

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JALIL LAMAMA, RESPONDENT.

G.R. No. 188313. August 23, 2017

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Accused Jalil Lamama[1] (Lamama) appeals the decision promulgated on September 24, 2008,[2] whereby the Court of Appeals (CA) affirmed his conviction for a violation of Section 5, Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) handed down on December 11, 2006 by the Regional Trial Court (RTC), Branch 48, in Urdaneta City, and for which he was sentenced to life imprisonment and to pay a fine of P500,000.00.[3]

Antecedents

On October 30, 2004, the Office of the City Prosecutor of Urdaneta City, Pangasinan charged Lamama with illegal sale of methamphetamine hydrochloride or shabu as defined and punished under Section 5 of the Comprehensive Dangerous Drugs Act of 2002. The information filed in the RTC alleged:

That on or about October 29, 2004 at Brgy. Pinmaludpod, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously sell three (3) plastic bags containing Methamphetamine Hydrochloride (SHABU), weighing 102.5 grams.

CONTRARY to Republic Act 9165, otherwise known as "Comprehensive Dangerous Drugs Act of 2002." [4]

The evidence of the Prosecution follows.

In the morning of October 29, 2004, an informant told PO2 Marlo M. Velasquez (PO2 Velasquez) and PO1 Danny Ventura (PO1 Ventura) of the Philippine Drug Enforcement Agency (PDEA), Dagupan City Station, that Lamama was selling shabu in Barangay Pinmaludpod, Urdaneta City, Pangasinan. The informant confided that he used to be a drug peddler, and that Lamama was his supplier. The officers reported the information to Chief Insp. Christopher N. Abrahano, their superior, who tasked them to conduct a "casing surveillance" together with the informant. Thereafter, Chief Insp. Abrahano organized a buy-bust operation to be conducted in the area where the "casing surveillance" was to be conducted. PO2 Velasquez was designated as the poseur-buyer, while others would serve as back-up and arresting officers. The buy-bust money consisted of a marked genuine P1,000.00 bill and a thick wad of paper cut out to the size of real bills.

At past 12:00 in the afternoon, the informant contacted Lamama by cellphone to arrange a drug deal for 100 grams of shabu.[5]

Upon arriving at the designated place at about 3:20 in the afternoon, the buy-bust team and the informant found Lamama sitting on a Honda Wave motorcycle. PO2 Velasquez and the informant approached Lamama while the other officers took distant positions. The informant introduced PO2 Velasquez to Lamama as the buyer of shabu.

PO2 Velasquez told Lamama that he wanted to buy shabu "if the price is right." Lamama replied that he had 100 grams of shabu costing P150,000.00. PO2 Velasquez explained that he only had P100,000.00 with him; hence, Lamama agreed to sell the 100 grams of shabu to PO2 Velasquez for P100,000.00 after the latter promised to pay the balance of P50,000.00 within two days. Thereupon, Lamama opened the tool box of his motorcycle, took out three plastic sachets containing white crystalline granules, and gave the sachets to PO2 Velasquez. In turn, the latter handed the buy-bust money to Lamama. Upon giving the pre-arranged signal to his fellow officers, PO2 Velasquez immediately introduced himself to Lamama as a PDEA agent. The other officers rushed forward and arrested Lamama.

Subsequently, the buy-bust team brought Lamama to the PDEA Station in Dagupan City where he was booked and investigated. The seized items were then marked and inventoried in detail.[6] Chief Insp. Abrahano signed the written request for laboratory examination by the PNP Crime Laboratory in Urdaneta City of the contents of the seized three plastic sachets.[7]

In her chemistry report dated October 30, 2004, Forensic Chemist Emelda Besarra-Roderos confirmed that the three plastic sachets contained shabu with an aggregate weight of 102.5 grams.[8]

On the other hand, the evidence of the Defense was as follows.

A certain Bulldog Vargas (Vargas) promised to reward Lamama with a commission if the latter would assist in finding a drug supplier. On October 29, 2004, Vargas told Lamama to proceed to a house in Barangay Pinmaludpod where the latter would be introduced to a drug buyer. Although Lamama had nothing to sell, he went to said house. Upon entering the house, he found three plastic sachets of shabu on top of a table. Thereafter, several PDEA agents surrounded and arrested him. They brought him with them to the PDEA Station.[9]

On December 11, 2006, the RTC convicted Lamama as charged, its judgment disposing thusly:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Sec. 5 of Republic Act 9165 and the Court hereby sentences him to suffer a penalty of Life Imprisonment and shall pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The illegal drugs presented as evidence in Court marked as Exhibits "A-1, A-2 and A-3" which were remarked as Exhibit "N" and submarkings, Exhibit "O" and submarkings, and Exhibit "P" and submarkings are hereby forfeited in favor of the government and shall be forwarded to the office of PDEA for proper disposition pursuant to Par.7, Sec. 21 of R.A. 9165.

The period of imprisonment of which herein accused has undergone shall be credited in the service of the term of his imprisonment.[10]

On appeal, the CA affirmed the RTC's judgment.[11]

Hence, this appeal, in which Lamama asserts that the RTC and the CA erred in believing the testimony of PO2 Velasquez, the poseur-buyer, to the effect that the informant had been a drug dealer, and that Lamama had been his supplier; that such testimony was incredible and contrary to human experience because no informant who was a former drug dealer would dare approach the police authorities to disclose his own past drug activities and the activities of his supplier; that the Prosecution did not present the informant to confirm such testimony; that his guilt was not proved beyond reasonable doubt because: (1) the alleged buy-bust money had not been dusted with ultra-violet powder, thereby negating the conduct of a buy-bust operation and the consummation of the sale; (2) no picture of him with the seized shabu was taken immediately after his arrest; (3) no physical inventory of the seized shabu was made in his presence or that of his counsel; and (4) the marking of the seized shabu was made

inside the PDEA office, not at the place of seizure.[12]

Ruling of the Court

The appeal has no merit.

The elements of illegal sale of shabu are: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti. The commission of the offense of illegal sale of dangerous drugs, like shabu, requires the consummation of the selling transaction, which occurs at the moment the buyer receives the drug from the seller and the latter receives the payment.[13]

PO2 Velasquez narrated his transaction with Lamama as follows:

PROS. BELTRAN

x x x

Q And after seeing him (Lamama) Mr. Witness, what did you do next?

A The voluntary civilian informant introduced me as a good buyer, Sir

Q What is the response of Aka Jap (Lamama)?

A He said "I have here only 100 grams and it costs Php 150,000.00." and I replied, I have only here Php 100,000.00 (witness demonstrated by showing the portion of the boodle money).

Q Will you demonstrate how did you show to Aka Jap the buy-bust money?

A (Witness demonstrated by showing the envelope with the portion of the envelope with boodle money No. 1,000.)

Q After you have shown that to Aka Jap, what is the response of Aka Jap to your proposal?

A Since my money is only Php 100,000.00, I told him that if he will trust me, my friend, the civilian informant will guarantee the remaining balance will be paid after two (2) days.

Q And what was the response of Aka Jap to you?

A After few minutes of conversation, Aka Jap agreed that I will pay the balance after two (2) days, sir.

Q What happened next?

A Aka Jap opened the tool box of his motor and got from inside three (3) plastic sachets containing shabu, sir.

Q What happened next?

A And the shabu was handed over to me sir.

COURT

Q What is the weight?

A He said I have 100 grams only sir.

PROS. BELTRAN

Q When Aka Jap handed to you those plastic sachets, what did you do with the plastic sachets?

A I looked at the three (3) plastic sachets and examined them carefully and after proof that it is really a shabu, I gave the boodle money then I brought out my handkerchief and I wiped my face with the handkerchief to signal my companions, sir.[14]

PO1 Ventura, one of the back-up/arresting officers, corroborated PO2 Velasquez on relevant points of the latter's testimony.[15] The Prosecution presented the three plastic sachets of shabu, the chemistry report of Chemist Roderos, and the buy-bust money.[16] Per the Chemistry Report by Chemist Roderos, the white crystalline substances contained in the three plastic sachets (having an aggregate weight of 102.5 grams) bought by PO2 Velasquez were found to be positive for methamphetamine hydrochloride or shabu.[17] Thus, the Prosecution sufficiently established that PO2 Velasquez, acting as poseur-buyer, bought shabu from Lamama during the legitimate buy-bust operation.[18]

In contrast, Lamama interposed denial and frame-up. But such defenses were weak and unreliable. To start with, such defenses have often been viewed with disfavor by the Court due to their being easily concocted, and because of their being common defense ploys in criminal prosecutions for violations of anti-drugs laws. Moreover, such defenses must be proved with strong and convincing evidence in order to prosper,[19] which Lamama utterly failed to do. He presented no proof to corroborate his version of the incident. Also, that he had been the victim of a frame-up lacked plausibility considering his admission that he and the members of the buy-bust team had no grudge between them prior to the arrest.[20] This explains why he did not file a complaint for extortion or false incrimination against the members of the buy-bust team.

Lamama impugns the RTC and CA's assessment of the witnesses' credibility. In the absence of glaring errors or gross misapprehension of facts on the part of the CA, however, we accord respect to the findings of the trial court on the credibility of witnesses because of the trial judge's unique advantage of directly observing the demeanor of the witnesses as they testified.[21] With more reason do we accord the respect now that the CA affirmed the factual findings as the appellate court.[22] Hence, in the absence of allegation and proof about PO2 Velasquez harboring any ill motive to falsely testify against the accused, the factual findings and conclusions of the lower courts on the credibility of PO2 Velasquez as a witness should prevail.

Lamama has taken issue against PO2 Velasquez's recollections to the effect that the informant introduced himself to the PDEA agents as having dealt in drugs in the past, and that the accused had been his supplier; and against the non-presentation of the informant as a witness during the trial. The issue is of little consequence in this adjudication. What matters more is that the report of the informant on the illegal drug dealing of the accused was objectively confirmed during the legitimate buy-bust operation. Neither was the presentation of the informant at the trial necessary to a finding of guilt. Informants have generally not been presented in court for security reasons in recognition of the need to hide their identities and to preserve their invaluable service to law enforcement.[23] At any rate, the informant's testimony was not superfluous to the successful prosecution of the case for illegal sale of dangerous drugs due to the availability of the poseur-buyer himself who transacted with the seller. In this case, the informant's testimony would merely corroborate the testimony of the poseur-buyer, PO2 Velasquez, who had earlier testified on the illegal sale.[24]

The dusting of the buy-bust money with ultra-violet powder is not indispensable for the prosecution of illegal sale of shabu.[25] There is no requirement either in Comprehensive Dangerous Drugs Act of 2002 or in its Implementing Rules and Regulations that the buy-bust money to be used in the actual buy-bust operation should be dusted with ultra-violet powder. For sure, the use of dusted buy-bust money is not an element of the offense of illegal dealing in drugs. The function for dusting of the buy-bust money with ultra-violet powder is identification, that is, to determine if there was handling of the buy-bust money by the accused in exchange for the illegal drugs being sold.[26]

In this case, even if the buy-bust money used in the entrapment of Lamama had not been dusted with ultra-violet powder, the Prosecution was still able to positively identify the two P1,000.00 bills (the genuine one being placed on top of the paper cut-outs, and the other, which was fake, being placed at the bottom) recovered from him immediately upon his arrest as the same buy-bust money bearing the initials "MV" of PO2 Velasquez.[27] To recall, PO2 Velasquez had written his initials on the bills before the buy--bust operation, and duly identified them during the trial.[28]

The provisions on the inventory, photograph, and marking of the seized drugs are as follows:

Section 21, paragraph 1, of Comprehensive Dangerous Drugs Act of 2002 provides:

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;

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 states:

(a) 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: 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.

The buy-bust team substantially complied with the requirements of the law on marking, photographing and inventorying of the dangerous drugs seized. The photographs showed Lamama standing beside the marked three sachets of shabu seized from him, and of the barangay officials[29] as well as the ABS-CBN News crew of Dagupan City[30] signing the certificate of inventory in the presence of one another and of the accused.[31] The signed certificate of inventory of the drugs and buy-bust money seized from Lamama was offered by the Prosecution to show compliance with the requirements.[32]

Lamama protests that the buy-bust team did not adhere to the requirements because the marking, photographing and inventorying were done at the PDEA Station instead of at the site of the buy-bust arrest; and that the barangay officials in attendance were not those from the barangay where the buy-bust arrest occurred (Barangay Pinmaludpod) but from the barangay where the PDEA Station was located (Barangay Tebeng).

The protest of Lamama is unwarranted. The law does not expressly require that the marking, photographing and inventorying be always made at the site of the buy-bust operation, and that the elected officials be always from the place where the buy-bust arrest occurred.

It is also relevant to note that Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165

addresses the contingency of the law enforcers being unable to literally meet the requirements - like marking, photographing and inventorying at the place of the arrest and seizure - by providing the saving mechanism 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." As the terms of the saving mechanism state, the justifiable grounds for the non-compliance must be explained during the trial.

There were valid reasons for conducting the marking, photographing and inventorying at the PDEA Station instead of at the place of the arrest. It was PO2 Velasquez who explained that he and the rest of the buy-bust team had to leave the scene immediately after the arrest of Lamama to avoid a commotion or reprisal inasmuch as Lamama, who was a notorious person, could have cohorts around.[33] PO2 Velasquez added that the documents and instruments needed for the marking, photographing and inventorying were inside the PDEA Station.[34]

PO2 Velasquez also clarified that the buy-bust team had sought the assistance of officials of Barangay Tebeng instead of the officials of Barangay Pinmaludpod in order to avoid the buy-bust operation against Lamama from being leaked to the latter's cohorts.[35]

More importantly, the integrity of the drugs seized from the accused as evidence was preserved. A careful consideration of the records indicates that the chain of custody of the drugs was unbroken. Upon the delivery of the drugs and confiscation of the buy-bust money, and the arrest of Lamama, PO2 Velasquez lost no time in bringing the three sachets of shabu to the PDEA Station, where he marked them with his initials ("MV").[36] PO1 Ventura similarly placed his own initials ("DV") on the three sachets of shabu at the PDEA Station.[37] Thereafter, PO2 Velasquez personally delivered the three sachets of shabu and the written request for the laboratory examination (prepared and signed by Chief Insp. Abrahano) to the PNP Crime Laboratory Office in Urdaneta City.[38] SPO2 Calub, the desk officer of the PNP Crime Laboratory Office in Urdaneta City, received the three sachets of shabu and the request-letter from PO2 Velasquez.[39] Forensic Chemist Roderos conducted the laboratory examination of the contents of the three sachets, and found them positive for shabu.[40] When the Prosecution presented the three sachets of shabu in court, PO2 Velasquez identified them as the same sachets he had bought from Lamama during the buy-bust operation, and as the same sachets of shabu he had submitted to the PNP Crime Laboratory Office in Urdaneta City for laboratory examination.[41] PO2 Velasquez and PO1 Ventura stated that they had placed their respective initials on the three sachets of shabu.[42] Forensic Chemist Roderos confirmed her chemistry report finding the three sachets to contain a total of 102.5 grams of shabu.[43]

We have ruled that when the marking, photographing and inventorying were done in the police station, the conviction of the accused for illegal sale of shabu should be upheld inasmuch as the elements of the offense were competently proven, and the integrity of the dangerous drugs seized as evidence remained intact.[44] In such situations, the non-compliance with the procedural requirements of Section 21, Article II of the Comprehensive Dangerous Drugs Act of 2002 and its IRR was not a serious or fatal flaw that would make the offender's arrest illegal or the items seized/confiscated from him inadmissible. The most significant factor was that the integrity and the evidentiary value of the seized items were preserved, and could be relied upon in the determination of the guilt or innocence of the accused.

The offense committed by Lamama is defined and penalized by Section 5 of the Comprehensive Dangerous Drugs Act of 2002, viz.:

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.

Accordingly, the penalty for illegal sale of dangerous drugs is life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00.[45] Lacking in basis to impose the higher penalty, and particularly in consideration of the effectivity of Republic Act No. 9346 that prohibits the imposition of the death penalty,[46] we affirm the penalty of life imprisonment and fine of P500,000.00 meted on Lamama by the lower courts.

WHEREFORE, the Court AFFIRMS the decision promulgated on September 24, 2008; and ORDERS the accused to pay the costs of suit.

SO ORDERED.

Velasco, Jr., Leonen, Martires, and Gesmundo, JJ., concur.

November 29, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on August 23, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 29, 2017 at 2:20 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Sometimes referred to as Jalil Lamana.

[2] Rollo, pp. 2-15; penned by Associate Justice Rosmari D. Carandang, with Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice) and Associate Justice Mariflor P. Punzalan-Castillo concurring.

[3] CA rollo, pp. 10-16; penned by Judge Aurelio R. Ralar, Jr..

[4] Records, p. 2.

[5] TSN, December 10, 2004, pp. 4-7.

[6] TSN, December 10, 2004, pp. 8-13.

[7] Records, p. 13.

[8] Records, p. 255.

[9] TSN, May 8, 2006, pp. 3-7.

[10] CA rollo, p. 16.

- [11] Supra note 1.
- [12] CA rollo, pp. 64-72.
- [13] *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 324.
- [14] TSN, December 10, 2004, pp. 9-10.
- [15] TSN, December 9, 2004, pp. 5-8.
- [16] Records, pp. 245-247.
- [17] Supra note 5.
- [18] TSN, December 10, 2004, p. 10.
- [19] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.
- [20] TSN, May 8, 2006, p. 16.
- [21] *People v. Encila*, G.R. No. 182419, February 10, 2009, 578 SCRA 341, 355; *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 845.
- [22] Id.
- [23] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446.
- [24] Supra note 18, at 272.
- [25] Supra note 12, at 331; *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 238.
- [26] Supra note 12, at 331.
- [27] TSN, December 10, 2004, pp. 5-6.
- [28] TSN, December 10, 2004, p. 6.
- [29] Brgy. Captain Roberto A Dion, Brgy. Kagawad Helen F. Fermill, and Brgy. Kagawad Gerardo D. Beltran, all of whom are from Brgy. Tebeng, Dagupan City.
- [30] Joanne Balaba.
- [31] Exhibits 3, 4, 5, and 6.
- [32] Records, p. 10.
- [33] TSN, December 9, 2004, p. 17; TSN, September 12, 2005, p. 16; TSN, December 15, 2004, p. 3.
- [34] TSN, December 15, 2004, p. 4.
- [35] TSN, December 15, 2004, p. 3.
- [36] TSN, December 15, 2004, p. 4.
- [37] TSN, December 9, 2004, p. 13.
- [38] Records, p. 12.
- [39] Id.

[40] Id. at 255.

[41] TSN, December 10, 2004, p. 13.

[42] Supra note 26 and 27.

[43] TSN, April 25, 2005, pp. 6-9.

[44] Supra note 12, at 333; People v. Ara, G.R. No. 185011, December 23, 2009, 609 SCRA 304-330; People v. Hernandez, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645; People v. Pringas, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

[45] Supra note 1.

[46] Entitled An Act Prohibiting the Imposition of Death Penalty in the Philippines; Approved on June 24, 2006.

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