

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO BALAQUIT Y BALDERAMA, APPELLANT.

G.R. No. 206366. August 13, 2014

Ponente: PEREZ, J.

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PEREZ, J.:

At bench is an appeal[1] assailing the Decision[2] dated 29 August 2012 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04595. In the said decision, the appellate court affirmed the conviction of herein appellant Eduardo B. Balaquit for violation of Section 5 of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The facts are as follows:

On 11 June 2008, appellant was arrested during a buy bust operation performed by officers of the Philippine National Police (PNP) in Camiling, Tarlac. He was thereafter charged with the offense of illegal sale of shabu under an Information filed before the Regional Trial Court (RTC) of Tarlac.[3] The Information reads:

That on June 11, 2008 at on or about 10 AM at Bobon 1st, in the Municipality of Camiling, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully and feloniously sell to one another one (1) heat sealed plastic sachet containing 0.049 grams of met[h]amphetamine hydrochloride commonly known as “shabu”, a dangerous drug, without being authorized by law.

Appellant was arraigned on 26 August 2008 and entered a plea of not guilty. Trial thereafter ensued.

During trial, the prosecution presented, among others, the following object evidence:

- One (1) heat-sealed transparent plastic sachet containing 0.049 grams of white crystalline substance. The plastic sachet is dated “11 June 2008” and marked with “JSE-EBB,”[4] and
- Chemistry Report D-184-08[5]

The foregoing object evidence were supplemented by the testimonies of Police Officer Jay Espiritu (PO3 Espiritu), Special Police Officer Noli Daraman (SPO1 Daraman) and police chemist Jebie Timario (Mr. Timario).

PO3 Espiritu and SPO1 Daraman were the police officers who conducted the buy-bust operation that led to the arrest of the appellant. Their testimonies recounted the following events:[6]

- On 11 June 2008, PO3 Espiritu and SPO1 Daraman engaged in a buy-bust operation against appellant after receiving confirmation from the Chief Intelligence Officer (CIO) of the Camiling PNP that the former was involved in the peddling of shabu. The confirmation from the CIO came at the heels of a week-long surveillance on the appellant conducted by the Camiling PNP.
- As the designated poseur-buyer of the operation, PO3 Espiritu met with the appellant outside the latter’s

residence at Bobon 1st, Camiling, Tarlac. SPO1 Daraman, on the other hand, hid behind a tree about ten (10) to twenty (20) meters from where PO3 Espiritu and appellant were standing.

- PO3 Espiritu was able to negotiate and successfully purchase from the appellant one (1) heat-sealed transparent plastic sachet. In exchange, PO3 Espiritu handed to the appellant a previously marked P500 bill. After the transaction, PO3 Espiritu proceeded to arrest appellant. SPO1 Daraman, who was able to witness the exchange, emerged from his hiding place and aided in the arrest of the appellant.

- PO3 Espiritu and SPO1 Daraman retrieved from appellant the marked P500 bill. They then proceeded to call the barangay officials of the place to witness the inventory of the plastic sachet containing white crystalline substance and the marked money. Photographs of the plastic sachet, the marked bill and of the appellant were also taken.

- PO3 Espiritu and SPO1 Daraman brought the appellant and the recovered items to the Camiling PNP station. The plastic sachet containing white crystalline substance were then dated “11 June 2008” and marked with “JSE-EBB”—the initials of both PO3 Espiritu and the appellant.

- On 12 June 2008, PO3 Espiritu and SPO1 forwarded to the PNP Crime Laboratory the plastic sachet, now dated “11 June 2008” and marked “JSE-EBB,” along with a request for laboratory examination.

In his testimony, PO3 Espiritu also identified the plastic sachet dated “11 June 2008” and marked with “JSE-EBB” presented by the prosecution as the very one he retrieved from the appellant during the buy-bust.[7]

Mr. Timario, on the other hand, is a police chemist for the Camiling PNP and the one who conducted laboratory examination on the contents of the plastic sachet dated “11 June 2008” and marked “JSE-EBB.” He is also the signatory of Chemistry Report D-184-08. Mr. Timario testified that per Chemistry Report D-184-08, he was able to confirm that the contents of the plastic sachet dated “11 June 2008” and marked “JSE-EBB” are positive for methamphetamine hydrochloride or shabu.[8]

The defense, for its part, relied on the testimonies of the appellant and his brother, Exequil Balaquit (Exequil).

In substance, appellant denied being caught, in flagrante, selling shabu and claimed that he was merely a victim of a police frame-up. He professed the following version of events:[9]

- On the date and time of the supposed buy-bust, he was in a day care center where he bought some sopas for his children. On his way home, he encountered two (2) men aboard a motorcycle.

- One of the two (2) men aboard the motorcycle alighted and drew a gun at him. At that point, SPO1 Daraman arrived and introduced himself and the one pointing a gun at him as policemen.

- Afterwards, SPO1 Daraman and other police officers led him to an alley. One of the police officers twisted his arms. At the alley, he was forced to sign a report. Later, the barangay captain also arrived and signed the same report.

- He was then brought to the Camiling PNP station where he was detained.

Exequil corroborated the denial of his brother. He recounted that he saw the appellant, arm-twisted and all, being led to an alley by police officers.[10]

On 24 June 2010, the RTC rendered a decision[11] finding appellant guilty beyond reasonable doubt of the offense of illegal sale of shabu under Section 5[12] of the Comprehensive Dangerous Drugs Act of 2002. In doing so, the RTC gave full faith and credence to the version of the prosecution as established by the testimonies of PO3 Espiritu, SPO1 Daraman and Mr. Timario. Accordingly, the RTC sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

Aggrieved, appellant appealed the RTC decision to the CA.

On 29 August 2012, the CA rendered a decision affirming the RTC. Hence, this appeal.

In this appeal, appellant claims that the RTC and the CA erred in giving full faith and credence to the version of the prosecution. To support his claim, he cites three (3) circumstances:

- The prosecution never presented as a witness the CIO of the Camiling PNP.
- The Camiling PNP never coordinated with the Philippine Drug Enforcement Agency (PDEA).
- The representation by the prosecution that the appellant was under surveillance prior to the buy-bust is not believable. If it were true, then the Camiling PNP could have just applied for a search warrant against the appellant.

These circumstances, the appellant believes, destroy the credibility of the prosecution story that the Camiling PNP really undertook a genuine buy-bust operation and also lend trustworthiness to his own version that he was merely a victim of a frame-up.

At any rate, the appellant adds that his acquittal for the two charges is in order because the prosecution failed to prove the corpus delicti of the offense charged. Appellant claims that the identity of the shabu that was presented by the prosecution in evidence is suspect in view of the failure by PO3 Espiritu and SPO1 Daraman to mark the plastic sachet they allegedly retrieved during the buy-bust immediately thereat as required by Section 21[13] of the Comprehensive Dangerous Drugs Act of 2002. Appellant points out that PO3 Espiritu and SPO1 Daraman, by their own testimonies, admitted to marking such plastic sachet only after bringing the same to the police station.

OUR RULING

We deny the appeal.

The RTC and the Court of Appeals did not err in giving full faith and credence to the testimony of the prosecution witnesses

We find no error on the part of the RTC and the CA in sustaining the prosecution's version of events. The circumstances cited by the appellant does not at all destroy its credibility:

First. The non-presentation as a witness of the CIO of the Camiling PNP does not discount that a legitimate buy-bust operation was undertaken in this case. The conduct of the buy-bust operation was already adequately established by the testimonies of PO3 Espiritu and SPO1 Daraman who were the very participants of such operation. Indeed, the testimony of the CIO would, at most, merely corroborate the testimonies of PO3 Espiritu and SPO1 Daraman.

Second. The appellant's qualm regarding the absence of coordination between the Camiling PNP and the PDEA is also immaterial. In *People v. Roa*,^[14] this Court ruled that prior coordination with the PDEA is not a condition sine qua non for the validity of every entrapment operation conducted by police authorities:

In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86[15] of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition sine qua non for every buy-bust operation. After all, a buy-bust is just a form of an in flagrante arrest sanctioned by Section 5, Rule 113[16] of the Rules of the Court, which police authorities may rightfully resort

to in apprehending violators of Republic Act No. 9165 in support of the PDEA.[17] A buy-bust operation is not invalidated by mere non-coordination with the PDEA.

Third. The assertion that the Camiling PNP could have just applied for a search warrant instead of conducting a buy-bust operation is irrelevant to the issue of whether a legitimate buy-bust operation was, in fact, undertaken. The decision whether to apply for a search warrant or to conduct instead a buy-bust operation on any given case is a matter rightfully addressed to the sound discretion of the police officers. Certainly, police officers have the right to choose which legal means or processes are best suited, given the circumstances, in accomplishing the task they are called upon to perform.

Verily, appellant is left with only his denial to fend off the serious accusations against him. Such denial, by itself, however, cannot overcome the weight traditionally accorded to affirmative testimonies by police officers with unsullied credibility.[18] The RTC and the CA were, therefore, correct in giving full faith and credit to the open court narrations of PO3 Espiritu and SPO1 Daraman.

Corpus delicti of the offense
proven beyond reasonable doubt

We also find that the corpus delicti of the offense was adequately proven in this case.

A review of the evidence on record will show that the prosecution was able to establish an unbroken chain of custody over the shabu that it claims as having been sold by the appellant:

- PO3 Espiritu testified that he was able to buy P500.00 worth of shabu inside a transparent plastic sachet from appellant, which he brought to the Camiling PNP station.[19]
- Upon arrival at the station, PO3 Espiritu testified that he dated the plastic sachet “11 June 2008” and marked it with “JSE-EBB.” Afterwards, a request for laboratory examination was prepared.[20]
- The next day, plastic sachet dated “11 June 2008” and marked “JSE-EBB” was sent to the PNP Crime Laboratory along with the request for laboratory examination.[21]
- At the PNP Crime Laboratory, Mr. Timario conducted examination on the contents of the plastic sachet dated “11 June 2008” and marked “JSE-EBB” that yielded positive results for shabu.[22]
- Afterwards, the shabu was retrieved for purposes of the trial.[23]

Evidently, the prosecution was able to account for each and every link in the chain of custody over the shabu, from the moment it was retrieved during the buy-bust operation up to the time it was presented before the court as proof of the corpus delicti.

Contrary to appellant’s assertion, the failure by PO3 Espiritu and SPO1 Daraman to mark the seized shabu immediately at the place where the buy-bust was conducted will not automatically impair the integrity of the chain of custody so established. Strictly speaking, marking the seized contraband at the nearest police station, rather than at the place where the buy-bust operation was conducted, is not even a violation of the procedure set forth in Section 21 of the Comprehensive Dangerous Drugs Act of 2002. Thus, in *People v. Resurreccion*,[24] this Court explained:

Accused-appellant broaches the view that SA Isidoro’s failure to mark the confiscated shabu immediately after seizure creates a reasonable doubt as to the drug’s identity. *People v. Sanchez*,[25] however, explains that RA 9165 does not specify a time frame for “immediate marking,” or where said marking should be done:

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of

“marking” of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the “chain of custody” rule requires that the “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 (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 be made in the presence of the accused and upon immediate confiscation. “Immediate confiscation” has no exact definition. Thus, in *People v. Gum-Oyen*,^[26] 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. (Emphasis supplied)

Verily, We are satisfied that the corpus delicti of the offense in this case was proven beyond reasonable doubt.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated 29 August 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04595 is hereby AFFIRMED.

SO ORDERED.

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

[1] By way of an ordinary appeal pursuant to Section 3(c) of Rule 122 of the Rules of Court.

[2] The decision was penned by Associate Justice Romeo F. Barza for the Seventh (7th) Division of the Court of Appeals with Associate Justices Noel G. Tijam and Ramon A. Cruz concurring; rollo, pp. 2-17.

[3] The Information was docketed as Criminal Case No. 08-71 and was assigned to Branch 68. Records, p. 1.

[4] Exhibit “G,” id. at 49-50.

[5] Exhibit “B,” id. at 5.

[6] See TSN, 13 November 2008 and 5 February 2009.

[7] TSN, 10 September 2009, p. 3.

[8] TSN, 30 July 2009, pp. 5-6.

[9] TSN, 22 October 2009, pp. 3-8.

[10] See TSN dated 10 June 2010.

[11] The decision was penned by Judge Jose S. Vallo; records, pp. 82-88.

[12] Section 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.

x x x

[13] Particularly, Section 21(1) of R.A. No. 9165. to wit:

Section 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 (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) xxx

[14] G.R. No. 186134, 6 May 2010, 620 SCRA 359, 368-369.

[15] Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. – The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves. x x x.

x x x x

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters. (Emphasis supplied)

[16] Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) x x x; and

(c) x x x.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (Emphasis supplied)

[17] Even the Implementing Rules and Regulation (IRR) of Republic Act No. 9165 does not make PDEA's participation a mandatory requirement before the other law enforcement agencies may conduct buy-bust operations. Section 86(a) of the said IRR provides:

(a) Relationship/Coordination between PDEA and Other Agencies – The PDEA shall be the lead agency in the

enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; Provided, further, that, in any case said agencies shall inform the PDEA of their anti-drug operations within twenty-four hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; Provided furthermore, that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. (Emphasis and underscoring supplied)

[18] *People v. Roa*, supra note 14, at 367-368.

[19] TSN, 13 November 2008, p.4.

[20] *Id.* at 5.

[21] *Id.* at 4-5.

[22] TSN, 30 July 2009, pp. 5-6.

[23] TSN, 10 September 2009, p. 3.

[24] G.R. No. 186380, 12 October 2009, 603 SCRA 510, 520.

[25] 590 Phil. 214, 240-241 (2008).

[26] 603 Phil. 665 (2009).

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