

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MALIK MANALAO Y ALAUYA, ACCUSED-APPELLANT.

G.R. No. 187496. February 06, 2013

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal[1] of the November 27, 2008 Decision[2] of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR.-H.C. No. 00173-MIN, which affirmed the Regional Trial Court's (RTC) July 26, 2005 Consolidated Decision[3] in Criminal Case Nos. 056-07-2004 and 057-07-2004, wherein accused-appellant MALIK MANALAO y ALAUYA (Manalao) was found guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165.

In two separate Informations filed before Branch 7, RTC of Lanao del Norte, Manalao was charged with violating Sections 5 and 11, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The pertinent portions of the Informations, both dated June 15, 2004, are hereby quoted as follows:

Criminal Case No. 056-07-2004:

That on or about the 15[th] day of June 2004, Purok 6, Barangay Poblacion, Tubod, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law did, then and there willfully and feloniously sell and deliver one (1) Deck of Methamphetamine Hydrochloride or SHABU weighing more or less 0.1 gram to a Police Poseur/Buyer in the amount of P200.00, said accused knowing the same to be Methamphetamine Hydrochloride or SHABU, a dangerous [drug].[4]

Criminal Case No. 057-07-2004:

That on or about the 15[th] day of June 2004, Purok 6, Barangay Poblacion, Tubod, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law did, then and there willfully and feloniously have in his possession and control Three (3) Decks of Methamphetamine Hydrochloride or SHABU weighing more or less 0.4 [grams], said accused knowing the same to be Methamphetamine Hydrochloride or SHABU, a dangerous [drug].[5]

Manalao pleaded not guilty to both charges upon his arraignment[6] on August 9, 2004.

During the pre-trial conference, the parties agreed on a joint trial of the cases as filed.[7]

During the trial, the prosecution put on the witness stand Senior Police Inspector Mary Leocy Jabonillo Mag-abo, the Forensic Chemist who conducted the qualitative examination of the items seized from Manalao;[8] and Police Officer 1 (PO1) Michael Solarta, a detached member of the Philippine Drug Enforcement Agency (PDEA) assigned with the Provincial Intelligence and Investigation Division of the Philippine National Police (PNP) in Pigcarangan, Tubod, Lanao del Norte, who was part of the team that conducted the buy-bust operation against Manalao.[9]

PO1 Solarta said that their office had received reports of Manalao's drug pushing and using activities in the area of Poblacion, Tubod, Lanao del Norte. Thus, upon instructions of their Officer-in-Charge,[10] Police Inspector (P/Insp.) Renato Salazar, they prepared to conduct an entrapment or buy-bust operation against Manalao. PO1 Solarta narrated that on June 15, 2004, the buy-bust operation team composed of P/Insp. Salazar, Senior Police Officer 3 (SPO3) Expedito Daulong, and himself, prepared two P100.00 bills as drug money by having them signed by P/Insp. Salazar and then photocopying them. At around seven in the evening, the team, together with a civilian agent who was to act as the poseur-buyer, proceeded to the carenderia of Josephine Tamarong, located along the national highway, Poblacion, Tubod, Lanao del Norte. At the carenderia, the team pretended to be customers and had some coffee while waiting for Manalao, who arrived at around 8:00 p.m. PO1 Solarta, who claimed to have been only around three to four meters away from the scene, testified that when Manalao arrived, the civilian agent immediately established contact with him. Following a brief conversation, the civilian agent handed Manalao the buy-bust money and in turn, Manalao "got something from his pocket, opened it, and gave something" to the civilian agent. After the "give and take" transaction, the civilian agent approached the buy-bust team, who without delay arrested Manalao. During the arrest, the buy-bust team introduced themselves to Manalao and bodily searched him, from which three decks of shabu and money, including the buy-bust money of two pieces of P100.00 bills, were recovered. Manalao, together with the items seized from him, were brought to the police station. Thereafter, P/Insp. Salazar marked the seized items in front of the other apprehending officers and Manalao. PO1 Solarta, aside from narrating his account of the entrapment operation, also identified the certificate of inventory of the items seized from Manalao, which he enumerated to be one deck of shabu, three decks of shabu, two P100.00 bills, and one small, black and white, lady's purse. He likewise identified the shabu presented in court to be the same one recovered from Manalao and examined by Forensic Chemist Mag-abo.[11]

For the defense, Manalao testified that it was on June 9, 2004 and not June 15, 2004 that he was arrested. He claimed that in the evening of June 9, 2004, he went to take his supper at a restaurant at Purok 6, Tubod, Lanao del Norte. Before he could enter the restaurant, his friend, Paquito Pido, along with two more companions, arrived. His nephew likewise arrived. Manalao said that his nephew was asking for money, thus he requested Paquito to have his P500.00 bill changed into smaller bills. Paquito did so, but in return, he asked Manalao to hand a wrapped item to a certain Mr. Posadas, who at that time was shouting from a distance. Manalao obliged Paquito, who by then had already left with his companions towards Poblacion. Five minutes later, Manalao saw P/Insp. Salazar's vehicle approaching, who after passing by him, alighted from the vehicle together with PO1 Solarta. Thereafter, Manalao said that he was cuffed, brought to the police station, and then frisked. Manalao then admitted that more than P600.00 was taken from him, including the P500.00 Paquito had changed into P100.00 bills.[12]

On July 26, 2005, the RTC convicted Manalao in a Consolidated Decision on Criminal Case Nos. 056-07-0224 and 057-07-2004, the dispositive portion of which reads:

WHEREFORE, the Court finds accused MALIK MANALAO y ALAUYA guilty beyond reasonable doubt of the crime in violation of Section 5, Article II, of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002, and sentences him to a penalty of Life Imprisonment and to pay a fine of P500,000.00, without subsidiary imprisonment in case of insolvency. And accused is also found guilty beyond reasonable doubt [of] having violated Section 11, Article II, of the same Act, and imposes upon him the indeterminate penalty of imprisonment of Six (6) Years and One (1) Day of Prision Mayor as minimum to Twelve (12) Years and One (1) Day of Reclusion Temporal as maximum, and as fine of P300,000.00, without subsidiary imprisonment in case of insolvency. If in case of possible commutation of sentences or not, he is entitled to the benefits of Article 29 of the Revised Penal Code, for his preventive imprisonment that he suffered.

The subject Methamphetamine Hydrochloride and/or paraphernalia are ordered confiscated in favor of the government and to be turn[ed] over to the Dangerous Drugs Board within 15 days from date hereof.

The Warden of the BJMP, Tubod, Lanao del Norte, is ordered to bring and deliver the living body of accused to the Bureau of Corrections or National Penitentiary, Muntinlupa City, Metro Manila, within 15 days from the date of the promulgation of decision.[13]

Aggrieved, Manalao appealed[14] to the Court of Appeals, arguing that the RTC failed to prove his guilt beyond reasonable doubt. The Court of Appeals was not persuaded, and on November 27, 2008, it affirmed in toto[15] the RTC in its Decision in CA-G.R. CR.-H.C. No. 00173-MIN.

Issue

Manalao is now before this Court, assigning[16] the same lone error he raised before the Court of Appeals, to wit:

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[17]

In support of his assigned error, Manalao posits the following arguments:

- The sale of the drugs was not established;[18] and
- The chain of custody of evidence of the drugs was not established.[19]

Manalao asseverates that the prosecution failed to establish that the sale of the dangerous drug ever took place since none of the prosecution witnesses saw the alleged transaction between him and the civilian agent. Manalao contends that the civilian agent who posed as the buyer should have been presented in court because PO1 Solarta, the only one who testified to witnessing the buying and selling of the shabu, did not even see what the civilian agent supposedly bought from him as PO1 Solarta could only see Manalao giving “something” to the civilian agent, as he said so during his testimony.[20]

Manalao also claims that the buy-bust team did not follow the proper procedure in the custody and control of seized drugs as they failed to mark, make an inventory, and photograph the confiscated drugs immediately and at the place of the incident.[21]

This Court’s Ruling

This Court has reviewed with scrutiny the records of the case and has found no reason to overturn the courts a quo.

Manalao was charged and convicted for the sale and possession of dangerous drugs in violation of Sections 5 and 11, Article II of Republic Act No. 9165 or the Dangerous Drugs Act of 2002. The law provides:

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.

x x x x

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:

(1)

10 grams or more of opium;

(2)

10 grams or more of morphine;

(3)

10 grams or more of heroin;

(4)

10 grams or more of cocaine or cocaine hydrochloride;

(5)

50 grams or more of methamphetamine hydrochloride or "shabu";

(6)

10 grams or more of marijuana resin or marijuana resin oil;

(7)

500 grams or more of marijuana; and

(8)

10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (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, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

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

(1)

Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2)

Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred

thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) 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 three hundred (300) grams or more but less than five hundred (500) grams of marijuana; 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 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.

Illegal Sale of Dangerous Drugs

The elements necessary to successfully prosecute an illegal sale of drugs case are:

- (1) [T]he identity of the buyer and the seller, the object, and the consideration; and
- (2) [T]he delivery of the thing sold and the payment therefor.[22] (Citation omitted.)

Simply put, the prosecution must establish that the illegal sale of the dangerous drugs actually took place together with the presentation in court of the corpus delicti or the dangerous drugs seized in evidence.[23]

It is clear from the records that the prosecution was able to establish the above elements.

Manalao was positively identified by PO1 Solarta, who knew him even before the operation, as the one who sold the seized shabu subject of this case to the poseur-buyer. Manalao was caught in flagrante delicto in the entrapment operation conducted by the PNP of Tubod, Lanao del Norte. Moreover, the corpus delicti of the crime was also established with certainty and conclusiveness. Manalao handed to the poseur-buyer one deck of shabu upon his receipt of the P200.00 buy-bust money. In *People v. Legaspi*,^[24] this Court said:

The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction between the entrapping officers and Legaspi. (Citation omitted.)

Manalao’s insistence that the non-presentation of the civilian agent, who posed as the buyer, weakens the prosecution’s case is without merit. In *People v. Berdadero*,^[25] this Court, presented with the exact query, held:

The appellant’s final contention that the failure to present the poseur-buyer is fatal and entitles him to an acquittal, again fails to impress. The non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction. The testimonies of PO3 Balmes and PO2 Villas sufficiently established that the appellant is guilty of selling a dangerous drug. Their referral to the shabu handed by the appellant to the poseur-buyer as “something” merely indicates that at the time of the sale, they could only presume that the specimen sold by the appellant was shabu since they were conducting a buy-bust operation. They still had to submit the specimen to the crime laboratory for testing which later tested positive for shabu. Thus, the fact that the poseur-buyer was not presented does not weaken the evidence for the prosecution. (Citation omitted.)

This Court would also like to emphasize the fact that Manalao himself testified that when the police officers recovered some money from him, P/Insp. Salazar, immediately, without leaving his sight, took out the photocopy

of the buy-bust money and told him to compare it to the two P100.00 bills found on him.²⁶ Manalao admitted, both in his direct and cross-examination, that the serial numbers of the bills obtained from him matched the serial numbers of the bills in the photocopy.²⁷ Moreover, while he claimed that he only had P500.00 with him, with P400.00 meant for his nephew and P100.00 meant for him, he contradicted himself by saying that the police officers recovered more than P600.00 of his money on his person.^[28]

Chain of Custody of Evidence

Paragraph 1, Section 21, Article II of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs, viz:

SEC. 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[.]

The foregoing is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, to wit:

SEC. 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:

(a) The apprehending officer/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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements 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 seizures of and custody over said items[.] (Emphasis supplied.)

A perusal of the law reveals that failure to strictly comply with Section 21 of Republic Act No. 9165 will not render an arrest illegal or the items seized from the accused inadmissible in evidence. What is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused.^{29[]}

In *People v. Llanita and Buar*,^[30] this Court elucidated on the concept of “chain of custody” and, quoting *People v. Kamad*,^[31] enumerated the different links that must be proven to establish it:

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.

In the case of *People v. Kamad*, the Court had the opportunity to enumerate the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. (Citations omitted.)

In the case at bar, the Court finds that the prosecution was able to establish that the integrity and evidentiary value of the confiscated illegal drugs had been maintained. P/Insp. Salazar, who was one of the apprehending officers, marked the seized items in front of Manalao and the other apprehending officers. P/Insp. Salazar, who was also the investigating officer, thereafter signed a request for the laboratory examination of the seized drugs, which was received by Forensic Chemist Mag-abo, together with the items enumerated therein. She then testified in open court on how her examination confirmed that the seized items, which she submitted in court, tested positive for shabu.

Besides, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered or meddled with, the presumptions that the integrity of such evidence had been preserved and that the police officers who handled the seized drugs had discharged their duties properly and with regularity remain.[32] The burden to overcome such presumptions lies on Manalao, and this Court finds that he failed to do so.

Illegal Possession of Dangerous Drugs

When prosecuting an illegal possession of dangerous drugs case, the following elements must be established: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[33]

The prosecution was able to satisfy all the foregoing elements during the joint trial of the cases. The three decks of shabu subject of the case for illegal possession of drugs were validly obtained upon searching Manalao after he was arrested in flagrante delicto for the illegal sale of dangerous drugs. The following section in Rule 126 of the Rules of Court provides:

Section 13. Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

Mere possession of a prohibited drug, without legal authority, is punishable under Republic Act No. 9165.[34] Since Manalao failed to adduce any evidence showing that he had legal authority to possess the seized drugs, then he was correctly charged with its illegal possession.

We have time and again looked upon the defense of denial with disfavor for being easily fabricated. Since

Manalao failed to give this Court anything more than his bare assertions, his defense of denial must necessarily be rejected.[35]

WHEREFORE, premises considered, the Court hereby AFFIRMS the November 27, 2008 Decision of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR.-H.C. No. 00173-MIN.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

[1] Rollo, p. 12.

[2] Id. at 4-11; penned by Associate Justice Edgardo T. Lloren with Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion, concurring.

[3] CA rollo, pp. 49-62; penned by Presiding Judge Alan L. Flores.

[4] Records (Crim. Case No. 056-07-2004), p. 1.

[5] Records (Crim. Case No. 057-07-2004), p. 1.

[6] Records (Crim. Case No. 056-07-2004), p. 15 and Records (Crim. Case No. 057-07-2004), p. 15.

[7] Id. at 18-19.

[8] TSN, October 4, 2004.

[9] TSN, December 14, 2004, pp. 4-5.

[10] Records (Crim. Case No. 056-07-2004), p. 3.

[11] TSN, December 14, 2004, pp. 4-14.

[12] TSN, March 28, 2005, pp. 3-8.

[13] CA rollo, p. 61.

[14] Records (Crim. Case No. 056-07-2004), p. 72 and Records (Crim. Case No. 057-07-2004), p. 73.

[15] Rollo, p. 11.

[16] Id. at 31-34.

[17] CA rollo, p. 39.

[18] Id. at 40.

[19] Id. at 43.

[20] Id. at 40-41.

[21] Id. at 43-44.

[22] *People v. Tiu*, 469 Phil. 163, 173 (2004).

[23] *People v. Berdadero*, G.R. No. 179710, June 29, 2010, 622 SCRA 196, 202.

[24] G.R. No. 173485, November 23, 2011, 661 SCRA 171, 185.

[25] Supra note 23 at 208-209.

[26] TSN, March 28, 2005, p. 8.

[27] Id. at 8-9.

[28] Id. at 8.

[29] People v. De Leon, G.R. No. 186471, January 25, 2010, 611 SCRA 118, 133.

[30] G.R. No. 189817, October 3, 2012.

[31] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

[32] People v. Castro, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 406.

[33] People v. Sembrano, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 342-343.

[34] People v. Mariacos, G.R. No. 188611, June 21, 2010, 621 SCRA 327, 344-345.

[35] People v. Mendoza, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 374.

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