidential agent, who will act as the poseur-buyer, was already there.[5] The team then strategically positioned themselves with PO3 Labininay approximately 5 meters away from the poseur-buyer and PO3 Agravante approximately 10 meters away.[6]

The police officers then saw Edroso arrive and approach the poseur-buyer; Edroso and the poseur-buyer engage in a conversation; the poseur-buyer showing the marked Php100 peso bill to Edroso; Edroso showing a small transparent sachet to the poseur-buyer; and the exchange of the marked money and the transparent sachet between the poseur-buyer and Edroso.[7]

The team then arrested Edroso.[8] PO3 Labininay recovered from Edroso the marked money while PO3 Agravante recovered the transparent sachet from the poseur-buyer.[9] They all then went to the police station where the transparent sachet was marked and a request for laboratory examination on the contents of the transparent sachet was made.[10] The chemistry report showed that the confiscated item was Methamphetamine Hydrochloride, otherwise known as shabu.[11] Consequently, an Information[12] for violation of Section 5, Article II of Republic Act No. 9165 otherwise known as the Dangerous Act of 2002 was filed against Edroso, to wit:

That on or about April 9, 2003, at more or less 2:30 o'clock in the afternoon, at Zone 4, Brgy. Bugo, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute,

dispatch in transit or transport any dangerous drugs, did, then and there wilfully, (sic) unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a poseur buyer/decoy One (1) sachet of shabu (sic) containing white crystalline substance of Methamphetamine hydrochloride locally known as SHABU, a dangerous drug, weighing 0.03 gram, accused knowing the same to be a dangerous drug, in consideration of One Hundred Pesos (Php 100.00) consisting of One (1) pc. of Php100.00 bill with Serial No. BP934720, which was previously marked for the purpose of the buy-bust operation.

Contrary to and in violation of Section 5, Article II of R.A. 9165.

Edroso's defense is denial. He testified that: on April 9, 2003, while dispatching at a jeepney terminal, Akut and another policeman apprehended him for the alleged theft of cases of beer; he was held at gun point when he was arrested; the arresting officers also informed him that he was being arrested for selling shabu; he admitted having taken the cases of beer but denied the allegation of selling shabu; he was detained at the police station; two weeks from his arrest, he was brought to the Hall of Justice and charged with selling shabu; he was brought to Patag and left in the police service vehicle for two hours and brought back again to the Hall of Justice; he was detained at Puerto Police Station for five days; he was brought to Maharlika Headquarters and detained for one week; and he was brought to Lumbia City Jail.[13]

The RTC convicted Edroso of the offense charged against him. The RTC based its conviction on its finding[14]: that the testimonies of PO3 Labininay and PO3 Agravante are unequivocal, straightforward and consistent in material respects; that the identity of the corpus delicti was properly identified, preserved and established by the prosecution; that the identity of Edroso as the seller was established; that the occurrence of sale was positively declared by the policemen; that the testimony of Edroso is inconsistent with certain documentary evidence on record; and that the contention of Edroso that only the testimony of the poseur-buyer can establish the truthfulness of the transaction does not convince.

Aggrieved, accused-appellant filed the instant appeal and raised the following errors:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT;

II.

THE COURT A QUO GRAVELY ERRED IN NOT DECLARING THE SEARCH AND ARREST OF APPELLANT AS UNLAWFUL AND UNCONSTITUTIONAL;

III.

THE COURT A QUO GRAVELY ERRED IN ADMITTING THE SEIZED EVIDENCE AS BASIS OF THE APPELLANT'S CONVICTION DESPITE THE FACT THAT THE EVIDENCE WAS OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT;

IV.

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THE FACT THAT THEY WERE RIDDLED WITH MATERIAL INCONSISTENCIES;

V.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT DESPITE NON-COMPLIANCE OF THE BUY-BUST TEAM OF SECTION 21 OF R.A. 9165.

Our Ruling

The appeal is without merit.

To constitute illegal sale of shabu, the following are required:[15] “(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.”

In the instant case, Edroso was positively identified[16] by the policemen-witnesses, who were also members of the buy-bust team, as the seller. They also know the buyer who happens to be their confidential agent.[17] They saw the exchange of the marked P100.00 bill and the sachet containing the shabu.[18] PO3 Agravante took the shabu from the poseur-buyer, marked it as “A”, initialed it, personally delivered it for laboratory examination, and identified it in court.[19] Clearly, the prosecution established all elements of the offense of illegal sale of shabu.

Edroso however insists that only the confidential informant can testify as to the truthfulness of the transaction since there were differences in the testimonies of the witnesses on: (1) the pre-arranged signal, (2) the place of the transaction, and (3) where the information was received. These differences however do not affect any of the elements necessary for the prosecution of illegal sale of shabu. “Minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses.[20]” The RTC, in its decision, made it clear that: “The Court finds the testimonies of PO3 Labininay and PO3 Agravante unequivocal, straightforward and consistent in material respects with each other.[21]” It should be stressed that “Well-settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh or the scant or full realization of an oath – all of which are useful for an accurate determination of a witness’ honesty and sincerity.[22]” Moreover, “The non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction.[23]” Clearly, based on the records of the case, there is no reason to disturb the findings and assessment of the trial court.

Edroso's insistence of the unconstitutionality of his arrest and search does not convince. It should be stressed that the arrest and search of Edroso was a consequence of a buy-bust operation. He was arrested during an entrapment operation wherein he was caught selling shabu. To reiterate, the policemen-witnesses saw the exchange of the marked money and the sachet containing the shabu.[24] The marked money was recovered from Edroso[25] while the shabu was recovered from the poseur-buyer[26]. “When an arrest is made during an entrapment operation, it is not required that a warrant be secured in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court allowing warrantless arrests.[27]”

Edroso also alleges that compliance to the chain of custody was not established arguing that: (1) the policemen did not immediately mark the seized shabu at the scene of the crime and that (2) the sachet containing the shabu was not marked but only the cellophane containing the sachet of shabu.

Records show that PO3 Agravante took the shabu from the poseur-buyer, gave it to PO3 Labininay, marked it as “A” when they arrived in the office, initialed it, personally delivered it for laboratory examination, and identified it in court.[28] The request for laboratory examination, made 2 hours after the buy-bust operation, clearly shows that it was received from Agravante.[29] The same request shows that what was received was a sachet containing

a crystalline substance believed to be shabu marked as exhibit “A” placed in a stapled sealed transparent cellophane with marking “A.”[30] The chemistry report indicates that the specimen submitted was one small heat sealed transparent plastic sachet with markings “A” containing 0.03 gram of white crystalline substance, further placed in a staple sealed transparent plastic sachet with markings “A”.[31] The request, sachet and cellophane were identified by PO3 Agravante in court.[32] It is thus clear that the corpus delicti has been preserved and established by the prosecution. “What is of vital importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[33]” Besides, “The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.[34]” Edroso did not present any evidence to indicate that the corpus delicti has been tampered with. The RTC, which has the opportunity to observe the demeanor of the witnesses, even found his testimony to be inconsistent with certain documentary evidence.[35] The testimonies of PO3 Agravante and PO3 Labininay, on the other hand, were found by the RTC to be unequivocal, straightforward and consistent in material respects.[36] “In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[37]”

WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court is AFFIRMED.

SO ORDERED.

Camello (Chairperson) and Lopez, JJ., concur.

[1] Rollo, pp. 15-48

[2] Rollo, pp. 50-59

[3] Rollo, p. 76

[4] Rollo, p. 76

[5] Rollo, p. 77

[6] Rollo, p. 77

[7] Rollo, p. 77

[8] Rollo, p. 77

[9] Rollo, pp. 77-78

[10] Rollo, p. 78

[11] Rollo, p. 78

[12] Records, p. 1

[13] Rollo, pp. 22-23

[14] Rollo, pp. 57-59

[15] People v. Berdadero, G.R. No. 179710, June 29, 2010

[16] TSN, August 8, 2006, pp. 4, 8-9 (Labininay) and August 17, 2010, pp. 2, 6-7 (Agravante)

- [17] TSN, August 8, 2006, pp. 7-9 (Labininay) and August 17, 2010, pp. 5-7 (Agravante)
- [18] TSN, August 8, 2006, pp. 9-10 (Labininay) and August 17, 2010, pp. 6-7 (Agravante)
- [19] TSN, August 17, 2010, pp. 7-10
- [20] People v. Cabrillas and Cabtalan, G.R. No. 175980, February 15, 2012
- [21] Rollo, p. 57
- [22] Lim v. San and Lo, G.R. No. 159723, September 9, 2004
- [23] People v. Berdadero, G.R. No. 179710, June 29, 2010
- [24] TSN, August 8, 2006, pp. 9-10 (Labininay) and August 17, 2010, pp. 6-7 (Agravante)
- [25] TSN, August 8, 2006, pp. 10 (Labininay) and August 17, 2010, pp. 7 (Agravante)
- [26] TSN, August 8, 2006, pp. 10 (Labininay) and August 17, 2010, pp. 7 (Agravante)
- [27] People v. Sembrano, G.R. No. 185848, August 16, 2010
- [28] TSN, August 17, 2010, pp. 7-10
- [29] Exhibit Folder, p. 1
- [30] Exhibit Folder, p. 1
- [31] Exhibit Folder, p. 2
- [32] TSN, August 17, 2010, pp. 9-10
- [33] People v. Berdadero, G.R. No. 179710, June 29, 2010
- [34] People v. Octavio and Carino, G.R. No. 199219, April 3, 2013
- [35] Rollo, p. 58
- [36] Rollo, p. 57
- [37] People v. Sembrano, G.R. No. 185848, August 16, 2010

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