

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LARRY LOPEZ, APPELLANT.

G.R. No. 181441. November 14, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is an appeal from the 25 September 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 02031. The Court of Appeals affirmed the 21 December 2005 Joint Decision[2] of the Regional Trial Court, Branch 96, Baler, Aurora, in Criminal Case Nos. 3188 and 3189 finding appellant Larry Lopez guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The prosecution charged appellant with violation of Sections 5 and 11 of RA 9165 in two Informations which read:

CRIMINAL CASE NO. 3188

That on or about 11:05 o'clock in the morning of November 1, 2003 in Baler, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, unlawfully, feloniously and willfully sell and convey unto a poseur buyer one plastic sachet containing 0.06 gram of shabu, a prohibited drug, for three (3) P100.00 and one (1) P200.00 marked bills without any license or permit from the authorities.

CONTRARY TO LAW.

CRIMINAL CASE NO. 3189

That on or about 11:00 o'clock in the morning of November 1, 2003 in Baler, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, unlawfully, feloniously and willfully have in his possession and control three (3) pieces of marlboro cigarettes packs, containing 6.20 grams of marijuana leaves and fruiting tops without any permit or license from the authorities.

CONTRARY TO LAW.[3]

Upon arraignment, appellant pleaded not guilty. Thereafter, trial ensued.

The prosecution established that on 1 November 2003, at around 10:00 a.m., a certain barangay official went to the Baler Police Station reporting the peddling of illegal drugs by appellant. A buy-bust operation was planned where PO1 Romeo Miranda (PO1 Miranda) was assigned as poseur-buyer. PO1 Miranda accompanied a confidential agent in going to the residence of appellant to buy P500 worth of shabu. Appellant told them that he would deliver the shabu in front of Ditha's Hardware in half an hour. The members of the buy-bust team

strategically stationed themselves near the place of the transaction. At around 11:05 a.m., the appellant, driving his tricycle, arrived and the confidential agent waved at him to stop. PO1 Miranda and the confidential agent approached appellant, they talked for a moment, and the exchange took place. The agent handed the marked money to appellant, who simultaneously handed the sachet of shabu. Immediately thereafter, the agent handed the shabu to PO1 Miranda who then held the appellant. The other members of the buy-bust team rushed to the crime scene and arrested appellant. After apprising appellant of the Miranda Rights, PO1 Sonny Guzman (PO1 Guzman) searched appellant's body which yielded dried marijuana leaves wrapped in two Marlboro cigarette packs and one cigarette foil.

Appellant, on the other hand, denied the charges and insisted that he was framed-up. Appellant claimed that at around 11:05 in the morning of 1 November 2003, he was driving his tricycle to bring his passengers, namely Teresita Fernando and Raymund Putol, to the cemetery. Upon reaching Ditha's Hardware, two men in civilian clothes blocked their way and identified themselves as policemen. Thereafter, appellant was suddenly and forcibly pulled down from the tricycle and handcuffed. After the policemen frisked appellant, they exclaimed "Positive" showing a sachet. Then, he was arrested and brought to the police station where he was interrogated and searched again.

The dispositive portion of the 21 December 2005 Joint Decision of the Regional Trial Court, Branch 96, Baler, Aurora, reads:

WHEREFORE, premises considered, the Court hereby renders judgment as follows:

- Finding Larry Lopez y Parinia GUILTY beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 for the sale of 0.06 gram of shabu and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (P500,000.00);

- Finding Larry Lopez y Parinia GUILTY beyond reasonable doubt of Violation of Section 11, Article II of R.A. 9165 for possession of 6.20 grams of dried marijuana leaves and hereby sentences him to suffer the penalty of imprisonment of Fourteen (14) years and a fine of Three Hundred Thousand Pesos (P300,000.00).

The confiscated shabu and dried marijuana leaves are hereby ordered to be turned over to the Office of the Provincial Prosecutor of Aurora, which, in turn, shall coordinate with the proper government agency for the proper disposition and destruction of the same.

SO ORDERED.[4]

On appeal, appellant pointed out that there were inconsistencies on the following matters: (1) existence of a pre-arranged signal; and the (2) recollection by PO1 Miranda of the markings on the buy-bust money. Appellant also argued that the subsequent warrantless search and seizure was illegal because he was never caught in flagrante delicto selling shabu. Hence, the marijuana recovered from him was inadmissible.

The Court of Appeals' Ruling

In a Decision dated 25 September 2007, the Court of Appeals affirmed the trial court's decision finding appellant guilty beyond reasonable doubt of the offenses charged. The appellate court found that PO1 Miranda satisfactorily explained his answer to the question regarding the pre-arranged signal. The appellate court also ruled that failure to recall the markings on the buy-bust money was probably due to the length of time between the date of the incident and the date of PO1 Miranda's testimony. At any rate, the markings on the marked money are immaterial because the presentation of the marked money is not even necessary for the successful prosecution of the offenses charged. The Court of Appeals also rejected appellant's claim of frame-up considering that there was no evidence of any ulterior motive for the police officers to falsely charge appellant of the offenses. It appears that the

frame-up theory was a mere afterthought.

On the warrantless search and seizure, the Court of Appeals held that it is valid having been made after a lawful warrantless arrest, citing Section 12, Rule 126 of the Rules of Court.[5]

Hence, this appeal.

The Issue

The sole issue in this case is whether appellant is guilty beyond reasonable doubt of violation of (1) Section 5, Article II of RA 9165 for the sale of 0.06 gram of shabu; and (2) Section 11, Article II of RA 9165 for the possession of 6.20 grams of dried marijuana leaves.

The Ruling of the Court

The appeal lacks merit.

Sections 5 and 11, Article II of RA 9165 read:

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.

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:

x x x x

(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.

The Court sustains the finding of the lower courts that the prosecution sufficiently established appellant's guilt beyond reasonable doubt for violation of Sections 5 and 11, Article II of RA 9165. The prosecution proved that a consummated sale of shabutranspired between the buy-bust team which included the confidential agent, on one hand, and the appellant on the other. PO1 Rafael Duaso, PO1 Guzman, and PO1 Miranda, who were members of the buy-bust team, testified that appellant sold shabu to the confidential agent, who simultaneously gave the marked money to appellant.[6] The prosecution also established that the police officers recovered marijuana after searching appellant's body. The subject drugs were also proven to be methylamphetamine hydrochloride and marijuana, as evidenced by Field Test Report No. APPO-SOG-1101-2003-01 and the confirmatory tests subsequently conducted by Forensic Chemical Officer, P/Insp. Divina Dizon of the Nueva Ecija Crime Laboratory, as evidenced by her Chemistry Report No. D-298-2003.

Generally, the factual findings of the trial court, when affirmed by the Court of Appeals, are conclusive and

binding on this Court.[7] In the present case, appellant gravely failed to show that the trial court overlooked or misapprehended any fact or circumstance of weight and substance to warrant a deviation from this rule.

First, the alleged inconsistencies in the testimony of PO1 Miranda refer to trivial or minor matters, which do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witness' honesty.[8] Inconsistencies on the existence of a pre-arranged signal and the markings on the buy-bust money pertain to peripheral matters and do not refer to the actual buy-bust operation itself — that crucial moment when the appellant was caught selling shabu — which might warrant a reversal of appellant's conviction.[9] Further, the Court sustains the trial court in giving credence to the testimonies of the prosecution's witnesses because the trial court is in a better position to evaluate the witnesses' deportment during the trial.[10] Besides, the employment of a pre-arranged signal, or the lack of it, is not indispensable in a buy-bust operation.[11] Also, the non-presentation of the buy-bust money is not fatal to the successful prosecution of a drug case.[12]

Second, appellant did not substantiate his defense of frame-up. He did not present evidence that the prosecution witnesses had motive to falsely charge him. Neither did appellant prove that the police officers did not perform their duties regularly.[13] As the Court of Appeals held, the frame-up theory was a mere afterthought.

Third, Section 12 of Rule 126 expressly provides that "[a] person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant." In this case, the arresting officers were justified in arresting appellant as he had just committed a crime when he sold shabu to the confidential agent. A buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting drug offenders.[14] Considering the legality of appellant's warrantless arrest, the subsequent warrantless search resulting in the recovery of marijuana found in appellant's body is also valid.[15]

Considering that appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165, the Court of Appeals correctly affirmed the trial court's imposition of life imprisonment and a fine of P500,000 in Criminal Case No. 3188 for the illegal sale of shabu.

While appellant is also guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165, the Court modifies the penalty imposed in Criminal Case No. 3189 for illegal possession of marijuana. In *People v. Mateo*,^[16] the Court held that the period of imprisonment imposed on the accused should not be a straight penalty, but should be an indeterminate penalty. Thus, the trial court erred in imposing the straight penalty of imprisonment of fourteen (14) years.

Section 1 of the Indeterminate Sentence Law^[17] provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same."^[18] Accordingly, the penalty that should be imposed on appellant is imprisonment ranging from twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum. The Court affirms the P300,000 fine imposed by the trial court.

WHEREFORE, the Court AFFIRMS the 25 September 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02031 with the MODIFICATION that the penalty in Criminal Case No. 3189 shall be imprisonment for twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and a fine of P300,000.

SO ORDERED.

Austria-Martinez,^[**] Corona, Carpio Morales,^[***] and Leandrdo-de Castro, JJ., concur.

[*] Per Special Order No. 534.

[**] Designated member per Special Order No. 535.

[***] Designated member per Special Order No. 535.

[1] Rollo, pp. 2-23. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose C. Reyes, Jr. and Japar B. Dimaampao, concurring.

[2] CA rollo, pp. 11- 17. Penned by Judge Corazon D. Soluren.

[3] Rollo, p. 3.

[4] CA rollo, p. 17.

[5] The Court of Appeals erroneously cited Section 13 of Rule 126.

[6] Rollo, pp. 10-16.

[7] *People v. Mateo*, G.R. No. 179478, 28 July 2008; *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194; *People v. Lim*, 435 Phil. 640 (2002); *People v. Pacis*, 434 Phil. 148 (2002). See also *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537.

[8] *People v. Fernando*, G.R. No. 170836, 4 April 2007, 520 SCRA 675, 683 citing *People v. Madriaga*, G.R. No. 82293, 23 July 1992, 211 SCRA 698, 709-712.

[9] See *People v. Fernando*, G.R. No. 170836, 4 April 2007, 520 SCRA 675, 684 citing *People v. Chang*, 382 Phil. 669 (2000).

[10] *People v. Dilao*, G.R. No. 170359, 27 July 2007, 528 SCRA 427; *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537; *People v. Villanueva*, G.R. No. 172116, 30 October 2006, 506 SCRA 280.

[11] *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187.

[12] *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312, 330 citing *People v. Eugenio*, 443 Phil. 411 (2003).

[13] *People v. Nicolas*, *supra*. See also *People v. Cabugatan*, *supra*.

[14] *People v. Bohol*, G.R. No. 171729, 28 July 2008.

[15] *Id.*; *People v. Navarro*, G.R. No. 173790, 11 October 2007, 535 SCRA 644.

[16] G.R. No. 179036, 28 July 2008.

[17] AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES, approved and effective on 5 December 1933 (Act No. 4103, as amended).

[18] *People v. Bohol*, *supra* note 14.

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