

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUSA FIGUEROA Y CORONADO, ACCUSED-APPELLANT.

G.R. No. 186141. April 11, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. C.R.-H.C. No. 02348 dated October 25, 2007 affirming the conviction of accused-appellant Jesusa Figueroa in Criminal Case No. 04-2433 for violation of Section 26, Article II of Republic Act No. 9165.

There were originally two Informations filed against accused-appellant:

Criminal Case No. 04-2432

That on or about the 2nd day of July 2004, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have in her possession, direct custody and control a total weight of nine point fourty [sic] two (9.42) grams of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug, in violation of the above-cited law.[2]

Criminal Case No. 04-2433

That on or about the 2nd day of July 2004, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously attempt to sell, give away, distribute and deliver four point sixty (4.60) grams of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug, by then and there agreeing to sell and deliver the said dangerous drug to the proposed buyer PO3 JOSEFINO CALLORA, thereby commencing the commission of the crime of sale of dangerous drugs, but which nevertheless failed to consummate the said sale by reason of causes other than her own spontaneous desistance, that is she got frightened by the presence of police officers at the scene of the crime.[3]

Accused-appellant pleaded not guilty to the crimes charged. Thereafter, the Regional Trial Court (RTC), Branch 64 of Makati City proceeded with the trial of the aforementioned charges. The versions of the prosecution and the defense of what transpired on July 2, 2004, as concisely summarized by the Court of Appeals, were as follows:

Version of the Prosecution

In the evening of June 20, 2004, an informant came to the office of P/Supt. Nelson T. Yabut (P/SUPT. YABUT), Chief of the Special Operation Unit 1 of PNP Anti-Illegal Drugs Special Operations Task Force (PNP AIDSOTF) at Camp Crame, Quezon City and informed him of the drug pushing activities of a certain “Baby,” later identified as accused-appellant FIGUEROA. P/SUPT. YABUT instructed PS/Insp. Pepito Garcia (PS/INSP. GARCIA), PO3 Josefino Callora (PO3 CALLORA) and PO2 Rogie Pinili (PO2 PINILI) to conduct discreet surveillance operation to verify the information.

On June 23, 2004, at about 8:00 p.m., PO3 CALLORA, together with the informant, met with accused-appellant FIGUEROA at the parking area of SM Bicutan in Taguig, Metro Manila. The informant introduced PO3 CALLORA to accused-appellant FIGUEROA as the one who was willing to regularly buy shabu from her should her sample be of good quality. Accused-appellant FIGUEROA, however, told them that she had no stock of shabu at that time, but she promised to inform PO3 CALLORA through the informant once she already has supply of good quality shabu.

In the morning of the following day, the Special Operation Unit 1 of the PNP AIDSOTF requested the PNP Crime Laboratory to dust with ultra-violet powder the two (2) pieces of P500.00 bills with serial numbers FG403794 and MY883243 to be used in the planned buy-bust operation against accused-appellant FIGUEROA.

On July 2, 2004, at about 12:00 noon, the informant called the Desk Officer of the Special Operation Unit 1 of PNP AIDSOTF, who in turn relayed to P/SUPT. YABUT that accused-appellant FIGUEROA had informed him that she already had a stock of good quality shabu and asked how much shabu would be bought by PO3 CALLORA. P/SUPT. YABUT instructed the informant to tell accused-appellant FIGUEROA that P10,000.00 worth of shabu would be bought from her. Later on the same day, the informant made another telephone call and relayed the information that accused-appellant FIGUEROA had agreed to deliver the shabu worth [P10,000.00] in front of the 7-Eleven Convenience Store at the corner of M. Almeda and M. Conception Avenues, San Joaquin, Pasig City at about 4:00 p.m. of that day.

A team, composed of P/SUPT. YABUT, PS/INSP. GARCIA, PO2 PINILI and PO3 CALLORA, was then formed to conduct the buy-bust operation, with PO3 CALLORA designated as the poseur-buyer. The buy-bust money was prepared. The genuine two (2) pieces of P500.00 bills were placed on top of boodle money to make them appear as P10,000.00.

At about 4:00 p.m. of July 2, 2004, the team proceeded to the agreed meeting place. PO3 CALLORA arrived in the vicinity of 7-Eleven on board a car driven by PS/INSP. GARCIA and met with the informant. PO3 CALLORA and the informant waited for accused-appellant FIGUEROA, who after a few minutes, arrived driving a Toyota Revo with Plate No. XPN 433. Seeing the two, accused-appellant FIGUEROA waived at them and drove towards them. Stopping near them, accused-appellant FIGUEROA rolled down the window of her car and asked where the money was. On the other hand, PO3 CALLORA asked for the shabu. At that juncture, accused-appellant FIGUEROA opened a Chowking plastic bag and showed a plastic sachet containing white crystalline substance. When PO3 CALLORA was about to hand over the buy-bust money to accused-appellant FIGUEROA, the latter sensed the presence of police officers in the area, so she sped away towards the direction of Kalayaan Avenue and C-5 road. The other occupants of the car were Susan Samson y Figueroa, sister-in-law of the accused, Margie Sampayan y Garbo, Fe Salceda y Resma and Christian Salceda y Resma, a nine[-]year[-]old boy.

PO3 CALLORA immediately boarded the car being driven by PS/INSP. GARCIA and gave chase. PO2 PINILI, who was driving another vehicle, joined the chase.

Accused-appellant FIGUEROA's vehicle was finally blocked at Kalayaan Avenue near the intersection of C-5 road. At that time, PS/INSP. GARCIA saw Christian Salceda y Resma alighted from the backdoor of the Toyota Revo and threw the Chowking plastic bag to the pavement, which was about two steps from the backdoor. PS/INSP. GARCIA picked it up and saw a heat sealed transparent plastic sachet containing white crystalline substance inside. PO3 CALLORA and PO2 PINILI introduced themselves as police officers. The Toyota Revo was checked by PS/INSP. GARCIA and PO2 PINILI, which was witnessed by PO1 Alvarado and PO3 Basa of the Makati Police PCP No. 7, MMDA Traffic Enforcers Gonzales and Salvador and a reporter/press photographer of Manila Star named Eduardo Rosales. Retrieved under the floor matting of the Toyota Revo were two heat sealed transparent plastic sachets of undetermined quantity of white crystalline substance.

Accused-appellant FIGUEROA was informed of her violation and was apprised of her constitutional rights. She was brought to the office of Special Operation Unit 1 of PNP AIDSOTF for investigation. The items recovered from the crime scene were brought to the PNP Crime Laboratory, where they were tested positive for Methylamphetamine Hydrochloride.

Version of the Defense

Accused-appellant FIGUEROA denied that she met and transacted with PO3 CALLORA regarding the sale of shabu. She likewise denied knowledge of the plastic sachets of shabu that were recovered under the floor matting of the car she was driving as well as the plastic sachet of shabu inside a Chowking plastic bag found on the pavement of Kalayaan Avenue corner C-5 road.

She alleged that between 1:00 and 2:00 p.m. of July 2, 2004, she was driving a Toyota Revo with Plate No. XPN 433 on her way to the house of her elder brother at Eco Center, Barangay Calsada, Taguig City to get their mother's allowance. Their mother stays with her at her residence at Better Living Subdivision, Parañaque City. With her as passengers were Susan Samson y Figueroa, Fe Salceda y Resma, and the latter's nine[-]year[-]old son, Christian Salceda y Resma, and Margie Sampayan y Garbo, accused-appellant FIGUEROA's laundrywoman. They stayed at her brother's house for about twenty (20) minutes.

From her brother's house, she proceeded to Tejeron, Sta. Ana, Manila to bring Susan Samson y Figueroa to the latter's house. The other passengers remained in the car. Accused-appellant FIGUEROA then continued driving, taking the C-5-Kalayaan Avenue route. When she was about to proceed after the traffic light turned green at the junction of Kalayaan Avenue, a navy blue car blocked her path. P/SUPT YABUT alighted from said car and was shouting that he was a police officer while approaching accused-appellant FIGUEROA. He ordered accused-appellant FIGUEROA to roll down her car window. Accused then asked, "Bakit po mister?" P/SUPT YABUT reiterated that he was a police officer and ordered accused-appellant FIGUEROA to get down from her car as they would be searching the same.

Accused-appellant FIGUEROA and her companions were made to stay at the sidewalk for about thirty (30) minutes. They were asked to turn their backs and were told not to do anything while the search was going on. P/SUPT. YABUT later said, "Aantayin muna natin sila." For another thirty minutes, they stayed at the sidewalk until other persons referred to by P/SUPT. YABUT arrived at the scene.

After the search, accused-appellant FIGUEROA and her companions were ordered to board the same Toyota Revo, which was driven to Camp Crame by one of the persons who arrived at the scene.[4]

On May 18, 2006, the RTC rendered its Decision[5] acquitting accused-appellant in Criminal Case No. 04-2432, but convicting her in Criminal Case No. 04-2433. The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing[,] judgment is rendered as follows:

1. In Criminal Case No. 04-2432[,] the accused Jesusa Figueroa y Coronado is ACQUITTED of the charge for violation of Sec. 11, Art. II RA No. 9165 for lack of evidence. The two plastic sachets of containing Methylamphetamine Hydrochloride or shabu with a combined weight of 9.42 grams are forfeited in favor of the Government. Let the custody thereof be turned over to the Philippine Drug Enforcement Agency (PDEA) for its appropriate disposition.

2. In Criminal Case No. 04-2433, the accused Jesusa Figueroa y Coronado alias "Baby" is found guilty beyond reasonable doubt of the offense of violation of Sec. 26, Art. II, RA 9165 and is sentenced to suffer life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00).

Let the one plastic bag labeled Chowking containing one (1) heat sealed plastic sachet with 4.60 grams of Methylamphetamine Hydrochloride be turned over to the PDEA for its appropriate disposition.

The period during which the accused is detained at the City Jail of Makati shall be considered in her favor pursuant to existing rules.[6]

Alleging that the foregoing decision was contrary to law and unsupported by the evidentiary records, accused-appellant sought a review of the same with this Court through a Notice of Appeal, which the RTC gave due course. However, in accordance with our ruling in *People v. Mateo*,[7] we remanded the case to the Court of Appeals for intermediate review.

On October 25, 2007, the Court of Appeals issued the assailed Decision affirming the conviction of accused-appellant. The dispositive portion of the Decision states:

WHEREFORE, premises considered, appeal is hereby DISMISSED and the assailed Decision, dated May 18, 2006, in Criminal Case Nos. 04-2432 and 04-2433, of the Regional Trial Court of Makati City, Branch 64, is hereby AFFIRMED.

Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.[8]

Accused-appellant appealed to this Court anew. Accused-appellant filed a Supplemental Brief,[9] wherein she highlighted the fact that the Court of Appeals did not discuss the first error assigned in her Brief with said appellate court. In the aforementioned Brief[10] with the Court of Appeals, accused-appellant submitted the following assignment of errors:

First

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE ALLEGED BUY-BUST OPERATION CONDUCTED BY THE SPECIAL OPERATION UNIT 1 OF THE PHILIPPINE NATIONAL POLICE ANTI-ILLEGAL DRUGS SPECIAL OPERATIONS TASK FORCE WAS IRREGULAR BECAUSE OF LACK OF PRIOR COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA).

Second

THE TRIAL COURT SERIOUSLY ERRED IN HOLDING THAT THERE WAS A PRIOR AGREEMENT BETWEEN PO3 JOSEFINO CALLORA AND ACCUSED REGARDING THE ALLEGED SALE OF SHABU.

Third

THE TRIAL COURT SERIOUSLY ERRED IN GIVING WEIGHT AND CREDENCE TO THE CONFLICTING AND CONTRADICTORY TESTIMONIES OF PO3 JOSEFINO CALLORA AND P/INSP. PEPITO GARCIA THAT HAVE DIRECT BEARING ON THE ELEMENTS OF THE OFFENSE CHARGED.

Fourth

THE TRIAL COURT SERIOUSLY ERRED IN FINDING ACCUSED GUILTY OF THE OFFENSE OF ATTEMPT TO SELL SHABU AS PROVIDED UNDER SECTION 26, ART. II OF R.A. 9165.[11]

Lack of Prior Coordination with the PDEA

In both the Appellant's Brief with the Court of Appeals and accused-appellant's Supplemental Brief before this Court, the main defense proffered by accused-appellant was the alleged violation of Section 86[12] of Republic

Act No. 9165, requiring that the Philippine National Police (PNP) maintain close coordination with the Philippine Drug Enforcement Agency (PDEA) on all drug related matters.

Accused-appellant's contention is unmeritorious. It is settled that Section 86 of Republic Act No. 9165 does not invalidate operations on account of the the law enforcers' failure to maintain close coordination with the PDEA. Thus, in *People v. Berdadero*,^[13] the Court noted that Section 86, as well as the Internal Rules and Regulations implementing the same, is silent as to the consequences of the failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation. This Court consequently held that "this silence [cannot] be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible."^[14] The same conclusion was reached by this Court in *People v. Roa*,^[15] *People v. Mantalaba*^[16] and *People v. Sabadlab*.^[17]

Alleged lack of prior agreement between accused-appellant and PO3 Callora.

Accused-appellant argues that the alleged sale transaction borne out by the evidence of the prosecution was not between Police Officer 3 (PO3) Josefino Callora and accused-appellant Figueroa, but was instead between the latter and the unnamed informant. Accused-appellant concludes that the testimony of PO3 Callora regarding the alleged sale transaction is purely hearsay, and therefore inadmissible and without probative value, as it was the informant which is competent to testify on the alleged agreement to sell drugs.^[18]

We disagree. Under the doctrine of independently relevant statements, we have held that the hearsay rule does not apply where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial.^[19] In the case at bar, the testimony of PO3 Callora as regards the conversations between the informant and accused-appellant is admissible insofar as it established that said information led the police officers to prepare for and proceed with the buy-bust operation. The conversation between the informant and the accused-appellant was not necessary to prove the attempted sale of shabu, as said attempt to sell was already clear from accused-appellant's actuations on July 2, 2004, which were all within the personal knowledge of PO3 Callora and testified to by him, to wit: (1) when accused-appellant arrived at the scene, she waived at the informant and PO3 Callora and approached them while driving her Toyota Revo;^[20] (2) upon reaching PO3 Callora and the informant, accused-appellant asked PO3 Callora where the money was, while the latter asked for the shabu;^[21] (3) accused-appellant showed PO3 Callora a Chowking plastic bag containing a sachet of white crystalline substance;^[22] (4) when PO3 Callora was about to give her the money, accused-appellant sensed that there were police officers around the area, and drove away;^[23] (5) PO3 Callora and the informant boarded the car of PS/Insp. Garcia, and they chased her to C-5 Road corner Kalayaan Avenue.^[24]

Under the Revised Penal Code, there is an attempt to commit a crime when the offender commences its commission directly by overt acts but does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.^[25] This definition has essentially been adopted by this Court in interpreting Section 26 of Republic Act No. 9165. Thus in *People v. Laylo*,^[26] we affirmed the conviction of the appellant therein and held that the attempt to sell shabu was shown by the overt act of appellant therein of showing the substance to the poseur-buyer. In said case, the sale was aborted when the police officers identified themselves and placed appellant under arrest.

The identity of the white crystalline substance was furthermore established by the testimony of PS/Insp. Garcia, who likewise testified as to the following matters based on his own personal knowledge: (1) after the chase, PS/Insp. Garcia saw a boy (later identified as Christian Salceda) alight from the vehicle and threw a Chowking plastic bag two to three meters from the vehicle;^[27] (2) PS/Insp. Garcia picked up the Chowking plastic bag from the sidewalk and found a sachet of shabu inside the same;^[28] (3) PS/Insp. Garcia later proceeded with the other

police officers to their office, where they requested for a laboratory examination of the white crystalline substance;[29] PS/Insp. Garcia identified the Chowking plastic bag and the sachet containing white crystalline substance in court. He identified the mark “PEG-1” on the sachet as his initial and testified that he was the one who marked the same.[30]

The prosecution presented as its Exhibit “B” an Initial Laboratory Report. The report states that the heat-sealed transparent plastic bag with the marking “PEG-1” inside a Chowking plastic bag was found to contain 4.60 grams of white crystalline substance. The latter specimen was found positive for methylamphetamine hydrochloride.[31]

In light of the foregoing testimonial and documentary evidence, which were found credible by both the trial court and the Court of Appeals, the crime of attempt to sell a dangerous drug under Section 26 of Republic Act No. 9165 was sufficiently proven beyond reasonable doubt.

As for the purported inconsistencies in the testimonies of the prosecution witnesses, we agree with the pronouncement of the Court of Appeals that discrepancies “referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair [the witnesses’] credibility”[32] nor do they overcome the presumption that the arresting officers have regularly performed their official duties.[33]

In sum, this Court finds no cogent reason to disturb the rulings of the lower courts in the instant case.

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02348 dated October 25, 2007 affirming the conviction of accused-appellant Jesusa Figueroa in Criminal Case No. 04-2433 for violation of Section 26, Article II of Republic Act No. 9165 is hereby AFFIRMED.

SO ORDERED.

Bersamin, Del Castillo, Villarama, Jr., and Reyes,[*] JJ., concur.

[*] Per Raffle dated April 11, 2012.

[1] Rollo, pp. 2-18; penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring.

[2] Records, p. 3.

[3] Id. at 4.

[4] Rollo, pp. 6-10.

[5] Records, pp. 183-197.

[6] Id. at 33-34.

[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[8] Rollo, p. 17.

[9] Id. at 30-35.

[10] CA rollo, p. 44.

[11] Id. at 48-49.

[12] 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: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

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)

[13] G.R. No. 179710, June 29, 2010, 622 SCRA 196.

[14] *Id.* at 207.

[15] G.R. No. 186134, May 6, 2010, 620 SCRA 359.

[16] G.R. No. 186227, July 20, 2011.

[17] G.R. No. 186392, January 18, 2012.

[18] CA rollo, p. 51.

[19] *People v. Malibiran*, G.R. No. 178301, April 24, 2009, 586 SCRA 693.

[20] TSN, March 8, 2005, pp. 25-26.

[21] *Id.* at 26.

[22] *Id.* at 26.

[23] *Id.* at 27.

[24] *Id.* at 28-29.

[25] Revised Penal Code, Article 6.

[26] G.R. No. 192235, July 6, 2011.

[27] TSN, January 5, 2005, pp. 20-22.

[28] *Id.* at 21-23.

[29] *Id.* at 25.

[30] *Id.* at 22-25.

[31] Records, p. 147.

[32] Rollo, p. 3.

[33] Id.

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