

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. KAMAD AKMAD Y ULIMPAIN @ “MHADS” AND BAINHOR AKMAD Y ULIMPAIN @ “BHADS,” ACCUSED-APPELLANTS.

G.R. No. 195194. November 25, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

On appeal is the 19 February 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03376 which affirmed the Decision dated 22 May 2008 of the Regional Trial Court (RTC), Malolos City, Branch 21 finding the accused-appellants Kamad Akmad y Ulimpain (Kamad) and Bainhor Akmad y Ulimpain (Bainhor) 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

Kamad and Bainhor were charged before RTC, Branch 21, Malolos, Bulacan for violation of Section 5, Article II of R.A. No. 9165 in an information that reads:

That on or about the 25[th] day of September, 2003 in the [M]unicipality of Meycauayan, [P]rovince 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 dangerous drug consisting of one (1) heat-sealed transparent plastic bag of Methylamphetamine Hydrochloride weighing 49.606 grams in conspiracy with each other.[2]

On 11 November 2003, Kamad and Bainhor, assisted by their counsel, pleaded not guilty to the crime charged. Pre-trial and trial thereafter ensued.

Version of the Prosecution

On 25 September 2003, senior Police Officer 1 Hashim Maung (SPO1 Maung) of the Philippine Drug Enforcement Agency (PDEA), Bulacan Provincial Office received a report from a civilian informant regarding the illegal drug activities of Kamad and Bainhor in the area of Meycauayan, Bulacan. The two were allegedly capable of disposing large volumes of shabu through consignment basis. SPO1 Maung instructed the civilian informant to set up a drug deal with the suspects.

At around 2:00 o'clock in the afternoon of the same date, the informant returned and reported that he had already negotiated for the delivery of 50 grams of shabu worth Fifty Thousand Pesos (P50,000.00). The delivery would allegedly take place in front of McDonald's restaurant in Barangay Banga, Meycauayan, Bulacan.[3]

A team composed of Police Officer 3 Rolando Navarette (PO3 Navarette), as poseur-buyer, and SPO1 Maung and

PO1 Co, as back-up, was immediately formed to conduct a buy-bust operation.[4]

Upon arrival at the locus criminis at around 5:45 o'clock in the afternoon, the informant introduced PO3 Navarette to Kamad and Bainhor as an interested buyer. Kamad then took a medium-sized plastic sachet containing suspected shabu from his pocket and gave it to Bainhor, who, in turn, handed it to PO3 Navarette. Upon receipt of the plastic sachet, PO3 Navarette immediately executed their pre-arranged signal by scratching the back of his head with his right hand. SPO1 Maung and PO1 Co immediately rushed in and introduced themselves as PDEA operatives. The accused were informed of their rights and brought to the police station for disposition and documentation.[5]

PO3 Navarette testified that he marked the plastic sachet with his initial "RCN." He likewise testified that he prepared the request for the laboratory examination that was brought by SPO1 Maung to the crime laboratory together with the specimen, which later on tested positive for shabu.[6]

Version of the Defense

Accused-appellants denied the accusations against them. They maintained that they were merely drinking softdrinks at the McDonald's fastfood restaurant in Barangay Banga, Meycauayan, Bulacan when three men suddenly approached them and poked a gun at Kamad. They were dragged out of the restaurant and forced to board a red car. Then, they were brought to a small house and were ordered to remove their clothings. They Were bodily searched but the three men did not find anything on them. Thereafter, they were brought to the provincial jail.

Ruling of the RTC

On 22 May 2008, the trial court promulgated a Decision[7] finding accused-appellants guilty beyond reasonable doubt of the offense charged and sentenced them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00). The trial court ruled that the evidence presented by the prosecution successfully established the elements of illegal sale of a dangerous drug as accused-appellants were caught in flagrante delicto in a valid buy-bust operation. It noted that the defense of denial and frame-up offered by the defense cannot overturn the presumption of regularity in the performance of official duties accorded to the apprehending officers.

The Ruling of the Court of Appeals

On intermediate appellate review, the CA found no reason to disturb the findings of the RTC and upheld its ruling. The appellate court agreed with the RTC that the testimony of the lone prosecution witness was sufficient to establish the culpability of accused-appellants. It also held that the apprehending officers complied with the proper procedure in the custody and disposition of the seized drug and that the identity of the corpus delicti was properly preserved and established by the prosecution.[8]

Issue

Whether the lower courts gravely erred in finding the accused-appellants guilty of the crime charged notwithstanding the prosecution's failure to prove their guilt beyond reasonable doubt.[9]

Our Ruling

We deny the appeal.

Accused-appellants allege that PO3 Navarette testified that they were informed by a civilian informant that the accused-appellants can dispose large volume of shabu through consignment basis, which means that, at first, they

will be given the shabu and on the next delivery, they will give the payment for the shabu earlier delivered. Accused-appellants maintain that the testimony defeated the prosecution's claim of illegal sale of drugs. They insist that no sale transaction was consummated between them and PO3 Navarette because one of the essential elements of a sale, i.e. the price certain in money or its equivalent is absent.[10]

The argument is erroneous. In the prosecution of a case of illegal sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drug is adequately proven and the drug subject of the transaction is presented before the court.[11] Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.[12] What is material is the proof that the transaction or sale took place, coupled with the presentation in court of the corpus delicti as evidence.[13] In the instant case, the prosecution was able to establish the consummated transaction between the poseur-buyer and accused-appellants.

Moreover, we note that accused-appellants were charged with selling, trading, delivering, giving away, dispatching in transit and transporting dangerous drugs under Section 5, Article II of R.A. No. 9165.[14] The charge was not limited to the selling of dangerous drugs. The aforesaid provision of law punishes not only the sale but also the mere act of delivery of prohibited drugs after the offer to buy by the entrapping officer has been accepted by the seller. In the distribution of prohibited drugs, the payment of any consideration is immaterial. The mere act of distributing the prohibited drugs to others is in itself a punishable offense.[15]

Accused-appellants also submit that the lower courts failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II, R.A. No. 9165.[16] They allege that the arresting team should have conducted a physical inventory of the item seized and took photographs thereof in their presence and in the presence of a representative each from the media, the Department of Justice, and any elected public official who shall further be required to sign copies of the inventory.[17] They further allege that the prosecution was not able to establish the unbroken chain of custody of the dangerous drug when it failed to present SPO1 Maung, the one who prepared the request and delivered the alleged confiscated specimen to the PNP Crime Laboratory Service, Bulacan Provincial Office, Malolos, Bulacan.

We are not persuaded. The procedure to be followed in the custody and handling of the seized 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[.] (Emphasis supplied)

The last part of the aforequoted issuance provided the exception to the strict compliance with the requirements of Section 21 of R.A. No. 9165. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient.[18] This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items

seized inadmissible in evidence.[19] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[20] In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.[21]

Here, the prosecution successfully established the unbroken chain of custody over the seized drug. After the arrest of the accused-appellants and the seizure of the suspected shabu, PO3 Navarette conducted an inventory in the presence of Princesita Gaspar and Ma. Theresa Lienado, officials of the barangay where the crime was committed. PO3 Navarette then marked the item with his initials, prepared the Receipt of Property Seized and had it signed by the barangay officials. These were done in the presence of the accused-appellants who refused to sign on the receipt. A request for laboratory examination was thereafter prepared and the item was transmitted to the crime laboratory for examination.[22] The seized item was received by Forensic Chemical Officer Nellson Sta. Maria, who conducted a chemistry examination of the substance. In his Chemistry Report No. D-727-2003,[23] the forensic officer stated that the specimen tested positive for methamphetamine hydrochloride or shabu.

It is clear from the foregoing that the substance marked, tested and offered in evidence was the same item seized from accused-appellants. This position by the prosecution was bolstered by the defense's admission during the pre-trial conference of the existence, due execution and genuineness of the request for laboratory examination, the Chemistry Report and specimen submitted.[24]

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.[25]

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. Accused-appellants bear 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.[26] Accused-appellants in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimony of PO3 Navarette deserves full faith and credit. In fact, accused-appellants did not even question the credibility of the apprehending officers. Nor did they present any reason why the apprehending would fabricate a story to arrest them. They simply anchored their appeal on denial and the alleged broken chain of the custody of the seized drug. We have previously 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.[27]

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 find the penalty imposed on accused-appellant in conformity with the above-quoted provision of the law.

In fine, there is no reason to modify or set aside the Decision of the RTC, as affirmed by the CA. We thus adopt its findings of fact and conclusions of law.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 03376 finding the accused Kamad Akmad y Ulimpain and Bainhor Akmad y Ulimpain guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," sentencing them to suffer the penalty of life imprisonment and ordering them to pay a fine of Five Hundred Thousand Pesos (P500,000.00) is hereby AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Velasco, Jr.,[*] Leonardo-De Castro, and Bersamin, JJ., concur.

[*] Acting member per Special Order No. 2292 dated 23 November 2015.

[1] Rollo, pp. 2-11; Penned by Associate Justice Japar B. Dimaampao with Associate Justices Ramon M. Bato, Jr. and Mario V. Lopez concurring.

[2] Records, p. 2.

[3] TSN dated 25 June 2003, pp. 2-3.

[4] Id. at 4.

[5] Id. at 4-6.

[6] Id. at 6-7.

[7] Records, pp. 124-133.

[8] Rollo, p. 10.

[9] CA rollo, p. 41; Brief for the Accused-appellants.

[10] Land, Inc. v. CA, 335 Phil. 626, 629 (1997); Coronel v. CA, 331 Phil. 294, 309 (1996).

[11] People v. Conception, 578 Phil. 957, 975-976 (2008).

[12] People v. Astudillo, 440 Phil 204, 224 (2002).

[13] People v. Chen Tiz Chang, 382 Phil. 669, 684 (2000).

[14] Records, p. 2; Information,.

[15] People v. Rodriguez, 429 Phil 359, 370 (2002).

[16] (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[.]

[17] CA rollo, p. 46; Brief for the Accused-appellants.

[18] *People v. Cortez*, G.R. No. 183819, 23 July 2009, 593 SCRA 743, 764.

[19] *People v. Almodiel*, G.R. No. 200951, 5 September 2012, 680 SCRA 306, 323; *People v. Campos*, G.R. No. 186526, 25 August 2010, 629 SCRA 462, 468 citing *People v. Conception*, 578 Phil. 957, 971 (2008).

[20] *People v. Magundayao*, G.R. No. 188132, 29 February 2012, 667 SCRA 310, 338;

[21] *People v. Le*, G.R. No. 188976, 29 June 2010, 622 SCRA 571, 583 citing *People v. De Leon*, 636 Phil. 586, 598 (2010) further citing *People v. Naquita*, 582 Phil. 422, 442 (2008); *People v. Conception*, 578 Phil. 957, 971 (2008).

[21] *People v. Manlangit*, 654 Phil. 427, 440-441 (2011) citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 520-521 further citing *People v. Rivera*, 590 Phil. 894, 912-913 (2008).

[22] Exhibit Folder, p. 1.

[23] *Id.* at 2.

[24] Records, p. 32; Pre-trial Order.

[25] *Malilin v. People*, 576 Phil 576, 588 (2008) citing *Graham v. State*, 255 NE2d 652, 655.

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

[27] *People v. Hernandez*, 607 Phil. 617, 635 (2009).

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