

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADRIANO PASCUA Y CONCEPCION, ACCUSED-APPELLANT.

G.R. No. 194580. August 31, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the July 16, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03563, which affirmed the August 21, 2008 Decision[2] of the Regional Trial Court (RTC), Branch 21 in Malolos, Bulacan, in Criminal Case No. 3936-M-2003. the RTC found accused Adriano Pascua guilty of violating Sec. 5, Art. II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

An Information charged the accused with the following:

That on or about the 13[th] day of October, 2003, in the municipality of Meycauayan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport [a] dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride weighing 0.084 gram.[3]

During his arraignment, the accused pleaded not guilty. The parties stipulated on the following facts during the trial:

- (1) That there was a request for laboratory examination (Exhibit "A") covering two (2) sachets of regulated drugs (Exhibits "C" and "C-1");
- (2) That pursuant to the request, an examination was conducted on the specimens seized; and
- (3) That the examination conducted by Forensic Chemical Officer Nelson Sta. Maria found the subject specimens positive for methamphetamine hydrochloride or shabu (Chemistry Report No. D-768-2003, Exhibit "B").[4]

Version of the Prosecution

The CA summarized the facts from the records as follows:

On 13 October 2003, PO1 Tadeo of the PNP Station, Meycauayan, Bulacan, received a phone call from a concerned citizen saying that there was rampant selling of illegal drugs in Banga, Meycauayan, Bulacan. When the information was relayed to the Chief of Police, the latter instructed the police officers to form a team which would conduct a buy-bust operation. The team was composed of PO1 Tadeo, who would act as the poseur-buyer in the said operation, and his back-up officers PO1 Michael Sarangaya, PO1 Frederick Viesca and PO1 Philip Santos.

After the pre-operational report was made, the buy-bust team, together with the asset, proceeded to the target

area which was a club located at Banga, Meycauayan, Bulacan. PO1 Tadeo was given two pieces of P100-bills, and he marked the same with his initials "WCT."

Thereafter, the back-up officers positioned themselves at the other side of the street, while PO1 Tadeo and his asset went inside the club. Upon entering the same, PO1 Tadeo noticed that there was somebody transacting with their suspect. Afterwards, PO1 Tadeo was introduced by the asset to their suspect, alias Joel, as the next buyer of shabu. PO1 Tadeo then asked alias Joel if he had P200.00 worth of shabu, to which the latter replied in the affirmative. PO1 Tadeo thus handed alias Joel the marked P100-bills, while the latter in turn gave PO1 Tadeo a plastic sachet containing white crystalline substance. PO1 Tadeo, thereafter, dialed the number of one of his back-up officers and made a missed call from his cellphone, which was the pre-arranged signal for his back-up team. Consequently, the other members of the entrapment team entered the premises and arrested the person whom they first saw buying suspected drugs from alias Joel, who they identified later on as Robert Carmelo, and likewise obtained from him a plastic sachet containing white crystalline substance. Thereafter, they arrested alias Joel, who was later on identified as accused-appellant Adriano Pascua.

After placing the necessary markings, the two (2) plastic sachets containing white crystalline substance recovered from the accused-appellant Pascua and Robert Carmelo were submitted to the PNP Crime Laboratory for analysis. Consequently, Forensic Chemist Nelson Sta. Maria issued Chemistry Report No. D-768-2003 which stated that the seized specimen yielded positive for Methamphetamine Hydrochloride, also known as "shabu", a dangerous drug.[5]

Version of the Defense

As synthesized by the CA, the defense offered the following version of what transpired:

On 13 October, 2003, at around 11:00 a.m., accused-appellant was resting in his home. Suddenly, he heard a noise and saw two uniformed men holding short guns while destroying the door of his house. He instantly felt afraid because just recently, two of his brothers were killed in an ambush, hence this prompted him to run away and pass -through the back door of his house. While running, he fell into the river, but he managed to swim and climb up the cliff. He continued running until he noticed two men in a motorcycle chasing him. When the men caught up with him, they grabbed him by the hand and told him that he was being arrested. The accused-appellant asked them for what offense he was being arrested, but he was instead told by the men that he better take a bath since he fell into a river and he [did] not smell good, after which they would bring him to the police headquarters. The armed men thus forcibly brought him inside their vehicle, where he saw another person handcuffed. The men subsequently brought both of them at the police headquarters in Meycauayan, Bulacan. At the police station, the accused-appellant [begged] the police officers not to charge him with violation of Section 5, Article II of Republic Act No. 9165, since said offense was not bailable. One of the police officers then told him that he would be charged with violation of Section 11 instead, but he should bring five (5) grams of shabu with him. The accused-appellant, however, replied that he did not have any shabu. The police officers thereafter locked him up in the Municipal Hall and, the next day, charged him at the fiscal's office with violation of Section 5, Article II of R.A. 9165. Subsequently, the police officers brought him back to his house and told him to give them money and shabu. Accused-appellant again replied that he did not have any money and shabu in his possession. The police officers then entered his house and searched it thoroughly, without showing him any search warrant. After conducting the search, the accused-appellant was brought back to the police station.

On the other hand, Robert Carmelo narrated that, on 13 October 2003, at around 11:00 a.m., he was at his house at Bangcal Extension, Meycauayan, Bulacan, when somebody forcibly entered it and hit him in the stomach with a 45-caliber gun. He was then forcefully taken outside and was made to ride in an ambulance. They passed by a bridge and stopped as the men riding with him alighted from the vehicle and entered another house. Thereafter, a chase ensued as the occupant of the house ran away. Subsequently, the men were able to arrest the person they were chasing and likewise was able to lead him inside the vehicle. Carmelo and the other

person arrested were brought to the Municipal Hall, where they were immediately charged with Violation of Section 11, Article II of R.A. 9165 and Section 5 of the same law, respectively. Carmelo only found out that the other person arrested with him was accused-appellant Pascua when they were already inside the jail.

Teresita "Bheng" de Belen, an assistant at the videoke bar located in front of accused-appellant's house who claimed to have witnessed the incident, corroborated the testimonies of accused-appellant and Carmelo.[6]

Ruling of the Trial Court

The RTC found the accused guilty of the offense charged. It found that the evidence of the prosecution established the elements of illegal sale of drugs as the accused was caught in flagrante delicto via a buy-bust operation. On the other hand, the RTC noted that the defense merely offered denial as its defense while failing to overturn the presumption of regularity in the performance of official duties accorded to the buy-bust team.

The dispositive portion of the RTC Decision reads:

WHEREFORE, all the foregoing premises considered, this Court finds and so holds that the prosecution was able to establish by proof beyond reasonable doubt the guilt of accused Adriano Pascua y Concepcion of the crime charged. Consequently, he is hereby sentenced, there being no attending circumstances, to serve the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos.

x x x x

SO ORDERED.[7]

Ruling of the Appellate Court

On appeal, accused averred that the trial court erred in finding him guilty beyond reasonable doubt despite the prosecution's non-compliance with Sec. 21 of RA 9165 on the chain of custody of seized drugs. He alleged that the prosecution failed to prove the integrity of the seized drug. He also raised as error his conviction based solely on the testimony of Police Officer 1 Willie Tadeo (PO1 Tadeo).

The People, represented by the Office of the Solicitor General (OSG), countered that the integrity and chain of custody of the seized item was duly established during the trial. It was further argued that not all those who came into possession of the seized drugs have to be presented as a witness as long as the chain of custody was not broken and the seized drugs were properly identified.

Moreover, the OSG argued that the failure of the prosecution to comply with Sec. 21 of RA 9165 did not overcome the application of the presumption of regularity in the performance of regular duty accorded to the police officers involved in the buy-bust operation. The OSG furthermore argued that the defense of bare denial cannot be given greater evidentiary weight than the positive declarations of the complainant. It added that no evidence was shown that the police officers in the buy-bust operation had any ill motive to make false charges against the accused.

The CA affirmed the ruling of the RTC. The fallo of the CA Decision reads:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DISMISSED, and the appealed decision is AFFIRMED in toto.[8]

On January 19, 2011, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested that they were adopting their respective briefs filed before the CA.

The Issues

I

Whether the Court of Appeals erred in finding accused-appellant guilty beyond reasonable doubt despite the prosecution's non-compliance with RA 9165 on chain of custody of seized drugs

II

Whether the Court of Appeals erred in finding accused-appellant guilty despite the prosecution's failure to prove the integrity of the seized drug

III

Whether the Court of Appeals erred in finding accused-appellant guilty based solely on the testimony of PO1 Tadeo.

The Ruling of this Court

In every case of illegal sale of dangerous drugs, the prosecution is obliged 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.[9]

On the first issue, the CA did not err in finding accused-appellant guilty beyond reasonable doubt. As the records show, the identities of the buyer, PO1 Tadeo, and the seller, accused-appellant, were established. The object of the sale, 0.084 gram of shabu, and the consideration, PhP 200, were likewise adequately shown by the prosecution. There is also no question as to the delivery of the shabu sold and the payment for it.

As to the second issue on the integrity of the seized drug, the CA correctly affirmed the findings of the RTC. Apart from establishing the elements in the illegal sale of drugs, it must further be shown by the prosecution that the drugs seized and tested are the same as the corpus delicti presented in court. Sec. 21(a), Art. II of the Implementing Rules and Regulations (IRR) of RA 9165 lays down the procedure in the custody and control of drugs:

(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.

In *People v. Rosialda*,^[10] We reiterated jurisprudence to the effect that leeway is given to the prosecution as regards compliance with the chain of custody requirement. We have previously underscored that RA 9165's IRR provides that "non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers."^[11] What is significant in the requirement is the preservation of the integrity and evidentiary value of the seized items. Indeed, "non-compliance with the provisions of RA 9165 on the custody and disposition of dangerous drugs is not necessarily fatal to the prosecution's case. Neither will it render the arrest of an accused illegal nor the items seized from her

inadmissible."

In the instant case, the chain of custody over the seized drugs was testified on by PO1 Tadeo. After the buy-bust was completed, PO1 Tadeo marked the plastic sachet sold by accused-appellant with the initials "WCT." PO1 Michael Sarangaya, who arrested accused-appellant's co-accused Carmelo, marked the plastic sachet from Carmelo with "MCS." A request for laboratory examination of the seized items was made (Exhibit "A"). Afterwards, PO1 Tadeo personally brought the request and the seized items to the PNP crime laboratory. The same specimens tested positive for shabu as evidenced in Chemistry Report No. D-768-2003 (Exhibit "B") and were subsequently presented during trial (Exhibits "C" and "C-I").

Reiterating his earlier argument, accused-appellant maintains that there was a broken chain of custody over the seized drugs in the instant case. However, as aptly shown by the prosecution, the chain of custody was shown to have been unbroken in accordance with RA 9165 and its IRR.

On the third issue, We affirm the CA as well. On the matter of presenting only one witness against accused-appellant, We had occasion to rule that "not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand." [13]

What is more, PO1 Tadeo enjoys the presumption of regularity accorded to those performing their official duties. To overturn the presumption, there must be clear and convincing evidence that the police officer was inspired by an improper motive. [14] No evidence was shown by accused-appellant that PO1 Tadeo had any ill motive to frame him.

Penalty Imposed

As there were no attending circumstances in the commission of the offense, the RTC imposed the penalty of life imprisonment and a fine of five hundred thousand pesos (PhP 500,000).

A violation of Sec. 5 of RA 9165 carries with it a penalty of life imprisonment and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000) for the sale of any dangerous drug regardless of the quantity or purity involved.

We find the penalty and fine imposed on accused-appellant conform to RA 9165.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 03563 is hereby AFFIRMED IN TOTO.

SO ORDERED.

Peralta, Abad, Mendoza, and Sereno, [*] JJ., concur.

[*] Additional member per Special Order No. 1028 dated June 21, 2011.

[1] Penned by Associate Justice Elihu A. Ybanez and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Estela M. Perlas-Bernabe.

[2] Penned by Judge Jaime V. Samonte.

[3] Rollo, p. 3.

[4] CA rollo, pp. 49-50.

[5] Rollo, pp. 4-5.

[6] Id. at 6-8.

[7] CA rollo, p. 18.

[8] Rollo, p. 25.

[9] *People v. Midenilla*, G.R. No. 186470, September 27, 2010, 631 SCRA 350, 364; citing *People v. Guiara*, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 322-323.

[10] G.R. No. 188330, August 25, 2010, 629 SCRA 507, 521; citing *People v. Rivera*, G.R. No. 182347, October 17, 2008, 569 SCRA 879, 897-899.

[11] *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 233.

[12] *People v. Marcelino*, G.R. No. 189278, July 26, 2010, 625 SCRA 632, 641; citing *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 718.

[13] *People v. Padua*, supra note 11.

[14] *People v. Pagkalinawan*, G.R. No. 184805, March 3, 2010, 614 SCRA 202, 219.

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