

FIRST DIVISION

[G.R. No. 248382, July 28, 2020]

JERRY BARAYUGA Y JOAQUIN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari* under Rule 45 assails the following dispositions of the Court of Appeals in CA-G.R. CR HC No. 07395 entitled "*People of the Philippines v. Jerry Barayuga y Joaquin*", viz:

1. Decision^[1] dated May 28, 2018 affirming his conviction for violation of Section 5 of Republic Act 9165 (RA9165);
2. Resolution^[2] dated September 19, 2018 ordering the issuance of an entry of judgment in view of petitioner's failure to file a notice of appeal within the reglementary period; and
3. Resolution^[3] dated July 10, 2019 denying reconsideration.

The Charge

Petitioner Jerry Barayuga y Joaquin was charged with violation of Section 5 of RA 9165 for the sale of 0.0803 gram of *methamphetamine hydrochloride*, otherwise known as *shabu*, viz:

Criminal Case No. 2014-4444-D-MK

That on or about 12:20 pm of May 20, 2012 in the City of Laoag and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously sell and deliver to a police poseur-buyer one (1) heat sealed transparent plastic sachet containing 0.0803 gram of Methamphetamine Hydrochloride locally known as "shabu", a dangerous drug, without any license or authority, in violation of [Section 5, Article II of RA 9165],

CONTRARY TO LAW.^[4]

On arraignment, petitioner pleaded "not guilty".^[5]

The Proceedings Before the Trial Court

PO1 Jackson Sugayen (PO1 Sugayen), SPO1 Jonathan Alonzo (SPO1 Alonzo) and SPO4 Rovimmanuel Balolong (SPO4 Balolong) testified for the prosecution. Testimonies of Police Inspector Amiely Ann Navarro (P/Insp Navarro) of the Philippine National Police (PNP) - Ilocos Norte Provincial Crime Laboratory, SPO4 Wilfredo Calubaquib (SPO4 Calubaquib), and SPO2 Ferdinand Santos (SPO1 Santos) were dispensed with upon admission by the defense of their proffered testimonies. [6] Petitioner testified as sole witness for the defense. [7]

The Prosecution's Evidence

PO1 Sugayen testified that on May 30, 2012, around 11:50 in the morning, he was on duty at the Laoag City PNP Office when he received a call from SPO4 Balolong instructing him to proceed to the house of their asset in Brgy. 10. When he arrived, SPO4 Balolong informed him that the asset was able to order P1,000.00 worth of *shabu* from petitioner and that he was to act as poseur-buyer in the buy-bust operation later that day. SPO4 Balolong, too, called the police station and ordered SPO4 Calubaquib to accomplish the proper forms and have the serial number of the P1,000.00 buy-bust money recorded on the blotter. SPO4 Balolong then handed him the P1,000.00 buy-bust money.

He and the asset rode a motorcycle to Brgy. 20, General Luna Street corner Lampitoc Street while SPO4 Balolong convoyed them with his car. Moments later, petitioner arrived. The asset introduced him to petitioner as the buyer of *shabu*. He then gave the buy-bust money to petitioner which the latter pocketed. In exchange, petitioner gave him a plastic sachet containing white crystalline substance from a flip top cigarette box.

After the sale was consummated, he held petitioner and said "*Police ako, arestado ka.*" SPO4 Balolong approached them because petitioner tried to resist arrest. He read petitioner his rights while SPO4 Balolong frisked him. SPO4 Balolong recovered from petitioner the flip top cigarette box and buy-bust money. [8]

Subsequently, the arresting team brought petitioner to the police station where he marked the sachet with his initials "JBS" in front of petitioner and duty investigator SPO1 Alonzo before turning it over to SPO1 Alonzo. [9]

SPO4 Rovimmanuel Balolong testified that on May 30, 2012, around 11:50 in the morning, he was at home when one of their police assets called and informed him about petitioner's illegal drug activities. He called PO1 Sugayen and directed him to proceed to the asset's house. There, he informed PO1 Sugayen that the latter will act as *poseur-buyer* who will buy P1,000.00 worth of *shabu* from petitioner. The P1,000.00 marked "RBB" was recorded in the police blotter by SPO4 Calubaquib.

He, PO1 Sugayen and the police asset proceeded to Brgy. 20. He acted as back up and waited in his car while PO1 Sugayen and the asset transacted with petitioner. After the sale was consummated, he saw PO1 Sugayen hold petitioner. He hurriedly approached them and assisted in petitioner's arrest. He frisked petitioner and recovered from him the P1,000.00 marked money and a flip top cigarette box. They brought petitioner to the police station where he turned over the seized money and

the flip top cigarette box to SPO1 Alonzo.^[10]

The parties stipulated on the supposed testimony of **SPO1 Alonzo** as the investigator and evidence custodian of the case. On May 30, 2012, he received from PO1 Sugayen one (1) heat-sealed transparent plastic sachet containing alleged *methylphenetamine hydrochloride*. He does not know the source of such plastic sachet though he witnessed PO1 Sugayen mark it "LCPS" "JJB" before placing his signature. He prepared a letter-request for laboratory examination and requested SPO1 Santos to prepare the other documents. On even date, he brought the letter-request together with the seized sachet to the crime laboratory which were received by forensic chemist Police Inspector P/Insp Navarro. He wrote his name and affixed his signature on the space beside "Delivered by:" in the rubber stamp receipt. He could identify the seized sachet and the letter-request for laboratory examination."^[11]

The parties, too, stipulated that on May 30, 2012, around 12:30 in the afternoon, **SPO4 Calubaquib** received a call from SPO4 Balolong instructing him to enter in the police blotter the serial number of the buy-bust money.^[12]

More, **SPO1 Santos** was the one who prepared the Inventory of Seized Items and affixed his signature on behalf of SPO4 Loreto Ancheta, the Senior Evidence Custodian who was not around that time.^[13]

Finally, the parties stipulated that on May 30, 2012, around 4:30 in the afternoon, forensic chemist **P/Insp Navarro** received from SPO1 Alonzo a letter-request for the examination of one (1) heat sealed plastic sachet containing alleged *shabu* together with the plastic sachet marked "LCPS", "JJB", "JBS" and a signature. She conducted a qualitative examination on the contents of the sachet and found them positive for *methamphetamine hydrochloride*. After examination, she sealed the sachet with masking tape and marked it "D-035-2012-IN May 30, 2012 AALN" and affixed her signature. She executed Initial Laboratory Report No. D-035-2012-IN and Chemistry Report No. D-035-2012-IN which contained her findings, she submitted the sachet, letter-request and Chemistry Report No. D-035-2012-IN to evidence custodian PO1 Erlanger Aguinaldo for safekeeping. On June 22, 2012, she and PO1 Aguinaldo retrieved the sachet, letter-request and Chemistry Report from their evidence locker and submitted the same to the RTC branch clerk of court Atty. Bernadette Espejo. She could identify the sachet, letter-request and Chemistry Report issued by Atty. Espejo.^[14]

The prosecution offered as documentary evidence the Letter Request for Laboratory Examination, Inventory of Evidence, and Chemistry Report No. D-035-2012-N.^[15]

The Defense's Evidence

Petitioner testified that on May 30, 2012, around 9:30 in the morning, he was at home when he received a text from his friend Mark Cid inviting him to play mahjong at the latter's house. Around 11:30 in the morning, Mark messaged him again, saying all the other players were already there. He then rode his motorcycle to Mark's house but when he arrived, Mark told him one player was still missing so he left to have lunch.

While he was traversing Lampitoc Street toward General Luna Street, two (2) men

blocked his way, one of whom he later identified as PO1 Sugayen. As he stopped his motorcycle to avoid bumping them, one of the men held the handlebars of his motorcycle while the other introduced himself as a policeman and tried to handcuff him. Suddenly, SPO4 Balolong appeared out of nowhere, grabbed his hand, told him to stop struggling and uttered invectives at him. The policemen frisked him and took his coin purse containing four (4) pieces of P1,000.00 bills which he was supposed to use in playing mahjong, his cellphone, cigarettes, and a lighter. He was made to board a car and, thereafter, brought to the police station. Along the way, SPO4 Balolong told him, "*Kinunak kenka idin dika pulos pagtalnaen*" (I told you before, I will never let you live in peace).^[16]

At the police station, PO1 Sugayen strip-searched him but found nothing. SPO4 Balolong arrived, pointed a gun at him and threatened to shoot him if he did not produce the item. He asked SPO4 Balolong what he was talking about but the latter simply told him he received a text message stating he had the items with him. He insisted he did not know these "items" they were referring to.

SPO4 Balolong left for a moment but later returned with a plastic sachet. When he continued to deny knowledge of what the policemen were talking about, SPO4 Balolong pointed to the sachet and said, "*Dayton lattan ne*" (This one will do). SPO4 Balolong also took out a P1,000.00 bill from his wallet. The police then took pictures of him pointing at the plastic sachet and P1,000.00 bill on top of a table as he was instructed to do.

Four (4) hours later, he was brought to the crime laboratory. Along the way, SPO1 Alonzo stopped by N. Corpuz Street to buy a pen to mark something. At the crime laboratory, his urine sample was taken, after which he was brought back to the police station.^[17]

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Decision^[18] dated January 30, 2015, the trial court found petitioner guilty as charged, thus:

WHEREFORE, judgment is hereby rendered finding accused Jerry Barayuga y Joaquin GUILTY beyond reasonable doubt as charged of illegal sale of shabu and is accordingly sentenced to suffer the penalty of LIFE IMPRISONMENT and pay a fine of P500,000.00.

The shabu subject hereof is confiscated for proper disposition as the law prescribes.

SO ORDERED.^[19]

The trial court held that the prosecution sufficiently established petitioner's act of selling dangerous drugs. It gave credence to the testimonies of the prosecution

witnesses, consistent as they were with documentary and object evidence.^[20]

As for the chain of custody rule, the trial court acknowledged the same to have been breached: the marking and inventory of the confiscated items were not done at the *situs criminis* right after petitioner's arrest but at the police station; it was not mentioned whether the inventory and photograph were done in the presence of the insulating witnesses required under RA 9165; and no photographs of the seized items were taken, or if there were any, the same were not presented in court. This notwithstanding, the trial court was convinced that the arresting officers as well as those who subsequently took possession of the seized dangerous drug preserved the integrity of the *corpus delicti*.^[21]

Petitioner's self-serving denial deserved scant consideration. He was caught selling dangerous drugs in *flagrante delicto* by the buy-bust team.^[22]

The Proceedings before the Court of Appeals

Petitioner faulted the trial court in rendering a verdict of conviction against him when no actual buy-bust operation took place considering:

First. PO1 Sugayen merely handed him the marked money but the negotiation of the sale was only between him and the asset.

Second. In SPO4 Balolong and PO1 Sugayen's Joint Affidavit, they stated that the marked money bore the serial number 164724 and yet on record, the serial number was 164725.

Lastly. There was no pre-arranged signal agreed upon among the members of the buy-bust team as to indicate consummation of the sale.

At any rate, the prosecution failed to establish an unbroken chain of custody as the police officers did not immediately mark the seized dangerous drug at the scene of the buy bust sale. Too, no photograph of the seized items was taken.^[23]

On the other hand, the Office of the Solicitor General (OSG) maintained that petitioner's arrest was the result of a legitimate buy-bust operation as he was caught in the act of selling *shabu*. The integrity and evidentiary value of the *corpus delicti* were also preserved.^[24]

The Court of Appeals' Ruling

By Decision dated May 28, 2018,^[25] the Court of Appeals affirmed. It agreed with the trial court that all the elements of illegal sale of dangerous drugs were proved. PO1 Sugayen narrated in detail how the transaction transpired from the time he and the asset arrived at Brgy. 20, General Luna Street corner Lampitoc Street and met with petitioner until the time he handed the marked money in exchange for a plastic sachet containing 0.0803 gram of *shabu*. SPO4 Balolong corroborated PO1 Sugayen's testimony. The chain of custody of the *corpus delicti* had also been