

TWENTY-SECOND DIVISION

[CA-G.R. CR HC NO. 01100-MIN, February 24, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BEN ASANJI Y CABALLERO A.K.A. "BEN", ACCUSED-APPELLANT.

D E C I S I O N

INTING, J.:

Before Us on appeal is the Decision^[1] dated September 12, 2012 of the Regional Trial Court (RTC) of Zamboanga City, 9th Judicial Region, Branch 9 rendered in Criminal Case No. 6247 (23945), which found the accused-appellant Ben Asanji y Caballero guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165^[2].

The facts^[3] of the case are as follows:

On November 26, 2003, an Information was filed before the Regional Trial Court (RTC) of Zamboanga City, 9th Judicial Region, Branch 9, against accused-appellant Ben Asanji y Caballero (Ben) for violation of Section 5, Article II of R.A. 9165. The Information reads as follows:

Criminal Case No. 5166 (20264)

The undersigned 2nd Assistant and Inquest Prosecutor of Zamboanga City hereby accuses BEN ASANJI y CABALLERO a.k.a 'BEN' of the crime of VIOLATION OF SECTION 5, ARTICLE II OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165), committed as follows:

That on or about October 13, 2008, in the city of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there wilfully (sic), unlawfully and feloniously, sell and deliver to IO2 Abdulsokor S. Abdulgani, a Philippine Drug Enforcement Agency (PDEA) Agent, who acted as poseur buyer, one (1) small heat-sealed transparent sachet containing white crystalline substance weighing 0.0129 gram which when subjected to qualitative examination gave positive result to the test for METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing well that the same is a dangerous drug.

CONTRARY TO LAW.^[4]

On June 7, 2004, Ben, with the assistance of counsel, was arraigned. He entered a plea of not guilty.^[5]

After the pre-trial conference, trial ensued.

Based on the evidence adduced, the following is the prosecution's version of the facts:

On October 13, 2008, two confidential informants appeared before the Regional Office of the Philippine Drug Enforcement Agency (PDEA) at Upper Calarian, Zamboanga City. They informed IA1 Esteban Lim, Jr. (Lim) that a certain Liz and Ben (accused-appellant) of Purok 4A in Sta. Catalina, Zamboanga City were involved in illegal drug trade. The confidential informants offered to act as poseur-buyers. Lim then relayed the information to their officer-in-charge (OIC), IO2 Benjamin Recites (IO2 Recites) who instructed him to act on the matter. Thereafter, Lim designated four (4) officers to conduct the surveillance in the area. These officers were IO1 Sulla, IO2 Villosa, IO2 Abdulgani and SI2 Bello. They then proceeded to Purok 4A, Sta. Catalina to conduct a surveillance of the area at around 11 a.m to assess if a simultaneous buy bust operation against Liz and Ben was possible since their houses were adjacent to each other.

When they returned to their office, they conferred with IO2 Recites. The police officers then decided to conduct a simultaneous buy bust operation against both Liz and Ben. During the briefing, IO2 Recites divided the police officers into two (2) teams – Team A and Team B. Team A was assigned to conduct the buy bust operation against Liz; and Team B against Ben. Team A was composed of IO1 Villosa and IO1 Sulla; while Team B was composed of IO2 Abdulgani, PO1 Hajan, PO1 Baddon and a confidential informant (CI).

IO2 Recites designated IO2 Abdulgani as the leader of Team B and at the same time as the poseur-buyer; and SI2 Bello as the back-up officer. IO2 Recites then gave IO2 Abdulgani Five Hundred Pesos (P500.00) as marked money; the latter acknowledged receipt of the money which came from the operational funds of PDEA and registered before the Office of the City Prosecutor. Team B agreed that Abdulgani was to make a drop call to signify that the transaction has been consummated. After coordinating with the Zamboanga City Police, Team B proceeded to the area around 1 p.m.

When Team B arrived at the area, IO2 Abdulgani and the CI went to Ben's house while SI2 Bello pretended to buy a soft drink in a nearby store around forty (40) to seventy (70) meters from Ben's house. The CI introduced IO2 Abdulgani to Ben as a longtime friend from Upper Calarian who wanted to buy shabu. Without hesitation, Ben asked IO2 Abdulgani how much shabu he would buy. After IO2 Abdulgani replied that he wanted to buy P500.00 worth of shabu, he then handed Ben the marked money. After a while, Ben handed Abdulgani the shabu which was placed inside a small-sized transparent sachet.

Suddenly, Abdulgani heard a commotion at the adjacent house of Liz. He then decided to draw his hand gun and effected the arrest of Ben. During this time, the CI ran away. SI2 Bello then rushed to the house to assist IO2 Abdulgani. They then brought Ben to the PDEA office. At the office, they prepared a booking sheet and arrest report on Ben. The team also conducted an inventory of the seized drug. The

sachet was marked with the initials, "ASA", which stands for Abdulsokor S. Abdulgani. They did not conduct the inventory at the area for security reasons. The witnesses to the conduct of inventory were Teodibar Arquisa of TV11 and Barangay Official Roselyn Mukaram.

During the trial, the testimony of Police Senior Inspector Mark Christian N. Maceda (Maceda) was dispensed with after the following stipulations were made by the parties: that Maceda is a forensic chemist of the Regional Crime Laboratory Office 9, Zamboanga City; that the office received a request for laboratory examination, marked as Exhibit "A", of one (1) small-sized transparent plastic pack of suspected shabu, marked as Exhibit "B", dated October 13, 2008, for the purpose of determining the presence of any dangerous drug; that Maceda conducted the laboratory examination on the specimen delivered, with a weight of 0.0129 gram of white crystalline substance and released, as a result, through Chemistry Report No. D-085-2008, that the white crystalline substance is positive for methamphetamine hydrochloride, which is a dangerous drug; that Maceda has no personal knowledge as to the source or origin of the drugs; and that he did not personally receive the drug from the requesting officer.

The testimony of IO2 Thessa Albanio was likewise dispensed with after the following stipulations were made by the parties: that Albanio received the living person of the accused-appellant Ben Asanji y Caballero when the examinations were conducted at the office of the PDEA, Regional Office 9, on October 13, 2009; that the investigator received one (1) small-sized transparent plastic sachet of suspected shabu marked as Exhibit "B", as well as five (5) pieces of P100 bill buy-bust money from IO2 Abdulsoko Abdulgani; that the Duty Investigator Albanio prepared and delivered the Request for Laboratory Examination marked as Exhibit "A", of one (1) sachet of suspected shabu marked as Exhibit "B", dated October 13, 2008, for the purpose of determining the presence of methamphetamine hydrochloride, which is a dangerous drug, as evidenced by the stamp mark, "RECEIVED", on said date; that a copy of the Request for Laboratory Examination was released by Forensic Chemist Police Senior Inspector Maceda in Chemistry Report No. D-085-2008; that Albanio prepared the necessary documents in relation to the investigation, to include buy-bust money receipt dated October 13, 2008, marked as Exhibit "F"; that Albanio prepared a Certificate of Inventory containing, among others, the named of the accused and the evidence seized and recovered by IO2 Abdulgani, marked as Exhibit "E"; that Albanio took photographs of the accused and the evidence seized, the picture kept in one (1) bond paper showing the accused and the seized evidence, which is one (1) sachet of suspected shabu marked as Exhibit "I"; that Albanio prepared her Investigation Report with recommendation for the filing of this case against the accused, dated October 14, 2008, marked as Exhibit "K"; that Albanio forwarded the case to the City Prosecutor's Office dated October 14, 2008, signed by IO2 Benjamin C. Recites III, Officer-in-Charge, Philippine Drug Enforcement Agency, marked as Exhibit "L"; the registration of the marked money, marked as Exhibit "G"; that Albanio prepared the Booking Sheet and Arrest Report of the accused marked as Exhibit "J"; that Albanio did not participate in the buy-bust operation; that Albanio has no personal knowledge as to the source of the drug; that Albanio admitted that her knowledge of the investigation is limited only to the information given to her by the poseur-buyer and arresting officer who participated in the buy-bust operation; that during the conduct of the inventory, the accused was not assisted by counsel; that the Department of Justice (DOJ) did not participate in the inventory; that during the conduct of the inventory, the representative of the accused did not

participate in the inventory; and that Albanio conducted the inventory without the assistance of counsel for the accused.

Contrariwise, accused-appellant presents the following version of facts:

Accused-appellant Ben Asanji is 45 years of age, married and a resident of Sta. Catalina, Zamboanga City. As a technician by profession, he used the ground floor of his house as his shop. He usually earns P200 to P300 a day.

Ben alleged that on October 13, 2008, at around 2 o'clock in the afternoon, he was in his house located in the interior portion of Betty II, around fifty (50) to sixty (60) meters from the Sta. Catalina highway; that he was eating at his house when three persons (two (2) men and one (1) small lady) entered his shop without saying anything; that suddenly, one of them pointed his gun at him; that the other two persons then searched the premises; and that the group did not introduce themselves to him nor present any document that would explain the purpose of their search.

Ben further alleged that after conducting a search on the house and having found nothing except spare parts of a television and cassette tapes, they brought him outside; that he initially resisted but one of them pulled him; that they rode a service vehicle where three persons (two (2) males and one (1) female) were already on board; that he recognized one of them as Liz (Lizel Aure), his neighbor; that when they reached a place called Tetuan, they parked the vehicle for about thirty (30) minutes; that one of them suggested that since he and the others who were arrested did not commit any crime, it would be in their best interest to release them; and that, however, one of them objected and insisted that they should be brought to the PDEA office.

Ben furthermore alleged that upon their arrival at the PDEA office, they were brought inside a room with a bench outside; that they were then instructed to remove their personal belongings; that they were told that they would be released if they have somebody to replace them or if they have someone arrested in exchange for them; that at first he did not understand what they were referring to but they explained that it was called "*Palit Ulo*"; that he, however, did not accede to their proposition; that the PDEA officers then said that if they were not amenable to a "*palit ulo*", then they could pay them P20,000.00 for their release, otherwise, they would remain in jail; that, however, he told the officers that he cannot come up with the amount; and that upon being frisked, no drugs were found in his person.

Ben finally insisted that he was framed-up for a crime he did not commit; and that he believes that he was arrested because some of his neighbors were envious of his economic status as a cellphone and appliance technician.

On September 12, 2012, the court *a quo* rendered the assailed Decision. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing considerations, this Court finds accused BEN ASANJI y CABALLERO a.k.a. "BEN" guilty beyond reasonable doubt for Violation of Section 5, Art. II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay the fine of FIVE HUNDRED

THOUSAND PESOS (P500,000) without subsidiary imprisonment in case of insolvency.

The methamphetamine hydrochloride used as evidence in this case is ordered confiscated and the Clerk of Court is directed to turn over the same to the proper authorities for disposition.^[6]

Undeterred, accused-appellant elevated the case on appeal before this Court anchored on a sole assigned error:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[7]

Our Ruling

The appeal is bereft of merit.

Accused-appellant argues that the PDEA operatives failed to follow the Chain of Custody Rule under Section 21, Article II of Republic Act (RA) 9165 thereby tainting the integrity of the illegal drug that was allegedly bought from him; that the PDEA operatives conducted the inventory, the taking of the photographs, and the marking of the alleged seized item at the office instead of conducting them at the area where they made the arrest; and that during the inventory, there was no representative from the DOJ, and the elected public official present during the inventory is not from Sta. Catalina where the buy-bust was held.

Accused-appellant also contends that the prosecution witnesses gave conflicting testimonies regarding the conduct of the surveillance. He asserts that per testimony of SI2 Bello, he conducted the surveillance of the target area with the two (2) confidential informants, IO1 Sulla, IO2 Villosa, and IO2 Abdulgani which is contrary to the testimony given by IO2 Abdulgani that he did not go with those who made the surveillance and that only IO1 Villosa and IO1 Sulla conducted the surveillance.

Accused-appellant's contentions deserve scant consideration.

It has been held that the non-compliance with the provisions of Section 21, Article II of RA 9165 is not necessarily fatal to the prosecution's case.

The Supreme Court, in *People v. Salvador*, explained in this wise:

In arguing for his acquittal, appellant heavily relies on the failure of the buy-bust team to immediately photograph and conduct a physical inventory of the seized items in his presence. In this regard, Section 21(1), Art. II of RA 9165 provides:

Sec. 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