

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL ROA Y VILLALUZ, ACCUSED-APPELLANT.

G.R. No. 186134. May 06, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

At bench is an ordinary appeal[1] assailing the decision[2] dated 3 July 2008 of the Court of Appeals in CA-G.R. CR No. 02828. In the said decision, the appellate court affirmed the twin convictions of herein appellant Joel Roa for the sale and for possession of dangerous drugs in violation of Republic Act No. 9165 or The Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the assailed decision reads:

WHEREFORE, the February 23, 2007 Decision of the Regional Trial Court, Branch 82, Quezon City, in Criminal Cases Nos. Q-03-120826, is hereby AFFIRMED.[3]

The prosecution's version of the events leading to the indictment of the appellant may be summarized as follows:

At around 10:00 in the evening of 5 September 2003, the Quezon City Police District (QCPD) received information from an "asset" that a certain Joel Roa was peddling shabu somewhere along Senatorial Road in Barangay Batasan Hills.[4] Acting on this information, QCPD Chief Superintendent Raymund Esquivel immediately formed a team of police officers to conduct a buy-bust operation with the objective of apprehending the suspected pusher in flagrante delicto.[5]

The buy-bust team was composed of Police Officer (PO) 2 Joel Galacgac, Special Police Officer (SPO) 1 Rodolfo Limin, SPO2 Cesar Nano, and SPO1 Michael Fernandez.[6] Before proceeding with the operation, PO2 Galacgac was designated as the team's poseur-buyer.[7]

The team arrived at the target area around 12:30 in the morning of 6 September 2003.[8] The "asset" and PO2 Galacgac proceeded towards the house of the appellant, while the other members of the buy-bust team positioned themselves in strategic places.[9]

The "asset" went inside the house, and, after about a minute, came out with the appellant. The "asset" then introduced PO2 Galacgac to the appellant as a user who wants to buy shabu. The appellant readily agreed.[10]

The appellant handed PO2 Galacgac one (1) small plastic sachet with white crystalline substance. In turn, PO2 Galacgac handed the previously marked P100.00 bill to the appellant as payment. Thereafter, PO2 Galacgac scratched his head, which served as the signal to the other members of the buy-bust team that the transaction was completed. In an instant, the other members of the buy-bust team closed in and apprehended the appellant. Upon being frisked by SPO1 Limin, two (2) more small plastic sachets containing white crystalline substance were recovered from the appellant's right front pocket.[11] Later, PO2 Galacgac would mark the small plastic sachet containing white crystalline substance handed to him during the sale, while SPO1 Limin had already marked the sachets he was able to retrieve from frisking the appellant.[12]

The appellant was then brought to the police station.[13] At the police station, PO2 Galacgac and SPO1 Limin forwarded the marked sachets to their investigator, PO3 Diosdado Rocero, who, in turn, made a request for a confirmatory examination.[14]

Police Inspector (P/Insp.) Leonard Arban, a forensic chemist of the Philippine National Police (PNP), received the marked sachets together with the request for a confirmatory examination.[15] The test conducted by P/Insp. Arban yielded a positive result for methamphetamine hydrochloride — the contents of the sachets were shabu.[16]

As a consequence of these events, two (2) separate criminal informations — one for violation of Section 5[17] of Republic Act No. 9165, and another for violation of Section 11[18] of the same law — were filed against appellant Joel Roa before the Regional Trial Court, Branch 82, in Quezon City. The informations[19] read:

CRIMINAL CASE NO. Q-03-120826 (For Violation of Section 5, Article II of Republic Act No. 9165)

INFORMATION

That on or about the 6[th] day of September 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero three (0.03) gram of white crystalline substance containing Methylamphetamine [sic] Hydrochloride, a dangerous drug.

INFORMATION

CRIMINAL CASE NO. Q-03-120827 (For Violation of Section 11, Article II of Republic Act No. 9165)

That on or about 6[th] day of September 2003, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there, willfully, unlawfully and knowingly have in her/his/their possession and control, zero point zero four (0.04) gram of white crystalline

substance containing Methylamphetamine [sic] Hydrochloride, a dangerous drug.

The appellant entered a plea of not guilty to both accusations, and a joint trial for the two interrelated charges thereafter ensued.[20]

On 23 February 2007, the trial court rendered a Decision,[21] finding the appellant guilty beyond reasonable doubt of violating Sections 5 and 11 of Republic Act No. 9165. The decretal portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

a.) Re: Criminal Case No. Q-03-120826, the Court finds accused JOEL ROA y VILLALUZ guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

b.) Re: Criminal Case No. Q-03-120827, the Court finds accused JOEL ROA y VILLALUZ guilty beyond reasonable doubt of violation of Section 11, Article II of the same Act and hereby sentences him to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to FOURTEEN (14) YEARS as MAXIMUM and to pay a fine of THREE HUNDRED THOUSAND (P300,000.00) PESOS;

In convicting the appellant, the trial court gave full faith and credence to the version of the prosecution as established by the open court narrations of PO2 Galacgac, SPO1 Limin and SPO2 Cesar Nano, coupled by the stipulated testimonies of SPO1 Michael Fernandez, PO3 Diosdado Rocero and P/Insp. Arban.

On appeal, the Court of Appeals found itself in agreement with the findings of the trial court, en route to rendering the decision that is now the subject of the present review.

In this appeal, the appellant asks the Court to consider his contrary version of events. The appellant denies that he was caught, in flagrante, selling and possessing shabu and claims that he was just a victim of a police frame-up.[22] He professes that on the morning of 6 September 2003, while he was eating inside his house on Senatorial Road, Barangay Batasan Hills, four (4) men suddenly barged in and arrested him for no valid reason.[23] Then, he was conducted by his captors, who turned out to be QCPD officers, to the police station, and was asked to produce P50,000.00 in exchange for his release.[24] Not having any money to satisfy the demand, the appellant alleges that the QCPD fabricated the present charges against him in order to justify the detention.[25]

In support of his denial, the appellant points out that the QCPD never coordinated with the Philippine Drug Enforcement Agency (PDEA) about conducting any buy-bust operation, violating in the process Section 86 of Republic Act No. 9165.[26] Neither did the QCPD conduct any surveillance prior to the execution of the purported buy-bust.[27] These circumstances, the appellant believes, discount the existence of a genuine buy-bust operation and lend credibility to his own version that he was merely a victim of a frame-up.[28]

At any rate, the appellant adds that his acquittal for the two charges is in order because the prohibited drugs allegedly taken from him and presented in evidence could not be accepted as adequate proof of the corpus delicti.[29] The shabu that the prosecution claims to have been unlawfully sold and possessed by the appellant was neither photographed nor made the subject of a physical inventory as required under Dangerous Drugs Board Regulation No. 3, Series of 1979.[30] The appellant argues that as a necessary result of this omission, the identity of the shabu presented in evidence becomes highly suspect.

We are not impressed.

Appellant's Denial

In any criminal prosecution, the defenses of denial and frame-up, like alibi, are considered weak defenses and have been invariably viewed by the courts with disfavor for they can just as easily be concocted but are difficult to prove.[31] Negative in their nature, bare denials and accusations of frame-up cannot, as a rule, prevail over the affirmative testimony of truthful witnesses.[32]

The foregoing principle applies with equal, if not greater, force in prosecutions involving violations of Republic Act No. 9165, especially those originating from buy-bust operations. In such cases, the testimonies of the police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails.

In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill motive.[33]

In pointing out that the buy-bust conducted by the QCPD was carried out without first coordinating with PDEA and without any prior surveillance, the appellant ascribes irregularity in the manner by which the police operatives of QCPD conducted their operations, thereby casting doubt on the testimony of the prosecution witnesses that a legitimate buy-bust was undertaken.

We are not convinced.

In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86[34] of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition sine qua non for every buy-bust operation. After all, a buy-bust is just a form of an in flagrante arrest sanctioned by Section 5, Rule 113[35] of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA.[36] A buy-bust operation is not invalidated by mere non-coordination with the PDEA.

Neither is the lack of prior surveillance fatal. The case of *People v. Lacbanes*[37] is quite instructive:

In *People v. Ganguso*,[38] it has been held that prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*,[39] that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance. (Emphasis supplied.)

Failing to show any ill motive and improper performance of duty on the part of the police officers who caused his apprehension, the appellant's defenses of denial and frame-up must necessarily fail.

Proof of Corpus Delicti

The appellant also contends that the prosecution has failed to present competent evidence of the corpus delicti, by reason of the failure of the buy-bust team to make an inventory and photograph the prohibited drugs allegedly retrieved from the former. For this purpose, appellant cites a violation of Dangerous Drugs Board Regulation No. 3, Series of 1979.

We do not agree.

To begin with, the appellant cited a defunct regulation. Dangerous Drugs Board Regulation No. 3, Series of 1979 was already superseded by Section 21 of Republic Act No. 9165 and its Implementing Rules, which are now the prevailing laws relative to the requirements of making an inventory and photographing confiscated prohibited drugs and paraphernalia. It may not be amiss to point out that the shabu subject of this case was seized from the appellant upon his apprehension on 3 September 2003 — during which, Republic Act No. 9165 was already in effect.[40]

For appellant's position, support is not provided by the applicable law.

This Court has consistently ruled that non-compliance with the requirements of Section 21 of Republic Act No. 9165 will not necessarily render the items seized or confiscated in a buy-bust operation inadmissible.[41] Strict compliance with the letter of Section 21 is not required if there is a clear showing that the integrity and the evidentiary value of the seized items have been preserved, i.e., the items being offered in court as exhibits are, without a specter of doubt, the very same ones recovered in the buy-bust operation.[42] Hence, once the possibility of substitution has been negated by evidence of an unbroken and cohesive chain of custody over the contraband, such contraband may be admitted and stand as proof of the corpus delicti notwithstanding the fact that it was never made the subject of an inventory or was photographed pursuant to Section 21(1) of Republic Act No. 9165.[43]

A review of the evidence on record will show that the prosecution was able to establish an unbroken chain of custody over the shabu which it claims as having been sold and possessed by the appellant:

1.)

On the charge of sale, PO2 Galacgac testified that he placed his markings on the small plastic sachet containing white crystalline substance handed to him by the appellant during the operation.[44]

2.)

On the charge of possession, PO2 Galacgac and SPO2 Cesar Nano recounted that they witnessed SPO1 Limin recover the two (2) small plastic sachets containing white crystalline substance from the accused at the locus criminis after he was bodily searched. Thereafter, SPO1 Limin marked the specimens he confiscated with his initials RL1 and RL2.[45]

3.)

PO2 Galacgac and SPO1 Limin testified that after marking the sachets, they turned the same over to their investigator, PO3 Diosdado Rocero.[46] PO3 Diosdado Rocero confirmed the receipt of the marked sachets in his stipulated testimony, adding that he also prepared a request for confirmatory examination.[47]

4.)

In turn, PNP forensic chemist P/Insp. Leonard Arban acknowledged in his testimony the receipt of the sachets along with the request for a confirmatory examination. He also stated that the test he conducted on the specimens yielded a positive result for methamphetamine hydrochloride, for which he issued a corresponding laboratory report. Finally, he attested that he turned over the specimen to the Evidence Custodian, which kept custody of the shabu until it was retrieved for purposes of the trial. [48]

Verily, the prosecution was able to account for each and every link in the chain of custody over the shabu, from the moment it was retrieved during the buy-bust operation up to the time it was presented before the court as proof of the corpus delicti. All told, the probability that the sachets taken from the appellant could have been switched for another is nil. The existence of the shabu sold and possessed by the appellant was, therefore, proven beyond reasonable doubt.

WHEREFORE, the instant appeal is DENIED. Accordingly, the decision of the Court of Appeals dated 3 July 2008 in CA-G.R. CR No. 02828 is hereby AFFIRMED. Costs against the appellant.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Abad, JJ., concur.

[1] Via a notice of appeal, pursuant to Section 13(c) of Rule 122 of the Rules of Court.

[2] Penned by Associate Justice Jose Catral Mendoza (now an Associate Justice of the Supreme Court) with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag concurring. Rollo, pp. 2-21.

[3] Id. at 20.

[4] CA rollo, p. 79.

[5] Id.

[6] Id.

[7] Id.

[8] Id. at 80.

[9] Id.

[10] Id.

[11] Id.

[12] Rollo, p. 18.

[13] CA rollo, p. 80.

[14] Rollo, p. 18.

[15] CA rollo, p. 81

[16] Id.

[17] Section 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.

[18] Section 11. Possession of Dangerous Drugs. - x x x:

(1) x x x;

(2) x x x;

(3) x x x;

(4) x x x;

(5) x x x;

(6) x x x;

(7) x x x; and

(8) x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x;

(2) x x x; and

(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 x x x methamphetamine hydrochloride or "shabu" x x x. (emphasis supplied.)

[19] CA rollo, pp. 10-13.

[20] Id. at 22-23.

[21] Id. at 22-29.

[22] Id. at 50.

[23] Id.

[24] Id.

[25] Id.

[26] Id. at 51.

[27] Id. at 52.

[28] Id. at 53.

[29] Id. at 54.

[30] Id.

[31] *People v. Guira*, G.R. No. 186497, 17 September 2009.

[32] *People v. Beruega*, 430 Phil. 487, 500-501 (2002).

[33] *People v. Bongalon*, 425 Phil. 96, 116 (2002).

[34] Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. - The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves. x x x.

x x x x

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters. (emphasis supplied)

[35] Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) x x x; and

(c) x x x.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (Emphasis supplied.)

[36] Even the Implementing Rules and Regulation (IRR) of Republic Act No. 9165 does not make PDEA's participation a mandatory requirement before the other law enforcement agencies may conduct buy-bust operations. Section 86(a) of the said IRR provides:

(a) Relationship/Coordination between PDEA and Other Agencies - The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; Provided, further, that, in any case said agencies shall inform the PDEA of their anti-drug operations within twenty-four hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; Provided furthermore, that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. (Emphasis and underscoring supplied)

[37] 336 Phil. 933, 941 (1997).

[38] G.R. No. 115430, 23 November 1995, 250 SCRA 268, 278-279.

[39] G.R. No. 110357, 17 August 1994, 235 SCRA 455, 463.

[40] Republic Act No. 9165 took effect on 7 June 2002.

[41] *People v. Pringas*, G.R. No. 175928, 31 August 2007, 531 SCRA 828, 842-843; *People v. Teodoro*, G.R. No. 185164, June 22, 2009; *People of the Philippines v. Capco*, G.R. No. 183088, 17 September 2009; *People v. Alberto*, G.R. No. 179717, 5 February 2010.

[42] *Id.*

[43] 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. (emphasis supplied.)

[44] *Rollo*, p. 18.

[45] *Id.*

[46] *Id.*

[47] *CA rollo*, p. 23.

[48] *Rollo*, p. 5.

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