PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO J. ROSIALDA, ACCUSED-APPELLANT.

G.R. No. 188330. August 25, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the February 17, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 02968, which affirmed the Decision[2] dated April 27, 2007 of the Regional Trial Court (RTC), Branch 164 in Pasig City, finding accused-appellant Rogelio Rosialda guilty of violating Section 5, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002. The RTC sentenced accused-appellant to life imprisonment and imposed upon him a fine of PhP 500,000, with the accessory penalties provided under Sec. 35 of RA 9165.

The Facts

On March 27, 2003, the Mayor's Special Action Team, City Hall Detachment, Pasig City Police, received information from Brgy. Councilor Antonio Santos of Brgy. Rosario, Pasig City, that one, alias "Bong," was selling shabu (methylamphetamine hydrochloride) in the vicinity. Santos gathered his information from an informant. The police then constituted a team in coordination with the Philippine Drug Enforcement Agency to conduct a buy-bust operation against alias "Bong." Police Officer 1 (PO1) Roland A. Panis was designated poseur-buyer, who was supplied with a one hundred peso (PhP 100) bill as buy-bust money, with which he marked his initials "RAP."

Accompanied by Santos' informant, the police went to Sampaguita Street, Jabson Site, Brgy. Rosario, Pasig City to conduct the buy-bust operation. Upon reaching the place, the informant led PO1 Panis to Bong, while the other police officers stood back waiting for the designated signal from the poseur-buyer. After the introductions, Bong asked PO1 Panis and the informant what they wanted, and the two said they wanted "to score," a code that meant to purchase shabu. Upon being asked, PO1 Panis replied he wanted PhP 100 worth of shabu while handing Bong the marked PhP 100 bill. When handed a plastic sachet of white crystalline powder, PO1 Panis then signaled the other policemen that the buy-bust had been carried out, and they converged on PO1 Panis, the informant, and Bong. PO1 Panis then held Bong's hand and introduced himself as a police officer while informing him of his violation and apprising him of his constitutional rights. Thereafter, PO1 Panis marked the plastic sachet as "Exh A RAP 3/27/03."

At the police station, Bong was identified as accused-appellant Rogelio Rosialda. There, too, PO1 Panis then turned over the plastic sachet to Police Senior Inspector Rodrigo Villaruel, who prepared a laboratory examination request, addressed to the Eastern Police District Crime Laboratory Office. A certain PO1 Mariano brought the plastic sachet with the examination request to the crime laboratory where it was received by a certain PO1 Chuidian. The contents of the plastic sachet were then examined by Police Inspector (P/Insp.) Lourdeliza Gural,

who prepared the corresponding Chemistry Report No. D-548-03E, with the following findings:

> FINDINGS
>
> Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for the presence of Methylamphetamine hydrochloride, a dangerous drugs (Exh. "C")[3]

Thus, the following Information[4] dated March 28, 2003 was filed against Rosialda for violation of Sec. 5, Article II of RA 9165:

> On or about March 27, 2003 in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Roland A. Panis, a police poseur buyer, one (1) small heat-sealed transparent plastic sachet, containing 0.03 gram of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.
>
> Contrary to law.

The case before the RTC was docketed as Criminal Case No. 12267-D entitled People of the Philippines v. Rogelio Rosialda y Jamot @ Bong.

At his arraignment, Rosialda pleaded not guilty. Pre-trial ensued where, notably, the parties stipulated on the following facts:

> (1) on the existence of the specimen (white crystalline substance contained in the plastic sachet marked as "Exh A RAP 3/27/03");
>
> (2) that a request for the examination of the specimen was made;
>
> (3) that P/Insp. Gural examined the same and, as a result, issued Chemistry Report No. D-548-03E;
>
> (4) that P/Insp. Gural had no personal knowledge from whom the specimen was taken; and,
>
> (5) that the examination led to the identification of the specimen as methylamphetamine hydrochloride or shabu.

During the trial proper, the prosecution presented as witnesses PO1 Panis, and three other police officers to corroborate his testimony: PO1 Janet Sabo, PO3 Arturo San Andres, and Senior Police Officer 1 Amilassan Salisa, all from the Pasig City Police Station, City Hall Detachment. P/Insp. Gural was not presented as a witness during the hearing.

The defense, on the other hand, presented as witnesses accused-appellant Rosialda, Frances Diana Rosialda, and Silflor C. Velasco.

Rosialda testified that on March 24, 2003 at about 2:00 p.m., he was smoking beside their house when several people ran past the area. After a while, two (2) armed men followed, approached him, and asked whether he knew the persons who were running in front of them. He answered in the negative, whereupon, he was restrained and frisked at gun point. Nothing illegal was recovered from his person. Continuing, Rosialda related that he was then taken to the Rizal Medical Center where he was made to sign a document. Then he was brought to the police station at the Pasig City Hall and there was detained. He was informed that he would be charged with violation of Secs. 5 and 11 of RA 9165. He was then told by PO1 Panis to just settle the case.

The defense's second witness, Frances Rosialda, Rosialda's daughter, corroborated her father's testimony regarding his apprehension, except as to the date. She testified that her father was taken on March 27, 2003, not

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March 24, 2003.

The third witness, Velasco, also corroborated the testimony of the Rosialda on his being arrested. But the witness testified also that the incident happened on March 27 and not March 24, 2003.

Subsequently, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, the court finds accused Rosialda y Jamot @ Bong GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of life imprisonment and a fine of Five Hundred Thousand (Php500,000.00) Pesos, with the accessory penalties provided for under Section 35 of the said law.
>
> The plastic sachet containing shabu (Exhs "D" and "D-1") is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.
>
> With costs against the accused.
>
> SO ORDERED.

From the above decision, accused-appellant filed a Notice of Appeal[5] dated April 30, 2007.

The appeal was docketed before the CA as CA-G.R. CR No. 02968. Eventually, the CA rendered the assailed decision affirming Rosialda's conviction, the fallo of which reads:

> WHEREFORE, premises considered, the Appeal is hereby DENIED. The challenged Decision is AFFIRMED in toto.

In its Decision, the CA found that the elements of the crime were present in the case. Moreover, it found that Rosialda's defense of frame-up was not proved, holding that for the defense of frame-up to prosper, clear evidence of ill-motive on the part of the arresting officers must be shown on why they would impute false charges against the accused. The CA found that the self-serving allegations of Rosialda were insufficient. In addition, the appellate court cited the doctrine that the defense of frame-up, like alibi, has been generally viewed by the Court with disfavor as it is easily concocted.

Anent Rosialda's claim of inconsistencies in the testimonies of the prosecution witnesses, the CA found them to be minor ones which did not affect the veracity of the testimonies.

Rosialda also questioned the admissibility of the Chemistry Report, arguing that since issuing officer P/Insp. Gural was not presented as a witness, said report is inadmissible. The CA dismissed such argument ruling that there was no need to present P/Insp. Gural, given the stipulations entered into by the parties at the pre-trial of the case. Moreover, the CA enunciated that the findings in the report are entries in official records made in the course of official duty, and as such, they are prima facie evidence of the facts stated in the report.

The issue of the police officers' non-compliance with Sec. 21, Article II of RA 9165 was also raised by Rosialda before the CA. However, relying on People v. Pringas,[6] the CA ruled that the failure to comply with Sec. 21 does not render the arrest of the accused illegal nor the items seized/confiscated inadmissible, for as long as there is a justifiable ground for such failure, and the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer.

Finally, as to the chain of custody of the seized item, the CA found that the facts and evidence presented show that such chain was unbroken from the time the sale was consummated, the marking of the specimen, and until it was delivered to the Eastern Police District Crime Laboratory Office for examination to the surrender of the specimen to the trial prosecutor who offered it to the RTC as evidence.

Hence, the instant appeal.

The Issues

Unconvinced, Rosialda raises in his Supplemental Brief the following issues for our consideration:

> - Whether there was ill-motive on the part of the arresting officer to give credence to the accused's allegation that he was framed; and,
>
> - Whether the chain of custody of the alleged illegal drugs was indeed unbroken.

The Ruling of the Court

The appeal is bereft of merit.

The first paragraph of Sec. 5, Art. II of RA 9165 penalizes the selling of dangerous drugs, thus:

> 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.

In People v. Darisan,[7] the Court enumerated the elements of the crime of sale of dangerous drugs:

> In a prosecution for illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the corpus delicti or the illicit drug as evidence.

One with the RTC and the CA, we find the above elements present and proved beyond reasonable doubt in the instant case through the evidence and testimonies presented by the prosecution.

The first element was proved by the testimonies of the police officers who conducted the buy-bust operation. For clarity, we quote the testimony of poseur-buyer PO1 Panis:

> DIRECT EXAMINATION
>
> Prosecutor Bautista:
>
> Mr. Witness, you are a member of Mayor Special Action Team (sic)?
>
> PO1 Panis:
>
> Yes, sir.
>
> Q:
>
> As a member of Mayor Special Action Team, will you tell us what you usually do?
>
> A:
>
> We are task[ed] to apprehend person of people (sic) engaged in illegal vices particularly on illegal drugs, sir.
>
> Q:
>
> Do you know the accused in this case?

A:

Yes, sir, he is present right now.

Q:

Why do you know him?

A:

I arrested him, sir.

Q:

Why was he arrested?

A:

Because he sold me illegal drugs of shabu (sic), sir.

Q:

Where was he arrested?

A:

Sampaguita St., Jabson Site, Rosario, Pasig City.

Q:

When was he arrested?

A:

Around 3:30 p.m., March 27, [2003], sir.

Q:

Will you tell us the circumstances of this buy-bust operation?

A:

At about 2 p.m., we received a phone call from one Kagawad Antonio Santos, "ka Tonying" of Parang, Rosario, he talked to our chief Police Inspector Villaroel, sir.

Q:

What was the conversation all about?

A:

After their conversation he ordered us to go to the office of Ka Tonying to give us the information, sir.

Q:

Did you heed this order?

A:

Yes, sir.

Q:

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And what did you find out?

A:

We conducted a buy-bust operation and Inspector Villaroel gave me money, P100 peso bill to use in buying illegal drugs from one alias "Bong".

Q:

Were you able to proceed to this target area?

A:

Yes, sir.

Q:

What time was it when you proceeded to the area?

A:

More or less 3:15 p.m., sir.

Q:

Will you tell us what happened then?

A:

We arrived in the area, I was with the civilian asset, our informant saw alias "Bong", he approached him together with me and then I was introduced as a friend, sir.

Q:

Who was your companion at the time?

A:

At the time the civilian informant, sir.

Q:

You were introduced to the accused?

A:

Yes, sir.

Q:

And upon introduction, what transpired?

A:

I was asked "Anong kailangan naming" and we uttered "Iiscore kami ng shabu."

Q:

And what was your answer?

A:

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He asked me how much, sir.

Q:

And what did you say?

A:

I told him P100, after that I handed the money, sir.

x x x x

Q:

So, when this stuff was handed to you by the accused, you made the pre-arranged signal by scratching your head?

A:

Yes, sir.

Q:

Afterwards, what did you do?

A:

I immediately held his hand and I introduced myself as a Police Officer and told him of his violation and afterwards we have konting pagtatalo and he resisted, sir.

Q:

Did you inform him of his constitutional rights?

A:

Yes, sir.[8]

Affirmed by the appellate court, the RTC gave full credence to the testimonies of PO1 Panis and the other police officers. Such finding of the trial court must be given great respect and shall generally not be disturbed by this Court. This principle was revisited in Sumbillo v. People of the Philippines,[9] where this Court reiterated that:

> The assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court due to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. x x x The findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, which is not true in the present case.

Rosialda, however, continues to question the testimonies of the prosecution witnesses asserting that the incident as narrated by them did not happen. He claims that he was framed. This defense, however, is unsupported by the evidence.

As correctly ruled by the courts a quo, for the defense of frame-up to prosper, the accused must present clear and convincing evidence of such fact. It must be noted at this juncture that a prima facie case against Rosialda had already been established. The burden of evidence now lies with him to prove his defense of frame-up. Correlatively, the Court ruled in People v. Rodrigo:[10]

> Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the

> identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. (Emphasis supplied.)

Thus, in People v. Hernandez,[11] the Court dismissed the defense of frame-up relied upon by the accused for failing to present clear and convincing evidence to prove his allegations. The Court said:

> The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence. In the case before us, appellants miserably failed to present any evidence in support of their claims. Aside from their self-serving assertions, no plausible proof was presented to bolster their allegations. (Emphasis supplied.)

The Court held succinctly in People v. Agulay:[12]

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

Anent the second element, Rosialda raises the issue that there is a violation of Sec. 21, Art. II of RA 9165, particularly the requirement that the alleged dangerous drugs seized by the apprehending officers be photographed "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." Rosialda argues that such failure to comply with the provision of the law is fatal to his conviction.

This contention is untenable.

The Court made the following enlightening disquisition on this matter in People v. Rivera:[13]

> The procedure to be followed in the custody and handling of seized dangerous drugs is outlined in Section 21, paragraph 1, Article II of Republic Act No. 9165 which stipulates:
>
> (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 same is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:
>
> (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.

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> The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. Indeed, the implementing rules offer some flexibility when a proviso added 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 same provision clearly states as well, that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved.
>
> This Court can no longer find out what justifiable reasons existed, if any, since the defense did not raise this issue during trial. Be that as it may, this Court has explained in People v. Del Monte that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition sine qua non for conviction for the illegal sale of dangerous drugs. The dangerous drug itself constitutes the very corpus delicti of the crime and the fact of its existence is vital to a judgment of conviction. Thus, it is essential that the identity of the prohibited drug be established beyond doubt. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.
>
> To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. (Emphasis supplied.)

In the instant case, we find that the prosecution has adequately showed the continuous and unbroken possession and subsequent transfers of the plastic sachet containing dangerous drugs from the time accused-appellant Rosialda handed it to PO1 Panis to consummate the sale of illicit drugs until it was offered in court. The fact that the plastic sachet containing shabu was immediately marked by PO1 Panis with such marking remaining until the plastic sachet was presented in court persuasively proves not only the identity of the shabu as seized from Rosialda, but more importantly that it is the same item seized from the buy-bust operation. Its integrity and evidentiary value were, thus, duly preserved. Consequently, the CA correctly appreciated that the chain of custody of the seized drug remains unbroken. Accordingly, the conviction of accused-appellant Rosialda must be maintained.

WHEREFORE, the appeal is DENIED for lack of merit. The February 17, 2009 CA Decision in CA-G.R. CR No. 02968 is hereby AFFIRMED IN TOTO.

No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

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[1] Rollo, pp. 2-18. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Rosalinda Asuncion-Vicente.

[2] CA rollo, pp. 14-18.

[3] Rollo, p. 4.

[4] CA rollo, p. 5.

[5] Id. at 19.

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[6] G.R. No. 175928, August 31, 2007, 531 SCRA 828.

[7] G.R. No. 176151, January 30, 2009, 577 SCRA 486, 490.

[8] Rollo, pp. 10-13.

[9] G.R. No. 167464, January 21, 2010.

[10] G.R. No. 176159, September 11, 2008, 564 SCRA 584, 596.

[11] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 642-643.

[12] G.R. No. 181747, September 26, 2008, 566 SCRA 571, 599-600.

[13] G.R. No. 182347, October 17, 2008, 569 SCRA 879, 897-899.

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