

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FREDERICK RICHIE TEODORO Y DELA CRUZ, ACCUSED-APPELLANT.

G.R. No. 185164. June 22, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

On appeal is the May 27, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02549 which affirmed the joint decision[2] rendered by Branch 214 of the Regional Trial Court (RTC) of Mandaluyong City, finding appellant Frederick Richie Teodoro y Dela Cruz guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

On June 3, 2004, in the RTC of Mandaluyong City, two (2) separate informations were filed against appellant charging him, in the first, with violation of Section 11, Article II of R.A. No. 9165. Docketed as Criminal Case No. MC-04-8227-D, the first Information[3] alleges, as follows:

That on or about the 28[th] day of May 2004 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess any dangerous drug, did, then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control One (1) heat-sealed transparent plastic sachet containing 0.06 gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known as "Shabu", a dangerous drug without the corresponding license and prescription, in violation of the above-cited law.

The other Information[4] docketed as Criminal Case No. MC-04-8228-D, charges appellant with violation of Section 5, Article II, also of R.A. No. 9165, allegedly committed in the following manner:

That on or about the 28[th] day of May 2004 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law, did, then and there willfully, unlawfully, and feloniously sell, deliver and distribute to PO1 MARLON CLIMACOSA, a poseur-buyer, One (1) heat-sealed transparent plastic sachet containing 0.04 gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known as "Shabu", a dangerous drug, for the amount of Two (2) pieces of P100.00 bills with Serial Nos. RF390501 and NS581977, Philippine Currency, without the corresponding license or prescription, in violation of the above-cited law.

On arraignment, accused-appellant, assisted by counsel, pleaded "Not Guilty" to both charges. Thereafter, a joint trial ensued.

The People's version of the facts shows that on May 23, 2004, Police Senior Inspector Rodrigo Flores Gadiano (PSI Gadiano), Chief of the Intelligence Unit of Mandaluyong City Police, received information from a confidential asset that a man named Richie was conducting illegal activities at Matamis Street, Barangay Hulo, Mandaluyong City. Acting on the information, PSI Gadiano instructed Police Officer 2 Robert Posadas (PO2 Posadas), PO1 Edgar Antipasado (PO1 Antipasado), and PO1 Marlon Climacosa (PO1 Climacosa) to conduct

surveillance. During the surveillance conducted from May 23-27, 2004, the group confirmed that appellant was involved in selling illegal drugs at his home in 741 Matamis Street, Barangay Hulo, Mandaluyong City.[5]

On May 28, 2003, a team, composed of SPO1 Ronaldo de Castro (SPO1 de Castro), SPO1 Romeo Rico (SPO1 Rico), PO1 Climacosa, PO1 Antipasado, PO2 Arsenio Calilong (PO2 Calilong), PO1 Edwin Gonocruz (PO1 Gonocruz), and PO2 Posadas, was organized to conduct a buy-bust operation at the target site. PO1 Climacosa was designated as poseur-buyer while the remaining members of the team served as back up. At the same time, PSI Gadiano coordinated with the Philippine Drug Enforcement Agency (PDEA) on the conduct of the buy-bust operation.[6]

Two (2) marked P100.00 bills with serial numbers RF390501 and NS581977 were handed to PO1 Climacosa.[7]

Around 5:30 o' clock in the afternoon of the same day, the team proceeded to the area.[8]

PO1 Climacosa approached appellant who was then standing by the gate of 741 Matamis Street, Barangay Hulo, Mandaluyong City and said, "Pre, iskor ako ng dalawang piso pang gamit lang." Appellant replied "sandali lang." PO1 Climacosa gave appellant the two marked P100.00 bills. Appellant, in turn, handed to PO1 Climacosa a sachet containing a white crystalline substance. PO1 Climacosa removed his cap to signal the consummation of the sale transaction to the other team members who were positioned some 10 meters away.[9]

Thereafter, PO1 Climacosa introduced himself and informed appellant that he was under arrest. Appellant resisted and ran away, but he was eventually accosted by PO1 Climacosa and the other members of the team.[10] PO1 Antipasado then frisked appellant and found the marked money and another sachet of white crystalline substance in appellant's pocket.[11]

Immediately, the team apprised appellant of his constitutional rights. Appellant was, thereafter, brought to the Mandaluyong Medical Center for medical check-up. From the hospital, appellant was turned over to the Criminal Investigation Division of the Mandaluyong City Police Station. In the said office, the confiscated sachets were marked as "MC" and "MC-1" by PO1 Climacosa and PO1 Antipasado, respectively. The marked two (2) P100.00 bills were turned over to the evidence custodian, while the two (2) confiscated sachets were immediately brought to the Philippine National Police (PNP) Crime Laboratory in Eastern Police District (EPD) for laboratory examination. PSI Lourdeliza Cejes, Forensic Chemist, found the two (2) sachets of white crystalline substance to be positive for methamphetamine hydrochloride or shabu.[12]

Accordingly, appellant was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165 with the RTC of Mandaluyong City.

Denial, frame up and extortion were accused-appellant's main exculpating line. In his Brief,[13] appellant summarized the version of the defense as follows:

On May 28, 2004, at around two o'clock (2:00) in the afternoon, FREDERICK RICHIE TEODORO was at his house in Pantaleon Street washing the dishes, when three (3) male persons entered the place and introduced themselves as police officers. He was told not to move and PO1 Climacosa told him that "at last, we were able to get you Jimmy". The accused was quick to tell the policemen that he was not "Jimmy", and the person they were looking for lives in the other house. One of the policemen went to the house of certa[i]n "Jimmy". Meanwhile, PO1 Climacosa handcuffed the accused, while the other policeman searched the house. Unable to find anything, the policemen brought him to Mandaluyong Medical Hospital. Afterwards, he was brought to the Mandaluyong City Hall, where he met PO1 Posadas who asked him the whereabouts of the Muslims. He replied that he does not know any Muslim, and he was told to produce thirty thousand (P30,000.00) pesos. He told PO1 Posadas that he does not have money. Irked by the accused's answer, PO1 Posadas pulled out from his drawer a small plastic sachet and lighter and was told that those are evidence against him.[14]

The trial court, however, disbelieved appellant's defenses and rendered a judgment of conviction, viz.:

WHEREFORE, the prosecution having successfully established the guilt of the accused beyond reasonable doubt, he is hereby sentenced to suffer the following: (1) In Criminal Case No. 04-8227-D the penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY and to pay a fine of Three Hundred Thousand Pesos (P300,000.00) and, (2) In Criminal Case No. 04-8228-D accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

Accused is credited in full of the preventive imprisonment he has already served in confinement.

Let the physical evidence subject matter of this case be confiscated and forfeited in favor of the State and referred to PDEA for proper disposition.

SO ORDERED.[15]

The appellant filed an appeal before the CA, claiming that the prosecution failed to prove his guilt beyond reasonable doubt. He argued that the prosecution witnesses had no personal knowledge of his alleged illegal activities. They merely relied on the information given by the confidential asset that he was engaged in the sale of illegal drugs. The prosecution, however, did not present their informant to establish that he is a drug peddler. The appellant, thus, contended that the prosecution failed to prove the charges against him. Appellant added that the chain of custody of the confiscated items had not been established, as the buy-bust team did not comply with Section 2 of Dangerous Drugs Board Regulation No. 1.[16]

On May 27, 2008, the CA rendered the assailed Decision[17]affirming appellant's conviction. Rejecting appellant's arguments, the CA held that the police officers acquired personal knowledge of appellant's illegal activities after they conducted the surveillance. Thus, the informant's testimony was no longer necessary to establish the fact that appellant was indeed engaged in the sale of illegal drugs. The CA, likewise, brushed aside appellant's argument that the evidence's chain of custody was not established.

The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED. The joint decision of the Regional Trial Court Mandaluyong City, Branch 214, in Criminal Case Nos. MC-04-8227-D and MC-04-8228-D is AFFIRMED.

SO ORDERED.[18]

Appellant is now before this Court submitting for resolution the same matters argued before the CA. Through his Manifestation and Motion in Lieu of Supplemental Brief,[19] appellant stated that he will not file a Supplemental Brief and, in lieu thereof, he will adopt the Appellant's Brief he had filed before the appellate court. The Office of the Solicitor General (OSG) likewise manifested that it is no longer filing a supplemental brief.[20]

Appellant primarily assails the non-presentation of the confidential asset to establish that he was indeed peddling drugs. Thus, he insists that the prosecution failed to prove his guilt beyond reasonable doubt.

After examining the records, we find no reason to overrule the findings of the trial court as affirmed by the Court of Appeals.

Contrary to appellant's assertion, the illegal sale of shabu is established by the clear testimony of PO1 Climacosa who acted as the poseur-buyer during the buy-bust operation. He testified as to his own personal knowledge of the sale that had taken place. Senior Police Officer 1 Rico and PO1 Antipasado corroborated PO1 Climacosa's testimony.

The testimonies of the prosecution witnesses established that appellant was caught in the act of selling a sachet containing substances which turned out to be positive for shabu to PO1 Climacosa. And as soon he was arrested, he was frisked by the arresting officers, in the course of which a sachet also containing a substance which likewise turned out to be positive for shabu was found in his pocket.

That the informant was not presented by the prosecution does not prejudice the State's case, as all the elements of illegal sale and possession of shabu by appellant were satisfactorily proved by testimonial, documentary and object evidence. At best, the testimony of the informant would only have been corroborative of the testimonies of PO1 Climacosa, SPO1 Rico and PO1 Antipasado. It is not indispensable.

As held by this Court in *People v. Lopez*:^[21]

In general, the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative. In a case involving the sale of illegal drugs, what should be proven beyond reasonable doubt is the fact of the sale itself. Hence, like the non-presentation of the marked money used in buying the contraband, the non-presentation of the informer would not necessarily create a hiatus in the prosecution's evidence^[22]

Thus, in *People v. Marilyn Naquita*,^[23] we rejected a similar contention, holding that:

The presentation of an informant is not a requisite in the prosecution of drug cases. The failure of the prosecution to present the informant does not vitiate its cause as the latter's testimony is not indispensable to a successful prosecution for drug-pushing, since his testimony would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug. Failure of the prosecution to produce the informant in court is of no moment, especially when he is not even the best witness to establish the fact that a buy-bust operation has indeed been conducted. Informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. It is well-settled that except when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to falsely testify against the accused, or that only the informant was the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness accounts.

In the case under consideration, none of the exceptions are present that would make the testimony of the confidential informant indispensable. As admitted by appellant, the police officers who testified against her were not known to her before her arrest. We likewise do not find material inconsistencies in their testimonies. Further, the informant is a person different from the poseur-buyer. What we find vital is appellant's apprehension while peddling and possessing dangerous drugs by PO1 Cosme and PO1 Llanderal.

Appellant further claims that the prosecution failed to establish the evidence's chain of custody because the buy-bust team failed to strictly comply with Section 21^[24] of RA 9165 and Section 2 of Dangerous Drugs Board Resolution No. 1.^[25] He adds that the policemen's failure to abide by these provisions casts doubt on the admissibility of the evidence adduced against him.

We disagree.

Contrary to what appellant wants to portray, the chain of custody of the seized prohibited drugs was shown not to have been broken. After the seizure of the drugs from appellant's possession, PO1 Climacosa and PO1 Antipasado marked the two (2) plastic sachets. The plastic sachet that was sold to PO1 Climacosa was marked MC, while the plastic sachet that was recovered by PO1 Antipasado was marked MC-1. These plastic sachets containing a white crystalline substance were immediately forwarded to the PNP Crime Laboratory in EPD for examination to

determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, PSI Cejes concluded that the white crystalline substance was positive for methylamphetamine hydrochloride (shabu), a dangerous drug. There can be no doubt that the drugs seized from appellant were the same ones examined in the crime laboratory. Plainly, the prosecution established the crucial link in the chain of custody of the seized shabu from the time they were first discovered until they were brought for examination.

Besides, appellant never questioned the custody and disposition of the drug that was taken from him in the proceedings before the RTC. In fact, he stipulated that the drugs subject matter of this case were examined by PSI Lourdeliza Cejes, and the examination yielded a positive result for methamphetamine hydrochloride, commonly known as shabu. We thus find the integrity and the evidentiary value of the drug seized from appellant not to have been compromised.

Jurisprudence teems with pronouncements^[26] that non-compliance with Section 21 will not render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance 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 this case, it has been shown that the integrity and evidentiary value of the seized items had been preserved. Thus, appellant's claim must fail.

This Court finds, as did the trial court and the CA, the accounts of the arresting/entrapping police officers, as to what occurred in the evening of May 28, 2004, credible. For, aside from the presumption that they - the police operatives - regularly performed their duties, we note that these operatives, as prosecution witnesses, gave consistent and straightforward narrations of what transpired on May 28, 2004. As things stand, the police officers uniformly testified to having apprehended the appellant in a buy-bust operation, and that upon being frisked, appellant was also found to be in possession of another sachet containing a white crystalline substance later on found to be methamphetamine hydrochloride, more popularly known as shabu.

Apart from his defense that he is a victim of a frame-up and extortion by the police officers, accused-appellant could not present any other viable defense. While the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence, for the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity.^[27] This, appellant failed to do.

All told, in Criminal Case No. MC-04-8227-D, the Court is convinced that the prosecution's evidence more than proved beyond reasonable doubt the charge for violation of Section 11, Article II, R.A. No. 9165 (illegal possession of shabu), appellant having knowingly carried with him the plastic sachet of shabu without legal authority at the time he was caught during the buy-bust operation.

Likewise proven by the same quantum of evidence is the charge for violation of Section 5, Article II, R.A. No. 9165 in Criminal Case No. MC-04-8228-D. The prosecution has established all the elements necessary in every prosecution for the illegal sale of shabu, to wit: (i) identity of the buyer and the seller, the object, and the consideration; and (ii) the delivery of the thing sold and the payment therefor.

We now go to the penalties imposed on appellant for possession and sale of shabu.

The possession of dangerous drugs is punished under Section 11, Article II of Republic Act No. 9165. Paragraph 2, No. 3 thereof, reads:

(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 . . . methamphetamine hydrochloride . . .

For possessing shabu weighing .06 gram, the trial court imposed on appellant the straight penalty of twelve (12) years and one (1) day, and a fine of P300,000.00.

In *People v. Mateo*[28] and *People v. Larry Lopez*,[29] 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, and the CA in affirming, the straight penalty of imprisonment of twelve (12) years and one (1) day.

Section 1 of the Indeterminate Sentence Law[30] 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."

Accordingly, in Criminal Case No. MC-04-8227-D this Court imposes on appellant an imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of P300,000.00.

As regards Criminal Case No. MC-04-8228-D, the trial court correctly imposed on appellant the penalty of life imprisonment and a fine of P500,000.00 for the sale of dangerous drugs, pursuant to Section 5, Article II of Republic Act No. 9165.[31]

In closing, we reiterate that "drug addiction is one of the most pernicious evils that has ever crept into our society." More often than not, it is the young who are the victims. On the other hand, equally reprehensible is the police practice of using the law as a tool for extorting money from hapless victims. Courts must be vigilant in trying drug charges, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.[32] In this case, however, appellant failed to prove his theory of extortion and frame-up, and we entertain no doubt as to his guilt.

WHEREFORE, the appeal is DIMISSED. The Court AFFIRMS the May 27, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02549 with the MODIFICATION that the penalty in Criminal Case No. MC-04-8227-D shall be imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of P300,000.00.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. del Castillo and Ricardo R. Rosario, concurring, rollo, pp. 2-12.

[2] CA rollo, pp. 16-20.

[3] Id. at 8.

[4] Id. at 10.

[5] Id., at 63.

[6] Id.

[7] Id.

[8] Id.

[9] Id. at 64.

[10] Id.

[11] Id.

[12] Id. at 65.

[13] Id. at 32-45.

[14] Id. at 39.

[15] Supra note 2 at 19-20.

[16] Seizure or Confiscation of Dangerous Drugs or Controlled Chemicals or Laboratory Equipment.

a. The apprehending team having initial custody of dangerous drugs or controlled chemicals or controlled chemicals or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physically inventory and photograph the same in the presence of:

(i)

The person from whom such items were confiscated and/or seized or his/her representative or counsel;

(ii)

A representative from the media;

(iii)

A representative from the Department of Justice; and

(iv)

Any elected public official;

who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall 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 place where the search warrant is served: or at the nearest police station or at the nearest office of the apprehending officer, whichever is applicable, in case of seizure without warrant; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizure of and custody over said items.

b. The drugs or controlled chemicals or laboratory equipment shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled by the apprehending officer/team xxx.

[17] Supra note 1.

[18] Id. at 11-12.

[19] Rollo, pp. 19-20.

[20] Id. at 22-23.

[21] People v. Lopez, G.R. No. 172369, March 7, 2007, 517 SCRA 749.

[22] Id. at. 757.

[23] People v. Naquita, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446.

[24] Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

xxx

[25] Supra note 16.

[26] People of the Philippines v. Marilyn Naquita, supra note 23; People v. Del Monte, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636; People v. Pringas, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

[27] People of the Philippines v. Narciso Agulay y Lopez, G.R. No. 181747, September 26, 2008.

[28] People v. Mateo, G.R. No. 179036, July 28, 2008, 560 SCRA 375, 395.

[29] People of the Philippines v. Larry Lopez, G.R. No. 181441, November 14, 2008.

[30] 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).

[31] 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.

[32] People v. Yuan, 466 Phil 791, 807-808 (2004).

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