PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO BOCADI Y APATAN, ACCUSED, ALBERTO BATICOLON Y RAMIREZ, ACCUSED-APPELLANT.

G.R. No. 193388. July 01, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal and setting aside of the 29 May 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00709. In that Decision, the CA affirmed the Regional Trial Court's (RTC) 15 February 2007 Decision in Criminal Case No. 17494 finding the accused-appellant Alberto.Baticolon y Ramirez (Baticolon), together with Rodolfo Bocadi y Apatan (Bocadi), guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

Accused-appellant Baticolon, together with Bocadi, was charged before RTC, Branch 30, Dumaguete City with violation of Section 5, Article II of R.ANo. 9165 in an information that reads:

> That on or about the 1[st] day of March 2005, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually aiding one another, not being authorized by law, did then and there, wilfully (sic), unlawfully, and feloniously sell and deliver to an NBI poseur buyer one (1) heat sealed transparent plastic sachet containing 0.03 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called shabu, a dangerous drug.
>
> Contrary to Section 5, Article II of R.A. 9165.[2]

Having been found in possession of one (1) heat-sealed transparent plastic sachet containing 0.17 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called shabu, Bocadi was separately charged for violation of Section 11, Article II of R.A. No. 9165.

Upon arraignment, the two accused, assisted by counsel, pleaded not guilty to the offenses charged. The two cases were consolidated and thereafter trial on the merits ensued.

Version of the Prosecution

At around 4:30 o'clock in the afternoon of 1 March 2005, Special Investigator Arnaldo Fineza (SI Fineza) and SRA Miguel Dungog (Agent Dungog) of the National Bureau of Investigation (NBI) received information from a confidential asset regarding the open sale of shabu in Barangay Looc. After verification of the information received, a team was formed to conduct a buy-bust operation wherein SI Fineza was designated as the poseur buyer to handle the marked money.

Before proceeding at the target area, a briefing was conducted and the office of the Philippine Drug Enforcement

Agency (PDEA) was informed of the operation.

SI Fineza, together with two informants, went to Barangay Looc. As they reached the locus criminis, they were met by four men, one of whom was identified by the informant as Baticolon. A man later identified as Bocadi offered them shabu. This led to the agreement for the purchase of P300.00 worth of the illicit drug. Bocadi then went inside a house, and when he came back, he gave to SI Fineza one transparent sachet of suspected shabu. Simultaneously, SI Fineza handed over the marked bills to Baticolon who was then nearer to him.

Thereafter, the group immediately arrested Bocadi. During this time the other suspects, including Baticolon, were prompted to scatter and escape. SI Fineza and one of the informants pursued and caught up with Baticolon who ran inside a nearby house. Baticolon was apprehended and dragged back to the locus criminis. SI Fineza informed the accused of the nature of their arrest and of their constitutional rights. SI Fineza then pre-marked the sachet of suspected shabu.

SI Fineza then physically searched Bocadi and discovered from him another sachet of suspected shabu. This was also pre-marked by SI Fineza. SI Fineza also recovered the marked money from Baticolon after a search was made on the latter's person.

Subsequently, the suspects, as well as the seized and recovered items, were brought to the NBI Office where these were photographed and inventoried. The inventory was prepared, signed and witnessed by SkyCable media man Juancho Gallarde, Barangay Looc Kagawad Rogelio Talavera, Agent Dungog and PDEA representative SPO1 Manuel Sanchez.

The seized items were then brought to the Negros Oriental PNP Provincial Crime Laboratory for laboratory examination. Tests results revealed that the contents of the two confiscated sachets yielded positive for methamphetamine hydrochloride or more commonly known as shabu. The urine samples from the two accused also confirmed the presence of shabu.[3]

Version of the Defense

Both accused denied the allegations against them. The defense claimed that on 1 March 2005, Baticolon was merely resting in his house when he heard someone call out his name. When Baticolon responded, a man by the name of Walter Adarna (Walter) barged inside his house and yanked him out. Walter is allegedly a known police asset with whom Baticolon had a previous altercation. While outside, Walter punched Baticolon on the stomach and told the latter that he can finally exact his revenge. Thereafter, Walter bodily searched Baticolon and took his wallet. Baticolon was thereafter handcuffed and brought to the NBI office together with co-accused Bocadi. Baticolon testified that Bocadi came into the picture only when the latter was asked by Walter to pinpoint his house. Baticolon's version was corroborated by defense witness May-May Artus, a neighbor of Baticolon who allegedly saw the entire incident.[4]

Ruling of the RTC

On 15 February 2007, the trial court rendered a Decision[5] finding accused Bocadi and Baticolon guilty beyond reasonable doubt of the offense of illegal sale of shabu and sentenced them to suffer the penalty of life imprisonment and to each pay a fine of Five Hundred Thousand Pesos (P500,000.00.). Bocadi was also found guilty beyond reasonable doubt of the offense of illegal possession of 0.17 gram of shabu and sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The trial court held that the elements of illegal sale of drugs were clearly established through the evidence

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presented by the prosecution. It ruled that the prosecution was able to prove the fact that both accused were caught in flagrante delicto in a valid buy-bust operation. It noted that the defense of denial offered by the accused cannot overturn the presumption of regularity in the performance of official duties accorded to the apprehending officers.

The trial court likewise held that the acts of the accused demonstrated the presence of conspiracy. It averred that the conduct of the two accused during the entrapment revealed a common design or community of interest between them as they acted in concert in committing the crime.

The Ruling of the Court of Appeals

Only Baticolon appealed the Decision of the RTC. On intermediate appellate review, the CA found no reason to disturb the findings of the RTC and upheld in toto its ruling. The appellate court was convinced that the testimonial and object evidence on record amply support the RTC's finding that the guilt of Baticolon has been proven beyond reasonable doubt.[6] It agreed with the RTC that credence should be accorded to the testimonies of the prosecution witnesses and in holding that the apprehending officers complied with the proper procedure in the custody and disposition of the seized drugs.

Issues

Whether the trial courts erred in upholding the existence and validity of the buy bust operation conducted by the NBI.

Whether the trial courts erred in ruling that conspiracy to sell illegal drugs was established by the prosecution.

Whether the trial courts erred in convicting Baticolon of the crime charged despite the fact that his guilt was not proven beyond reasonable doubt.[7]

Our Ruling

We find the appeal bereft of merit.

In the prosecution of a case of illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (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 its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.[8]

The evidence for the prosecution clearly established all these elements. The prosecution proved that a valid buy-bust operation was conducted with SI Fineza as the buyer and Baticolon, in connivance with Bocadi, as the sellers of the shabu. Likewise, the prosecution presented in evidence the plastic sachet containing shabu as the object of the sale and proved that P300.00 was received as consideration thereof. Finally, the delivery of the shabu sold and its payment were clearly testified to by the prosecution witnesses.

Baticolon's defense which is anchored principally on denial and frame-up cannot be given credence. It does not have more evidentiary weight than the positive assertions of the prosecution witnesses. His defense is unavailing considering that he and his cohort were CEiught in flagrante delicto in a legitimate buy-bust operation. This Court has ruled that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.[9]

We agree with the trial court that the testimony of prosecution witness SI Fineza not only established the fact of

sale of shabu, but also the fact that Baticolon and Bocadi acted in concert in committing the crime, thus:

> Pros. Zerna -
>
> DIRECT EXAMINATION
>
> x x x x x x x x x
>
> Q:
>
> What transpired when you arrived at Barangay Looc?
>
> A:
>
> Arriving at the vicinity sir after entering a narrow pathway, a group of men whom one of them was positively identified by the informant as Alberto Baticolon and we approached them and then there was one man who was wearing black sleeveless shirt and shorts who offered us shabu.
>
> Q:
>
> Can you still remember how many men were in this group?
>
> A:
>
> [There] were four of them.
>
> Q:
>
> And what were they doing before you approached them?
>
> A:
>
> Maybe they were talking to each other sir.
>
> Q:
>
> When you said one of them asked or offered to you a sachet of shabu, what then did you do?
>
> A:
>
> We agreed that we were going to buy sachet of shabu worth P300 and this man wearing black T-shirt sir went inside the house leaving the three of them; one of them beside me.
>
> Q:
>
> You mean to say, you first gave your money before this man went into the house?
>
> A:
>
> No sir.
>
> Q:
>
> You did not give the money first?
>
> A:
>
> No sir.
>
> Q:

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And when you said you would buy P300 worth of shabu and this man went into the house, did he come back?

A:

Yes sir, he went out and then he handed over to me sachet of shabu and then the money, I gave it to the person standing beside the door wearing white sando and maong shorts.

Q:

How many sachets were handed over to you?

A:

Only one sachet sir.

x x x x x x x x x

Q:

Now you said after you have received the sachet handed to you by accused Rodolfo Bocadi you gave the money to another person, is that correct?

A:

Yes sir.

Q:

Do you know this other person to whom you gave the money?

A:

The man wearing white sando and maong shorts sir was positively identified by our informant as Alberto Baticolon.

x x x x x x x x x

Q:

You said, Mr.Witness, that you gave to Alberto Baticolon P300?

A:

Yes sir.

Q:

Is this the same money that was handed to you by Miguel Dungog in your office?

A:

Yes, that is the marked money sir.

Q:

After you have handed the P300 marked money, what happened next?

A:

We immediately made an arrest of Rodolfo Bocadi sir and this Alberto Baticolon, upon seeing the arrest of Rodolfo Bocadi, ran inside the nearby house sir.

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x x x x x x x x x

Q:

So, as you said, when you arrested Mr. Bocadi, Mr. Baticolon ran but you were still able to arrest him?

A:

Yes sir.

Q:

How were you able to arrest Mr. Baticolon?

A:

After he entered the house, we were able to catch him sir.

Q:

Where did you bring him after you caught Mr. Baticolon?

A:

We brought Alberto Baticolon near Rodolfo Bocadi and that time I informed them the reason for their arrest and their Constitutional Rights sir.[10]

The aforesaid testimony gave a complete picture on how Baticolon and Bocadi connived with each other in the consummation of the offense of illegal sale of a dangerous drug. The trial court found SI Fineza's testimony to be positive, clear and credible, especially during cross-examination where he remained steadfast and unwavering. His testimony, being candid and straightforward, is sufficient for a finding of guilt.

On the other hand, the trial court did not err in not giving much weight on the testimony of May-May Artus, the neighbor of Baticolon who testified for the defense, since she buckled and even admitted on cross-examination that she cannot remember the description of the apprehending officer who accompanied the informant and that she was not very sure of the details of the arrest of Baticolon and Bocadi.[11]

As correctly noted by the appellate court, although baticolon was not the one who offered and delivered the shabu to the poseur buyer, his act in thereafter receiving the marked money gives rise to the inference that he was in connivance with the seller.[12] Indeed, no person in his right mind would receive and keep the money given in payment for an illegal drug unless he is a part of such sale. We also took into consideration the fact that after the arrest, the P300 was found still in Baticolon's possession.

Baticolon questions the validity of the buy-bust operation. He contends that with the enactment of R.A. No. 9165, it is now required that all anti-drug operations shall be coordinated with the PDEA, and only specially trained and competent drug enforcement personnel shall conduct drug enforcement operations. He argues that the NBI's operation is highly questionable considering that it is neither a deputized agent of PDEA nor is buy-bust operations its primary mandate.

The provision relevant to the issue raised is Section 86 of R.A. No. 9165, which reads:

SEC. 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. - The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of

> the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.
>
> The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.
>
> Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

Baticolon's argument is no longer novel. In People v. Sta. Maria,[13] this Court has already ruled that a buy-bust operation, albeit made without the participation of PDEA, does not violate appellant's constitutional right to be protected from illegal arrest. There is nothing in Republic Act No. 9165 which even remotely indicate the intention of the legislature to make an arrest made without the participation of the PDEA illegal and evidence obtained pursuant to such an arrest inadmissible. Moreover, the law did not deprive the PNP of the power to make arrests.

Further, such contention is untenable because in this case the prosecution was able to establish that coordination with the PDEA was made prior to the buy-bust operation and even after the arrests were made. It is therefore evident that the arrests made by the NBI were legal and the evidence seized therefrom admissible in evidence.

Baticolon also submits that the evidence presented against him were insufficient for his conviction, especially considering the non-presentation of the marked money by the prosecution.

The procedure to be followed by arresting officers in apprehensions involving dangerous drugs is outlined in Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

> (a) 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[.]

It is clear from the aforesaid issuance that the presentation of the marked money is not essential in the validity of a arrest. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation. It is sufficient to show that the illicit transaction did take place, coupled with the presentation in court of the corpus delicti in evidence. These were done, and were proved by the prosecution's evidence.[14]

In this case; the prosecution has successfully established the unbroken chain of custody over the seized drugs.

After the buy-bust operation was completed, SI Fineza pre-marked the items seized and brought these to the NBI office for photograph and inventory. At the NBI office, an inventory of the seized items was conducted and these were photographed in the presence of a Sky Cable media man, barangay kagawad and a PDEA representative. A photograph of the accused with the seized items was also taken. SI Fineza then prepared a written request for laboratory examination. The written request for laboratory examination and the item seized were, thereafter, delivered by SI Fineza to the Negros Oriental PNP Provincial Crime Laboratory for examination. The request and seized item were received by PSI Llena, the forensic chemist who conducted a chemistry examination of the substance.[15] In her Chemistry Report No. D-039-05, Police Senior Inspector Josephine S. Llena (PSI Llena) certified that the specimen tested positive for methamphetamine hydrochloride.[16] The substance tested was .the same item marked; offered in evidence as Exhibit "D" 17494; and positively identified during trial by SI Fineza as the very same item sold by and taken from Bocadi during the buy-bust operation.

We have previously ruled that as long as the state can show by record or testimony that the integrity of the evidence has not been compromised by accounting for the continuous whereabouts of the object evidence at least between the time it came into the possession of the police officers until it was tested in the laboratory, then the prosecution can maintain that it was able to prove the guilt of the accused beyond reasonable doubt.[17]

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellant bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.[18] Appellant in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.[19] We note that appellant did not even question the credibility of the prosecution witnesses. His appeal harped primarily on the fact that it was not a PDEA initiated operation and that the marked money was not presented in evidence.

Finally, Section 5 of R.A. No. 9165 provides the penalty for the illegal sale of dangerous drugs, viz.:

> Sect 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.

We sustain the penalty imposed on appellant as this in conformity with the above-quoted provision of the law.

Finding no reason to depart from the rulings of the trial court and the CA, we hereby adopt the same.

WHEREFORE, the instant appeal is DENIED. The Decision dated 29 May 2009 of the Court of Appeals in CA-G.R. CR-HC No. 00709 AFFIRMING the Joint Judgment of the Regional Trial Court finding Rodolfo Bocadi y Apatan and Alberto, Baticolon y Ramirez GUILTY beyond reasonable doubt of selling shabu in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," sentencing them to each suffer the penalty of life imprisonment and ordering them to each pay a fine of Five Hundred Thousand Pesos (P500,000.00) is hereby AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

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[1] Rollo, pp. 2-11; Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Franchito N. Diamante and Rodil V. Zalameda concurring.

[2] Records, p. 3.

[3] Rollo, pp. 3-4.

[4] Id. at 4.

[5] CA rollo, pp. 46-55.

[6] Rollo, p. 10; CA Decision.

[7] CA rollo, pp. 28-29; Brief for the Accused-Appellant.

[8] People v. Midenilla, et al., 645 Phil. 587, 601 (2010) citing People v. Guiara, G. R. No. 186497 616 Phil. 290, 302 (2009).

[9] People v. Hernandez, et. al., 607 Phil. 617, 635 (2009).

[10] TSN, 10 October 2006, pp. 3-6; Direct Examination of SI Fineza.

[11] TSN, 4 December 2006, p. 9; Cross-examination of May-May Artus.

[12] Rollo, p. 10; CA Decision.

[13] 545 Phil. 520,530-531(2007).

[14] People v. Yang, 467 Phil. 492, 507 (2004).

[15] Records, p. 75.

[16] Id. at 76.

[17] Mallillin v. People, 576 Phil. 576, 588 (2008) citing Graham v. State, 255 N.E. 2d 652, 655.

[18] People v. Miranda, 560 Phil. 795, 810 (2007).

[19] See People v. Macabalang, 538 Phil. 136, 155 (2006).

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