

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO CERDON Y SANCHEZ, ACCUSED-APPELLANT.

G.R. No. 201111. August 06, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

On appeal is the Decision[1] of the Court of Appeals promulgated on 10 November 2011, affirming the conviction by the Regional Trial Court[2] (RTC) of Angeles City, Pampanga, Branch 57, of appellant Alfredo Cerdon y Sanchez for violation of Section 5, Article II of Republic Act No. 9165 and the corresponding penalty of life imprisonment and fine of P500,000.00.

Appellant was charged with the violation following a “buy-bust” operation.

The accusatory portion of the Information against appellant reads:

That on or about the 12[th] day of July 2003, at Brg. Dau, [M]unicipality of Mabalacat, [P]rovince of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ALFREDO CERDON Y SANCHEZ, being a person not authorized by law to sell and deliver, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing methylamphetamine hydrochloride (shabu), weighing FIVE HUNDRED THIRTY EIGHT TENTH THOUSANDTH (0.0538) of a gram, a dangerous drug.[3]

When arraigned, appellant pleaded not guilty. During the pre-trial, the parties stipulated on the following points:

- The identity [o]f the accused;
- That the accused is also known by the name of Fred;
- That there was no surveillance conducted prior to the arrest of the accused on July 13, 2003;
- That there was no photographs taken on the seized confiscated items in the presence of the accused;
- That in the confiscation receipt, there was no signature from any public elected officials, a representative from the media and representative of the DO[J].[4]

Trial ensued.

The prosecution presented as witnesses, PO1 Michael Yusi (PO1 Yusi), who acted as poseur-buyer, and PO3 Henry Laxamana (PO3 Laxamana), a back-up operative who assisted PO1 Yusi. Their testimonies sought to establish the following facts:

Acting on a tip from an asset that a certain “Fred” was selling shabu in his residence at Roxas Street, Mabalacat, Pampanga, the Chief of Police of Mabalacat Police Station formed a buy-bust team on 12 July 2003 composed of PO1 Yusi as poseur-buyer, SPO4 Israel Gutierrez as team leader, PO3 Rodolfo Agustin, Jr. (PO3 Agustin), PO3 Laxamana, and a certain PO1 Basangan. PO1 Yusi was then given two (2) One Hundred Peso bills to be used as

buy-bust money. He marked his initials “MVY” on the bills.[5] A pre-operational coordination sheet was prepared. At about 5:00 p.m. of the same day, the team proceeded to the target place. PO1 Yusi was introduced by the asset to a certain Fred, who later was identified as appellant. Appellant asked from PO1 Yusi how much shabu the latter would buy. Appellant then went inside the house and came out a few minutes later handing one plastic sachet of shabu to PO1 Yusi in exchange for P200.00. After the exchange, PO1 Yusi made the pre-arranged signal of scratching his head. PO3 Laxamana and PO3 Agustin rushed to the scene while PO1 Yusi introduced himself as a police officer. PO3 Laxamana confiscated the marked money from appellant. He also noticed that appellant had a Caliber 22 magnum with eight rounds of ammunition tucked on his waist. PO3 Laxamana confiscated the same. Appellant was then brought to the barangay hall where the confiscation receipt was prepared. PO1 Yusi likewise placed his markings on the confiscated shabu. Thereafter, appellant was brought to the police station. At 10:00 p.m. on the same day, PO1 Yusi and PO3 Laxamana brought the confiscated evidence to the crime laboratory.[6]

In his defense, appellant denied the charge against him. He narrated that at around 4:00 p.m. on 12 July 2003, he was having snack with his live-in partner Yvette Jose when three male persons entered his house. He recognized them as PO1 Yusi, PO3 Laxamana and PO3 Agustin. These three police officers poked their guns on appellant while PO1 Yusi searched his room. While he was held at the kitchen, appellant heard PO1 Yusi utter the word “bingo.” PO1 Yusi emerged carrying a gun allegedly confiscated from appellant. Appellant was immediately arrested but he resisted. A commotion ensued before the barangay chairman arrived. The barangay chairman asked appellant to go with the police officers to the barangay hall. Afterwards, appellant was brought to the police station.[7]

On 31 March 2010, the RTC rendered a Decision finding appellant guilty of violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a P500,000.00 fine. The trial court gave credence to the prosecution's evidence.[8]

After receiving a copy of the trial court's Decision, petitioner seasonably filed a Notice of Appeal before the Court of Appeals. On 10 November 2011, the appellate court affirmed the judgment of the RTC. The appellate court held that the prosecution was able to prove beyond reasonable doubt the identity of the appellant as the one who sold the shabu to the poseur-buyer; that the sale that actually took place; and the payment of P200.00. The appellate court ruled that the prosecution was able to sufficiently establish an unbroken chain of custody of the confiscated illegal drug.

Appellant appealed his conviction before this Court, adopting the same arguments in his Brief before the Court of Appeals.

Appellant essentially maintains that the prosecution failed to prove beyond reasonable doubt the corpus delicti of the offense. Appellant also argues that the prosecution failed to establish the crucial links in the chain of custody of the shabu.

It is jurisprudential that factual findings of trial courts especially those which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings.[9] The evaluation of the credibility of witnesses and their testimonies are best undertaken by the trial court because of its unique opportunity to observe the witnesses' deportment, demeanor, conduct and attitude under grilling examination.[10]

After a painstaking review of the records, we agree with the lower courts' findings that the guilt of the appellant was established beyond reasonable doubt.

In every prosecution for illegal sale of shabu, the following elements must be sufficiently proved: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[11] Indeed, all these elements were duly established. Appellant was caught in flagrante delicto selling shabu through a buy-bust operation conducted by members of the Special Operations Group of Mabalacat, Pampanga.

The poseur-buyer, PO1 Yusi, positively testified that the sale took place and appellant was the author thereof, thus:

Q:

Mr. Witness, in the last hearing of this case, you mentioned that when you reached the house of the target person you were introduced. And you said you were then in front of the house of Alfred. My next question is: how were you introduced?

A:

I was introduced by our asset as his “kumpadre”, sir.

Q:

And after you were introduced as the asset’s “kumpadre”, what else happened then?

A:

Accused Alfredo Cerdon asked me how much will I buy shabu from him, sir.

Q:

After that, what else happened?

A:

Accused Alfredo Cerdon went inside his house and a few minutes later he went back in front of his house and gave me one plastic sachet of shabu in exchange for P200.00, sir.

Q:

Which came first, the giving of the shabu or the giving of P200.00, sir.

A:

It was simultaneous, sir.

Q:

You gave him P200.00, sir.

A:

Yes, sir.

Q:

I thought you were buying “aduang pesos”?

A:

“Aduang pesos” means P200.00, sir.

Q:

At the time that this accused gave you the shabu and you gave him the money, where was the asset then?

A:

We were just beside each other, sir.

Q:

How far were you from his house then?

A:

In front of the house, sir.

Q:

So, you were still outside the house at the time?

A:

Yes, sir.

Q:

And after the giving of the money to him, what else happened?

A:

I executed the pre-arranged signal by scratching my head, sir.

Q:

After executing the pre-arranged signal, what else happened?

A:

I introduced myself as a policeman and then PO3 Laxamana and PO3 Agustin rushed to the scene, sir.

Q:

What was the accused's reaction when you introduced yourself as policeman?

A:

When PO3 Laxamana requested him to shell out the contents of his pocket, he was able to confiscate the marked money from his possession, sir.[12]

PO3 Laxamana who acted as one of the back-up arresting officers testified that appellant produced the plastic sachet containing shabu and handed it to the poseur-buyer in exchange for P200.00. He corroborated PO1 Yusi's attestation in his own testimony before the Court:

Q:

Last hearing, Mr. Witness, you testified that your confidential informant introduced PO1 Yusi to a certain Fred in front of his house. Can you please tell us where is this house you are referring to?

A:

At No. 356 Roxas St., Barangay Dau, Mabalacat, Pampanga, sir.

Q:

When Officer Yusi was introduced to this certain Fred, where were you?

A:

We were 10 to 15 meters away from them, sir.

Q:

Who were with you?

A:

PO3 Agustin, sir.

Q:

So, while you were 10 to 15 meters away from Officer Yusi, where is your attention focused?

A:

To PO1 Yusi and the suspect, sir.

Q:

And what did you observe subsequently?

A:

After the confidential informant introduced PO1 Michael Yusi to the suspect, then moments later, the suspect went inside his house and another moments later, he went back and handed something to Yusi, simultaneously, Yusi handed something to the suspect, sir.

Q:

After that exchange, can you please tell us what happened?

A:

Yusi gave the pre-arranged signal to us by scratching his head, sir.

Q:

When was this scratching of head agreed as the pre-arranged signal?

A:

During the briefing in our office, sir.

Q:

What is the significance of Yusi scratching his head?

A:

It means when the buy-bust operation is already consummated then he will scratch his head as pre-arranged signal so that we can arrest the suspect, sir.

Q:

So, after seeing Yusi scratching his head, what would you do and the rest of the team?

A:

We immediately rushed to the scene and arrested the suspect, sir.[13]

The result of the laboratory examination confirmed the presence of methylamphetamine hydrochloride on the white crystalline substance inside the plastic sachet confiscated from appellant.[14] The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. This was further corroborated by the presentation of the marked money in evidence.[15]

Appellant avers that there was no testimony which proves that the police officers complied with Section 21 of Republic Act No. 9165 in effecting his arrest and in the subsequent disposition of the prohibited drug involved. Appellant asserts that there was no evidence presented to show that the police officers conducted an inventory, and took photographs, of the confiscated items in his presence, a representative from the media and the Department of Justice (DOJ). Appellant points out that the confiscation receipt was neither prepared by the police officers in the presence of the media representative and the DOJ, nor was it signed by the latter. Furthermore, appellant claims that the police officers presented no valid justification as to their non-compliance with the procedural mandates of the law.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides for the custody and disposition of the confiscated illegal drugs, to wit:

(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.

In elaboration of the rule in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz:

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.

The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated in the presence of representatives from the media and the DOJ pursuant to said guidelines does not automatically render appellant's arrest illegal or the item seized from him inadmissible. A proviso was added in the implementing rules 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."

Pertinently, it is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the corpus delicti.

Appellant then contends that the prosecution failed to prove the crucial links in the chain of custody of shabu, such as: 1) immediate marking of the seized shabu; 2) to whom PO3 Laxamana turned over the sachet at the crime laboratory; 3) the presentation of the chemist on the witness stand; and 4) the identity of the person who had custody over the subject drug pending its presentation in court.

PO1 Yusi was able to put the necessary markings on the plastic sachet of shabu seized from appellant at the police station. The general rule is that “marking” of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done, (1) in the presence of the apprehended violator, and (2) immediately upon confiscation. To be able to create a first link in the chain of custody, then, what is required is that the marking should be made in the presence of the accused and upon immediate confiscation. In *People v. Gum-Oyen*,^[16] a testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.^[17]

The non-presentation of the forensic chemist is not fatal to the prosecution’s case. In *People v. Quebral*,^[18] this Court explained that “the corpus delicti in dangerous drugs cases constitutes the dangerous drug itself. x x x [I]t has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44, Rule 130, of the Revised Rules of Court, entries in official records made in the performance of official duty are prima facie evidence of the facts they state.”^[19]

The prosecution was able to preserve the integrity and evidentiary value of the illegal drug. The concurrence of all the elements of the illegal sale of shabu was proven by the prosecution. The chain of custody did not appear to be broken. The recovery and handling of the seized drug was satisfactorily established. As correctly found by the appellate court:

Withal, the prosecution was able to sufficiently establish the following circumstances showing an unbroken chain of custody over the shabu that was seized from herein accused-appellant: (1) PO1 Yusi, who acted as the poseur buyer during the buy-bust operation, was the one who received the transparent plastic sachet containing a substance later identified as shabu from the accused-appellant; (2) the said transparent plastic sachet was then brought to the barangay outpost where the same was marked “MVY” and a confiscation receipt was prepared by PO1 Yusi; (3) thereafter, the said sachet was turned over to the Mabalacat Municipal Police Station; (4) in the said station, Chief Inspector Ritchie Duldulao, in behalf of P/Supt. Manulid, prepared the request addressed to the PNP Regional Crime Laboratory Office 3 for the laboratory examination of the substance contained in the said plastic sachet; (5) after preparing the said request, PO1 Yusi personally delivered the said request together with the substance contained in the said plastic sachet to the PNP Regional Crime Laboratory Office 3; and (6) the laboratory examination was conducted by P/Insp[.] Agala.^[20]

Appellant’s defense, which is predicated on bare denial, deserves scant consideration in light of the positive testimonies of the police officers. The defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties.^[21] Bare denial of appellant cannot prevail over the positive testimonies of the three police officers.^[22] Moreover, there is no evidence of any improper motive on the part of the police officers who conducted the buy-bust operation to falsely testify against appellant.

In fine, it has been established by proof beyond reasonable doubt that appellant sold shabu. Under Section 5, Article II of Republic Act No. 9165, “[t]he penalty of life imprisonment to death and 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 x x x.” Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed upon appellant the penalty of life imprisonment and a fine of P500,000.00.

WHEREFORE, the Decision dated 10 November 2011 of the Court of Appeals affirming the conviction of appellant by the RTC of Angeles City, Pampanga, Branch 57 for violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE of P500,000.00 is hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Sesinando E. Villon and Rodil V. Zalameda, concurring. Rollo, pp.2-16.

[2] Presided by Judge Omar T. Viola. Records, pp. 96-104.

[3] Records, p. 2.

[4] Id. at 17.

[5] TSN, 20 November 2003, pp. 4-6

[6] TSN, 9 December 2003, pp. 2-4; TSN, 15 August 2006, pp. 6-11; TSN 28 October 2008, pp. 2-4 and 7.

[7] TSN, 10 September 2009, pp. 3-7.

[8] Records, pp. 96-104.

[9] *People v. Ocampo*, 503 Phil. 310, 317 (2006).

[10] Id.

[11] *People v. Isnani*, G.R. No. 133006, 9 June 2004, 431 SCRA 439, 449 citing *People v. Tan*, 432 Phil. 171, 183 (2002) citing further *People v. Zheng Bai Hui*, 393 Phil. 68, 131 (2000); *People v. Tiu*, 460 Phil. 95, 103 (2003).

[12] TSN, 9 December 2003, pp. 2-3.

[13] TSN, 28 October 2008, pp. 2-3.

[14] Records, p. 10.

[15] Id. at 7.

[16] G.R. No. 182231, 16 April 2009, 585 SCRA 668.

[17] Id. at 677-678.

[18] G.R. No. 185379, 27 November 2009, 606 SCRA 247.

[19] Id. at 255.

[20] Rollo, pp. 11-12.

[21] *People v. Chua Uy*, 384 Phil. 70, 85-86 (2000) citing *People v. Dichoso*, G.R. No. 101216-18, 4 June 1993, 223 SCRA 174, 187; *People v. Constantino*, G.R. No. 109119, 16 August 1994, 235 SCRA 384, 391; *People v. Tranca*, G.R. No. 110357, 17 August 1994, 235 SCRA 455, 462-463.

[22] *People v. Lee Hoi Ming*, 459 Phil. 187, 195 (2003); *People v. Saludes*, 451 Phil. 719, 727 (2003).

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