

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUFINO VICENTE, JR. Y CRUZ, ACCUSED-APPELLANT.

G.R. No. 188847. January 31, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the April 30, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02699 entitled *People of the Philippines v. Rufino Vicente, Jr. y Cruz*, which affirmed the September 7, 2006 Decision in Criminal Case No. 12474-D of the Regional Trial Court (RTC), Branch 151 in Pasig City. The RTC found accused Rufino Vicente, Jr. (Vicente, Jr.) guilty of violating Section 5, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Acts of 2002.

The Facts

An Information[1] charged Vicente, Jr. as follows:

That, on or about the 31[st] day of May 2003, in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another 0.40 grams of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to test for Methylamphetamine Hydrochloride, also known as "shabu," which is a dangerous drug, in consideration of the amount of Php500.00, in violation of the above-cited law.

During his arraignment, Vicente, Jr. gave a negative plea.

Version of the Prosecution

At the trial, the prosecution presented the following witnesses: Police Officer 2 (PO2) Darwin M. Boiser and PO2 Gerald Marion R. Lagos, who were both part of the buy-bust team that apprehended Vicente, Jr.

PO2 Boiser and PO2 Lagos testified as to the following events that allegedly transpired:

On May 31, 2003, at around 8:00 in the evening, an informant arrived at the District Anti-Illegal Drugs at the Southern Police District, Fort Bonifacio, Taguig, Metro Manila. The informant reported that a certain "Paks" was pushing shabu on P. Mariano St., Ususan, Taguig, Metro Manila.[2]

Acting on the information from the informant, Police Inspector (P/Insp.) Rodolfo Anicoche ordered PO2 Boiser to verify the drug-peddling activities of "Paks." [3]

PO2 Boiser proceeded to Ususan accompanied by the informant. Once there, the informant pointed "Paks" to PO2 Boiser. They were at a distance of 10 meters when they both saw "Paks" peddling drugs to several persons. After confirming the informant's report, they went back to the police station to recount what they had seen to P/Insp. Anicoche. Thereafter, a team was dispatched to conduct a buy-bust operation. The buy-bust team was composed of P/Insp. Anicoche, PO2 Boiser, PO2 Lagos, PO3 Macario, and Senior Police Officer 2 Millari. PO2 Boiser was

designated as the poseur-buyer. [4]

The buy-bust team conducted a briefing where PO2 Boiser marked a PhP 500 bill with "JG," the initials of Police Superintendent and District Intelligence and Investigation Branch Chief Jose Gentiles. Afterwards, they boarded a vehicle and headed to Ususan, Taguig, arriving at the area around midnight. PO2 Boiser and PO2 Lagos walked with the informant to meet "Paks." PO2 Boiser was then introduced to "Paks" as a balikbayan who wanted to score some drugs. He also told "Paks" that he had been released from rehab and wanted to use again. "Paks," satisfied that PO2 Boiser was indeed a drug user, agreed to sell PhP 500 worth of shabu. He reached from his camouflage shorts a plastic sachet and handed it to PO2 Boiser.[5]

After receiving the plastic sachet from "Paks," PO2 Boiser examined it under the light of a lamppost. Seeing the pre-arranged signal acted out by PO2 Boiser, PO2 Lagos went to the scene and introduced himself as a police officer to "Paks."

The buy-bust money was then seized from "Paks." "Paks" quietly stood while he was informed of his drug violation as well as his constitutional rights. The plastic sachet sold by "Paks" was later turned over by PO2 Boiser to investigating officer PO3 Delima, who prepared the laboratory request. The plastic sachet was marked "DB-1-3105-03," pertaining to PO2 Boiser's initials and the date of the seizure of the drug.[6] The following pieces of documentary evidence were also presented:

- (1) Exhibit "A" - Joint Affidavit of Arrest dated June 2, 2003 by PO2 Gerald Marion R. Lagos and PO2 Darwin M. Boiser;[7]
- (2) Exhibit "B" - Request for Laboratory Examination dated May 31, 2003 by Police Superintendent Jose L. Gentiles, Officer-in-Charge, District Intelligence and Investigation Branch, delivered by PO2 Lagos and received by PO2 Imus;[8] and
- (3) Exhibit "D" - Physical Science Report No. D-616-03S prepared by Forensic Chemical Officer Richard Allan B. Mangalip.[9]

Version of the Defense

The defense offered the testimonies of Vicente, Jr. and Elisa Santos.

According to Elisa, she was outside her house having a conversation with Vicente, Jr. around midnight of May 31, 2003. They both noticed a gray vehicle drive past them. Shortly thereafter, a tricycle stopped in front of them. Three men alighted and poked a gun at Vicente, Jr., and warned him, "Reden, wag kang kikilos ng masama." Vicente, Jr. denied he was Reden. Yet the three men took him away and hit him with a gun and boxed him in his abdomen. Elisa further testified, "Tinuhod po yung harapan niya." Vicente, Jr. attempted to show identification to the three men but they ignored him. The gray vehicle earlier spotted by Elisa and Vicente, Jr. then returned and a person inside said, "Hindi iyan." However, someone replied "Sinaktan niyo na siya, isama na natin." [10]

On the witness stand, Vicente, Jr. said that he had never been involved in any drug-related case prior to his arrest. He explained that he was buying balut from witness Elisa when three men accosted him and poked a gun at him. They mistakenly thought he was "Reden" and beat him up when he said it was a case of mistaken identity. The men turned out to be police officers and he was brought to their office where one of them told him, "Kung gusto mo magturo ka na lang ng ibang tao." When he did not cooperate, he was again beaten up. Vicente, Jr. further testified that his wife and brother were not allowed to visit him. He claimed that he did not get a medical certificate for his injuries for that reason. PO2 Lagos even warned him not to say anything during the inquest proceedings and to tell the prosecutor that he would just make his statement in court.[11]

The Ruling of the RTC

On September 7, 2006, the RTC pronounced Vicente, Jr. guilty of the crime charged. The RTC stated that the witnesses for the prosecution gave straightforward testimonies that clearly established the elements necessary for the prosecution of illegal sale of drugs.

The dispositive portion of the RTC Decision[12] reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding the accused, RUFINO VICENTE, JR., Y CRUZ, GUILTY beyond reasonable doubt for violation of Section 5, 1[st] paragraph, Article II of RA 9165 as charged and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Php500,000.00.

The Ruling of the CA

On appeal, Vicente, Jr. averred that the trial court erred (1) in convicting him as the alleged seller of shabu since he was not the alleged "Paks" identified by the police informant as the peddler of shabu; (2) in convicting him based on the weakness of the defense and not on the strength of the prosecution's evidence; and (3) in finding that the arresting police officers regularly performed their duties despite non-compliance with procedural rules on drug buy-bust operations.

Representing the People, the Office of the Solicitor General (OSG) countered that all the elements in the illegal sale of drugs were established. Vicente, Jr.'s identity as the seller of shabu was established by the credible testimonies of PO2 Boiser and PO2 Lagos.

The CA affirmed the findings of the trial court, viz:

The said elements of the offense of illegal sale of dangerous drugs (shabu) was clearly established by the testimony of PO2 Boiser who acted as the poseur-buyer in the standard police buy-bust operation. PO2 Boiser was able to chronologically and consistently narrate the factual circumstances that led to the arrest of the accused-appellant.

Moreso, PO2 Boiser's testimony was corroborated on material points by PO2 Lagos who was just more or less ten (10) meters from the locus criminis and who helped PO2 Boiser in effecting the arrest of the accused-appellant.[13]

On May 26, 2009, Vicente, Jr. filed his Notice of Appeal from the appellate court's Decision.

On October 5, 2009, this Court required the parties to submit supplemental briefs if they so desired. The People, through the OSG, manifested that it was adopting its previous arguments. Vicente, Jr. filed his Supplemental Brief on January 18, 2010. He averred that there was a failure to preserve the integrity and evidentiary value of the seized drug by the arresting officers.

The Issue

Whether the Court of Appeals erred in finding accused-appellant guilty beyond reasonable doubt

The Ruling of this Court

Vicente, Jr. is convinced that Sec. 21 of the Implementing Rules and Regulations (IRR) of RA 9165 was not complied with, since the buy-bust team failed to present a pre-operation report and photographs of the seized items. He concludes that there is uncertainty as to the identity of the illegal drugs seized. He says that due to the buy-bust team's omissions, there is a lingering doubt as to whether the drugs that underwent laboratory examination were the same items allegedly seized from him.

The OSG, on the other hand, argues that the integrity and evidentiary value of the seized shabu were properly preserved by the buy-bust team from the time it was handed by Vicente, Jr. to the poseur-buyer up to the time it was presented during trial. The OSG adds that prior coordination with the Philippine Drug Enforcement Agency was not required as the buy-bust was conducted on March 31, 2003, while the IRR of RA 9165 took effect only on November 27, 2004.

We affirm accused's conviction.

As previously held by this Court, Sec. 21 of RA 9165 need not be followed as an exact science. Non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[14] Non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.[15] We have thus emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." [16]

People v. Sultan[17] explains further:

In fact, the Implementing Rules and Regulations of Rep. Act No. 9165 adequately reflects the desire of the law to excuse from the rigid tenor of Section 21 situations wherein slight infractions in methodology are present but the integrity and identity of the specimen remains intact.

The following exchange took place during the direct examination of PO2 Boiser and shows the handling of the seized drug:

PROSECUTOR DULDULAO

Q: After the recovery of the buy-bust money from alias Paks, what else did you do?

A: I informed him of his violation and apprised him his constitutional rights.

Q: What violation did you inform him [about]?

A: That he violated [a law by] selling shabu, sir.

Q: What was his answer if any?

A: He kept silent, sir.

Q: How about the rights you informed him? What are those rights?

A: He has the right to remain silent and he has the right to get his own counsel.

x x x x

Q: After that, what else did you do?

A: We brought Paks to our office, sir.

Q: How about the specimen or the shabu which you were able to buy from alias Paks? What did you do to it if any?

A: I turned it over to the investigator and he prepared a crime lab request.

Q: If shown to you again, Mr. Witness, that plastic sachet containing shabu which according to you you were able to buy from alias Paks, would you be able to identify it and how can you identify it?

A: I place a marking, sir.

Q: What marking did you place?

A: I placed the initial of my name and the date of arrest.

Q: What initial did you put?

A: DB, sir.

Q: DB meaning the initial refers to?

A: My name, sir. Darwin Boiser.

Q: I am showing to you, Mr. Witness, a heat transparent plastic sachet containing white crystalline substance which was found positive to the test of shabu previously marked as Exh. C. Will you please go over this and tell us if this is the same specimen [which] you were able to buy from alias Paks at the time of the buy-bust operation?

A: Yes, sir. It is the same.

Q: Why do you say so?

A: Because it bears the marking which I placed, sir.

Q: Again, what marking are you referring to?

A: DB-1-310503, sir.

INTERPRETER

Witness is referring to the initial appearing in Exh. C.

PROSECUTOR DULDULAO:

Q: When you put the marking on this evidence, what happened next?

A: We brought Paks to the office, sir.

Q: When you were already at the office, what happened thereat?

A: I turned him over to the investigator.

Q: You are referring to alias Paks?

A: Yes, sir.

Q: How about the evidence?

A: I also gave it, sir.

Q: Who was your investigator then?

A: PO3 Delima, sir.

Q: What did Delima do after turning over to him the person of alias Paks and the evidence?

A: He prepared the crime lab request.

Q: Request for what?

A: For laboratory examination.

Q: What was the subject of the examination?

A: The shabu which we bought from Paks.

Q: What happened to the request?

A: There was a result, sir.

Q: What was the result?

A: It [was] found positive [for] methylamphetamine hydrochloride.

Q: How about alias Paks? Did you come to know his full name?

A: Yes, sir.

Q: How did you come to know it?

A: When I asked him to sign the booking sheet, sir.

Q: What was his name?

A: Rufino Vicente, sir.

Q: The accused in this case?

A: Yes, sir.

Q: If you will see him again, would you be able to identify him?

A: Yes, sir.

Q: Will you please point to him if he is inside the courtroom?

A: He is there seated in front wearing a yellow t-shirt, sir.

INTERPRETER:

Witness is pointing to a person inside the courtroom whom upon being asked answered by the name of Rufino Vicente, Jr.[18]

Additionally, any doubts as to the chain of custody requirement were clarified during the cross-examination of PO2 Boiser:

ATTY. RONATAY

Q: Where did you place the marking of the specimen, at the place where the accused was arrested or at the police station when there was already an investigation?

A: At the place where the accused was arrested, ma'am.[19]

We affirm the trial court's finding that PO2 Boiser's testimony was credible and straightforward. As the trial court explained:

The prosecution showed that there was a meeting of the minds between the witness Boiser, poseur-buyer and the seller, accused Rufino Vicente, Jr., to sell to the former shabu for Php500.00. The act of the accused-seller in receiving the money and delivering the said shabu consummated the sale. The straightforward testimonies of the witnesses for the prosecution clearly established the elements.[20]

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[21] Oft-repeated is the rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[22] Absent any indication that the police officers were ill-motivated in testifying against the accused, full credence should be given to their testimonies.[23]

The cross-examination of Vicente, Jr. sheds light on the matter of ill motive:

Fiscal Glenn Santos

Q Mr. witness, but prior to this incident do you know these police officers Boiser, Lagos and Millari?

A No sir.

Q So it [is] safe to assume that you do not have any misunderstanding or misgiving with these police officers, Mr. witness?

A None, sir.

Q During the incident you said that you were with the "balut" vendor?

A [Y]es, sir.

Q But the "balut" vendor [was] never [harmed] nor arrested by these police officers?

A No sir.

Q And just like you, you claimed that you [did] not commit anything this "balut" vendor did not commit any crime?

A None, sir.

Q But despite that you were [singled] out by these police officers in arresting and mauling you?

A Yes, sir.

Q Would you know of any reason why these police officers would hurt you for no apparent reason or arrest or [charge] you for selling shabu?

A None, sir.[24]

No clear and convincing evidence exists in the records to show that Vicente, Jr.'s arresting officers were impelled by malicious or ill motives in bringing up trumped-up charges against him.

Moreover, We take notice of Vicente, Jr.'s belated objection to the alleged lapses committed by the buy-bust team. *People v. Sta. Maria*[25] does not support this move:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

The OSG, however, is incorrect in arguing that the buy-bust was conducted on March 31, 2003, while the IRR of RA 9165 took effect only on November 27, 2004. The IRR of RA 9165 was approved on August 30, 2002, and it became effective upon its publication in three newspapers of general circulation and registration with the Office of the National Administrative Register. It was published in the national newspaper Today on October 31, 2002 or before the buy-bust against Vicente, Jr. occurred. Thus, the IRR of RA 9165 is applicable to the case of Vicente, Jr. Yet, regardless of this argument on the effectivity of said IRR, Vicente, Jr. still cannot count on his acquittal. Even with the effectivity of the IRR during his arrest, We hold that the chain of custody of the seized item was not broken in this case. We are not convinced that the integrity and evidentiary value of the evidence were compromised.

Alibi as a Defense

As Vicente, Jr.'s final argument, he reiterates that the case against him was all a frame-up. We find his excuse all too common and poorly argued.

As the trial court noted:

x x x [T]he accused failed to secure a medical report to support his claim alleging that his relatives were prevented from going near him. Such excuse deserves scant consideration. Also, his silence during the inquest proceeding because a policeman simply advised him to is highly suspect. Finally his claim that he did not file any action against the policemen who mauled him because of his fear for his life and that of his family is questionable.[26]

Vicente, Jr.'s testimony was, thus, labeled by the CA as "simply not corroborated by credible and convincing evidence," a requirement for the defense of frame-up to gain merit in court.

Penalty Imposed

Vicente, Jr. was sentenced to life imprisonment and the payment of a PhP 500,000 fine. This is within the range provided in RA 9165 for the crime of illegal sale of drugs:

SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.³⁴The 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.

We, thus, affirm the findings of the appellate court.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 02699 finding accused-appellant Vicente, Jr. guilty of the violation charged is AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Mendoza,[*] and Perez, JJ., concur.

[*] Additional member as per raffle dated January 26, 2011.

[1] CA rollo, p. 47.

[2] Id. at 48.

[3] Id.

[4] Id. The records do not divulge the complete names of PO3 Macario and SPO2 Millari.

[5] Id.

[6] Id. at 48-49.

[7] Records, p. 103.

[8] Id. at 105.

[9] Id. at 107.

[10] Id. at 168.

[11] CA rollo, p. 50.

[12] Id. at 51. Penned by Judge Franchito N. Diamante.

[13] Rollo, p. 10. The Decision was penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Mariano C. Del Castillo (now a member of this Court) and Marlene Gonzales-Sison.

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

[15] *People v. Ara*, G.R. No. 185011, December 23, 2009, 609 SCRA 304, 325.

[16] Id.

[17] G.R. No. 187737, July 5, 2010.

[18] TSN, January 20, 2004, pp. 18-22.

[19] TSN, April 26, 2004, pp. 6-7.

[20] CA rollo, p. 50.

[21] *People v. Villamin*, G.R. No. 175590, February 9, 2010, 612 SCRA 91,106.

[22] *People v. Tamayo*, G.R. No. 187070, February 24, 2010, 613 SCRA 556, 564.

[23] *People v. Gum-Oyen*, G.R. No. 182231, April 16, 2009, 585 SCRA 668, 678.

[24] TSN, September 12, 2005, pp. 15-16.

[25] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

[26] CA rollo, p. 50.

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