

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL MENDIOLA Y MAGSALIN, ACCUSED-APPELLANT.

Ponente: SORONGON, E. D., J.

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### SORONGON, E. D., J.:

For Review is the Decision[1] dated July 29, 2011 of the Regional Trial Court of Pasig City, Branch 70 in Criminal Case No. 16305-D entitled People of the Philippines vs. Rodel Mendiola y Magsalin finding herein accused guilty of illegal possession of Methamphetamine Hydrochloride more popularly known as "shabu".

The Information[2] dated June 3, 2008 charging Rodel Mendiola y Magsalin (accused-appellant) with violation of Sec. II, Art. II of RA 9165 reads:

“That, on or about the 31[st] day of May 2008, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully, feloniously and knowingly possess one heat-sealed transparent plastic sachet containing zero point one (0.01) gram of white crystalline substance, which substance was found positive to the test for Methamphetamine Hydrochloride, commonly known as “shabu” a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.”

Accused-appellant entered a plea of "Not Guilty" on his arraignment.

The version of the People as succinctly chronicled by the Office of the Solicitor General (OSG) in its Brief[3]:

“In the afternoon of May 31, 2008, PO2 Gomer Pablo, a member of the Intelligence Section of the Philippine National Police (PNP), Taguig Police Station, was on duty at their office when their chief formed a team consisting of PO2 Pablo, PO2 Nicanor Anico, PO3 Antonio D.R. Reyes and PO2 Rolly Concepcion to conduct surveillance operation at Natividad St., Brgy. Palingon Tipas, Taguig City based on reports regarding illegal trade activities in the area (TSN, July 27, 2009, pp. 2-4). Accordingly PO2 Pablo, PO2 Anico, PO3 Reyes and PO2 Concepcion, clad in civilian clothing, proceeded to the area on board a private vehicle. While conducting surveillance in the area, PO2 Pablo's group decided to stop at a sari-sari store to buy mineral water. As their group approached the sari-sari store, PO2 Pablo noticed a man (later identified to be appellant Rodel Mendiola y Magsalin) busy doing something while his back was turned against their group. Thereupon, PO2 Pablo approached appellant and noticed that appellant was holding a small plastic sachet containing what PO2 Pablo suspected to be a prohibited drug. PO2 Pablo then held appellant's shoulder which surprised him and caused him to drop the plastic sachet. PO2 Pablo then picked up the dropped sachet containing white crystalline substance of suspected shabu, a prohibited drug (Exhibit “A”). forthwith, PO2 Pablo marked the plastic sachet with the initials of appellant's given name Rodel Mendiola y Magsalin “RMM”, with date and signature, and immediately informed him of his constitutional rights (TSN, Ibid., pp. 5-7). Afterwards, PO2 Pablo and his companions brought appellant to their police station and turned over their custody over appellant to their investigator PO1 Rey Memoracion to make an endorsement to the PDEA. PO2 Pablo and PO2 Anico also prepared a Certificate of Inventory (Exhibit “E”) of the seized sachet of suspected shabu. Meanwhile, PO2 Rolly Concepcion prepared the requests for laboratory examination of the seized plastic sachet. Afterwards,

PO2 Pablo and PO2 Anico executed a Joint Affidavit dated June 1, 2008 before PSI Ariel Solomon Bait Administering Officer (TSN, Ibid., pp.8-9, Exhibits “A”, “B” and “C”).

Thereafter, PO2 Concepcion brought the Letter Request for Laboratory Examination dated June 1, 2008 (Exh. “B”, Records, p. 73) to the PNP Crime Laboratory, Southern Police District, P. Zobel, Makati City along with the seized specimen which were received by PO3 Santos and the case was docketed as No. D-228-08 (Exhibits “B” and “C”). Subsequently, the PNP Crime laboratory issued Physical Science Report No. D-228-085 stating that “Qualitative Examination on the above stated specimen A gave POSITIVE result to the tests for the presence of Methylamphetamine Hydrochloride xxx” and indicating the “Conclusion: Specimen A contain Methylamphetamine Hydrochloride, a dangerous drug xxx” (Exhibit “D”). The same report was signed by Pol. Sr. Inspector Richard Allan B. Mangalip, Forensic Chemical Officer, and Police Supt. Juanita A. Ramos, District Chief, and subscribed to before Administering Officer P/S Insp. Sharon Fabros (Ibid.).”[4]

Accused-appellant's account runs this wise:

“In the morning of 31 May 2008, the accused Rodel Mendiola and his four (4) year-old son were buying food at a store in front of their house along 8 General Natividad Street, Tipas, Taguig City, when suddenly, a vehicle stopped in front of them. A man in civilian attire came out and approached the accused. The former grabbed the latter's shirt and forcibly boarded him in the vehicle. The accused was incarcerated and was asked to produce Twenty Thousand Pesos (P20,000.00), which he failed to give.”[5]

As earlier mentioned, the trial court found accused-appellant guilty beyond reasonable doubt of the charge, viz:

“WHEREFORE, the accused is found GUILTY beyond reasonable doubt of possession of zero point zero one (0.01) grams of Methylamphetamine Hydrochloride, commonly known as “shabu” a dangerous drug, in violation of the provisions of R.A. 9165, specifically Art. II, Sec. 11, Par. 2, No. 3 thereof and is hereby sentenced to suffer an indeterminate penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY as MINIMUM TO SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY AS MINIMUM and a FINE of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).

Pursuant to Section 21 of Republic Act 9165, Mr. Magella Monashi, evidence Custodian of the Philippine Drug Enforcement Agency (PDEA), or any authorized representative is hereby ordered to take charge and to have custody of the “shabu”, subject matter of this case, for proper disposition.

Furnish the PDEA a copy of this decision for its information and guidance.

SO ORDERED.”

Thus, this appeal based on the following grounds:

- I. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE ILLEGALITY OF HIS ARREST.
- II. THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE PROSECUTION'S VERSION.
- III. THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED SHABU.
- IV. THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION.

Accused-appellant insists that the prosecution was not able to discharge the onus probandi or the required quantum of evidence to convict him for possession of illegal drugs because there was irregularity in the conduct of the warrantless arrest; the testimonies of prosecution witnesses are not credible; and the chain of custody in the

handling of the confiscated shabu was broken.

We disagree.

Jurisprudence tells us that “for illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (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 drug[6]. In the case of *People of the Philippines vs. Efren Ditona y Montefalcon, et al.*,[7] the Supreme Court ruled:

“To successfully prosecute an accused for selling and/or possession of illegal drugs, the State has to prove as well the *corpus delicti*, the body of the crime. It must be shown that the suspected substance the police officers seized from the accused is the same thing presented in court during the trial. Thus, the chain of custody rule 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. The witnesses should be able to describe these movements to ensure that there had been no change in the condition of the item and that no one who did not belong in the chain had access to the same.” (Emphasis is Ours)

PO2 Pablo saw accused-appellant holding a plastic sachet containing suspected "shabu", a prohibited drug. He was at the area purposely to conduct surveillance operation at Bgy. Natividad St., Tipas, Taguig City per his superior's instructions based on report about the illegal sale of drugs thereat. In open court, PO2 Pablo candidly and spontaneously narrated how his team chanced upon the accused-appellant holding the plastic sachet of shabu. Immediately, he accosted accused-appellant and placed him under arrest. The arrest was within the purview of a legal warrantless arrest as provided in Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure[8]. Said arresting officer recognized and identified the pack of shabu held by the accused-appellant. As aptly pointed out by the trial court who had the opportunity to observe the demeanor of the witnesses and examine the documentary exhibits presented before it:

“PO2 Gomer Esteban Pablo testified that he caught the accused in *flagranti delicto* in possession of Methylamphetamine Hydrochloride (shabu). He saw the accused holding a plastic sachet containing substance which appears to be “shabu”. Considering the initial information of illegal trade activities in the area, which prompted the surveillance operation coupled with the sight of the accused in plain view having in his possession some substance which appear to be “shabu”, the arrest was valid despite the absence of a warrant of arrest. There was reason to believe that a crime was being committed in the presence of the police officer. It was a valid in *flagranti delicto* arrest. And there is no reason to believe that the police officer was simply making up this story. He positively identified the accused and testified in a straightforward manner. xxx”[9]

Viewed from the foregoing correct finding of the trial court, the contention of the accused-appellant that his warrantless arrest suffered from factual and legal infirmities will not simply hold. The presence of PO2 Pablo in the area was purposely to conduct surveillance operation because of the report that peddling of prohibited drugs is rampant in the area. Accused-appellant was caught in the act by PO2 Pablo in possession of illegal drugs which prompted the latter to place him under arrest.

Accused-appellant also argues that the prosecution failed to observe the proper procedure in handling the illegal drug allegedly seized from him in accordance with Section 21, paragraph 1 of Article II of RA 9165. In other words, the chain of custody of the said evidence was broken. As such, the integrity and evidentiary value of the recovered and seized drugs was not preserved.

Not true. From the moment accused-appellant was arrested in *flagrante delicto*, the seized plastic sachet of shabu was marked by the arresting officer, WHO brought it to their headquarters for recording and blotter and thereafter

to the crime laboratory for testing. The confiscated illegal drug was marked at the crime scene in the presence of the suspect (accused-appellant) and it was brought to the police station together with the accused-appellant. All the time the seized shabu was within the control and supervision of the arresting police officer. The prosecution thus duly established the crucial links in the chain of custody of the seized item from the time it was confiscated until it was brought for laboratory examination. Under the circumstances, the presumption of regularity in the handling of the evidence (seized illegal drugs) by the police officers concerned and the presumption that they properly discharged their duties should apply. There has been substantial compliance by the police authorities with the required procedure on the custody and control of the confiscated drug.[10]

Besides, during the pre-trial, accused-appellant stipulated on the existence and due execution of Physical Science Report No. D-228-08S which specified that the specimen submitted for examination is the heat-sealed plastic sachet with "RMM 05-31-08" markings. The same report concluded that the specimen submitted indeed contains methylamphetamine hydrochloride, a dangerous drug. The Supreme Court succinctly explained in *People vs. Del Monte*[11]:

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 [be] accorded it by the courts....

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 the 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.

Likewise, in the cases of *People vs. Niquita y Cibulo*[12] and *People vs. Agulay*,[13] the Supreme Court held that non-compliance with the required procedure on the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II of RA 9165 is not fatal and will not render the arrest of the accused-appellant illegal or the items seized from him inadmissible in evidence. What is, nonetheless important, 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.

In a more recent case, the Supreme Court thoroughly explicated the principle on the proper custody of the seized illegal drugs, saying,

“The “chain of custody” is the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. As a method of authenticating evidence, the chain of custody rule requires that the admission of the 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 thus include a testimony about the every link in the chain, from the moment the item was seized to the time it was offered in court as evidence, such that every person who handled the same would admit as to 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. The same 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.[14]

Here, We believe that the integrity of the seized items were duly preserved. The prosecution has presented and

offered in court the key witnesses who had sufficiently established the chain of custody of the seized illegal drugs, that is from the confiscation of the same from herein accused-appellant, then marking of the seized drugs immediately after the arrest at the very crime scene and thereafter forwarding thereof to the PNP Crime Laboratory for examination to determine the presence of any dangerous drug, which ultimately tendered a positive result.

In fine, the alleged minor infirmities, upon which accused-appellant banks this appeal, do not in any way detract from the veracity and weight of the prosecution's evidence. The fact remains that accused-appellant was caught red-handed in the commission of an offense by the police officers.

We see no irregularity in the aforementioned judgment of the trial court that would sufficiently persuade Us to modify or even set aside the same. The trivial defect, if any, committed by the prosecution which became the anchor of this appeal does not create a hiatus in the evidence for the latter. Besides, it is very clear from the testimonies of the arresting officers, who were practically in the vicinity where the incident happened, that indeed a crime was committed, thus We cannot fault the trial court in giving due weight and full credence to this positive assertion of the prosecution witnesses. As has been repeatedly held, credence shall 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 be evidence to the contrary; moreover in the absence of proof of motive to falsely impute such a serious crime against 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 appellant's self-serving and uncorroborated claim of having been framed.[15]

It is fundamental that in the prosecution of violation of RA 9165, a case becomes a contest of the credibility of witnesses[16] and well settled is the rule that the assessment made by the trial court deserves utmost respect and is even conclusive and binding upon the appellate courts absent any arbitrariness or inadvertent oversight on the part of the trial court.

We are one with the trial court in holding that the prosecution's evidence on record as well as the testimonies of the arresting officers, have adequately established the foregoing elements to sustain a judgment of conviction. The court a quo, which has the opportunity to best determine the evidence presented by both parties, gave due credence to the asseverations of the prosecution's witnesses and found no reason to believe otherwise. We cannot, therefore, substitute a contrary ruling sans impelling basis to do so.

Anent the penalty imposed by the trial court, noteworthy is the observation of the OSG pertaining to an inadvertent error in the dispositive portion of the assailed decision pertinently on the imposed penalty necessitating minor correction. Hence, it should be read as:

“TWELVE (12) YEARS AND ONE (1) DAY as MINIMUM TO SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY AS MAXIMUM and a FINE of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).”

Apart from the above correction, We find the penalties imposed to be in accordance with law[17], thus We sustain.

WHEREFORE, the appeal is DISMISSED. The Decision dated July 29, 2011 of the Regional Trial Court of Pasig City, Branch 70 in Criminal Case No. 16305-D is AFFIRMED with a minor correction as to the imposed indeterminate penalty which is hereby rectified to henceforth read as “TWELVE (12) YEARS AND ONE (1) DAY as MINIMUM TO SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY AS MAXIMUM and a FINE of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).”

**SO ORDERED.**

Reyes, Jr., A.B., Chairperson, and Rosario, R.R., JJ., concur.

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[1] Rollo, pp. 44-47

[2] Records, p. 1

[3] Rollo, pp. 52-71

[4] Brief for the Appellee, Rollo, pp. 52-71

[5] Brief for the Appellant, Rollo, pp. 26-42

[6] People v. Lagman, G.R. No. 168695, 8 December 2005, 573 SCRA 224, 232-233.

[7] G.R. No. 189841, December 15, 2010

[8] Supra at Note 3, p. 62

[9] Supra at note 1

[10] Rollo, p. 63

**[11] 552 SCRA 627 (2008)**

[12] G.R. No. 180511, 28 July 2008

[13] G.R. No. 181747, 26 September 2008

[14] People of the Philippines vs. Erlinda Capuno y Tison, G.R. No. 185715, January 19, 2011.

[15] People v. Alhambra, 233 SCRA 604

[16] People vs. Evangelista, G.R. No. 175281, 27 September 2007

[17] Sec. 5. Sale, Trading, Administration, dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Pre-cursors and Essential Chemicals.- 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) shall imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or distribute, including any or all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transaction.

SEC. 11. Possession of Dangerous Drugs. — 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) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly

introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

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