PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DATS MAMALUMPON Y BAÑEZ, ACCUSED-APPELLANT.

G.R. No. 210452. August 26, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

Before us for review is the Decision[1] of the Court of Appeals in CA- G.R. CR No. 33323 dated 18 June 2013 which affirmed the Judgment[2] of the Regional Trial Court (RTC) of Manila, Branch 16, in Criminal Case No. 03-217892 finding accused-appellant Dats Mamalumpon y Bañez guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged with the violation of the Comprehensive Dangerous Drug of 2002 following a "buy-bust" operation.

The accusatory portion of the Information against him reads:

> That on or about August 25, 2003, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell ZERO POINT TWO HUNDRED FIFTEEN (0.215) gram of white crystalline substance marked as "DMB" known as "shabu" placed in a transparent plastic sachet containing methylamphetamine hydrochloride, which is a dangerous drug.[3]

When arraigned, accused-appellant pleaded not guilty. Trial ensued.

The prosecution presented as witnesses Senior Police Officer 1 (SPO1) (then PO3) Apolinar Arevalo (SPO1 Arevalo) and SPO1 (then PO3) Jerry Velasco, (SPO1 Velasco) whose testimonies sought to establish the following facts:

Acting on a tip from a confidential informant that accused-appellant is selling shabu, a buy-bust team was formed composed of SPO1 Arevalo, team leader SPO1 Velasco, PO3 Gerry Nolasco, PO2 Richard Galiando and PO2 Edgardo Palabay. SPO1 Arevalo was tasked as poseur-buyer. Two pieces of One Hundred Peso bill were prepared as marked money and SPO1 Arevalo placed a marking of “DSOG,” representing District Special Operation Group, at the upper right corner of the bills.

At around 3:00 p.m. of the same date, the buy-bust team proceeded to the target area situated along Bautista Street, Quiapo, Manila. When the team reached the target area, accused-appellant approached SPO1 Arevalo and the confidential informant. SPO1 Arevalo told accused-appellant that he will buy shabu worth Two Hundred Pesos. Accused-appellant demanded payment before he produced a plastic sachet from the right pocket of his short pants. Immediately after the exchange, SPO1 Arevalo arrested accused-appellant. Accused-appellant was brought to the police station. Thereat, SPO1 Arevalo marked the plastic sachet he received with accused-appellant’s initials "DMB." SPO2 Eduardo Palma made a laboratory request for chemical analysis of the seized item and SPO1 Arevalo brought the plastic sachet to the crime laboratory for examination.[4]

SPO1 Velasco testified that he witnessed the entire buy-bust operation from where he was strategically situated some seven meters away from the scene.[5] Police Inspector Maritess Mariano in her Chemistry Report No. D-2023-03[6] found that the seized plastic sachet is positive for the presence of Methylamphetamine Hydrochloride or shabu.

Accused-appellant denied the charges against him and testified that on 25 August 2003 at around 3:00 p.m., he was resting inside his room when several police officers barged into the house. The police officers were apparently looking for a certain person selling shabu. Unable to find that person, they brought accused-appellant to the Western Police District (WPD) headquarters in U.N. Avenue, Manila. Accused-appellant claimed that he was manhandled and detained for two days.[7]

On 30 July 2009, the RTC rendered judgment finding accused-appellant guilty of violation of Section 5, Article II of R.A. No. 9165, and sentencing him to imprisonment of twelve (12) years and one (1) day to twenty (20) years and to pay a P500,000.00 fine. The trial court found that the prosecution was able to prove all the elements of the crime of illegal sale of prohibited drugs. The trial court found credible and relied on the prosecution witnesses who testified on the conduct of the buy-bust operation.

Accused-appellant seasonably filed a Notice of Appeal[8] before the Court of Appeals. On 18 June 2013, the Court of Appeals affirmed the judgment of the RTC with modification in that accused-appellant is sentenced to suffer the penalty of life imprisonment. Aside from ruling that all the elements of the crime of illegal sale of prohibited drugs were proven, the Court of Appeals held that the chain of custody of the seized illegal drug was not broken.

Accused-appellant appealed his conviction before this Court, adopting the same arguments in his Brief[9] before the Court of Appeals.[10]

It is axiomatic that factual findings of trial courts especially those which revolve around 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. 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 grueling examination.[11]

Upon review of the records, we affirm the lower courts' finding of accused-appellant's guilt.

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.[12]

All elements for illegal sale were duly established with accused-appellant being caught in flagrante delicto selling shabu through a buy-bust operation conducted by the District Special Operation Group of the WPD.

SPO1 Arevalo, who acted as the poseur buyer, testified that accused-appellant handed to him the plastic sachet containing the prohibited drug in exchange for P200.00, thus:

> Q:
>
> Will you now please narrate to the Court how you effected the buy-bust operation?
>
> A:
>
> Yes sir. We proceeded to the area along Bautista St., Quiapo, Manila together with the confidential informant

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and when we get there the suspect approached me and the confidential informant. I told to (sic) him that I am willing to buy one (1) plastic sachet worth Two Hundred Peso (PhP200.00), sir.

Q:

After you approach the suspect that you were willing to buy, what time was it Mr. Witness?

A:

On or about 3:00 p.m., sir.

Q:

Where?

A:

Along Bautista St., Quiapo, Manila, sir.

Q:

How did you go to the target area?

A:

We motor (sic) the place, sir.

Q:

Meaning you used a vehicle?

A:

Yes sir.

x x x x

Q:

When you went to the suspect with the confidential informant that you were willing to buy, what happened next?

A:

We immediately approach[ed] the suspect and I told to [sic] him that I will buy shabu worth Two Hundred Pesos (PhP200.00). He demanded for (sic) me to pay him immediately so I took the marked money and I handed it over to the suspect. After that, the Accused get [sic] a plastic sachet from the right pocket of his short pant[s] and he immediately handed it over to me and so, I immediately effect[ed] the arrest, sir.[13]

His testimony was corroborated by other police officers who were strategically posted in the perimeter of the target area. In their Joint Affidavit of Apprehension, three police officers, including SPO1 Velasco made the following attestation:

That on or about 3:00 p.m., August 25, 2003, along Bautista St., Quiapo, Manila, when we saw the poseur-buyer and the confidential informant having a conversation thereat to a malefactor fitted to the description of suspect @DATS. Thereon, after a while when we noticed that hand-over took place between the suspect and [SPO1] Arevalo. Thereafter, [SPO1] Arevalo effected the apprehension of the suspect by grabbing his arm prompting the undersigned to went [sic] out from their strategic place and assisted the poseur-buyer in the arrest of the suspect who tried to resist. Thereon, I, PO3 Rizalde Liangco recovered from suspect's

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> possession and control when apprehended was the two (2) pieces of PhP100.00 bill utilized as the buy-bust money. Suspect when apprised of his Constitutional Rights in a language known to him and the nature of the charge being imputed against him, he opted to remain silent.[14]

The result of the laboratory examination confirmed the presence of methylamphetamine hydrochloride or shabu on the white crystalline substance inside the plastic sachet received from accused-appellant. 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]

Accused-appellant insists that the standard procedures for the custody and disposition of the confiscated drugs as provided in Section 21 of R.A. No. 9165 were not complied with. Accused-appellant notes that the police officers failed to immediately mark the evidence upon arrest, to make an inventory and to photograph the prohibited drug in his presence.

Section 21, paragraph 1, Article II of R.A. 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.

This rule was elaborated 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 or warrantless arrest; 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 conduct a physical inventory and take photograph of the seized item does not ipso facto render inadmissible in evidence the items seized. There is a proviso in the implementing rules stating that when it is shown that there exist justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused.[16]

Likewise, the failure to immediately mark the confiscated shabu after its seizure does not affect its integrity. In Imson v. People,[17] we explained:

> Likewise, the failure of the policemen to mark the two plastic sachets containing shabu at the place of arrest does not render the confiscated items inadmissible in evidence. In People v. Resurreccion, the Court held that the failure of the policemen to immediately mark the confiscated items does not automatically impair the integrity of chain of custody. The Court held:
> Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.

> The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.
>
> x x x x
>
> Accused-appellant broaches the view that SA Isidro's failure to mark the confiscated shabu immediately after seizure creates a reasonable doubt as to the drug's identity. People v. Sanchez, 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, 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.[18] (Emphases omitted)

Accused-appellant zeroes in on the inconsistencies in the testimony of SPO1 Arevalo who claimed that prior to the alleged buy-bust operation, they already had a target suspect but in the pre-coordination report, accused-appellant's name was omitted. Furthermore, SPO1 Arevalo initially narrated that he approached accused-appellant but contradicted himself during cross-examination when he declared that it was accused-appellant who approached him and the confidential informant.

The alleged inconsistencies are too minor or trivial to affect the weight of SPO1 Arevalo's testimony. They do not detract from the proven elements of the offense of illegal sale of dangerous drugs. On the contrary, minor inconsistencies and contradictions in the declarations of witnesses even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[19]

Ultimately, it is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the corpus delicti.[20]

The chain of custody remained intact. As correctly observed by the appellate court:

> In the instant case, [w]e find that the chain of custody of the seized illegal drug was not broken. SPO1 Arevalo's testimony established that he received the plastic sachet of shabu from the appellant together with the marked money. He also testified that he had the custody of the seized item from the scene of the crime and was the one who marked it with initials "DMB" signifying the name of the appellant while another police officer, SPO2 Eduardo Palma made a laboratory request for chemical analysis. During trial, he positively identified the plastic sachet recovered from the appellant. Also, PO1 Velasco corroborated the said testimony and likewise identified the specimen. x x x
>
> x x x x
>
> Given these testimonies, there is no question then as to the integrity of the evidence as it was clearly

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> established that the item seized at the time of the buy-bust operation was the same one that was tested, introduced and identified in the trial court.[21]

Accused-appellant's defense, which is predicated on a bare denial, deserves scant consideration. A bare denial is an inherently weak defense and has been invariably viewed by this Court with disfavor, for it can be easily concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165. And in the absence of any intent on the part of the police authorities to falsely impute such crime against the accused, the presumption of regularity in the performance of duty stands.[22]

In fine, it has been established by proof beyond reasonable doubt that accused-appellant sold shabu. Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and fine ranging from P500,000.00 to P1,000,000.00 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. Thus, the Court of Appeals correctly imposed the penalty of life imprisonment and the fine of P500,000.00.

WHEREFORE, the Decision dated 18 June 2013 of the Court of Appeals affirming the conviction of accused-appellant Dats Mamalumpon y Bañez by the Regional Trial Court of Manila, Branch 16, for violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life of imprisonment and to pay a fine of P500,000.00 is hereby AFFIRMED.

SO ORDERED.

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

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[*] Additional member per raffle dated 18 August 2015.

[1] Rollo, pp. 2-16; Penned by Associate Justice Elihu A. Ybañez with Associate Justices Manuel M. Barrios and Victoria Isabel A. Paredes concurring.

[2] Records, pp. 62-67; Presided by Presiding Judge Cannelita S. Manahan.

[3] Records, p. 1.

[4] TSN, 10 December 2007, pp. 7-10; Testimony of SPO1 Arevalo.

[5] TSN, 19 July 2007, pp. 5-6; Testimony of SPO1 Velasco.

[6] Records, p. 10.

[7] TSN, 29 January 2009, pp. 4-9; Testimony of Accused-appellant.

[8] Records, p. 76.

[9] CA rollo, pp. 43-57.

[10] See rollo, pp. 30-32.

[11] People v. Bayan, G.R. No. 200987, 20 August 2014, 733 SCRA 577, 587.

[12] People v. Buenaventura, G.R. No. 184807, 23 November 2011, 661 SCRA 216, 223.

[13] TSN, 10 December 2007, pp. 7-8.

[14] Records, p. 4.

[15] Id. at 13.

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

[17] 669 Phil. 262 (2011).

[18] Id. at 270-271.

[19] People v. Rebotazo, G.R. No. 192913, 13 June 2013, 698 SCRA 452, 477-478.

[20] People v. Bala, G.R. No. 203048, 13 August 2014, 733 SCRA 50, 64.

[21] Rollo, pp. 9-14.

[22] People v. Quiamanlon, 655 Phil. 695, 718 (2011).

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