

THIRD DIVISION

[G.R. No. 238519, June 26, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DESIREE DELA TORRE Y ARBILLON, ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

This is an appeal filed by appellant Desiree Dela Torre y Arbillon of the Decision^[1] dated July 27, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08268, affirming with modification the Decision^[2] dated April 13, 2016 of the Regional Trial Court (RTC) of Makati City, Branch 64 in Criminal Case Nos. 15-1009 and 15-1010.

The antecedent facts are as follows:

On March 14, 2015, at around 11:00 a.m., PSupt. Mario Ignacio alerted his team and tasked them to conduct an anti-narcotics operation in Barangay Palanan, Makati City. Prosecution witness PO1 Mauro Pagulayan was informed that their target was a certain *alias* "Zandra" who was suspected to sell illegal drugs in Barangay Palanan. After conducting an anti-narcotics operation in said area, their team, headed by P/Insp. Crisanto Racoma, had a briefing. PO1 Pagulayan was designated as the poseur-buyer. He was given a P1,000.00 bill, with serial number RM289309, to be used as marked money. It was also agreed that PO1 Pagulayan would give a pre-arranged signal of scratching the side of his body when the sale was consummated. Meanwhile, PO1 Mario Maramag was designated as police backup, while the rest of the team would serve as perimeter security.^[3]

PO1 Maramag coordinated with the Philippine Drug Enforcement Agency and submitted a coordination form in order to legalize the buy-bust operation. Then, PO1 Pagulayan called their regular informant to locate *alias* Zandra. A few hours after, their informant confirmed *alias* Zandra's location and so they proceeded to meet the informant at Cash & Carry in Barangay Palanan. From Cash & Carry, PO1 Pagulayan and the rest of the team proceeded on foot towards Diesel Street. There, a female person whom the informant identified as *alias* Zandra stood at the side of the street. PO1 Pagulayan and the informant approached her and the informant introduced PO1 Pagulayan as his friend who wanted to get *shabu*. *Alias* Zandra asked him how much he needed and he said P1,000.00, to which *alias* Zandra replied, "*akin na ang pera*." PO1 Pagulayan handed the marked money to her and she placed it inside her pocket. Thereafter, *alias* Zandra took out three plastic sachets containing white crystalline substances suspected to be *shabu* and asked PO1 Pagulayan to choose among the three. After he had chosen, *alias* Zandra returned the two plastic sachets inside her left pocket. PO1 Pagulayan placed the sachet containing white crystalline substances suspected to be *shabu* inside his pocket and, thereafter, introduced himself to *alias* Zandra as a policeman. PO1 Maramag then arrived and assisted PO1 Pagulayan in arresting *alias* Zandra. PO1 Pagulayan asked *alias* Zandra, to take out

from her pocket the marked money, as well as the two other plastic sachets containing white crystalline substances suspected to be *shabu*. PO1 Maramag then informed *alias* Zandra of the Miranda rights. They also called for a barangay official who could witness the inventory of the seized items. However, as a lot of people had already started to gather around them, they decided to head to the barangay hall in Palanan.^[4]

Inside the barangay hall, PO1 Pagulayan made an inventory of the seized items and marked the sachet containing white crystalline substances suspected to be *shabu*, subject of the sale, as "M.A.P," and the two other sachets recovered from the appellant as "M.A.P-1" and "M.A.P-2," respectively. The seized items were marked and inventoried in the presence of Barangay Kagawad Jose A. Villa, Jr. The barangay kagawad signed the Inventory Receipt as proof that he was there to witness the inventory of the seized items. Photos of the appellant, as well as the seized items and buy-bust money, were also taken. Then, PO1 Pagulayan prepared a request for laboratory examination, the chain of custody form, and a request for drug test. He, thereafter, brought these documents, as well as the seized items, to the crime laboratory. PCI May Andrea Bonifacio conducted a qualitative examination of the three heat-sealed plastic sachets containing white crystalline substances marked as "M.A.P" weighing 0.26 gram, "M.A.P-1" weighing 0.25 gram, and "M.A.P-2" weighing 0.27 gram, and found each one of them to be positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug. She then reduced her findings on Chemistry Report No. D-227-15.^[5]

Appellant was charged in two separate informations for violation of Sections 5 and 11 of Republic Act (R.A.) No. 9165 on March 16, 2015, to wit:

In Criminal Case No. 15-1009:

On the 14th day of March 2015, in the city of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point twenty six (0.26) gram, a dangerous drug, in consideration of Php1,000.

CONTRARY TO LAW.^[6]

In Criminal Case No. 15-1010:

On the 14th day of March 2015, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession, direct custody and control a total of zero point fifty two (0.52) gram of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.^[7]

Upon arraignment, appellant pleaded not guilty to both crimes as charged. During pre-trial, the parties agreed to dispense with the testimony of PO3 Voltaire Esguerra

and, instead, stipulated on the following: 1) lack of knowledge as to how the appellant was arrested and as to the confiscation of the evidence, and that he was the investigator of the case; 2) he prepared and signed the investigation report, request for drug test, and chain of custody form; 3) he could identify the appellant and the seized items; 4) he signed the inventory receipt of the three pieces of transparent plastic sachets containing white crystalline substances from PO1 Pagulayan; 5) after receiving the seized items from PO1 Pagulayan, he returned the same to the latter for delivery to the crime laboratory as appearing in the chain of custody form; and 6) the scanned image of the P1,000.00 bill is a faithful reproduction of the original.^[8]

The parties likewise agreed to dispense with the testimony of PCI May Andrea Bonifacio and stipulated that: 1) she is connected with the Southern Police District Crime Laboratory as a forensic chemist; 2) she is authorized to conduct qualitative examination on the specimen submitted to their office for the purpose; 3) on March 14, 2015, their office received drug items seized from the appellant for qualitative examination as per Request for Laboratory Examination; 4) she conducted the qualitative examination on the three heat-sealed transparent plastic sachets, with markings "M.A.P," "M.A.P-1" and "M.A.P-2," containing white crystalline substances; 5) in the course of the examination, she found the specimens positive for the presence of methamphetamine hydrochloride, a dangerous drug; and 6) she reduced into writing her findings as evidenced by Chemistry Report No. D-277-15. To safeguard the integrity of the specimens, she placed the three sachets in a bigger plastic sachet and marked the same with D-277-15, which corresponds to the Chemistry Report number, and with her initial.^[9]

For her part, appellant denied the charges against her. She testified that on March 14, 2015, she was at her boyfriend's house, together with a friend, when, suddenly, several civilian men entered her boyfriend's house and started looking for a certain "Tata." Her boyfriend answered that there was no such person in the house. However, the men still proceeded to search the house and told them to go with them to their office. They were taken to the basement of the Criminal Investigation Division (CID). Appellant alleged that the men asked money from them. She added that they were later brought to the barangay hall where their photographs were taken, and two plastic sachets and money were presented. Thereafter, they were asked to go to the SOCO to urinate before they were transported back to the CID.^[10]

On April 13, 2016, the trial court found appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 15-1009, finding the accused Desiree Dela Torre y Arbillon, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing her to life imprisonment and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00) without subsidiary imprisonment in case of insolvency; and

2. In Criminal Cases Nos. 15-1010, finding the accused Desiree Dela Torre y Arbillon, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing her to an indeterminate penalty of twelve (12) years and one (1) day to fourteen (14) years of imprisonment and to pay a fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.^[11]

On appeal, the CA affirmed the RTC Decision with modification as to the fine imposed. The dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the appeal is DENIED for lack of merit. The Decision dated 13 April 2016 of the Regional Trial Court of Makati, Branch 64 is hereby AFFIRMED with MODIFICATION as to the fine in Criminal Case No. 15-1009 which shall be increased to Php500,000.00 to conform with the imposable fine as provided in Section 5, Article II of RA 9165.

SO ORDERED.^[12]

Thus, the instant appeal raising the same issues raised before the appellate court:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF REPUBLIC ACT NO. 9165, DESPITE THE PROSECUTION'S FAILURE TO ADEQUATELY ESTABLISH THE CHAIN OF CUSTODY.

II

THE COURT A QUO GRAVELY ERRED IN DISMISSING THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL FOR BEING EASILY CONCOCTED AND A COMMON DEFENSE PLOY IN CASES INVOLVING DANGEROUS DRUGS.

^[13]

Appellant would like to impress upon this Court that there were significant deficiencies in the chain of custody which render the identity and integrity of the specimen submitted in evidence. Appellant alleged that the marking of dangerous drugs or related items should be made in the presence of the apprehended violator immediately upon arrest; however, in this case, appellant claimed that the seized drug items were not marked on site, but in the barangay hall, at least an hour or two after the arrest was made.

Appellant likewise claimed that during the physical inventory, only an elected public official, *i.e.*, Barangay Kagawad Jose A. Villa, Jr., was present, in violation of the requirements of R.A. No. 9165. There was also no justifiable ground for the non-compliance. Thus, considering the irregularities and non-compliance with the chain of custody, appellant asserted that she must be acquitted since the law demands that proof beyond reasonable doubt must be established.

We find merit in the petition.

In the instant case, appellant was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of R.A. No. 9165. In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (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.^[14] On the other hand, when an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (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.^[15]

However, in order to sustain a conviction in both instances, the identity of the prohibited drug should be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. To remove any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[16]

To establish a chain of custody sufficient to make the evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be. In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be.^[17] Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.^[18]

Section 21(1), Article II of R.A. No. 9165^[19] states:

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 shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or