

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO VILLALON, JR. Y PABUAYA ALIAS "JUN-JUN";
ACCUSED-APPELLANT.

G.R. No. 249412. March 15, 2021

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this ordinary appeal[1] is the Decision[2] dated June 26, 2019 rendered by the Court of Appeals (CA) in CA-G.R. CEB CR. HC. No. 02664, which affirmed the Joint Decision[3] dated August 22, 2017 of the Regional Trial Court of San Carlos City, Negros Occidental, Branch 59 (RTC) in Criminal Case Nos. RTC-5681, RTC-5682, and RTC-5683 finding accused-appellant Gregorio Villalon, Jr. y Pabuaya alias "Jun-Jun" (accused-appellant) guilty beyond reasonable doubt of Illegal Sale and Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia, as respectively defined and penalized under Sections 5,[4] 11,[5] and 12,[6] Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from three (3) separate Informations[7] filed before the RTC charging accused-appellant with the crimes of Illegal Sale and Possession of Dangerous Drugs, as well as Illegal Possession of Drug Paraphernalia under Sections 5, 11, and 12, Article II of RA 9165, respectively, the accusatory portions of which read:

Criminal Case No. RTC-5681[8]

That on September 6, 2015 at Purok Nabantuan, Barangay Balintawak, Escalante City, Occidental Negros, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority by law, did then and there, unlawfully sell and handed (sic) over to the police poseur-buyer one (1) heat-sealed plastic sachet containing methamphetamine hydrochloride, locally known as "shabu" and classified as a dangerous drug, with a total combined weight of 0.336 gram and marked as AM-BB, in exchange for one thousand five hundred pesos (PhP1500.00) in the following denomination: one (1) one thousand peso bill with serial number TB317872, one (1) two hundred peso bill with serial number QV410083, and three (3) pieces one hundred pesos bill with serial numbers ZS683053, XJ845484, and QR652664.

ACT CONTRARY TO LAW.

Criminal Case No. RTC-5682[9]

That on September 6, 2015, at Purok Nabantuan, Barangay Balintawak, Escalante City, Occidental Negros, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority by law, did then and there, unlawfully have in his possession and control two (2) small transparent plastic sachets marked as AM-1 and AM-2 and one (1) big sachet marked as AM-3 containing methamphetamine hydrochloride locally known as "shabu", classified as a dangerous drug and having a total weight of 5.298 grams, without authority by law and in violation of the aforesaid law.

ACT CONTRARY TO LAW.

Criminal Case No. RTC-5683[10]

That on September 6, 2015, at Purok Nabantuan, Barangay Balintawak, Escalante City, Occidental Negros, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority by law, did then and there, unlawfully have in his possession the following equipments, instruments and paraphernalia intended for use of dangerous drugs:

- (1) two (2) pieces lighter, and
- (2) one (1) piece improvised tube tooter.

Without authority by law to the damage and prejudice of the State.

ACT CONTRARY TO LAW.

The prosecution alleged that at 5:20 in the afternoon of September 6, 2015, acting on confidential information regarding the alleged illegal drug-peddling activities of accused-appellant in a rented room of a house owned by a certain Mrs. Cabus in Sitio Nabantuan, Barangay Balintawak, Escalante City, Negros Occidental; the City Anti-Illegal Drugs Special Operation Task Group conducted a buy-bust operation thereat with Police Officer 2 (PO2) Alex J. Mahinay (PO2 Mahinay) as the designated poseur-buyer. Disguised as a tricycle driver, PO2 Mahinay, accompanied by the confidential informant, offered to buy shabu worth P1,500.00 from accused-appellant, who then handed a plastic sachet containing 0.336 gram of white crystalline substance to him (PO2 Mahinay). When accused-appellant was searched after his arrest, PO2 Mahinay recovered from him the marked money, three (3) other plastic sachets containing a total of 5.298 grams of white crystalline substance, two (2) pieces of lighter, and one (1) improvised tube tooter.

Immediately thereafter, accused-appellant and the seized items, which were in the custody of PO2 Mahinay, were brought to the Escalante City Police Station Where the items were marked, inventoried,[11] and photographed[12] in the presence of accused-appellant, Marlyn D. Salili (elected official), Renante R. Malaay (media representative), Dennis P. Opina (Department of Justice [DOJ] representative), and PO1 Marvin A. Belleza, Jr. (photographer). Subsequently, PO2 Mahinay himself brought the seized items together with the Request for Laboratory Examination[13] to the PNP Crime Laboratory, which were duly received by PO3 Ariel Magbanua (PO3 Magbanua), the Evidence Custodian per Chain of Custody Form.[14] The confiscated items were turned over to P/SInsp. Alvin Raymundo Pascual (P/SInsp. Pascual), the Forensic Chemist who conducted a qualitative examination on the specimens, which tested positive[15] for methamphetamine hydrochloride or shabu, a dangerous drug. Thereafter, PO3 Magbanua took custody of the seized items for safekeeping.

For his part, accused-appellant denied the charges against him and instead, claimed that during that time, he was waiting for his turn to buy softdrinks from a store when two (2) unknown people approached him and asked him if he was Jun-Jun Villalon, which he confirmed. They then held him and instructed him to bring them to his boarding house. Upon arrival they made him sit and then asked him where his money was, which he answered by pointing at the top of the table. Thereafter, they asked him the whereabouts of a gun and shabu, to which he replied that they will never find any even if they turn the house upside down. One of them then showed him a small wallet with shabu inside that was allegedly his, which he vehemently denied. Subsequently, they brought him to the police station and detained him. Accused-appellant's testimony was corroborated by one Loreto Lopez who testified that he saw two (2) men drag accused-appellant from the store to his boarding house.

The RTC Ruling

In a Joint Decision[16] dated August 22, 2017, the RTC found accused-appellant guilty beyond reasonable doubt

of the crimes charged, and accordingly, sentenced him to suffer the following penalties: (a) for Illegal Sale of Dangerous Drugs, the penalty of life imprisonment and to pay a fine in the amount of P500,000.00; (b) for Illegal Possession of Dangerous Drugs, the penalty of imprisonment for an indeterminate period of twenty (20) years and one (1) day, as minimum, to life imprisonment, as maximum, and to pay a fine in the amount of P400,000.00; and (c) for Illegal Possession of Drug Paraphernalia, the penalty of imprisonment for an indeterminate period of six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and to pay a fine of P20,000.00. The RTC ruled that the evidence presented by the prosecution sufficiently established the crimes charged and that accused-appellant is guilty thereof. Conversely, it rejected accused-appellant's self-serving allegations, which cannot prevail or overturn the presumption of regularity in the performance of official duties in favor of the police officers.[17]

Dissatisfied, accused-appellant appealed to the CA.

The CA Ruling

In a Decision[18] dated June 26, 2019, the CA affirmed in toto the RTC ruling, finding that all the elements of the crimes charged had been successfully established. It ruled that lack of prior surveillance was not fatal, if not inconsequential, to accused-appellant's conviction since the police operatives were accompanied by their informant during the entrapment. Anent accused-appellant's contention that the prosecution failed to prove the element of consideration, it ruled that the crime had been consummated the moment the poseur-buyer handed the marked money to accused-appellant during the buy-bust operation; besides, the defense proffered no objection when a copy of the marked money was formally offered as a documentary exhibit. More importantly, the absence of marked money does not create a hiatus in the evidence of the prosecution as long as the sale of the dangerous drug was adequately proven and the drug subject of the transaction is presented before the court,[19] as in this case.

Hence, this appeal.

The Issue Before the Court

The core issue for the Court's resolution is whether or not accused-appellant is guilty beyond reasonable doubt of the crimes charged.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[20] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[21]

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. On the other hand, the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[22] Finally, Illegal Possession of Drug Paraphernalia is deemed consummated the moment the accused is found in possession of said articles without the necessary license or prescription.[23]

Jurisprudence states that in these cases, it is essential that the identity of the seized drug and/or paraphernalia be established with moral certainty. Thus, in order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug/paraphernalia from the moment of seizure up to its presentation in court as evidence of the corpus delicti.[24]

In *Dela Riva v. People*,[25] the Court explained that the chain of custody is divided into four (4) links: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[26] Notably, RA 9165, its IRR, and RA 10640 require that all items seized from the accused, particularly, "all dangerous drugs, controlled precursors and. essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered," must undergo the proper chain of custody procedure as provided therein in order to preserve their integrity and evidentiary value.[27]

In this case, while the prosecution successfully established the first to the third links, it however failed to show compliance with the fourth link of the chain of custody. Records show that during the trial, the prosecution and the defense stipulated on the intended testimony of prosecution witness P/S Insp. Pascual, thus: (a) that he is an expert witness; (b) that pursuant to the Request for Laboratory Examination from the Escalante City Police Station, P/SInsp. Pascual conducted the qualitative examination on the specimens submitted to them; (c) that after conducting the required examination, he reduced his findings in Chemistry Report No. D-549-2015; and (d) that he can identify the specimens which he subjected to examination.[28] However, in dispensing with his testimony, the prosecution failed to prove the manner by which the specimens were handled before P/SInsp. Pascual received them, how he examined the items, and how these were stored or kept in custody until they were brought and presented in court as evidence.[29]

In drug related cases, "it is of paramount necessity that the forensic chemist testifies on the details pertaining to the handling and analysis of the dangerous drug submitted for examination, i.e., when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen." [30]

Should the parties opt to stipulate and dispense with the attendance of the forensic chemist, the Court clarified in *People v. Ubungen*[31] that "it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial." Here, the parties' stipulation did not mention that any one of these precautionary steps were in fact done by the forensic chemist, from the time he received the seized items for laboratory examination and before they were delivered to the trial court for identification, leaving a gap in the chain of custody of said seized items.

Clearly, absent any of the afore-mentioned conditions, the fourth link in the chain of custody of the said illegal drug could not be reasonably established. The lapses committed by the prosecution and the law enforcers herein could not be considered minor. Indeed, establishing every link in the chain of custody is crucial to the preservation of the integrity, identity, and evidentiary value of the seized illegal drug. Failure to demonstrate compliance with even just one of these links creates reasonable doubt that the substance confiscated from the accused is the same substance offered in evidence,[32] as in this case. Accordingly, since the prosecution failed to

account for the fourth link in the chain of custody of the items purportedly seized from accused-appellant, its integrity and evidentiary value were already compromised, thereby warranting accused-appellant's acquittal.

WHEREFORE, the appeal is GRANTED. The Decision dated June 26, 2019 rendered by the Court of Appeals in CA-G.R. CEB CR. HC. No. 02664 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Gregorio Villalon, Jr. y Pabuaya alias "Jun-Jun" is ACQUITTED of the crimes charged.

The Director of the Bureau of Corrections is ORDERED to: (a) cause the immediate release of accused-appellant Gregorio Villalon, Jr. y Pabuaya alias "Jun-Jun," unless he is being lawfully held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Decision.

Let entry of judgment be issued immediately.

SO ORDERED.

Gesmundo, Lazaro-Javier, Lopez, and Rosario, JJ., concur.

[1] Rollo, pp. 17-19.

[2] Id. at 5-16. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Edward B. Contreras and Dorothy Montejo-Gonzaga, concurring.

[3] CA rollo, pp. 43-48. Penned by Presiding Judge Kathrine A. Go.

[4] Section 5 penalizes "Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals."

[5] Section 11 penalizes "Possession of Dangerous Drugs."

[6] Section 12 penalizes "Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs."

[7] Rollo, pp. 6-7.

[8] Records, pp. 1-2.

[9] Id. at 25-26.

[10] Id. at 49-50.

[11] Id. at 32-33.

[12] Id. at 40-42.

[13] Id. at 43.

[14] Id. at 106, including dorsal portion.

[15] See Chemistry Report No. D-549-2015 dated September 7, 2015; id. at 44.

[16] CA rollo, pp. 43-48.

[17] Id. at 46-47.

[18] Rollo, pp. 5-16.

[19] See *id.* at 11-15.

[20] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[21] *People v. Comboy*, 782 Phil. 187, 196 (2016).

[22] *People v. De Dios*, G.R. No. 243664, January 22, 2020.

[23] *People v. Ching*, 819 Phil. 565, 575-576 (2017), citing *People v. Bontuyan*, 742 Phil. 788, 799 (2014).

[24] *Id.* at 576, citing *People v. Viterbo*, 739 Phil. 598, 601 (2014).

[25] 769 Phil. 872 (2015).

[26] *Id.* at 886-887.

[27] See Section 21 of RA 9165, Section 21 of the IRR, and Section 1 of RA 10640.

[28] TSN, June 29, 2016, pp. 8-9.

[29] See *People v. Leano*, G.R. No. 246461, July 28, 2020.

[30] *People v. Omamos*, G.R. No. 223036, July 10, 2019.

[31] G.R. No. 225497, July 23, 2018, 873 SCRA 172, citing *People v. Pajarin*, 654 Phil. 461 (2011).

[32] See *People v. Ubungen*, *id.*

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