PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIA POLITICO Y TICALA AND EWINIE POLITICO Y PALMA, ACCUSED-APPELLANTS.

G.R. No. 191394. October 18, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Before this Court on appeal is the Decision dated November 27, 2009 of the Court of Appeals[1] (CA) in CA-G.R. CR-H.C. No. 03284, which upheld the convictions of accused-appellants Maria Politico y Ticala and Ewinie Politico y Palma in consolidated Criminal Case Nos. 06244402-06244404, decided by the Regional Trial Court (RTC) of Manila, Branch 35 on February 8, 2008.

In Criminal Case No. 06244402, accused-appellants were charged with violation of Section 5, in relation to Sec. 26, Article II of Republic Act No. (RA) 9165, in an Information dated June 5, 2006, which reads as follows:

> That on or about June 3, 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other not having been authorized by law to sell trade deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell one (1) heat sealed transparent plastic sachet containing ZERO point ZERO ZERO SEVEN (0.007) gram of white crystalline substance known as "Shabu" containing methylamphetamine hydrochloride, which is a dangerous drug.[2]

In Criminal Case No. 06244403, accused-appellant Maria was charged with violation of Sec. 11(3), Art. II, RA 9165, in an Information dated June 5, 2006, which reads as follows:

> That on or about June 3, 2006, in the City of Manila, Philippines, the said accused without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in possession and under his custody and control, two (2) heat sealed transparent plastic sachet[s] weighing:
>
> ZERO POINT ZERO ONE ZERO (0.010) gram and
> ZERO POINT ZERO ZERO NINE (0.009) GRAM

of white crystalline substance containing methylamphetamine hydrochloride, known as "shabu" a dangerous drug.[3]

In Criminal Case No. 06244404, accused-appellant Ewinie was also charged with violation of Sec. 11(3), Art. II, RA 9165, in an Information dated June 5, 2006, which reads as follows:

> That on or about June 3, 2006, in the City of Manila, Philippines, the said accused without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in possession and under his custody and control, two (2) heat sealed transparent plastic sachets weighing:
>
> ZERO POINT ZERO ONE ZERO (0.010) gram and
> ZERO POINT ZERO ZERO SEVEN (0.007) gram

of white crystalline substance containing methylamphetamine hydrochloride, known as "shabu" a dangerous drug.[4]

The cases were called for arraignment on June 22, 2006, but both accused appeared without counsel and requested that they be given 30 days to secure the services of counsel. On July 25, 2006, they appeared in court again without counsel, and a counsel de oficio was appointed for the arraignment, to assist both the accused in all further stages of the proceedings. At the arraignment, the couple pleaded "NOT GUILTY" in Criminal Case No. 06244402, and individually pleaded "NOT GUILTY" IN Criminal Case Nos. 06244403-04.

The prosecution's version of events relied largely upon the testimony of Police Officer 2 (PO2) Job Jimenez, the poseur-buyer in the buy-bust operation.

On June 2, 2006, at 11:00 p.m., a confidential informant of the Anti-Illegal Drugs Unit of the Manila Police Station No. 5 at U.N. Avenue, Manila made a report that a certain "Day" was selling shabu in Tondo, Manila. Accordingly, a buy-bust operation was planned, with PO2 Job Jimenez acting as poseur-buyer. Jimenez marked two 100-peso bills at the end of their serial numbers with his initials, "JJ."

On June 3, 2006, between 12:00 and 12:30 a.m., the police proceeded to the 12[th] St. in Tondo. Jimenez and the informant waited until they were approached by accused-appellant Maria. The informant then introduced Jimenez as the interested buyer to Maria. Maria then asked Jimenez how much he wanted to buy, to which he replied PhP 200 worth. Maria then told Jimenez to give the money to her husband, Ewinie. After Jimenez gave Ewinie the marked money, Maria handed him a plastic sachet containing a white crystalline substance. Jimenez then combed his hair, which was the pre-arranged signal for the rest of the team. He then introduced himself as a police officer and arrested the couple with the aid of PO3 Leslie Bautista. Jimenez then recovered the marked money from Ewinie. He also recovered two plastic sachets with a white crystalline substance from Maria, and another two plastic sachets from Ewinie. The couple were apprised of their rights, and were brought to Police Station No. 5. Jimenez then marked the five sachets in front of the police investigator with the initials of the accused as MPT-A (for the sachet handed to Jimenez during the buy-bust operation), MPT-B1, MPT-B2, EPP-1, and EPP-2 (for those recovered from the couple after the deal), with "MPT" for "Maria Politico y Ticala" and "EPP" for "Ewinie Politico y Palma."

The five plastic sachets were submitted to the Philippine National Police Crime Laboratory for analysis. In Chemistry Report No. D-682-06 dated June 3, 2006, prepared by Police Inspector Elisa G. Reyes, the five sachets were tested positive for methylamphetamine hydrochloride.

In their defense, accused-appellants stated that on June 3, 2006, at 11:00 p.m., they were inside their house on 12[th] Street, Port Area, Manila, watching TV when people claiming to be police officers entered their house and brought the couple to the police station for "verification" purposes. At the police station, they were arrested and jailed.

The RTC consolidated the cases considering their relation to each other, and tried them jointly.

After considering the evidence for both sides, the trial court rendered its Decision on February 8, 2008, finding accused-appellants guilty in Criminal Case Nos. 06244402-04, the dispositive portion of the decision reading as follows:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered as follows:
>
> - In Criminal Case No. 06-0244402, finding both accused Maria Politico y Ticala and Ewinie Politico y Palma GUILTY beyond reasonable doubt of the offense therein charged, they are each hereby sentenced to suffer the penalty of life imprisonment; to pay a fine of Five Hundred Thousand (P500,000.00) Pesos; and the cost of

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> suit;
>
> - In Criminal Case No. 06-244403, accused Maria Politico y Ticala, and in Criminal Case No. 06-244404, accused Ewinie Politico y Palma, finding them likewise GUILTY beyond reasonable doubt of the offense charged, they are each hereby sentenced to suffer an indeterminate penalty ranging from Twelve (12) years and One (1) day, as minimum, to Fifteen (15) years of imprisonment, as maximum; to pay a fine of Three Hundred Thousand (P300,000.00) Pesos; and cost of suit.
>
> Let commitment orders be respectively issued for the immediate transfer of their custody to the Bureau of Corrections, Muntinlupa City and Correctional Institute for Women, Mandaluyong City, pursuant to SC Circulars Nos. 4-92-A and 7-2000.
>
> The five [(]5) plastic sachets (Exhibits "C" to "G", inclusive), the contents of which were positive for methylamphetamine hydrochloride, a dangerous drug, are hereby confiscated and forfeited in favor of the Government. The Branch Clerk of Court is hereby directed to turn over the same to the PDEA for proper disposal thereof.[5]

The Case before the CA

The case was appealed to the CA, with accused-appellants contending that: (1) the plastic sachets allegedly recovered from them were not marked immediately after seizure, as the marking occurred only at the police station; and (2) they had been framed and the evidence had been planted.

The CA disposed of the appeal by finding that the chain of custody of the seized drugs was unbroken, and that the integrity and evidentiary value of the confiscated items were preserved. It also found that the defense of accused-appellants that they had been framed failed when faced with the detailed testimony of the arresting officer.

The CA, thus, upheld the RTC, with the dispositive portion of the CA decision reading as follows:

> WHEREFORE, the Appeal is hereby DENIED. The Joint Decision of conviction dated 8 February 2008 of the Regional Trial Court of Manila, Branch 35, in Criminal Case Nos. 06244402-06244404 is AFFIRMED.[6]

Hence, we have this appeal.

The Ruling of this Court

The appeal is without merit.

First, on the matter of non-compliance with the requirements of Sec. 21(a) of RA 9165, as to the failure of PO2 Jimenez to mark the sachets immediately after seizure, this issue is easily disposed of in the light of the Implementing Rules and Regulations (IRR) of RA 9165.

Sec. 21(a) of the IRR of RA No. 9165 reads as follows:

> The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending

officer/team, shall not render void and invalid such seizures of and custody over said items.

The IRR excuses non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved. The fact that PO2 Jimenez marked the items at the police station, instead of at the area where the buy-bust operation took place, does not diminish the evidentiary value of the seized items, nor does it damage the case for the prosecution. Generally, non-compliance with Sec. 21 of the IRR will not render an accused's arrest illegal or the items seized or confiscated from the accused inadmissible.[7] The failure to mark the items at the scene of the buy-bust operation was sufficiently explained by PO2 Jimenez, in that he and his team were compelled to remove accused-appellants from the scene as there were other people ganging up on them who might have freed accused-appellants.[8] The necessity of securing accused-appellants, as well as the evidence, was paramount.

Accused-appellants failed to show that the integrity and evidentiary value of the seized sachets were not properly preserved. From the testimony of PO2 Jimenez, as well as the records, which include the affidavit of apprehension,[9] request for laboratory examination of the seized items,[10] and the chemistry report,[11] the chain of custody was established. The plastic sachets were accounted for from the time of the arrest to the time they were presented in court as evidence.

In a successful prosecution for offenses involving the illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.[12] Such elements are present in this case. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug or the corpus delicti as evidence.[13]

PO2 Jimenez related how the buy-bust operation transpired as follows:

Q What time did you arrive at the place?

A Around 12:00 to 12:30, sir.

Q What was that place where you proceeded, was it a house, a store or office or a warehouse?

A It was in front of a house, the 12 Street, a squatter's area, sir.

Q What did you observe when you arrived in front of the house that you mentioned?

A The suspect approached us, sir.

Q Immediately when you arrived?

A Yes, sir.

Q By the way, who were with you when you approached the house?

A The confidential informant, sir.

Q You and the confidential informant?

A Yes, sir.

Q What were you wearing at the time?

A Short pants and white t-shirt, sir.

Q You said you had companions at the time, where were they at the time?

A They strategically positioned themselves in the area, sir.

Q What happened when the suspect approached you?

A Maria alias Day asked the confidential informant whether her companion is the buyer of shabu and the informant replied yes.

Q After the confidential informant indicated to the suspect that you were the buyer of shabu that she was referring to, what happened next?

A Day asked me how much I am going to buy and I replied P200.00, sir.

Q What happened after you said you wanted to buy shabu in the amount of P200.00?

A Day instructed to give the money to her husband Ewinie, sir.

Q So the companion of the suspect happened to be her husband?

A Yes, sir.

Q What did you do after you were instructed to give the money to her husband?

A I handed him the two pieces of P100.00 bills, sir.

Q What happened next?

A Then Day handed to me one plastic sachet, sir.

Q What happened next?

A I combed my hair and that was the pre-arranged signal, sir.

Q What happened after you combed your hair?

A I introduced myself as a police officer and effected their arrest with the assistance of PO3 Bautista, sir.

Q Whom did you arrest?

A The two. Day and her husband, sir.

Q What happened after you and Police Officer Bautista effected the arrest of the two suspects?

A I recovered the money from the right hand of Ewinie and emptied their pockets and thereafter we recovered two plastic sachets with white crystalline substances from the right front short pants of Maria alias Day and another two plastic sachets from Ewinie's right front pants' pocket, sir.

Q So how many in all did you recover?

A Four sir plus the one that I was able to buy from alias Day, that makes five plastic sachets.

Q What happened next after you were able to recover these plastic sachets with white crystalline substances, if any?

A I informed them of their constitutional rights and they were brought to Police Station No. 5, sir.

Q What happened at the police station?

A I put markings on the recovered items in front of the investigator, sir.

Q You were the one who made the markings?

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A Yes, sir.

Q Alright, we are dealing with five plastic sachets here. First, the one that you mentioned that was given to you in exchange of the buy-bust money, what markings did you place on that plastic sachet?

A MPT-A, sir.

Q What does MPT-A stand for?

A Maria Politico y Ticala, sir.

Q How about the ones that you recovered from Day, what markings did you place on them?

A MPT-B1 and MPT-B2, sir.

Q How about the two other plastic sachets that you recovered from Ewinie, what markings did you place on them?

A EPP-1 and EPP-2, sir.

Q What do the markings EPP stand for?

A Ewinie Politico y Palma, sir.

Q So, on the basis of the markings can you recognize the markings if shown to you again?

A Yes, sir.[14]

PO2 Jimenez testified as the poseur-buyer in a buy-bust operation, identifying the accused couple as the sellers of a sealed sachet that contained a white crystalline substance, with PhP 200 as consideration. He marked said sachet in the presence of the couple before the item, along with other sachets confiscated from them, before these were sent to the crime laboratory for chemical analysis. The chemical analysis revealed that the crystalline substance in the sachets was methylamphetamine hydrochloride or shabu. The sachets were identified in court by PO2 Jimenez as the same ones that were confiscated from the couple.

Parenthetically, in illegal possession of dangerous drugs, such as shabu, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[15] Again, these elements are also present in this case. PO2 Jimenez testified that after the accused couple sold him shabu, when they emptied their pockets, two plastic sachets containing a white crystalline substance were recovered. These too were marked and submitted to the crime laboratory for analysis, and were found to contain shabu. PO2 Jimenez also identified the marked sachets in court as those recovered from accused-appellants.

Against the positive testimony of PO2 Jimenez, the defense of accused-appellants that they were victims of a frame-up must fail. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters.[16] Accused-appellants failed to present corroborating evidence to support their alibi. It must be remembered that accused-appellants' defenses of frame-up and denial require strong and convincing evidence to support them, for the incantation of such defense is nothing new to the Court.[17] The inability of accused-appellants to predicate their defense on anything other than their words alone ultimately condemns them to prison, especially in light of the prosecution's evidence and witnesses, which accused-appellants had been incapable of impeaching.[18] The trial court held that PO2 Jimenez's testimony was more credible than the couple's. The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect, because trial courts have the advantage of observing the

demeanor of the witnesses as they testify.[19] Furthermore, accused-appellants cannot point to any ill motive for PO2 Jimenez to testify falsely. An affirmative testimony coming from credible witnesses without motive to perjure is far stronger than a negative testimony.[20]

The prosecution has sufficiently proved the elements of the illegal sale and the illegal possession of the dangerous drug shabu, and has shown that accused-appellants are guilty beyond reasonable doubt of the crimes charged.

Sec. 5, Art. II of RA 9165 provides that the penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000) shall be imposed for the illegal sale of a dangerous drug, and pursuant to RA 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and a fine may be imposed upon accused-appellants for their violation of said section of RA 9165.

Under Sec. 11(3) of RA 9165, regarding illegal possession of a dangerous drug, the penalty imposed shall be imprisonment of twelve (12) years and (1) day to twenty (20) years, and a fine ranging from three hundred thousand pesos (PhP 300,000) to four hundred thousand pesos (PhP 400,000) if the quantity of the dangerous drug is less than 5 grams.

The penalties imposed upon accused-appellants fall squarely within the provisions of the law.

WHEREFORE, the Court AFFIRMS the Decision dated November 27, 2009 of the CA in CA-G.R. CR-H.C. No. 03284.

SO ORDERED.

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

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[1] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Bienvenido L. Reyes and Antonio L. Villamor.

[2] Records, p. 2.

[3] Id. at 3.

[4] Id. at 4.

[5] Id. at 69-70.

[6] Rollo, p. 12.

[7] People v. Capco, G.R. No. 183088, September 17, 2009, 600 SCRA 204, 213.

[8] TSN, October 12, 2006, p. 23.

[9] Records, p. 6.

[10] Id. at 9.

[11] Id. at 10.

[12] People v. Alberto, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 713.

[13] People v. Rivera, G.R. No. 182347, October 17, 2008, 569 SCRA 879, 893.

[14] TSN, October 12, 2006, pp. 6-10.

[15] People v. Lazaro, Jr., G.R. No. 186418, October 16, 2009, 604 SCRA 250, 267.

[16] People v. Alberto, supra note 12, at 714.

[17] People v. Dilao, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 440-441.

[18] People v. Soriano, G.R. No. 173795, April 3, 2007, 520 SCRA 458, 469.

[19] People v. Lazaro, Jr., supra note 15, at 268.

[20] People v. Dilao, supra note 17, at 441.

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