

## THIRD DIVISION

[ G.R. No. 177771, May 30, 2011 ]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARIELITO ALIVIO Y OLIVEROS AND ERNESTO DELA VEGA Y CABBAROBAS, APPELLANT.**

### DECISION

**BRION, J.:**

On appeal to this Court is the Decision,<sup>[1]</sup> dated November 30, 2006, of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01138, which affirmed the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 70, Pasig City, in Criminal Case Nos. 12450-52-D. The RTC convicted Arielito Alivio y Oliveros and Ernesto dela Vega (collectively referred to as *appellants*) of violating Sections 5, 11 and 12, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

#### The Arraignment and Plea

In Criminal Case No. 12450-D, the Information charged the appellants of selling *shabu*, as follows:

the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Lemuel Laro, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing six (6) centigrams (0.06 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.<sup>[3]</sup>

In Criminal Case No. 12451-D, Dela Vega was charged of possessing *shabu* under the following Information:

the accused, not being lawfully authorized to possess any dangerous drug; did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing ten (10) decigrams (0.10 gram), of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.<sup>[4]</sup>

Finally, in Criminal Case No. 12452-D, Alivio was charged of possessing drug

paraphernalia consisting of two disposable lighters, an improvised tooter and an improvised burner. The pertinent portion of the Information states:

the accused, not being lawfully authorized to possess paraphernalia or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession two (2) pcs. of disposable lighters, one (1) improvised tooter and one (1) improvised burner, which are all instruments, equipment, apparatus or paraphernalia, fit or intended for smoking, sniffing, consuming or introducing methamphetamine hydrochloride, commonly known as shabu, a dangerous drug, in violation of the said law.<sup>[5]</sup>

The appellants pleaded not guilty to all the charges and trial on the merits followed.

### **The Version of the Prosecution**

The prosecution's case relied on the theory that the police apprehended the appellants during a buy-bust operation conducted at Alivio's residence. During the buy-bust operation, the police found drug paraphernalia at Alivio's residence while a search on Dela Vega's person yielded one plastic sachet of *shabu* which the police seized.

The prosecution's evidence showed that at around 9:30 p.m. of May 20, 2003, the Pasig City Police received a tip from an asset that one "Ariel" was rampantly selling illegal drugs in Bagong Ilog, Pasig City. A buy-bust team was immediately formed in coordination with the Philippine Drug Enforcement Agency. The buy-bust money, which consisted of two (2) 100 peso bills, was prepared and marked with the symbol, "3L." PO2 Lemuel Lagunay Laro was designated to act as the poseur-buyer.

Together with SPO3 Lemuel Matias and PO1 Allan Mapula, PO2 Laro and the asset went to the house of Ariel. While the rest of the buy-bust team strategically positioned themselves at the target area, PO2 Laro and the asset met Ariel. The asset introduced PO2 Laro to Ariel who was later on identified as Alivio. The asset told Alivio that they wanted to buy *shabu*. Alivio asked how much they wanted to buy, to which the asset replied: "*dalawang daan lang p're at saka puwede kaming gumamit d'yan?*" The two were ushered into the second floor of the house where they saw dela Vega seated in front of a table with drug paraphernalia. PO2 Laro then gave the buy-bust money to Alivio who handed it to Dela Vega. The latter then took out from his pocket one plastic sachet of *shabu* which he gave to Alivio who handed it to PO2 Laro. After the exchange, PO2 Laro introduced himself as a police officer and arrested Alivio and Dela Vega. The asset made a signal for the buy-bust team to come inside the house. SPO3 Matias searched Dela Vega and found him in possession of one plastic sachet of *shabu*. The buy-bust team also retrieved the drug paraphernalia on top of the table, which paraphernalia they correspondingly marked. The buy-bust team took Alivio, Dela Vega and the confiscated items to the police station for investigation. Afterwards, the confiscated items were taken by PO1 Mapula to the PNP Crime Laboratory for examination. The two (2) plastic sachets tested positive for *shabu*.

By agreement of the prosecution and the defense, the testimony of forensic chemist

P/Insp. Joseph Perdido was dispensed with and they entered stipulations on:

- 1) The due execution and genuineness of the Request for Laboratory Examination dated May 20, 2003 which was marked in evidence as Exhibit "A" and the stamp showing receipt thereof by the PNP Crime Laboratory as Exhibit "A-1";
- 2) The due execution and genuineness, as well as the truth of the contents, of Chemistry Report No. D-940-03E dated May 12, 2003 issued by Forensic Chemist P/Insp. Joseph M. Perdido of the PNP Crime Laboratory, Eastern Police District, Saint Francis St., Mandaluyong City, which was marked in evidence as Exhibit "B", the finding and conclusion as appearing on the report as Exhibit "B-1" and the signature of the forensic Chemist over his typewritten name likewise as appearing on the report as Exhibit "B-2";
- 3) The existence of the two (2) plastic sachets and other paraphernalia, but not their source or origin, contained in an envelope, the contents of which were the subject of the Request for Laboratory Examination, which were marked in evidence as follows: as Exhibit "C" (the envelope), as Exhibit "C-1" (the 1<sup>st</sup> plastic sachet), as Exhibit "D" (the improvised tooter with markings EXH-E AAO dated 05-20-03), as Exhibit "E" (the improvised burner) and as Exhibits "F-1" & "F-2" (the two disposable lighters).<sup>[6]</sup>

### **The Version of the Defense**

The appellants anchored their defense on denial and frame-up. They denied selling *shabu* and claimed that they were together that night drinking at the second floor of Alivio's residence. They also claimed that five (5) men (who turned out to be policemen) suddenly barged in on them looking for a person named "Bon-bon." When they replied that neither of them was Bon-bon, the policemen frisked and arrested them. The policemen took from the appellants their earnings for that day and the P5,000.00 cash they found in the house. The appellants tried to resist arrest and suffered injuries as a result. <sup>[7]</sup>

Alivio additionally asserted that he could not have sold *shabu* to PO2 Laro since he knew him to be a policeman. Alivio claimed that he was a former driver of Atty. Nelson Fajardo whom he used to accompany to the police station where PO2 Laro was assigned.

### **The Ruling of the RTC**

On February 28, 2005, the RTC convicted the appellants of all charges laid. The RTC relied on the presumption of regularity in the buy-bust operation and the lack of improper motive on the part of the police officers. The RTC rejected the proffered denial and frame-up as defenses as they are inherently easy to concoct, and found that the prosecution sufficiently established all the elements of the crimes charged and the identity of the appellants as perpetrators. The RTC thus concluded:

**WHEREFORE**, premises considered, judgment is hereby rendered, as follows:

In **Criminal Case No. 12450-D** both accused Arielito Alivio and Ernesto Dela Vega are hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act 9165 (illegal sale of shabu) and are hereby sentenced to **LIFE IMPRISONMENT** and to solidarily pay a **FINE** of **Five Hundred Thousand Pesos (PHP500,000.00)**.

In **Criminal Case No. 12451-D** accused Ernesto dela Vega is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 11, Article II, Republic Act 9165 (illegal possession of shabu) and is hereby sentenced to **Twelve (12) Years** and **One (1) Day to Twenty (20) Years** and to pay a **Fine** of **Three Hundred Thousand Pesos (PHP 300,000.00)**.

In **Criminal Case No. 12452-D** accused Arielito Alivio is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 12, Article II, of Republic Act 9165 (illegal possession of drug paraphernalia) and is hereby sentenced to **Six (6) Years** and **One (1) Day to Four (4) Years** and a **FINE** of **Ten Thousand Pesos (PHP 10,000.00)**.<sup>[8]</sup>

The appellants appealed to the CA.

### **The Ruling of the CA**

On November 30, 2006, the CA affirmed the RTC decision. The CA took into account the consistent testimonies of the prosecution witnesses to support the presumption that the police officers regularly performed the buy-bust operation. The CA likewise ruled that the appellants failed to substantiate their defenses.

### **The Issue**

The appellants raised the following lone assignment of error:

THE [CA] ERRED IN FINDING THE [APPELLANTS] GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF THE PROVISIONS OF REPUBLIC ACT NO. 9165.<sup>[9]</sup>

The appellants argue that the lower courts erred in evaluating the testimonial evidence when they placed undue reliance on the presumption of regularity and the absence of improper motive on the part of the police officers to perpetuate the claimed irregularities. The appellants assert that the presumption of regularity cannot take precedence over the presumption of innocence in their favor.

The appellants also fault the lower courts for disregarding the defense's evidence that showed Alivio's familiarity with PO2 Laro as a policeman. They emphasize that

this evidence was corroborated by the testimony of defense witness Atty. Fajardo.

Finally, the appellants contend that the identities of the subject *shabu* were not sufficiently proven since the seized items were not marked at the time the appellants were apprehended.

### **The Court's Ruling**

**We find no reversible error committed by the RTC and the CA in convicting the appellants of the crimes charged.**

While the presumption of innocence is the highest in the hierarchy of presumptions, it remains a rebuttable presumption. In a criminal case, the presumption of innocence can be overcome by the presumption of regularity when the latter is accompanied by strong evidence supporting the guilt of the accused.<sup>[10]</sup> Even without the presumption of regularity, a drug conviction can be sustained through competent evidence establishing the existence of all the elements of the crimes charged.

In this case, although the presumption of regularity did not arise considering the evident lapses the police committed in the prescribed procedures, we rule that the prosecution's evidence sufficiently established all the elements of the three (3) crimes charged and the identity of the appellants as the perpetrators.

#### **The existence of the buy-bust operation**

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Thus, we generally defer to the assessment on this point by the trial court as it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand.<sup>[11]</sup> Our independent examination of the records shows no compelling reason to depart from this rule.

*First*, the lower courts found the testimonies of PO2 Laro and SPO3 Matias consistent, positive and straightforward. These testimonies were corroborated by PO1 Mapula who testified that the appellants were apprehended through a buy-bust operation.

*Second*, the records reveal the lack of improper motive on the part of the buy-bust team. Appellant Alivio even admitted that he had no idea why the police officers filed the present case against him.<sup>[12]</sup> Alivio also denied police extortion.<sup>[13]</sup>

*Third*, the appellants' failure to file cases against the buy-bust team for planting evidence undoubtedly supports the prosecution's theory that the appellants were arrested because they were caught *in flagrante delicto* selling *shabu*.

*Fourth*, the following documentary evidence presented by the prosecution corroborates the existence of an actual buy-bust operation:

(a) The Pre-Opns Reports, made part of the records, showed that anti-narcotics operations were conducted on May 20, 2003 against one "@Ariel" who was