THIRD DIVISION

[G.R. No. 242159, February 05, 2020]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE CASILANG *Y* RINO AND SILVERIO VERGARA *Y* CORTEZ, ACCUSED-APPELLANTS.

DECISION

GESMUNDO, J.:

In all criminal prosecutions, the accused is presumed innocent until proven guilty by proof beyond reasonable doubt.[1] When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[2]

On appeal is the Decision[3] dated April 30, 2018 issued by the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 07852, which affirmed the Decision[4] dated August 18, 2015 rendered by the Regional Trial Court of Dagupan City, Branch 42 *(RTC)* in Criminal Case No. 2012-0003-D finding Dante Casilang *y* Rino *(Casilang)* and Silverio Vergara *y* Cortez *(Vergara; collectively, accused-appellants)* guilty of violation of Section 5, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Antecedents

In the Information[5] dated January 6, 2012, accused-appellants were charged with violation of Article II, Section 5 of R.A. No. 9165, allegedly committed as follows:

> That on or about the 5th day of January 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **DANTE CASILANG *Y* RINO AND SILVERIO VERGARA *Y* CORTEZ**, confederating together, acting jointly and helping each other, did then and there, wilfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride *(Shabu)* contained in one (1) heat sealed plastic sachet, weighing more or less 0.1 gram in exchange for P500.00, without authority to do so.
>
> Contrary to Article II, Section 5, R.A. 9165.[6]

Accused-appellants were arraigned on May 23, 2012 and pleaded not guilty to the charge.[7]

Version of Prosecution

The prosecution presented three (3) witnesses, namely: (1) Police Officer 2 Jayson M. Cadawan *(PO2 Cadawan)*, *poseur-buyer*; (2) Senior Police Officer 1 Julius Coroña *(SPO1 Coroña)*, the backup and arresting police officer; and (3) Police Senior Inspector Myrna Malojo-Todeño *(PSI Malojo-Todeño)*, the Forensic Chemist of the Pangasinan Provincial Crime Laboratory Office *(crime laboratory)* who examined the seized illegal drugs. Through their combined testimonies, the prosecution sought to establish the following facts:

On January 5, 2012, Police Chief Superintendent Froiland Valdez instructed some police officers assigned at the Provincial Intelligence Branch *(PIB)*, Lingayen, Pangasinan Police Provincial Office, to conduct a buy-bust operation targeting accused-appellants who the PIB had been monitoring since receiving information of their drug dealing from a confidential informant.[8]

A buy-bust team was formed, consisting of PO2 Cadawan, Police Inspector Romel Centeno *(PI Centeno)*, and SPO1 Coroña. PO2 Cadawan prepared the P500-bill marked money. The team then proceeded to Police Community Precinct No. 6 *(PCP 6)* at Bonuan-Tondaligan to document the operation, before embarking on their mission near Leisure Coast, Bonuan-Binloc where accused-appellants were usually seen. At around 1:45 p.m., accused-appellants arrived and settled near a waiting shed. PO2 Cadawan approached accused-appellant Vergara and asked if he had P500.00 worth of *shabu*. In response, Vergara asked his companion, accused-appellant Casilang, to hand him the item which Vergara in turn handed to PO2 Cadawan. After giving the marked money as payment, PO2 Cadawan touched his head to signal the consummation of the sale. SPO1 Coroña approached the group and he and PO2 Cadawan introduced themselves as police officers. They then arrested accused-appellants for selling illegal drugs. PO2 Cadawan marked the seized item with his initials ("JMC") and the current date ("1-5-12") and placed it in an envelope. The police officers informed accused-appellants of their constitutional rights and brought them to PCP 6 to record the transaction in the blotter.[9]

At PCP 6, an inventory of the seized item was made in the presence of *Barangay Kagawad* Segundino Ayson *(Barangay Kagawad Ayson)*, and the evidence was photographed together with accused-appellants. Afterwards, PO2 Cadawan returned the seized item inside the envelope and he, PI Centeno and SPO1 Coroña brought accused-appellants to the Provincial Intelligence Office. Upon arrival thereat, PI Centeno prepared the request for medico-legal and crime laboratory examinations. PO2 Cadawan brought the request and seized item to the crime laboratory, where he personally handed the seized item to Forensic Chemist PSI Malojo-Todeño. Laboratory examination later revealed that the seized item tested positive for *shabu*.[10]

Version of the Defense

Accused-appellants both testified and interposed the defense of denial.

Casilang testified that he was a tricycle driver plying his route on January 5, 2012. Along the way, he was flagged down by Vergara, who proposed that they drive around ("have a joyride") as he had nothing to do that day. When they were near Leisure Coast, police officers flagged them down, asked them to alight and frisked them. Even if the police officers did not recover anything from them, they were nonetheless brought to the police station and led to a room where they saw a table with money, and an item they were not familiar with, on top of it. They were then photographed.[11]

For his part, Vergara testified that he was in Salay, Mangaldan on January 5, 2012 between 12:30 to 1:00 p.m., when he flagged down Casilang who was then transporting two passengers to Tondaligan Beach. He boarded the tricycle to have a joy ride. After the passengers alighted, accused-appellants decided to go home. As they neared the Leisure Coast Resort, a person flagged them down. Believing that this person and his companions were passengers, accused-appellants stopped. The persons turned out to be armed. They instructed accused-appellants to alight from the tricycle and searched them, but did not find anything. Still, they were made to board a van and brought to the police station. They were not informed of their constitutional rights.[12]

The RTC Ruling

On August 18, 2015, the RTC rendered a Decision finding accused-appellants guilty as charged. It found the prosecution to have clearly established the passing of the plastic sachet with white crystalline substance from Casilang to Vergara, who in turn handed the same to PO2 Cadawan in exchange for P500.00. Thus, the police officers were justified in arresting accused-appellants without a warrant and in seizing the plastic sachet. Moreover, the white crystalline substance in the plastic sachet was later on confirmed to be methamphetamine hydrochloride or *shabu*, per the Chemistry Report issued by the PNP Crime Laboratory through Forensic Chemist PSI Malojo-Todeño. SPO1 Coroña also identified in court the recovered P500-bill buy-bust money with serial number FJ848102.[13]

The RTC held that the defenses of denial and frame up interposed by accused-appellants are viewed with disfavor as they can easily be concocted. They should not benefit accused-appellants unless the evidence of frame up is clear and convincing. Here, aside from their self-serving allegations, accused-appellants adduced no evidence to strengthen their claim. Hence, their defenses are highly unacceptable. There is also no proof of any intent on the part of the police officers to falsely impute the commission of a crime on accused-appellants. Consequently, the presumption of regularity in the performance of official duty prevails.[14] The dispositive portion of the RTC Decision states:

> **WHEREFORE,** premises considered, the [C]ourt finds the accused **DANTE CASILANG and SILVERIO VERGARA GUILTY** beyond reasonable doubt of the crime of **Violation of Section 5 of Art. II of [R.A. No.] 9165** and are hereby sentenced to suffer the penalty **of life imprisonment and to [each pay] the fine of Five Hundred Thousand Pesos (P500,000.00).**
>
> **SO ORDERED**.[15] (emphases in the original)

The CA Ruling

The CA affirmed the RTC Decision. It held that the buy-bust operation conducted on January 5, 2012 is valid when scrutinized using the "objective test," which demands that details of the purported transaction must be clearly and adequately shown. Here, PO2 Cadawan's testimony, which was corroborated by that of SPOl Coroña, duly established the details of the buy-bust operation which resulted in the lawful arrest of accused-appellants.[16]

Moreover, the prosecution was able to prove beyond reasonable doubt the existence of all the elements of the crime of illegal sale of *shabu*, namely: the identity of the buyer and seller, object and consideration, the delivery of the thing sold, and the payment therefor. The prosecution's evidence established the identity of PO2 Cadawan as *poseur-buyer*, accused-appellants as the sellers, the object of the sale which is *shabu*, and the consideration of P500.00. The delivery of the illegal drug in exchange for P500.00 consummated the sale transaction.[17]

The CA also held that even if the police officers did not strictly comply with the requirements of Section 21, Article II of R.A. No. 9165 due to the absence of a Department of Justice (*DOJ*) or media representative, the prosecution was able to explain that the police officers tried, but found no available media or DOJ representatives at the time. The presence of an elective official in the person of *Barangay Kagawad* Ayson during the inventory and taking of photographs of the confiscated items is deemed substantial compliance with the requirements of the law. Moreover, even if the police officers did not strictly comply with the requirements of the said provision, such fact did not affect the evidentiary weight of the illegal drugs seized from accused-appellants because the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.[18]

Finally, the CA held that accused-appellants' defense of denial or frame up must fail in the face of credible and positive testimonies of the prosecution witnesses which are duly supported by documentary and object evidence.[19] The CA disposed of the case as follows:

> **WHEREFORE,** the appeal is **DENIED.** The Decision dated 18 August 2015 of the Regional Trial Court, Branch 42, Dagupan City, in Criminal Case No. 2012-0003-D, finding accused-appellants Dante Casilang *y* Rino and Silverio Vergara *y* Cortez guilty of Violation of Section 5, Article II of Republic Act No. 9165 is **AFFIRMED**.
>
> **SO ORDERED.**[20] (emphases in the original)

Hence, this appeal.

In its Resolution[21] dated December 3, 2018, the Court required the parties to submit their respective Supplemental Briefs, if they so desired. Subsequently, the parties respectively manifested that they are no longer filing such briefs.[22]

The Issues

Accused-appellants maintain their innocence and seek the final resolution of the following issues:

I.

> THE TRIAL COURT GRAVE[LY] ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION.

II.

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUG CONSTITUTING THE *CORPUS DELICTI* OF THE CRIME.[23]

The Court's Ruling

Accused-appellants argue that the police officers failed to comply with the mandatory procedures in the handling and disposition of the seized illegal drug as provided under paragraph 1, Section 21, Article II of R.A. No. 9165, since no representatives from the media and the DOJ were present during the conduct of the inventory. While the Implementing Rules and Regulations (**IRR**) of R.A. No. 9165 allow a degree of latitude with respect to compliance with its requirements, the same must be based on justifiable grounds.[24] Here, the apprehending officers did not tender any explanation or justification for noncompliance with the required procedure. It was thus grave error for the RTC to rule that the *shabu* transmitted by PO2 Cadawan to the crime laboratory was the very same one allegedly sold to him by accused-appellants. The arresting officers' deliberate disregard of the legal safeguards under R.A. No. 9165 produced serious doubts on the integrity and identity of the *corpus delicti*.[25] Moreover, while the Court has held that procedural lapses in the conduct of the buy-bust operation are not *ipso facto* fatal to the prosecution's cause as long as the integrity and evidentiary value of the seized items have been preserved, still, the courts must thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law. The presumption of regularity in the performance of official functions was negated by the buy-bust team's failure to comply with Section 21 of R.A. No. 9165. In view of all these, accused-appellants insist that the Court resolve the case in their favor.[26]

The appeal is meritorious.

The trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. The Court has reviewed the trial court's factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[27] Such is the case here, where circumstances exist that raise serious doubts on accused-appellants' culpability of the crime charged.

In actions involving the illegal sale of dangerous drugs, the prosecution must establish the following elements: (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. It is equally essential for a conviction that the drug subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over it. The prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[28]

Reasonable doubt on the actual sale of illegal drugs exists

In this case, despite the prosecution's evidence showing that a buy-bust operation was conducted, there exists reasonable doubt that the sale of illegal drugs actually took place.

PO2 Cadawan testified that police officers conducted surveillance prior to the buy-bust operation. However, he did not describe the particular acts being committed by accused-appellants at the time which led him and the other police officers to conclude that the latter were involved in a crime. Thus:

> Q. You mentioned about [two] personalities, who are these two personalities?
> A. Dante Casilang and Silverio Vergara, ma'am.
>
> Q. Where were you supposed to conduct this operation?
> A. Particularly at Bonuan-Binloc, Dagupan City, ma'am.
>
> Q. You mentioned a while ago that these two personalities have been monitored by your office, who told you this, Mr. Witness?
> A. Series of information have been given by confidential informant to our office, ma'am.
>
> Q. You said that you already monitored these two accused, how did you monitor them about their drug dealings?
> A. We usually see these personalities at Bonuan-Binloc, ma'am.
>
> Q. You said you usually see them, how often do you see them in Bonuan-Binloc?

A. Twice a week, ma'am.

Q. Why do you go at Bonuan-Binloc?
A. To perform our duties and obligations as intelligence officer in conducting and monitoring illegal activities, ma'am.[29]

Aside from the fact that there was no record of the surveillance,[30] PO2 Cadawan palpably failed to identify the activities to which the "series of information" allegedly provided by a confidential informant pertained. His testimony lacks the bare essentials to justify the conduct of a buy-bust operation. In fact, if the prosecutor did not use the term "drug dealings" in one of his questions, there would have been no indication whatsoever of the crime that accused-appellants were supposed to be committing. As part of the surveillance team, PO2 Cadawan could not have neglected to describe the illegal activities that he witnessed—if indeed he witnessed any. It is considerably uncharacteristic of a police officer who had monitored a crime to omit basic information on what he had perceived, particularly when testifying in court where such information is most crucial.

Moreover, in their Joint Affidavit of Arrest,[31] PO2 Cadawan and SPO1 Coroña described accused-appellants as "long[-]monitored drug personalities" who hailed from Mangaldan, but operated within the area of Bonuan-Binloc, Dagupan City in Pangasinan. The police officers narrated that on the day of the scheduled buy-bust operation, they "stationed [themselves] strategically at an area near the waiting shed where [they] usually [saw] the two drug personalities waiting for their customers." These statements convey that accused-appellants were confirmed by surveillance to have been habitually engaged in the sale of illegal drugs. However, if this were true, then it is curious why only one (1) sachet of *shabu* was recovered from accused-appellants during the buy-bust operation.

The prosecution would have the courts believe that accused-appellants travelled from their hometown in Mangaldan to sell their illegal merchandise in Bonuan, which is a good 10.7-kilometer distance or a 20-minute car ride away,[32] to sell only one (1) sachet of *shabu* worth P500.00 and weighing only 0.17 gram to the first customer who will approach them. While it may be asserted that this fact alone is not beyond ordinary human experience, it gains significance in light of PO2 Cadawan's palpable omission to testify on the illegal activities committed by accused-appellants and their *modus operandi*, as supposedly ascertained by undocumented surveillance operations. The facts, taken together, raise doubt on whether accused-appellants were indeed drug pushers, and whether they actually sold illegal drugs in the purported buy-bust operation.

The prosecution is not entitled to the saving mechanism of Section 21 of the IRR of R.A. No. 9165

Even granting that the buy-bust was a legitimate police operation, the Court also finds that the prosecution failed to show justifiable grounds for noncompliance with Section 21(a) of the IRR of R.A. No. 9165, and that there is a substantial gap in the chain of custody of the seized item that puts into question its integrity and evidentiary value.

The statutory requirements to establish chain of custody are reflected in Section 21 of R.A. No. 9165 which provides, among others, that "the apprehending team shall immediately after seizure and confiscation physically inventory and photograph the seized item in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."[33] The Court had explained that the presence of the latter three witnesses serves to guard against switching, "planting" or contamination of the evidence.[34]

However, as it is a fact that field conditions vary and strict compliance with the rule may not always be possible, Section 21 of the IRR of R.A. No. 9165 provides a saving clause. It states that noncompliance with the requirements of Section 21 will not automatically render void and invalid the seizure and custody over the seized items, so long as: 1) there are justifiable grounds therefor, and 2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Failure to show these two conditions renders void and invalid the seizure of and custody of the seized illegal drugs.[35]

Here, the inventory and taking of photographs of the seized illegal drug were witnessed by accused-appellants and *Barangay Kagawad* Ayson. However, there were no representatives from the media and the DOJ present at the time. Since this is a deviation from the requirements of Section 21, it is incumbent upon the prosecution to provide justifiable reasons in order for the saving clause to apply.[36] Unfortunately, the prosecution failed to recognize its procedural lapse and provided no such explanation whatsoever other than that the police officers "cannot avail" of the presence of the required witnesses. On this point, PO2 Cadawan testified as follows:

Q. I am showing to you a Receipt/Inventory of Seized/Confiscated Items, what is the relation of this document with the confiscation receipt that you mentioned?
A. I was the one who personally prepared this, ma'am.

Q. At the left lower portion of this document is a signature above the printed name Segundino Ayson, Jr. the *Barangay Kagawad*, Bonuan-Gueset, whose signature is this?
A. It's *Kagawad Ayson, (sic)* sir.

Q. Why do you say so?
A. I was present and my fellow PO Coroña was also present at that time when he signed that document, ma'am.

Q. I do not see any representative from the Media as well as any representative of the DOJ in this