

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR BOLO Y FRANCO, ACCUSED-APPELLANT.

G.R. No. 200295. August 19, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

Before the Court is a notice of appeal assailing the Decision[1] dated April 28, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03651, which affirmed the Decision[2] dated October 21, 2008 of the Regional Trial Court (RTC) of Caloocan City, Branch 123, in Criminal Cases No. C-74987 and No. C-74988, finding accused-appellant Edgar Bolo y Franco guilty beyond reasonable doubt of illegal sale and illegal possession of shabu under Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

In Criminal Case No. C-74987, accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165, as follows:

That on or about the 1st day of April, 2006 in Caloocan City and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 ROLLY JONES MONTEFRIO who pose[d] as buyer [of] METHYL AMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.21 gram without corresponding license or prescription therefore, knowing the same to be such.

CONTRARY TO LAW.[3]

Meanwhile, in Criminal Case No. C-74988, accused-appellant was charged with violation of Section 11, Article II of R.A. No. 9165, to wit:

That on or about the 1st day of April, 2006 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.19 gram, 0.22 gram & 0.20 gram when subjected [to] chemistry examination gave positive result of METHYLAMPHETAMINE HYDROCHLORIDE, a dangerous drug.

CONTRARY TO LAW.[4]

Although these charges were anchored on a single incident, the two sets of Information were raffled separately. Criminal Case No. C-74987 was raffled to Branch 123, while Criminal Case No. C-74988 was raffled to Branch 127.

On separate arraignments, accused-appellant pleaded not guilty to both of the charges.[5]

In an Order dated January 23, 2007,[6] the consolidation of these cases was ordered. Thereafter, a joint trial on the merits ensued.

As succinctly summarized by the RTC, the version of the prosecution is as follows:

On April 1, 2006, Col. Cuaton, Chief of the SAID SOU of the Caloocan City Police Station, acting on the information furnished by their confidential informant that an alias Gagay was engaged in illegal drug activities at 11[th] and 12[th] street, Caloocan City, ordered that a buy bust team be formed to conduct an operation against the said person.

Accordingly, the team was formed composed of PO3 Valderama, PO3 Modina, PO3 Galvez, PO1 Rosales and PO1 Montefrio. PO1 Montefrio was designated as the poseur buyer who received two (2) P100 bills as buy bust money pre-dusted with ultra violet powder. On the other hand, PO3 Pagsolingan and the rest of the team were designated as back-ups.

Having agreed on what the signal would be once the same is consummated and after securing a Pre-Operation Report from the PDEA, the team then proceeded to the target place at 11[th] and 12[th] avenue, 7[th] street, Caloocan City. Upon their arrival and upon seeing alias Gagay, the latter was introduced by the informant to Montefrio who immediately announced his intention to buy shabu. Alias Gagay then asked Montefrio how much. In response, Montefrio said "two hundred pesos" and simultaneously handed the money to alias Gagay, the accused herein. Upon receipt of the money, the accused took from his pocket a plastic sachet from which he pulled one plastic sachet which he gave to PO1 Montefrio who thereafter gave the pre-arranged signal. Thereafter, he arrested the accused and introduced himself as a police officer and recovered the buy bust money from the hand of the accused.

Upon seeing the pre-arranged signal, Pagsolingan ran towards the accused and Montefrio in order to arrest the former. Having been told by Montefrio that there were still other sachets in the pocket of the accused, Pagsolingan ordered the latter to empty his pocket. As a result, Pagsolingan recovered three more plastic sachets from the accused.

The police officers then brought the accused to their office where they turned him over together with the recovered evidence to the investigator, PO2 Randolph Hipolito. Upon receipt of the evidence, PO2 Randolph Hipolito marked the evidence that he received from PO1 Montefrio as EBF-1 Buy Bust 04-01-06. On the other hand, the evidence that PO3 Pagsolingan recovered were marked as EBF-2, EBF-3 and EBF-4. Thereafter, the investigator prepared a letter addressed to the Crime Laboratory Office requesting that the buy bust shabu as well as the specimen recovered from the accused be subjected to laboratory examination to determine whether they contained Methylamphetamine hydrochloride. The investigator likewise prepared a letter request for the detection of ultra violet powder on the persons of the accused, the poseur buyer, PO1 Montefrio as well as on the two P100 bills.

Upon receipt of the Letter Request from the DAID-SOTG, Police Senior Inspector Jesse de la Rosa, conducted an examination on the specimen contained in four plastic sachets pre-marked with EBF-1 Buy Bust 4-01-06 to EBF-4. His examination gave positive results to the test of Methylamphetamine Hydrochloride, a dangerous drug. He reduced his findings into writing contained in Physical Science Report D-167-06.

He also received a request for the detection of ultra violet powder on the living persons of the accused and of PO1 Montefrio as well as the money that was used in the buy-bust operation. His examination gave positive result for the presence of ultra violet powder on the palmar portion of both hands of the accused and of PO1 Montefrio as well as the buy bust money. His findings were contained in PSR No. PI-003-06.[7]

The defense's version, on the other hand, is as follows:

Accused Edgar Bolo testified that on March 31, 2006 at around 8:30 pm, he was at 7[th] St., 11[th] Ave., Caloocan City. He was fetched by his friends at the "saklaan" and one of them is Gil. They invited him to attend the graduation of Gil's child for thanksgiving at 11th Ave., 7[th] Street, Caloocan City. At the house of Gil, while they were having drinking session, more than ten policemen arrived and introduced themselves as

such and frisked them. Then the policemen left and proceeded to another alley where there were also people drinking. He identified one of them as SPO1 Moran. He knew him because he gives money when he goes to the "saklaan." As he was leaving the place, he was accompanied by a lady friend. Upon reaching 7[th] St., the lady friend looked back and saw four male persons coming towards them. When he also looked back, he saw them holding clubs and pipes. Upon seeing them, he ran towards 6[th] St. [W]hile running, he shouted for help. He was blocked on his way [by] an owner type jeep from where SPO1 Moran alighted, pointing a gun at him. He was brought to Sangandaan. He asked them what was his violation, but they did not answer. It was only when he was inquested that he knew of his violation which is Section 5 and Section 11 of RA 9165. Then he had his medical check up. While he was handcuffed, PO1 Montefrio wiped both his hands and his pockets with marked money.

Janet de Vera testified that on March 31, 2006 at around 8:30, she was invited by a friend to attend a graduation celebration. At the celebration, accused was also one of the visitors. When she decided to go home, accused was also on his way home and asked her where he could take a ride in going home.

Both of them then left the place. On their way home, she looked back and sensed that there were male persons who were following them. She told the accused on what she noticed. Accused also looked back and confirmed that they were being followed. She told the accused to run and the latter ran towards 12[th] Avenue.[8]

After weighing the evidence, the RTC convicted accused-appellant on both charges. The RTC held that the presence of ultraviolet powder on both hands of the accused established that a buy-bust transaction took place. It also accorded full faith and credence to the testimonies of Police Officer 1 Rolly Jones Montefrio (PO1 Montefrio) and PO3 Rodrigo Pagsolangan (PO3 Pagsolangan) as there were no imputations of any evil or improper motives on their persons. Also, it ruled that the specimens recovered from accused-appellant were the same items turned over to the investigator and then to the forensic chemist, and which were found to be shabu. The RTC then concluded that, as against the overwhelming pieces of evidence presented by the prosecution, the defenses of denial and frame-up raised by accused-appellant did not inspire belief.

The RTC then convicted accused-appellant in this manner:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1.)

In Crim. Case No. C-74987, finding accused EDGAR BOLO Y FRANCO guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II, RA 9165 and hereby sentencing him to suffer the penalty of life imprisonment and to pay a fine of One Million Pesos ([P]1,000,000.00) without subsidiary imprisonment in case of insolvency.

2.)

In Crim. Case No. C-74988, finding accused EDGAR BOLO Y FRANCO guilty beyond reasonable doubt of the crime of Violation of Sec. 11, Art. II[,] RA 9165 and hereby sentencing him to suffer the penalty of imprisonment from Twelve (12) years and One (1) day to Thirteen (13) years and Eight (8) months and to pay a fine of P300,000.00 without subsidiary imprisonment in case of insolvency[.]

The shabu subject matter of these cases is hereby confiscated in favor of the government to be disposed of in accordance with the rules governing the same.

The Branch Clerk of Court is hereby ordered to turn-over to the Office of the Clerk of Court the buy bust money in the amount of P200.00.

Costs against the accused.

SO ORDERED.[9]

Accused-appellant appealed before the Court of Appeals, raising the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATIONS OF SECTION[S] 5 AND 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE ARRESTING OFFICERS' PATENT NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DRUGS.[10]

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE FACT THAT THE PROSECUTION FAILED TO PROVE THE PROPER CHAIN OF CUSTODY OF THE SEIZED DANGEROUS DRUGS.[11]

After a review of the records, the Court of Appeals affirmed the RTC Decision. The Court of Appeals found that there was no break in the chain of custody of the confiscated drugs; thus, the integrity and the evidentiary value of the same were preserved and established before the RTC. The appellate court also ruled that the testimony of PO1 Montefrio clearly established the elements for accused-appellant's violation of Sections 5 and 11, Article II of R.A. No. 9165, and that there was no reason to doubt PO1 Montefrio's testimony.

As such, the Court of Appeals held:

WHEREFORE, premises considered, the assailed Decision dated 21 October 2008 of the Regional Trial Court of Caloocan City, Branch 123[,] is hereby AFFIRMED in toto.

SO ORDERED.[12]

Accused-appellant is now before the Court, seeking a review of his conviction. In his Brief, accused-appellant claims that the failure of the arresting police officers to comply with Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, specifically on the requirements of markings, physical inventory and photographs, translates to their failure to preserve the integrity and the evidentiary value of the seized items,[13] especially since the testimonies of the prosecution witnesses failed to establish the chain of custody of the seized drugs.[14] Also, accused-appellant questions the authenticity of the ultraviolet dusting of the buy-bust money in light of the possible contamination of such as the police officers surrendered said dusted money without first placing them in a sealed envelope or container. Accused-appellant then intimates on the possibilities that the dusting was done only after he was arrested and that he was deliberately forced to hold the same.[15]

We dismiss the appeal.

Indeed, as we held in *People v. Torres*[16] -

The identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. In this regard, paragraph 1, Section 21, Article II of [R.A.] No. 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and [the] integrity of dangerous drugs seized, to wit:

SEC. 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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.[17]

However, "this Court has, in many cases, held that while the chain of custody should ideally be perfect, in reality it is not, 'as it is almost always impossible to obtain an unbroken chain.' The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or [the] innocence of the accused. Hence, the prosecution's failure to submit in evidence the physical inventory and photograph of the seized drugs[,] as required under [Section] 21 [Article II of the IRR] of [R.A.] No. 9165, will not render the accused's arrest illegal or the items seized from [him] inadmissible." [18]

The chain of custody is not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the presence of the enumerated persons. The IRR of R.A. No. 9165 on the handling and disposition of seized dangerous drugs states:

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 the case at bar, PO1 Montefrio and PO3 Pagsolingan testified that, after one of the subject sachets was seized by PO1 Montefrio during the buy-bust operation and after the three other subject sachets were seized by PO3 Pagsolingan during the arrest, both of them turned over the seized items to PO2 Randolph Hipolito (PO2 Hipolito) at the police station. PO2 Hipolito then testified that he received and marked the seized items (EBF-1 BB 04-01-06 for the sachet seized by PO1 Montefrio, and EBF-2 to EBF-4 for the sachets recovered by PO3 Pagsolingan), and that he brought them to Police Senior Inspector Jesse dela Rosa [19] (PSI Dela Rosa), a forensic chemist. PSI Dela Rosa then testified that he received the seized items, that he conducted a qualitative examination on said items, and that his examination confirmed that the seized items were positive for methylamphetamine hydrochloride. In open court, PO1 Montefrio, PO3 Pagsolingan, PO2 Hipolito, and PSI Dela Rosa were able to identify the seized items as those confiscated from accused-appellant, as the sachets still bore the markings inscribed by PO2 Hipolito.

Although the seized items were marked only at the police station and not during the actual apprehension and seizure, in *People v. Loks*, [20] we held that the "marking of the seized [substance] immediately upon xxx arrival at the police station qualified as a compliance with the marking requirement." [21]

"Clearly, there was no hiatus or confusion in the confiscation, handling, custody [,] and examination of the shabu." [22] The sachets of shabu that were seized from accused-appellant, taken to the police station and thereat marked, then taken to the crime laboratory and subjected to a qualitative examination, and thereafter introduced as evidence against accused-appellant were the same sachets of shabu confiscated from him during the buy-bust operation and his arrest.

We now address the issue of whether all the elements of the crimes charged were duly proven.

In *People v. Gaspar*,^[23] the Court held that -

In a successful prosecution for offenses involving the illegal sale of dangerous drugs under Section 5, Article II of [R.A. No.] 9165, the following elements must concur: (1) the identities of the buyer and [the] seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.^[24]

The concurrence of these elements can be gleaned from the testimony of PO1 Montefrio:

Q

Then what happened after that?

A

We approached the suspect, Ma'am.

Q

You said we, are you trying to tell us that the informer went with you when you approached the suspect?

A

Yes Ma'am.

Q

Did you reach the suspect?

A

Yes Ma'am.

Q

What happened next?

A

We told him [of] our intention to buy, Ma'am.

Q

How did the suspect respond?

A

He asked us how much, Ma'am.

Q

With whom exactly was the suspect talking, to you or to the informer?

A

To both of us. Ma'am.

Q

Who asked the question you wanted to buy shabu?

A

We, Ma'am.

Q

Was it you or the informer who asked the question "paiskor"?

A

The informer, Ma'am.

Q

How about you, what did you do?

A

I handed the money, Ma'am.

Q

Did you say anything to indicate your intention that it was you who wanted to buy?

A

Yes Ma'am, he introduced me.

Q

How did the informer introduce you to the suspect?

A

He introduced me as the scorer, Ma'am.

Q

After you were introduced to the suspect that you were the scorer, what happened next?

A

The informer said that we will buy, Ma'am.

Q

And it was at that point that the suspect asked you how much?

A

Yes Ma'am.

Q

Who between you and the informer responded to the question of the suspect how much are you buying?

A

I was the one, Ma'am.

Q

What did you say?

A

I said two hundred pesos, Ma'am.

Q

After that, what happened next?

A

I handed him the money, Ma'am.

Q

Then after handing the money to the suspect, what happened next?

A

He received it and then took one plastic sachet from his pocket containing four pieces of small plastic sachets containing shabu, Ma'am.

Q

After pulling out the plastic sachet containing four other small plastic sachets, what happened next?

A

One was handed to me, one plastic sachet containing shabu, Ma'am.

Q

After that, what happened next?

A

The remaining sachets were placed back [in] his left pocket, Ma'am.

Q

After that, what happened next?

A

I tried to see my back ups, after sensing that they were near already, I gave my pre-arranged signal by scratching my nape, Ma'am.

Q

After you executed the pre-arranged signal, what happened next?

A

I arrested the suspect and introduced myself as [a] police officer then I recovered the buy bust money from him, Ma'am.

Q

The person from whom you bought the plastic sachet, if you would see him again, will you be able to identify him?

A

Yes Ma'am.

Q

Will you please look around and tell us if he is present?

A

Yes Ma'am, he is here.

Q

Will you step down from the witness stand and tap the shoulder of the person you said was the suspect?

A

(Witness at this juncture stepped down from the witness stand and tapped the shoulder of a man who when asked gave his name as Edgar Bolo).[25]

Verily, all the elements for a conviction of illegal sale of dangerous or prohibited drugs were proven by the prosecution: PO1 Montefrio proved that a buy-bust operation actually took place, and that during said operation, accused-appellant delivered a small plastic sachet to him in exchange for P200.00. PO1 Montefrio retained possession of the sachet until he reached the police station where he turned it over to PO2 Hipolito who, in turn, marked it with accused-appellant's initials and the buy-bust date (EBF-1 BB 04-01-06). PO2 Hipolito then turned over the sachet to PSI Dela Rosa who confirmed that the substance in the sachet was shabu. In open court, PO1 Montefrio was able to identify accused-appellant as the one who sold him the plastic sachet, and he was also able to identify said sachet because of the markings.

On the other hand, in *People of the Philippines v. Amy Dasigan y Oliva*, [26] the Court held that "[u]nder Section 11, Article II of R.A. No. 9165, the elements of the offense of illegal possession of dangerous drugs 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." [27]

In the case at bar, all these elements were proven. First, the three plastic sachets containing shabu, which were the subjects of the charge for illegal possession of dangerous or prohibited drugs, were seen by PO1 Montefrio and found on accused-appellant's person by PO3 Pagsolingan following accused-appellant's arrest in flagrante delicto for the illegal sale of shabu. Second, accused-appellant was not able to establish his legal authority to possess the said shabu. And third, accused-appellant's act of giving PO1 Montefrio, the poseur-buyer, one sachet and, in the process, bringing out three more sachets indicated that he freely and consciously possessed the said shabu. Moreover, as testified to by PO3 Pagsolingan, after he recovered the three sachets from accused-appellant, he kept them until he turned them over to PO2 Hipolito at the police station. PO2 Hipolito then marked them (EBF-2, EBF-3 and EBF-4) and turned them over to PSI Dela Rosa who attested that the substance inside the subject sachets was shabu. Consequently, accused-appellant was rightfully convicted of illegal possession of shabu.

As to accused-appellant's intimation of the possibilities that the police officers conducted the dusting of ultraviolet powder only after accused-appellant was arrested, and that the latter was deliberately forced to hold the same, such claim is speculative and unsupported by any shred of evidence. Contrasted with the testimony of PO1 Montefrio that the buy-bust money was already dusted with ultraviolet powder prior to the buy-bust

operation,[28] accused-appellant's suggestion does not inspire belief.

In *People v. Ting Uy*,[29] the Court explains that "credence shall be given to the narration of the incident by prosecution witnesses especially so when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary." [30] In the case at bar, accused-appellant failed to adduce any evidence showing that the police officers harbored ill motives as to falsely incriminate him.

Under Section 5, Article II of R.A. No. 9165, the penalty for illegal sale of shabu, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00. As the penalty imposed by the RTC and affirmed by the Court of Appeals is within the prescribed range, the Court affirms the imposition of life imprisonment and the fine of P1,000,000.00.

As for illegal possession of shabu, Section 11(3), Article II of R.A. No. 9165 provides that if the shabu is less than five grams, then the penalty is imprisonment of twelve (12) years and one (1) day to twenty (20) years plus a fine ranging from P300,000.00 to P400,000.00. In the case at bar, as the total weight of the subject shabu is 0.61 gram or less than five grams, and as the penalty imposed by the RTC and affirmed by the Court of Appeals is also within the prescribed range, the Court affirms the imposition of imprisonment from twelve (12) years and one (1) day to thirteen (13) years and eight (8) months and the fine of P300,000.00.

WHEREFORE, premises considered, the present appeal is DISMISSED.

SO ORDERED.

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

[1] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Rosmari D. Carandang and Ramon R. Garcia concurring; CA rollo, pp. 124-135.

[2] Penned by Judge Edmundo T. Acuna; records (Criminal Case No. C-74988), pp. 124-139.

[3] Information; records (Criminal Case No. C-74987), p. 2,

[4] Information; records (Criminal Case No. C-74988), p. 2.

[5] Certificate of Arraignment, records (Criminal Case No. C-74987), p. 14; and Certificate of Arraignment, id. at 17.

[6] Records (Criminal Case No. C-74988), p. 41.

[7] Supra note 2, at 126-127.

[8] Id. at 127-128.

[9] Id. at 139.

[10] Brief for the Accused-Appellant. CA rollo, p. 65.

[11] Id. at 72.

[12] Supra note 1, at 134.

[13] CA rollo, pp. 67-70.

[14] Id. at 73.

[15] Id. at 71.

[16] G.R. No. 191730, June 5, 2013, 697 SCRA 452.

[17] Id. at 464.

[18] *People v. Loks*, G.R. No. 203433, November 27, 2013, 711 SCRA 187, 196-197. (Citations omitted.)

[19] Also known as Police Inspector Jessie dela Rosa in other documents.

[20] *Supra* note 18.

[21] Id. at 195.

[22] *People v. Montevirgen*, G.R. No. 189840, December 11, 2013, 712 SCRA 459, 470.

[23] G.R. No. 192816, July 6, 2011, 653 SCRA 673.

[24] Id. at 686.

[25] TSN, November 6, 2007, pp. 11-14.

[26] G.R. No. 206229, February 4, 2015.

[27] Id.

[28] TSN, November 6, 2007, p. 7.

[29] 430 Phil. 516 (2002).

[30] Id. at 526.

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