

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAMON FRONDOZO Y DALIDA, APPELLANT.

G.R. No. 177164. June 30, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the Decision[1] dated January 31, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01582, affirming the Decision[2] dated August 3, 2005 of the Regional Trial Court (RTC) of Caloocan City, Branch 120 in Criminal Case No. C-67810. The trial court found appellant Ramon Frondozo y Dalida guilty of violation of Section 5,[3] Article II of Republic Act

No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.[4]

The information charging Frondozo with violation of Section 5, Article II of Rep. Act No. 9165, reads:

x x x x

That on or about the 27[th] day of March, 2003 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to PO1 ABNER BUTAY who posed, as buyer [of] METHAMPHETAMINE HYDROCHLORIDE (SHABU) weighing 0.02 gram drug, without the corresponding license or prescription therefore, knowing the same to be [s]uch.

CONTRARY TO LAW.[5]

x x x x

On his arraignment, Frondozo pleaded not guilty.

As found by the RTC and confirmed by the Court of Appeals, the testimonies of (1) PO1 Abner Butay, police operative of Caloocan City Hall North Detachment who acted as poseur-buyer; (2) P/Insp. Albert Arturo, forensic chemist of NPD Crime Laboratory; and (3) P/Insp. Richard Ang, then police investigator of the Caloocan City Hall North Detachment, establish the following facts:

On March 27, 2003, acting on information from a police asset about the drug activities of Frondozo, a team was organized by Major Mario M. Dapilloza, composed of PO2 Hector Ortencio, PO2 Michael Conrad Martin Miranda, PO1 Roderick Medrano and PO1 Abner Butay to conduct surveillance and buy-bust operation to entrap Frondozo. PO1 Butay testified that he came late during the briefing so it was PO1 Medrano who relayed to him that he was designated as poseur-buyer and the P100 buy-bust money was given to him. They agreed that he will remove his cap as a signal to indicate that their mission was accomplished.[6]

Guided by the informant's sketch of Frondozo's house and a tip that he is the only male residing there,[7] the team proceeded to the site of operation before midnight of the same day. They positioned themselves strategically in different positions where they could see PO1 Butay. Thereafter, PO1 Butay approached Frondozo's house and

knocked at the door several times. When a man came out, PO1 Butay told him "pakuha." The man asked, "magkano?" and he replied "piso lang." The man said, "sandali lang" then went back inside the house. Moments later, the man returned and handed a plastic sachet to PO1 Butay. PO1 Butay examined its content and was satisfied that the plastic sachet contained shabu. PO1 Butay then handed the man the P100 buy-bust money and put the plastic sachet of shabu inside his pocket. PO1 Butay then removed his baseball cap as pre-arranged to signal to his teammates that the sale was already consummated. He introduced himself to the man and stated "pulis ako pare" and showed him his badge. He frisked the man's body and found two arrows with sling, one fan knife (balisong) and the P100 buy-bust money from the man's hand. PO1 Butay testified that his teammates never went inside the house.[8]

Together with the members of the team, PO1 Butay brought the man, who was later on identified as Frondoza, to the police station. The specimen and the items seized from Frondoza's body were turned over to P/Insp. Richard Ang who marked the specimen "RFD-01" and prepared the request for laboratory examination.

P/Insp. Albert Arturo made a laboratory examination of the contents of the plastic sachet. Based on the physical, chemical and chromatographic examinations he conducted, it was found that the specimen yielded positive results for the presence of methamphetamine hydrochloride or shabu.[9]

During trial, PO1 Butay positively identified Frondoza as the man who sold him the prohibited drug. He also identified Exhibit "D-4" marked as "RFD-01" as the shabu he bought from Frondoza.[10]

Thereafter, P/Insp. Ang presented in court the P100 bill used in the buy-bust operation against Frondoza. He also testified that he entered the serial number of the buy-bust money in their logbook at their station. He said he attached the referral slip, pre-operational report and the booking sheet arrest report to the case envelope but he no longer has access to it since he is now assigned in Malabon. P/Insp. Ang further testified that there was a coordination sheet faxed to the Philippine Drug Enforcement Agency (PDEA). However, he was not able to present the documents in court since he did not receive any subpoena and the scheduled hearing was relayed to him only through a text message.[11]

In his defense, Frondoza denied the accusations against him. He testified that on March 27, 2003 at about 10:00 p.m., a group of police officers arrived at his residence in Brgy. Pag-asa, Camarin, Caloocan City. He was then washing clothes while his wife was inside the house since the latter could not do the chore due to her menstruation. He asked the police officers what they wanted and was in turn asked by PO2 Miranda if he knew a certain alias "Monching." When he admitted that he was "Monching," he said that he was instructed to face the wall and was frisked. According to Frondoza, he was ordered to turn over the shabu which they accused him of keeping. Despite his denial of the accusation, he was still handcuffed, arrested and made to board a vehicle. Frondoza further averred that PO1 Butay, PO2 Ortencio and PO1 Medrano entered and searched his house. He claimed that the police officers found the fan knife on the table and the two arrows with sling under the sink.[12]

Frondoza further narrated that he was thereafter brought to the Mini City Hall Annex Police Station. While in the detention cell, PO1 Butay confronted and accused him of stealing his 13 fighting cocks.[13] He denied stealing the fighting cocks but PO1 Butay refused to believe him. He claimed that PO1 Butay laughed when he told him "tarantado ka" and insisted even more that he stole the fighting cocks. Frondoza admitted knowing PO1 Butay's caretaker, alias "July," who lives about 50 meters away from his house, but maintained that prior to his arrest he never knew PO1 Butay or any of the police officers who apprehended him. He came to know their names only at the precinct.[14]

Moreover, Frondoza claimed that PO1 Butay extorted money from him. While in the detention cell, PO1 Butay told him to pay P50,000 for his release but the amount was later reduced to P20,000.[15] He said he was unable to

pay since he has not yet received his salary. He further claimed that he only learned of the case filed against him after he was transferred to the City Jail. He also claimed he has never seen shabu in his entire life.[16]

On August 3, 2005, the court a quo convicted Frondozo. The dispositive portion of the decision reads:

WHEREFORE, from the foregoing, this Court finds accused RAMON FRONDOZO Y DALIDA, GUILTY beyond reasonable doubt for Violation of Section 5, Article II of RA 9165 and hereby imposes upon him the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos without subsidiary imprisonment.

SO ORDERED.[17]

On January 31, 2007, the appellate court affirmed in toto the court a quo's decision. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, appeal is hereby DISMISSED for lack of merit and RAMON FRONDOZO y DALIDA should be made to suffer the penalty correctly imposed by the trial court.

SO ORDERED.[18]

Aggrieved, Frondozo filed the instant appeal.

On July 4, 2007, we accepted the appeal and required Frondozo and the Office of the Solicitor General (OSG) to file their respective supplemental briefs if they so desire.

Both parties, however, opted to file Manifestations in lieu of Supplemental Briefs, and adopted their respective briefs filed before the Court of Appeals.[19]

In his brief, Frondozo alleges that:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 5, ARTICLE II, R.A. NO. 9165.[20]

This appeal hangs mainly on the alleged lack of credibility of the prosecution's witnesses and the frame-up theory.

Frondozo insists that no buy-bust operation was conducted and instead, he was a victim of a frame-up. He claims that PO1 Butay framed him because PO1 Butay suspected him of stealing his fighting cocks three months before his arrest. He also accuses PO1 Butay of extorting P50,000 from him for his liberty.[21]

Furthermore, Frondozo assails the credibility of PO1 Butay (poseur-buyer). He contends that the following details cast doubt on the veracity of the alleged buy-bust operation: (1) PO1 Butay claimed to have no knowledge whether the buy-bust money had been dusted with fluorescent powder;[22] (2) he cannot recall whether the plastic sachet of shabu was properly marked;[23] and (3) he cannot recall the serial number of the buy-bust money.[24] Frondozo also asserts that the prosecution not only failed to present as evidence the dispatch book where the serial number of the buy-bust money was supposedly entered,[25] the prosecution also failed to present evidence showing that the police officers previously coordinated with PDEA regarding the buy-bust operation launched against him.[26] Further, he doubts the identity of the shabu because it was marked only after it was turned over to P/Insp. Ang and not immediately after seizure as a standard procedure in anti-narcotics operation.[27]

Given these circumstances, Frondoza insists that the presumption of regularity in the performance of official duty, by itself, could not sustain his conviction, let alone prevail over the constitutionally guaranteed presumption of innocence in his favor.[28]

The OSG, on the other hand, submits that Frondoza's guilt had been proven beyond reasonable doubt. The OSG insists that the evidence on record shows that Frondoza was caught in flagrante delicto. They maintain that Frondoza's defense of frame-up and extortion deserves scant consideration since it was unsubstantiated by any evidence other than his self-serving testimony. The OSG further asserts that while the specimen was marked only after it was turned-over to P/Insp. Ang, such fact did not vitiate the identity and chain of custody of the specimen sold by Frondoza. Likewise, the OSG insists that the lack of documents showing that there was prior coordination with PDEA is immaterial because what is more important is that Frondoza was arrested in a valid buy-bust operation.[29]

Finally, the OSG maintains that in the absence of proof to the contrary, the police officers enjoy the presumption of regularity in the performance of their official duties.[30]

The appeal is meritorious.

Jurisprudence clearly sets the essential elements to be established in the prosecution for illegal sale of dangerous drugs, viz.: (1) the transaction or sale took place, (2) the corpus delicti or the illicit drug was presented as evidence, and (3) the buyer and seller were identified.[31]

What is material in the prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.[32] Prosecutions for illegal sale of prohibited drugs necessitate that the elemental act of possession of prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction. Therefore, it is essential that the identity of the prohibited drug be established beyond doubt.[33]

To establish the identity of the shabu seized from Frondoza, the procedures laid down in Rep. Act No. 9165 should be complied with. Section 21 of the Implementing Rules and Regulations of Rep. Act No. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. It 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. [Emphasis supplied.]

In this case, the arresting officers failed to strictly comply with the procedures for the custody and disposition of confiscated dangerous drugs as prescribed by Rep. Act No. 9165. The arresting officers did not mark the shabu immediately after they arrested Frondoza. Further, while there was testimony regarding the marking of the shabu after it was turned over to the police investigator, no evidence was presented to prove that the marking thereof was done in the presence of Frondoza.

Also, fatal in the prosecution's case is the failure of the arresting officers to take a photograph and make an inventory of the confiscated materials in the presence of Frondoza. Likewise, there was no mention that any representative from the media, DOJ or any elected public official had been present during the inventory or that any of these persons had been required to sign the copies of the inventory.

Clearly, none of the statutory safeguards mandated by Rep. Act No. 9165 was observed. Hence, the failure of the

buy-bust team to comply with the procedure in the custody of the seized drugs raises doubt as to its origins.

Nevertheless, while the seized drugs may be admitted in evidence, it does not necessarily follow that the same should be given evidentiary weight if the procedures provided by Rep. Act No. 9165 were not complied with. The admissibility of the seized dangerous drugs in evidence should not be equated with its probative value in proving the corpus delicti. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[34]

Finally, the presumption of regularity in the performance of official duty relied upon by the lower courts cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt. As a rule, the testimony of police officers who apprehended Frondoza is accorded full faith and credit because of the presumption that they have performed their duties regularly. However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.[35]

All told, the corpus delicti in this case does not exist.

WHEREFORE, the assailed Decision dated January 31, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01582 is REVERSED and SET ASIDE. Appellant RAMON FRONDOZO y DALIDA is ACQUITTED of the crime charged on the ground of reasonable doubt and ordered immediately RELEASED from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is ORDERED to implement this decision forthwith and to INFORM this Court, within five (5) days from receipt thereof, of the date appellant was actually released from confinement.

SO ORDERED.

Ynares-Santiago*, Chico-Nazario**, Leonardo-De Castro***, and Brion, JJ., concur.

[*] Designated member of the Second Division per Special Order No. 645.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635.

[1]Rollo, pp. 2-12. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Noel G. Tijam and Sesinando E. Villon concurring.

[2] CA rollo, pp. 14-24. Penned by Judge Victorino S. Alvaro.

[3]SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors 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 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, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes, approved on June 7, 2002.

[5] Records, p. 1.

[6] TSN, April 20, 2004, pp. 3-7.

[7] Id. at 9-10.

[8] Id. at 37.

[9] Records, p. 76.

[10] TSN, April 20, 2004, pp. 16-19.

[11] TSN, July 5, 2004, pp. 3-7.

[12] TSN, January 27, 2005, pp. 15-17; TSN, March 3, 2005, pp. 2-4, 6-7.

[13] TSN, March 3, 2005, pp. 8 & 17.

[14] TSN, January 27, 2005, pp. 13-15, 17-18; TSN, March 3, 2005, pp. 8, 17-19.

[15] TSN, March 3, 2005, pp. 10-11, 23-25 & 27.

[16] Id. at 15-16.

[17] CA rollo, p. 24.

[18] Rollo, p. 12.

[19] Id. at 19-20, 22-23.

[20] CA rollo, p. 42.

[21] TSN, March 3, 2005, pp. 17 & 25.

[22] CA rollo, p. 43.

[23] Id. at 44.

[24] Id. at 43-44.

[25] Id. at 43.

[26] Id. at 45.

[27] Id. at 44-45.

[28] Id. at 46.

[29] Id. at 73, 79-80.

[30] Id. at 80.

[31] People v. Bandang, G.R. No. 151314, June 3, 2004, 430 SCRA 570, 579.

[32] People v. Dela Cruz, G.R. No. 181545, October 8, 2008, p. 8.

[33] Malillin v. People, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 631-632.

[34] People v. Magat, G.R. No. 179939, September 29, 2008, pp. 12-13.

[35] People v. Dela Cruz, *supra* note 32, at 13.

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