

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAKAR
MAPAN LE Y SUBA AND RODEL DEL CASTILLO Y SACRUZ,
ACCUSED-APPELLANTS.**

G.R. No. 188976. June 29, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the March 31, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03019 entitled *People of the Philippines v. Jakar Mapan Le y Suba alias "Ankaw" and Rodel Del Castillo y Sacruz alias "Rodel"* which affirmed the Decision of the Regional Trial Court (RTC) Branch 154 in Pasig City in Criminal Case No. 13644-D for Violation of Section 5 in relation to Section 26 of Republic Act (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002. Accused-appellants were sentenced to life imprisonment.

The Facts

An Information charged accused-appellants as follows:

On or about July 27, 2004, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Richard N. Noble, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet, containing two (2) grams of white crystalline substance, which were found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.[1]

During their arraignment, accused-appellants both gave a negative plea.

At the trial, the prosecution presented the following witnesses: PO2 Richard Noble (PO2 Noble) and PO1 Melvin Mendoza (PO1 Mendoza). The defense offered the testimonies of accused-appellants and Norhaya Mapan Le, Mapan Le's daughter.

Version of the Prosecution

According to PO2 Noble, the Pasig City Police Station received information at around 9:00 on the evening of July 27, 2004 from a confidential informant (CI) that a certain "Ankar" and "Rodel" were selling shabu in Bolante, Palatiw in Pasig City. He noticed that the two men tagged in the information were included in their drug watch list. Their office thus prepared a pre-operation report (Exhibit "B") and coordinated with the Philippine Drug Enforcement Agency (PDEA) (Exhibit "B-1"). Police Inspector Castillo organized a buy-operation and designated PO2 Noble as the poseur-buyer. PO2 Noble placed his initials "RN" on the buy-bust money (Exhibits "E" and "F") consisting of two (2) Php100 bills. PO2 Noble, PO1 Mendoza and their colleagues then headed for the target area in two (2) unmarked vehicles. They reached the place at around 9:50pm and walked to the place of "Ankar" and "Rodel." Once the latter were spotted, the CI talked to "Ankar" and introduced PO2 Noble as a regular shabu buyer. When "Ankar" asked PO2 Noble how much he wanted to purchase, he replied by giving "Ankar" the

Php200 marked money. "Ankar" then instructed "Rodel" to give PO2 Noble a plastic sachet. PO2 Noble examined the contents of the plastic bag and proceeded to scratch his head to mark the consummation of the drug transaction. Upon seeing the pre-arranged signal from PO2 Noble, back-up operative PO2 Mendoza rushed to the scene. PO2 Noble arrested "Rodel" while PO2 Mendoza arrested "Ankar," who attempted to flee. PO2 Mendoza retrieved the buy-bust money from "Ankar" while PO2 Noble marked the plastic sachet received from "Rodel." [2]

PO1 Melvin Mendoza corroborated PO2 Noble's testimony. He testified that he followed PO2 Noble and the CI at a distance of around 10 to 15 meters. He observed the men talking with "Ankar," with "Rodel" handing something to "Ankar" afterwards. "Ankar" then handed the object to PO2 Noble. PO2 Mendoza did not see what the object was from where he was situated. When he saw PO2 Noble brush his hair with his hand he joined PO2 Noble in arresting "Rodel" and "Ankar," with PO2 Noble informing the men of their violation. PO2 Noble then placed markings on the plastic sachet that was sold. The men were then brought to the police station for further investigation. [3] The two were subsequently identified as Jakar "Ankar" Mapan Le (Le) and Rodel Del Castillo (Del Castillo).

Version of the Defense

On the witness stand, Le testified that he was a vendor of slippers and socks at the Pasig Market. On the evening of July 27, 2004, he was inside his house with his family. While they were watching television someone suddenly kicked the door of their house. Four male strangers then entered without warning and frisked him. They found nothing on his person. He asked if they had a warrant and they answered that they did not. Still they brought him outside and boarded him in a red car. He was told that they were taking him to their office. [4]

According to Le, Del Castillo [5] lived five houses away from him. He only knew Del Castillo by face and only found out his name when he arrived at the Parancillo Police Station, where Del Castillo was in handcuffs. Le recounted that a police officer named Noble demanded PhP 10,000 from Mapan for his freedom. Le answered that he did not have money, to which Noble said, "tutuluyan kita." Le was jailed when he could not comply with Noble's demand.

Del Castillo testified that on the night of the buy-bust operation, he was on his way home from work as a kargador in the market. He stopped by a deep-well pump in front of Le's house in order to wash his hands. Several police officers approached him while he was washing his hands. He was asked if he knew who Ankar was. He replied in the negative. Afterwards, he noticed that three of the police officers went inside Le's house while the rest remained outside. He left soon after. After taking only a few steps, PO2 Noble called Del Castillo back and asked him if he knew Le. He replied that he did not. He was boarded in a car, with Le following suit three minutes later. The two were brought to Rizal Medical Center where they were made to sign a document. They were not brought to the crime laboratory for drug testing but were instead escorted to the Parancillo police station. [6]

Del Castillo narrated that the police insisted he knew who Le was. He denied this and was brought to a bathroom where he was beaten up. [7]

Norhaya Mapan Le (Norhaya) corroborated her father's testimony. She said she was watching television with her parents when four men barged into their house on July 27, 2007 at around 10 to 11pm. They were armed men in civilian clothing who announced that they were police officers. They instructed her family not to move. The men searched their house and did not find anything. She saw them frisk her father and handcuff him. Later, their neighbors told them that the police officers were from Parancillo and that they should follow her father to the police station. [8]

At the police station, Norhaya and her family begged Police Officer Noble to set her father free because he was

innocent. The policeman instructed them to pay Php10,000.00 for the release of Le. When they told Noble they could not produce the amount, they were advised to return when they had the payment.[9]

In addition, Norhaya testified that she did not know her father's co-accused Rodel Del Castillo prior to the alleged buy-bust operation. She told the court that her father left their house on July 27, 2004 to sell slippers and socks at the market and returned home before 8pm and did not leave their house anymore.[10]

The Ruling of the Trial Court

Finding all of the elements of a valid buy-bust operation present, the RTC convicted accused-appellants of the crime charged. The trial court also noted that the requirements prescribed by RA 9165 on coordination with PDEA were complied with. The defense's claim of extortion was not given credence as it was found to be a vain attempt by accused-appellants to show motive on the part of the police officers even if the former had no visible means of income.

The dispositive portion of the RTC Decision[11] reads:

WHEREFORE, premises considered, judgment is hereby rendered in finding the accused JAKAR MAPAN LE and RODEL DEL CASTILLO GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165 (sale of dangerous drugs) and each of them is sentenced to suffer the penalty of LIFE IMPRISONMENT. Each of them is also ordered to pay a fine of P1,000,000.00. x x x

SO ORDERED.

Accused-appellants appealed their conviction before the CA. They averred that their guilt was not proven beyond reasonable doubt. There were material inconsistencies and contradictions in the prosecution witnesses' testimonies, such as PO2 Noble and PO1 Mendoza's version of how the buy-bust operation was conducted. The defense also emphasized that the prosecution failed to (1) present the person who delivered the subject shabu to the crime laboratory, thus creating a missing link in the chain of custody; and (2) make an inventory and take photographs of the confiscated shabu in the presence of accused-appellants, a media representative, and an elected public official as required by RA 9165.

The Ruling of the Court of Appeals

The CA[12] affirmed the appealed RTC decision. The alleged inconsistent statements made by prosecution witnesses were not material enough to overturn the trial court's findings and did not delve into the elements of the crime charged. As to the chain of custody rule, the appellate court ruled that what was most important was that the prosecution showed that the identity and integrity of the shabu was preserved.

Accused-appellants seasonably filed their Notice of Appeal of the appellate court's Decision.

On, September 23, 2009, this Court required the parties to submit supplemental briefs, if they so desire. The parties manifested that they were adopting their arguments contained in their respective briefs earlier filed with the Court.

The Issue

WHETHER THE COURT OF APPEALS ERRED IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT.

Reiterating their arguments, accused-appellants maintain that the prosecution witnesses' testimonies on how the buy-bust operation occurred were completely different from each other. The non-presentation of the marked money the team used is also questioned. The prosecution's evidence is likewise attacked for having a missing link

in the chain of custody of over the subject shabu and for non-compliance with Sec. 21 of RA 9165 as well as its Implementing Rules and Regulations (IRR). The defense further argues that no justifiable reason was offered for such non-compliance.

The Office of the Solicitor General (OSG), on the other hand, argues on behalf of the People that the prosecution was able to prove the identity of the seized shabu. They label as immaterial whether it was Le or Castillo who gave the shabu to PO2 Noble. In their view, the non-presentation of the marked money does not create a hiatus in the evidence of the prosecution as the sale of the shabu was adequately proven and the shabu itself was presented before the court. In addition, they point out that the photocopies of the marked money were presented, identified, and not objected to.

On the matter of extortion, the OSG contends that no proof was shown by the defense to overcome the presumption of regularity in the performance of official duties enjoyed by the buy-bust operation team's members.

The Ruling of This Court

We affirm accused-appellant's conviction.

Elements of the Crime

Accused-appellants are charged with violating Section 5 of RA 9165, which reads:

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 essential elements that must be established in prosecuting a case of illegal sale of shabu are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor.[13] What is material is proof that the transaction actually took place, along with the presentation in court of the illegal substance which constitutes the corpus delicti of the crime.[14]

In the instant case, the aforementioned elements were established by the prosecution. Le received Php200 from poseur-buyer PO2 Noble in exchange for a plastic sachet handed to him by Del Castillo. PO2 Noble wrote his initials on the seized item. The plastic sachet's contents were then subjected to a laboratory examination and tested positive for shabu. The alleged inconsistencies cited by the defense do not materially affect the credibility of the prosecution's witnesses. As the OSG correctly pointed out, the inconsistencies were too trivial to merit consideration. What is important is that the elements of the crime were established by both the oral and object evidence presented in court.

Accused-appellants' argument on the failure to present the marked money in court is not only without merit but baseless. Two (2) One hundred peso (Php100) bills were presented as evidence as the buy-bust money used and marked as Exhibits "E" and "F." Moreover, the presentation of buy-bust money is not required by law or jurisprudence. Its non-presentation is not fatal to the case for the prosecution. The marked money used in the buy-bust operation is not indispensable but merely corroborative in nature.[15]

Chain of Custody

We likewise affirm the findings of both lower courts on the issue of chain of custody. What is important is the preservation of the identity and integrity of the seized shabu.

RA 9165 provides the procedure for buy-bust operations:

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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for

proper disposition and destruction within twenty-four (24) hours from receipt of the same; xxx

To summarize, we ruled in *People v. Camad*,^[16] that there are links that must be established in the chain of custody in a buy-bust situation, viz: 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 from the forensic chemist to the court.

In the instant case, the links in the chain are the following:

- (1) At the scene of the buy-bust operation, Castillo handed the plastic sachet to PO2 Noble, who immediately marked it with his initials;
- (2) The plastic sachet was brought to the laboratory for examination per Request for Laboratory Examination (Exhibit "A") signed by Police Inspector Earl B. Castillo;
- (3) According to Physical Science Report No. D-0670-04E (Exhibit "B") prepared by Forensic Chemist Lourdeliza Gural Cejes, the two (2) grams inside the seized sachet tested positive for shabu.

Non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.^[17] The requirements under RA 9165 and its IRR are not inflexible. 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."^[18] The prosecution in this case was able to preserve the integrity and the evidentiary value of the shabu seized from accused-appellants. The records show that there was substantial compliance with the requirements of RA 9165. We thus hold that the chain of custody requirements were met in the instant case.

Presumption of Regularity

Likewise undeserving of credence is the allegation of frame-up. Accused-appellants did not present any evidence of extortion on the part of the buy-bust team. Neither were they able to show any effort in correcting a wrong supposedly committed against them by filing the appropriate administrative and criminal charges against the police officers who arrested them. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit.^[19] We therefore uphold the presumption that the members of the buy bust team performed their duties in a regular manner. Their testimonies as prosecution witnesses are entitled to full faith and credit.

Penalty Imposed

RA 9165 prescribes the penalty of life imprisonment to death and a fine ranging from PhP 500,000 to PhP 10 million for a violation of Sec. 5 of the same law. Having been sentenced to life imprisonment and to pay a fine of PhP 1 million each, accused-appellants' imposed penalties should be affirmed as these are within the range provided by law.

WHEREFORE, the appeal is DENIED. Accordingly, the CA's March 31, 2009 Decision in CA-G.R. CR-H.C. No. 03019 is AFFIRMED IN TOTO. Costs against accused-appellants.

SO ORDERED.

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

[1] CA rollo, p. 6.

[2] Id. at 50-52.

[3] Id. at 52-53.

[4] Id. at 53.

[5] Also identified in the records as "Rodel Castillo."

[6] CA rollo, p. 54.

[7] Id.

[8] Id. at 55.

[9] Id.

[10] Id.

[11] Id. at 57. Penned by Judge Abraham B. Borreta.

[12] Rollo, pp. 2-.23. The Decision was penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Lucas P. Bersamin and Ramon R. Garcia, concurring.

[13] People v. Guiara, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 322-323.

[14] People v. Capco, G.R. No. 183088, September 17, 2009, 600 SCRA 204, 214.

[15] People v. Cruz, G.R. No. 164580, February 6, 2009, 578 SCRA 147, 154.

[16] G.R. No. 174198, January 9, 2010.

[17] People v. De Leon, G.R. No. 186471, January 25, 2010; citing People v. Naquita, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; People v. Del Monte, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[18] People v. De Leon, supra; citing People v. Naquita, supra; People v. Concepcion, G.R. No. 178876, June 27, 2008, 556 SCRA 421.

[19] People v. Tion, G.R. No. 17209, December 16, 2009.

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