

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUSTY BALA, ACCUSED-APPELLANT.

G.R. No. 203048. August 13, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

On appeal is the Decision[1] of the Court of Appeals promulgated on 25 July 2011 affirming the conviction by the Regional Trial Court[2] (RTC) of Malabon City, Branch 72 of appellant Rusty Bala for violation of Section 15, Article III of Republic Act No. 6425, as amended by Republic Act No. 7659.

This case is an offshoot of G.R. No. 152351[3] promulgated on 18 September 2003, where the Court affirmed the conviction only of Jamil Mala y Ragid (Mala), appellant's co-accused in this case.

Following a buy-bust operation, appellant and Mala were charged with a violation of Republic Act No. 6425, as amended, under an Information which reads:

That on or about the 4th day of April 2001, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping with one another, being private persons and without authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver in consideration of undetermined pieces of money (boodle money) to poseur-buyer, two (2) pieces of transparent plastic bags each containing yellowish crystalline substance with the following net weights:

A- (ABI-R1 4-4-01) = 105.89 grams

B- (ABI-R2 4-4-01) = 105.71 grams

which substances when subjected to chemistry examination gave positive results for METHYLAMPHETAMINE HYDROCHLORIDE otherwise known as "shabu" which is a regulated drug.[4]

When arraigned, both appellant and Mala pleaded not guilty. Trial ensued. On 28 August 2001, the RTC rendered a decision convicting both appellant and Mala of the crime charged. On 18 September 2003, the Supreme Court in G.R. No. 152351 affirmed the conviction only of Mala, appellant's co-accused in this case. The dispositive portion of the said decision reads:

WHEREFORE, the assailed decision of 28 August 2001 of the Regional Trial Court of Malabon City, Branch 72, in Criminal Case No. 24514-MN is hereby AFFIRMED insofar as JAMIL MALA y RAJID is found guilty beyond reasonable doubt of the crime charged as penalized under Section 15, Article III, R.A. No. 6425, as amended by R.A. No. 7659, and sentenced to suffer the penalty of reclusion perpetua and to pay a fine in the amount of P1 MILLION and the costs. However, insofar as appellant Rusty Bala is concerned, the decision is SET ASIDE and this case is hereby remanded to the trial court below for the reception of evidence for Rusty Bala, unless it is determined that he is not mentally fit to face trial, in which case the trial court should take the appropriate steps provided by law.[5] (Emphasis supplied).

The factual antecedents, as narrated by prosecution witnesses, have been succinctly summarized in G.R. No.

152351 as follows:

On 4 April 2001, at around 5:30 p.m., a confidential informant came to the office of the Drug Enforcement Group, Malabon Police Station. He reported that a transaction with two Muslims for the sale of 200 grams of shabu in the amount of P130,000 would take place between 9:00 and 10:00 p.m. in his house at C-4 Road, Barangay Tañong, Malabon, Metro Manila. Acting on this information, Police Inspector Virgilio Olalia forthwith formed a buy-bust team composed of PO1 Joel Fernandez [PO1 Fernandez] as poseur-buyer, SPO2 Armando Isidto [SPO2 Isidto], SPO2 Manolito Manalo, and other policemen. PO1 Fernandez was then given “boodle money” consisting of fake P1,000 bills on both ends of the bundle and cut newspaper prints in the middle, which were wrapped in a plastic bag. At about 8:30 p.m. the team proceeded to the place of operation. They then waited along C-4 Road.

An hour later, the appellants arrived on board a taxicab. Fernandez and the confidential informant immediately entered the latter’s house. After a short while, there was a knocking at the door. The confidential informant opened the door and let appellants Jamil Mala and Rusty Bala enter his house. He then talked with the appellants and introduced Fernandez to the two as the buyer of shabu. When Mala asked for the money, Fernandez showed to him the boodle money contained in a plastic bag. The former then gave to the latter the suspected shabu wrapped with a yellow transparent plastic bag. As Mala was counting the money, he noticed it to be fake or merely boodle money. The appellants then talked with each other in Muslim and instantly grabbed the suspected shabu from Fernandez.

Meanwhile, the confidential informer went out of the house and gave the pre-arranged signal to the other policemen by scratching his head. Isidto and Manalo immediately entered the house just as Fernandez was drawing his gun. Isidto confiscated the suspected shabu from Mala, and the boodle money from Bala. The shabu was sent to the PNP Crime Laboratory for examination, which yielded positive result for methylamphetamine hydrochloride.

For his part, appellant Jamil Mala denied the accusation against him and his co-appellant. He claimed that he was engaged in the selling of VCDs in the Muslim area in Greenhills, as well as in Caloocan City. He was also selling at the Caloocan City market readymade pants on installment basis. One time, he met a certain Manny in Czar Bar near the Wise Hotel in Monumento, Caloocan City; and later Manny borrowed P18,000 from him. On 4 April 2001, he went to the house of Manny to collect the P18,000 he loaned to him (Manny). He arrived at 7:00 p.m. only to be told by Manny’s daughter that Manny was not around. While Mala was saying that he would leave and would just return later, Manny’s wife told him to wait, as she would ask her daughter to fetch Manny.

Fifteen minutes thereafter, four persons in civilian clothes arrived. They frisked him and told him to undress. They then handcuffed him along with his companion Rusty Bala. Two of the armed men went out of the house and later returned with two plastic bags. Mala and Bala were thereupon taken to the Pagamutang Bayan ng Malabon and then to a detention cell. When appellant Mala subsequently learned of the charges against him and Bala, he asked his wife to file charges against the arresting officers. But his wife instead returned home to their home province.

Appellant Rusty Bala was no longer called to testify because his lawyer allegedly “had a hard time communicating with him”; and besides, he (Bala) appeared somewhat mentally deficient and would only corroborate Mala’s testimony.[6]

Acting on the Resolution issued by the Court on 7 July 2004, further proceedings insofar as appellant is concerned was conducted by the Muntinlupa RTC.[7] The trial against appellant resumed on 8 June 2006 during which appellant testified in his defense. Appellant denied the charges against him. He claimed that around 5:00 a.m. of 4 April 2001, he went to Balintawak market to sell baby clothes. At 10:00 a.m., appellant proceeded to Caloocan City to attend a worship service in a mosque until 12:00 p.m. While he was waiting for a tricycle to go back to

Balintawak, an owner-type jeep suddenly stopped beside him. Three men alighted from the jeep and asked appellant if he is a Muslim. When he answered in the affirmative, the three men suddenly frisked him and forcibly boarded him into their jeep where he was blindfolded. When they reached their destination which was unknown to appellant, he was brought to a room where he heard the three unidentified men talking to another person. When his blindfold was removed, appellant was asked if he knew the person whom they were talking to earlier. He only came to know said person as his co-accused, Mala, when they were both left in the room handcuffed. On the following day, they were brought to the Malabon City Jail. Appellant denied the charges against him.[8]

Mohammad Nur Tandual (Tandual), a distant relative of appellant, corroborated his testimony. Tandual recounted that after the worship service, he saw the police arrive outside the mosque and arrest the appellant. Tandual recalled that appellant was merely standing when he was apprehended. Appellant tried to resist but he was dragged and boarded into the police vehicle.[9]

On 5 February 2008, the RTC rendered an Amended Decision finding appellant guilty of the crime of drug pushing under Section 15, Article III of Republic Act No. 6425, penalized with reclusion perpetua. He was also ordered to pay a fine of One Million Pesos (P1,000,000.00), and to pay the costs.[10] The trial court did not give credit to appellant's defense of denial and frame-up.

After receiving a copy of the trial court's decision, petitioner seasonably filed a Notice of Appeal[11] before the Court of Appeals. In his Appellant's Brief, appellant questioned the police officer's decision to immediately conduct a buy-bust operation without conducting a surveillance or test-buy. Appellant found the action of the poseur-buyer in immediately demanding payment for the shabu after introductions were made as improbable because if appellant were indeed involved in illegal drug trade, he would not have immediately agreed to transact business with such readiness and willingness. Appellant alleged that the apprehending officers failed to immediately mark the evidence, conduct a physical inventory of the seized items, and to photograph the same in the presence of the accused. Appellant averred that the prosecution failed to account for every link in the chain of custody starting from its turn over by SPO3 Isidto to the investigator and from the latter to the chemist.

On 25 July 2011, the Court of Appeals affirmed appellant's conviction in toto. The issues raised by appellant were resolved as follows: 1) The absence of a prior surveillance or test-buy does not affect the legality of the buy-bust operation. The Court has left it accordingly to the discretion of the police authorities the selection of effective means to apprehend drug dealers; 2) It is not improbable for appellant to deal with drugs openly in a public place to persons he hardly knew, for drug dealers are known to sell their goods even to strangers; 3) Strict compliance with the requirements relating to the corpus delicti is not required as long as the integrity and evidentiary value of the seized items have been preserved; and 4) The prosecution was able to establish an unbroken chain of custody over the shabu.[12]

The appellate court also dismissed appellant's claim of frame-up and denial as insufficient.

Appellant appealed his conviction before this Court.

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.[13] All these elements were duly established.

Appellant was caught in flagrante delicto selling shabu through a buy-bust operation conducted by members of the Malabon Drug Enforcement Unit. The poseur-buyer, PO1 Fernandez, positively testified that the sale took place and appellant was one of the authors of the illegal sale of drugs, thus:

Q:

And after they entered the house, referring to the 2 accused, what happened next?

A:

The 2 accused and the confidential informan[t] talked to each other.

Q:

You were present when they talked?

A:

Yes, sir.

Q:

And after the confidential informant and the 2 accused talked to each other, what happened next?

A:

Our confidential informant introduced me, sir.

Q:

As what?

A:

As the buyer of the shabu, sir.

Q:

And after you were introduced by the confidential informant to the 2 accused as the buyer, what happened next?

A:

They demanded the money.

Q:

The 2 of them?

A:

Jamil, sir.

Q:

Only Jamil?

A:

Yes, sir.

Q:

And what did you do when Jamil Mala asked for the money?

A:

I showed the boodle money, sir, wrapped with yellow plastic bag.

Q:

Then what happened?

A:

I asked for the shabu, sir.

Q:

From whom?

A:

From Jamil, sir.

Q:

And what did Jamil Mala do?

A:

He gave to me the shabu, sir. What happened was like this: Jamil Mala was asked by the other to count the money and while doing so, Mala noticed the money to be fake so the 2 accused talked in Muslim after which Jamil Mala tried to grab from me the shabu and was able to do so. But before that, the confidential informant went out of his house and gave the signal to the others.

Q:

Will you be able to identify the buy-bust shabu if shown to you?

A:

Yes, sir.

Q:

From whom did he grab the shabu?

A:

From me.

Q:

You said the confidential informant went out. What happened later when the confidential informant went out?

A:

It was our pre-arranged signal that that is the time that the deal was consummated already.

Q:

What happened next after the confidential informant went out of his house?

A:

When Jamil Mala was able to grab the shabu from me, I drew my gun and at the same time, SPO[2] Armando Isidto and SPO2 Manolito Manalo entered the house.

Q:

Were you in civilian clothes?

A:

Yes, sir. I was wearing shorts, sir.

Q:

What about Isidto and Manalo? Were they also in civilian clothes?

A:

Yes, sir.

Q:

Where was your gun at the time?

A:

Under my shirt at the back of my waist.

Q:

What did they do when they entered the house?

A:

Isidto recovered the shabu from Mala and the boodle money from Bala, sir.

Q:

And who recovered the boodle money?

A:

Isidto recovered the money.

Q:

From whom did he recover the boodle money?

A:

From Rusty Bala, sir.[14]

It can be gleaned from the above-quoted testimony that appellant acted in common concert with his co-accused in the illegal sale of shabu. They were both present during the entire transaction. Mala produced the shabu and handed it to the poseur-buyer in exchange for the boodle money. Appellant ordered Mala to count the money. When they were placed under arrest, the boodle money was recovered from appellant. Their acts clearly demonstrate the presence of conspiracy. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy.[15]

In his Supplemental Brief, appellant assails the appellate court's affirmance of his conviction despite the apprehending officers' failure to preserve the evidentiary value of the seized items. First, appellant argues that the apprehending officers failed to give any explanation why they failed to place the necessary markings on the items seized in the presence of the persons mentioned by law, to take photographs, and, submit a detailed inventory of

the same. Second, appellant avers that while SPO3 Isidto claimed that he delivered the drugs to a certain SPO1 Mandac, it does not appear that the latter received the same as the dispatch in the blotter was not signed by said person. Appellant also notes that a certain PO1 Sigua made the delivery to the crime laboratory and not the investigator as claimed by SPO2 Isidto. Third, appellant maintains that the failure of the apprehending officers to observe the proper procedure negates the operation of the presumption of regularity accorded to police officers.

Section 1 of Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Board Regulation No. 2, Series of 1990, provides that all prohibited and regulated drugs shall be physically inventoried and photographed in the presence of the accused who shall be required to sign the copies of the inventory and be given a copy thereof, to wit:

Section 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter, the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation.

This rule is now incorporated as Section 21(1) of Republic Act No. 9165 that repealed Republic Act No. 6425.

The alleged procedural infirmity pointed out by appellant does not prove fatal to the prosecution's case.

In *People v. Gratil*,^[16] a case wherein appellant therein claimed that proper procedure for taking custody of the seized prohibited drugs was not faithfully followed, we ruled that:

In *People v. De Los Reyes*, a case which also involved an objection regarding the non-compliance with the chain of custody rule, we held that:

The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established x x x and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board.

Moreover, in *People v. Agulay*, we held that:

Non-compliance with [Section 21, 19 Article II of Republic Act No. 9165] is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. In *People v. Del Monte*, this Court held that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. x x x.

The ponente of Agulay would further observe in a separate opinion that the failure by the buy-bust team to comply with the procedure in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which replicated Section 21(1) of Republic Act No. 9165, did not overcome the presumption of

regularity accorded to police authorities in the performance of their official duties, to wit:

First, it must be made clear that in several cases decided by the Court, failure by the buy-bust team to comply with said section did not prevent the presumption of regularity in the performance of duty from applying.

Second, even prior to the enactment of R.A. 9165, the requirements contained in Section 21(a) were already there per Dangerous Drugs Board Regulation No. 3, Series of 1979. Despite the presence of such regulation and its non-compliance by the buy-bust team, the Court still applied such presumption. x x x.

Notwithstanding the minor lapse in procedure committed by the police officers in the handling of the illegal drugs taken from appellant, the identity and integrity of the evidence was never put into serious doubt in the course of the proceedings of this case. x x x.[17]

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

Furthermore, the Court of Appeals held that the chain of custody requirement were proven during the trial, thus:

A review of the evidence on record will show that the prosecution was able to establish an unbroken chain of custody over the shabu which it claims as having been sold and possessed by the accused-appellant. SPO[2] Armando Isidto testified that he recovered the shabu from accused-appellant Bala and Mala. He then sealed the recovered shabu in a plastic bag and marked it at the police station. He turned over the dangerous drugs to investigator SPO1 Vic Mandac, who prepared the request for examination. The recovered shabu was then sent to NPDC Crime Laboratory. P/Insp. Sandra Go acknowledged the receipt of the sealed plastic bag. She stated that the test she conducted on the specimens yielded a positive result for methamphetamine hydrochloride.[18]

Appellant's defenses, which are predicated on denial and frame-up, are invariably viewed with disfavor because such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs.[19] They deserve scant consideration in light of the positive testimonies of the police officers.

In fine, it has been established by proof beyond reasonable doubt that appellant sold shabu. Section 15, Article III, in relation to Section 20(3) of Republic Act No. 6425, as amended by Republic Act No. 7659, states:

Sec. 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. - The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

- 40 grams or more of opium;
- 40 grams or more of morphine;
- 200 grams or more of shabu or methylamphetamine hydrochloride;
- 40 grams or more of heroin;
- 750 grams or more of Indian hemp or marijuana;
- 50 grams or more of marijuana resin or marijuana resin oil;

- 40 grams or more of cocaine or cocaine hydrochloride; or
- In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua depending upon the quantity.

In the instant case, appellant was found to have sold to the poseur-buyer a total of 211.6 grams of shabu, which amount is more than the minimum of 200 grams required by the law for the imposition of reclusion perpetua to death.

Article 63 of the Revised Penal Code mandates that when the law prescribes a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be applied.[20] Thus, in this case, considering that no mitigating or aggravating circumstances attended the appellant's violation of Section 15, Article III of Republic Act No. 6425, as amended, the trial court correctly imposed the penalty of reclusion perpetua and the fine of P1,000,000.00.

WHEREFORE, the Decision dated 25 July 2011 of the Court of Appeals, affirming the conviction of appellant Rusty Bala by the RTC of Malabon City, Branch 72 for violation of Section 15, Article III of Republic Act No. 6425, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P1,000,000.00 is hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Mendoza,[*] and Perlas-Bernabe, JJ., concur.

[*] Per Raffle dated 1 October 2012.

[1] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Antonio L. Villamor and Ramon A. Cruz, concurring. Rollo, pp. 2-14.

[2] Presided by Judge Benjamin M. Aquino, Jr. CA rollo, pp. 27-33.

[3] *People v. Mala*, 458 Phil. 180 (2003).

[4] Records, p. 1.

[5] *People v. Mala*, supra note 3 at 195.

[6] *Id.* at 185-187.

[7] CA rollo, p. 28.

[8] TSN, 8 June 2006, pp. 4-19.

[9] TSN, 2 August 2007, pp. 4-8.

[10] CA rollo, p. 33.

[11] *Id.* at 36.

[12] Rollo, pp. 8-13.

[13] *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).

[14] TSN, 9 July 2001, pp. 5-7.

[15] *People v. Seraspe*, G.R. No. 180919, 9 January 2013, 688 SCRA 289, 305 citing *People v. Ebet*, G.R. No. 181635, 15 November 2010, 634 SCRA 689, 706.

[16] G.R. No. 182236, 22 June 2011, 652 SCRA 551.

[17] *Id.* at 566-568.

[18] Rollo, pp. 12-13.

[19] *People v. Musa*, G.R. No. 199735, 24 October 2012, 684 SCRA 622, 635 citing *People v. Andres*, G.R. No. 193184, 7 February 2011, 641 SCRA 602, 610.

[20] *People v. Vasquez*, G.R. No. 200304, 15 January 2014.

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