

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLANDO FERNANDEZ Y ABARQUIZ, ACCUSED-APPELLANT.

G.R. No. 210617. December 07, 2016

Ponente: PEREZ, J.

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PEREZ, J.:

This is an appeal filed by herein appellant Orlando Fernandez y Abarquiz (Fernandez) from the Decision[1] of the Court of Appeals (CA) in CA G.R. CR-HC No. 05626, dated 26 July 2013, affirming the Decision[2] of the Regional Trial Court of Dagupan City (RTC-Dagupan City) in Criminal Case No. 2009-0659-D, dated 9 May 2012, convicting the appellant for Violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).[3]

The appellant was charged in an Information[4] that reads:

That on or about the 18[th] day of November 2009, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the [herein appellant FERNANDEZ], did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride (Shabu) contained in one (1) heat-sealed plastic sachet, weighing more or less 0.13 gram, without authority to do so.

Contrary to [Section 5, Article II, RA 91651].

On arraignment,[5] the appellant pleaded NOT GUILTY to the crime charged. At the pre-trial conference, the parties stipulated as follows:

1. Identity of the [herein appellant] as the same [appellant] who was arraigned and pleaded not guilty to the commission of the crime charged.
2. That the [appellant] was arrested at Gonzales Street, Botman Boquig, Dagupan City, at 4:55 in the afternoon of [18 November 2009].[6]

Following the pre-trial conference, trial on the merits ensued, where the prosecution presented the following witnesses: (1) Police Senior Inspector Emelda Roderos (PSI Roderos), the Forensic Chemist who examined the specimen subject of the buy-bust operation;[7] (2) Police Inspector Apollo Calimlim (PI Calimlim), the duty investigator who prepared the Spot Report, the Affidavit of Statement and the Request for Laboratory Examination of the seized items;[8] (3) PO1 Mario Mondero (PO1 Mondero);[9] (4) Police Chief Inspector Froilan Lopez (PCI Lopez), the team leader of the buy-bust operation against the appellant;[10] (5) Police Officer 3 Christopher Baruelo (PO3 Baruelo), the designated poseur-buyer and the one who prepared the buy-bust money;[11] and (6) PO3 Noel Domalanta (PO3 Domalanta), the assigned arresting officer;[12] and.

The testimonies of the aforesaid witnesses established that:

At around 10:00 a.m. of 18 November 2009, the members of the Provincial Anti-Illegal Drug Special Operations Task Group (PAIDSOTG) were summoned by their action officer PCI Lopez to come to their office at Lingayen, Pangasinan, for instruction and briefing as regards the buy-bust operation that they would be conducting against

one Orlando Fernandez y Abarquiz (aka "Tatay Lando"), the herein appellant, who is a suspected shabu vendor, in Gonzales St., Bonuan Boquig, Dagupan City (target area).[13] During the briefing, PCI Lopez acted as the team leader, PO3 Baruelo was assigned as the poseur-buyer, PO3 Domalanta was tasked to act as the arresting officer, and the four other members of PAIDSOTG, namely: PO3 Dizon Santos (PO3 Santos), PO1 Mondero, Senior Police Officer 2 Ravago (SPO2 Ravago) and SPO1 Flash Ferrer (SPO1 Ferrer), were the designated back-up officers. PO3 Baruelo then prepared the buy-bust money, i.e., P500.00 peso-bill, marked with his initials "CFB," which was placed before the serial number, and photocopied the same.[14]

Thereafter, or at around 4:55 in the afternoon of even date, the above-named PAIDSOTG members, together with a confidential agent, proceeded to the target area. Upon arrival thereat, PO3 Baruelo and the confidential agent went directly in front of the appellant's house, particularly, near the fence, and waited for him. The rest of the buy-bust team, on the other hand, strategically positioned themselves within a five (5) meter radius therefrom. Later, when the appellant arrived, the confidential agent introduced to him PO3 Baruelo as a user and a buyer of shabu. The appellant then asked PO3 Baruelo how much drugs he was willing to buy to which the latter responded "P500.00." Thereupon, the appellant handed to PO3 Baruelo one (1) plastic sachet containing the suspected shabu. In turn, the latter gave the former the P500.00 marked money as payment therefor.[15]

At this juncture, PO3 Baruelo purposely scratched his head, which was their pre-arranged signal that the sale transaction has already been consummated, giving cue to PO3 Domalanta to make the necessary arrest. The appellant tried to escape but PO3 Domalanta chased him and successfully caught him and placed him under arrest. The appellant was then informed of his constitutional rights. Thereafter, PO3 Domalanta bodily searched the appellant and recovered from him the following: (a) one cal. 22 homemade gun; (b) one piece glass tube; (c) several aluminum foil strips; (d) one bundle of empty plastic sachets; (e) two lighters; and (f) the P500.00 peso marked money used in the buy-bust operation. PO3 Domalanta later turned over to PO3 Baruelo the seized items.[16]

Afterwards the appellant and the seized items were brought to PCP6 Bonuan, Tondaligan, Dagupan City, Pangasinan. It was PO3 Baruelo who was in possession of the seized items during this period. Upon reaching the said place, PO3 Baruelo marked the seized items with his initials "CFB." In particular, the drug paraphernalias, i.e., one bundle of empty plastic sachets, several aluminum foil strips, one piece glass tube water pipe and two lighters, recovered from the appellant during his arrest were marked "CFB-2" "CFB-3" "CFB-4" and "CFB-5," respectively while the plastic sachet containing suspected shabu subject of the sale transaction was marked with "CFB-1." [17] Thereafter, an inventory [18] and photograph of the seized items were made in the presence of the appellant and other witnesses, namely: Barangay Kagawad Ramil C. Soy of Barangay Bonuan Tondaligan; Cipriano R. Cayabyab, Chief of the CVO of Barangay Bonuan Boquig; and Peha Lagao of GMA 7, representative from the media.[19]

The buy-bust team, thereafter, returned to their office in Lingayen, Pangasinan, for further investigation by PI Calimlim, the duty investigator who prepared the Request for Laboratory Examination of the seized items, which request was signed by PCI Lopez. At this time, it was still PO3 Baruelo who was in possession of the seized items. Meanwhile, PO3 Baruelo and PO3 Dorpalanta prepared the affidavit of arrest. The seized items were then handed by PO3 Baruelo to PO1 Mondero. After which, PO1 Mondero, together with PI Calimlim, brought the Request for Laboratory Examination and the seized items to the Philippine National Police (PNP) Crime Laboratory in Lingayen, Pangasinan.[20] The same was received by PO2 Tajon.[21]

The qualitative laboratory examination was performed by Forensic Chemist PSI Roderos on 19 November 2009, which confirmed that the contents of the plastic sachet and improvised water pipe confiscated from the appellant were methamphetamine hydrochloride, commonly known as shabu.[22]

The defense, on the other hand, presented the appellant as its sole witness, who denied the accusation against him and offered a different set of facts, thus:

The appellant averred that at around 4:30 in the afternoon of 18 November 2009, he was taking a rest in front of his house in Gonzales St., Bgy. Bonuan Boquig, Dagupan City, when a man suddenly approached him and asked if he knows a person who sells shabu. The man even told him that in case he could give a referral, he would be given a certain amount as his commission. The appellant then remembered someone from the Muslim area where he used to pasture his cow. Thus, he accompanied the man to the cemetery and pointed to him the person who sells shabu.[23]

The man and the alleged shabu seller then negotiated. The man again approached the appellant and they went back in front of the latter's house. Afterwards, the man handed the appellant a P500.00-peso bill as the latter's commission. Upon receiving the said amount, the appellant was already apprehended by several persons by making him face the ground and by handcuffing him. Afterwards, the appellant was boarded on a mobile and was brought to the police station.[24]

The appellant further alleged that when he was frisked nothing was retrieved from him. As such, he was forced to admit that he was selling prohibited drugs. The appellant likewise avowed that the plastic sachets and other items really came from the man who previously negotiated with the alleged shabu seller. The appellant also stated that those who arrested him introduced themselves as members of the PAIDSOTG.[25]

On 9 May 2012, the trial court rendered a Decision[26] that reads:

WHEREFORE, judgment is hereby rendered finding [herein appellant Fernandez], GUILTY beyond reasonable doubt with Violation of [Section 5, Article II] of RA 9165 x x x and is hereby sentenced to suffer life imprisonment and to pay a fine in the amount of Five Hundred Thousand ([P500,000.00]) pesos.

The subject plastic sachet of shabu is hereby ordered disposed of in accordance with law.

With cost against said [appellant].

SO ORDERED.[27]

The trial court did not give weight on the testimony of the appellant that he was only an agent who referred the buyer to the alleged shabu seller, who actually sold the prohibited drugs. The defense that the P500.00-peso bill retrieved from him was only a commission fee was unbelievable especially when it was uncorroborated by any evidence or testimony from other witness.[28]

On appeal, the CA affirmed the trial court's Decision.[29]

The CA ruled that the elements of illegal sale of dangerous drugs were clearly established. It explained that what is material is the proof that the transaction or sale actually took place coupled with the presentation in court of the corpus delicti. The prosecution established that the illegal drug was sold to the poseur-buyer PO3 Baruelo who, in exchange of the drugs contained in a plastic sachet, gave a marked P500.00-peso bill to the appellant, which was, upon apprehension, retrieved from his pocket.[30]

The CA also stated that the defense of the appellant that the police officers failed to mark, photograph and inventory the seized items immediately after the arrest was bereft of merit. Such failure does not automatically impair the reliability of the chain of custody of the seized items as long as their integrity and evidentiary value are preserved by the apprehending team.[31]

Aggrieved by the aforesaid CA Decision, the appellant went to this Court, once again, raising the failure of the prosecution to establish the unbroken chain of custody, as well as the failure of the police officers to mark,

photograph and inventory the confiscated items as required by Section 21, Article II of RA 9165, thus, casting doubt on the guilt of the appellant.

After a careful examination of the records, this Court affirms the CA Decision as the errors alleged herein by the appellant are bereft of merit.

Time and again, in every prosecution for illegal sale of dangerous drugs, the following elements should first be established: (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. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of corpus delicti which means the actual commission by someone of the particular crime charged. The corpus delicti in cases involving dangerous drugs is the presentation of the dangerous drug itself.[32]

In this case, the prosecution has clearly established the foregoing elements as presented in the testimony of PO3 Baruelo who represented himself as the poseur-buyer in the buy-bust operation. PO3 Baruelo categorically identified the appellant as the seller of the dangerous drugs contained in a plastic sachet who handed him the said plastic sachet upon giving him the P500.00-peso bill.[33] This testimony was corroborated by the presentation in court of the corpus delicti which was the dangerous drugs itself.

Contrary to the averment of the appellant, the chain of custody of the confiscated drugs, paraphernalia and other seized items was evidently in accordance with the mandate of Section 21, Article II of the Implementing Rules and Regulations of RA 9165, which provides:

(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[.] (Emphasis supplied.)

As enunciated in the case of *People v. Guzon*,[34] the rule includes the proviso that procedural lapses in the handling of the seized drugs are not ipso facto fatal to the prosecution's cause, provided that the integrity and the evidentiary value of the seized items are preserved.

In the case at bench, notwithstanding the fact that PO3 Baruelo was not able to immediately mark the confiscated items at the place of arrest, such procedural lapse is found to be not detrimental to the prosecution's case. Nonetheless, PO3 Baruelo has complied with the required marking at the nearest police station as it was more practicable at that time. The persons, whose presence is required in Section 21 of the IRR, were also present during the physical inventory and taking of the photograph of the confiscated items.[35]

In view of the foregoing, this Court has taken cognizance of the fact that a testimony of a perfect chain is not always the standard because it is almost always impossible to obtain.[36] Moreover, the saving clause provided in the IRR rather applies in this case since the police officers credibly showed the effort to preserve the integrity of the dangerous drugs according to the letters of the law and that the identity of the dangerous drugs can be ascertained with moral certainty that the confiscated items were the same as those presented in court.[37]

Upon confiscation, PO3 Baruelo and PO3 Domalanta brought the seized items to PCP6 Bonuan Tondaligan where the initials of PO3 Baruelo were marked on each item. Thereafter, an inventory receipt was prepared in the presence of the persons required by law to be there during inventory and photograph of the seized items. The Affidavit of Arrest and the Request for Laboratory Examination were then prepared by PO3 Baruelo and PI Calimlim, respectively, while the seized items were brought by PO2 Mondero, who was then authorized to transport them in Lingayen, Pangasinan. The plastic sachet and the improvised water pipe were examined by Forensic Chemist PSI Roderos, whose examination yielded positive result to methamphetamine hydrochloride or shabu.

The other seized items such as the one bundle of empty plastic sachet[s], several strips of aluminum foil and two lighters, on the other hand, were left in the custody of PO3 Baruelo before their presentation and submission to the court's custody.[38]

Finally, mere denial of the appellant of the charge against him is inherently a weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the light of positive identification of the appellant as in this case.[39] Also, the initial claim of the appellant that he only served as a referring agent of the buyer to the alleged shabu seller in the Muslim area, who was the real seller of dangerous drugs is of no moment. The elements of the crime, as enumerated in Section 5, Article II of RA 9165,[40] were clearly proven by the prosecution. And, even assuming that the appellant merely acted as a referring agent in the sale of the dangerous drugs, the same also constitutes a violation of the law as the latter does not render persons serving as brokers with impunity.

WHEREFORE, the instant appeal is DISMISSED. Accordingly, the Court of Appeals Decision dated 26 July 2013 in CA-G.R. CR-HC No. 05626 is hereby AFFIRMED. No costs.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Peralta, and Reyes, JJ., concur.

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on December 7, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 16, 2017 at 1:25 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated as Additional Member in lieu of Associate Justice Francis H. Jardeleza per Raffle dated 21 March 2016.

- [1] Rollo, pp. 2-15; penned by Associate Justice Mario V. Lopez with Associate Justices Jose C. Reyes, Jr. and Samuel H. Gaerlan, concurring.
- [2] Records, pp. 121-126; penned by Judge Genoveva Coching-Maramba.
- [3] Known as the "Comprehensive Dangerous Drugs Act of 2002."
- [4] Records, p. 1.
- [5] Id. at 29-30; per RTC Order dated 20 April 2010 and Certificate of Arraignment also dated 20 April 2010.
- [6] Id. at 36-37; per Pre-Trial Order dated 29 April 2010.
- [7] Id. at 49-50; her testimony was, however, dispensed with per stipulation of the parties as contained in the RTC Order dated 20 May 2010.
- [8] TSN, 3 September 2010, p. 3; Testimony of PI Apollo Calimlim; records, p. 70, later, however, his testimony was dispensed with per RTC Order dated 3 September 2010.
- [9] Records, p. 79; his testimony was dispensed with per RTC Order dated 16 December 2010.
- [10] Id. at 85; his testimony was also dispensed with per RTC Order dated 20 January 2011.
- [11] TSN, 18 August 2010, p. 4; Testimony of PO3 Christopher Baruelo.
- [12] TSN, 3 September 2010, p. 6; Testimony of PO3 Noel Domalanta.
- [13] Supra note 11 at 3-4.
- [14] Id. at 3-6, 8; supra note 12, Testimony of PO3 Noel Domalanta.
- [15] Id. at 4-5; id. at 5-9, 12-13.
- [16] Id. at 5-6; id. at 7, 14.
- [17] Id. at 6, 9, 11-12, 14; id. at 9; records, pp. 3-4; Joint Affidavit of Arrest and Seizure dated 19 November 2009; records, p. 5; Receipt/Inventory of Items Seized dated 18 November 2009.
- [18] Records, p. 5; id.
- [19] Supra note 17.
- [20] Supra note 11 at 12; supra note 8; supra note 12 at 16; supra note 8; RTC Order dated 3 September 2010.
- [21] Records, p. 6; per PAIDSOTG Memorandum dated 18 November 2009.
- [22] Id. at 47 & 11; per Chemistry Report No. D-090-2009-U dated 19 November 2009.
- [23] TSN, 20 September 2011, pp. 3-4; Testimony of Orlando Fernandez.
- [24] Id. at 4.
- [25] Id. at 5.
- [26] Supra note 2.
- [27] Id. at 126.
- [28] Id. at 125.

[29] Supra note 1 at 14.

[30] Id. at 7.

[31] Id. at 9-10.

[32] 687 Phil. 593,603 (2012); citing 663 Phil. 147, 157 (2011).

[33] Supra note 11 at 4-5.

[34] 719 Phil. 441, 453 (2013); citing 686 Phil. 1024, 1037 (2012).

[35] Supra note 17.

[36] 698 Phil. 204, 220 (2012).

[37] 599 Phil. 416 (2009).

[38] Supra note 11 at 15.

[39] 727 Phil. 587, 606 (2014).

[40] 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.

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