

SECOND DIVISION

[G.R. No. 216941, June 10, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MARIO URBANO TUBERA ACCUSED-APPELLANT.

D E C I S I O N

CAGUIOA, J:

Before the Court is an ordinary appeal^[1] filed by accused-appellant Mario Urbano Tubera (Tubera) assailing the Decision^[2] dated July 31, 2014 (Assailed Decision) of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01341, which affirmed the Decision^[3] dated March 30, 2011 of the Regional Trial Court of Ormoc City, Branch 35 (RTC) in Criminal Case No. R-ORM-08-0097-HC, finding Tubera guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"^[4] as amended.

The Facts

The Information filed against Tubera for violation of Section 5, Article II of RA 9165 reads:

That at about 7:45 o'clock in the evening of May 19, 2008, at Mabini Street, Ormoc City, and within the jurisdiction of this [H]onorable [C]ourt, the above-named accused: MARIO URBANO TUBERA, did then and there wilfully, unlawfully and feloniously sell one (1) pack heat-sealed transparent sachet filled with white crystalline substance, worth [P500.00] to Agent III Levi S. Ortiz of the PDEA, Region VIII, Palo, Leyte, who acted as the poseur-buyer during a buy-bust operation conducted by elements of the PDEA, Region VIII, Palo, Leyte led by Atty. Gil T. Pabilona, and when a laboratory examination was conducted on said sealed transparent sachet containing white crystalline substance with a weight of point zero eight gram (0.08) gram by a Forensic Chemical Officer at PNP, Regional Crime Laboratory Office 8, at Camp Kangleon, Palo, Leyte, the same gave POSITIVE results to the test for the presence of Methylamphetamine Hydrochloride, a dangerous drug, without the necessary license or permit to sell, a dangerous drug.^[5]

During the arraignment, Tubera pleaded not guilty.^[6] Thereafter, pre trial and trial on the case ensued.^[7] The CA summarized the version of the prosecution as follows:

On April 14, 2008, after persistent reports of the alleged drug trading activities of accused-appellant Mario Urbano Tubera, Investigating Agent III Levi S. Ortiz, of the Philippine Drug Enforcement Agency, filed a pre-

operation report with his office at Regional Office VIII, Palo, Leyte for the conduct of surveillance, casing and buy-bust operation against accused-appellant.

After several surveillance and casing operations were conducted in Barangay Mabini, Ormoc City, it was confirmed by the operatives of the PDEA that indeed, accused-appellant was one of those individuals engaging in the illicit drug trade in the area.

Sometime around 7:45 P.M. on May 19, 2008, Investigating Agent III Levi S. Ortiz, acting as team leader and poseur-buyer, together with the other members of his team, arrived at Barangay Mabini, Ormoc City. There, they were met by their confidential informant who was to accompany agent Ortiz during the buy-bust operation.

After several minutes of casing the area, the confidential agent was able to spot accused-appellant. Together with agent Ortiz, the confidential agent then approached accused-appellant and engaged him in a conversation. During their talk, the confidential agent informed accused-appellant Mario Urbano Tubera of their desire to purchase *shabu*.

Suspicious about agent Ortiz however, accused-appellant asked from the confidential agent whether the former could be trusted. The confidential agent then answered in the affirmative.

Wary, however, of agent Ortiz, accused-appellant beckoned the pair to follow him into the interior portion of the barangay. After walking some fifteen meters through a narrow footpath, accused-appellant pulled out from his pocket a plastic container. He then positioned himself into one of the dimly lit comers of the pathway and demanded from the pair, the money for the *shabu*. Agent Ortiz then handed accused-appellant Tubera the five hundred peso bill he had pre-marked and blotted at the PDEA office.

Upon receipt of the money, accused-appellant then pocketed it and opened the plastic container, which contained several packets containing white crystalline substance, and handed one packet to agent Ortiz.

While the whole transaction was going on, an unidentified person hovered around the group and acted as a lookout for accused-appellant. Several inhabitants, also of the area, were also keenly observing the transaction.

After agent Ortiz received the plastic packet, he immediately announced his identity and authority and arrested accused-appellant Mario Urbano Tubera. While he was arresting accused-appellant, however, the latter was able to toss the plastic container he was carrying to his lookout who immediately scampered away into the maze of houses inside the interior portion of the barangay.

After accused-appellant was secured, and the marked money was retrieved from his possession, the PDEA agents immediately left the area and proceeded to their office at Baras, Palo, Leyte. Enroute, the

purchased packet as well as the marked money was in the possession of agent Ortiz.

At the PDEA Regional Office 8, the purchased packet was marked by agent Ortiz with the initial "MT". Photographs and an inventory were also made in the presence of an elected barangay official, a member of the media and accused-appellant.

Subsequently, the purchased packet, together with a letter request for its laboratory examination, was delivered by police officer Mataro and agent Ortiz to the PNP Regional Crime Laboratory Office 8 and Camp Ruperto Kangleon, Palo[,] Leyte.

On May 20, 2008, the PNP Regional Crime Laboratory Office 8 released Chemistry Report No. D-099-2008 finding the specimen submitted by the PDEA bearing the mark "MT" to be positive for the presence of methamphetamine (sic) hydrochloride, a dangerous drug.^[8]

On the other hand, the CA summarized Tubera's version of the facts as follows:

In his defense, accused-appellant Mario Urbano Tubera together with his brother-in-law, Bobby Asis, took the witness stand and declared that around 7:45 P.M. on May 19, 2008, they were having a round of drinks inside the house of one of their friends in Barangay Mabini, District 4, Ormoc City, when elements from the Philippine Drug Enforcement Agency suddenly arrested accused-appellant. They insist that no buy-bust operation ever took place and that the PDEA officers merely ganged up on accused-appellant, pointed their guns at him and his brother-in-law, and then immediately brought accused-appellant inside their white van and then brought him to their office at Tacloban City. Accused-Appellant concludes that inside the office of the PDEA, he was surprised to see one sachet of shabu that was being inventoried and photographed by the officers as having been recovered from accused-appellant during an alleged buy-bust operation.^[9]

Ruling of the RTC

After trial on the merits, the RTC, in its Decision^[10] dated March 30, 2011 convicted Tubera of the crime charged. The dispositive portion of the said Decision stated:

WHEREFORE, finding the evidence of the Prosecution satisfying that degree of moral certainty, accused MARIO URBANO TUBERA is found Guilty beyond reasonable doubt of having violated Section 5, Article II of Republic Act No. 9165 as set forth in the information filed in this case. He is therefore sentenced to pay a fine of P500,000.00 and to undergo life imprisonment pursuant to law. He is however, credited with his preventive imprisonment if he is entitled to any.

x x x x

SO ORDERED.^[11]

The RTC held that the prosecution sufficiently established the elements of the crime charged.^[12] As to compliance with Section 21 of RA 9165, the RTC held that

although the marking, inventory, and photographing of the dangerous drugs were done at the police station, the integrity and evidentiary value of the seized items were preserved as Investigating Agent III Levi S. Ortiz (Agent Ortiz) had possession and control of the same from the time it was confiscated up to the time it was submitted to the laboratory for examination.^[13] Thus, the failure to strictly comply with Section 21 was not fatal to the case.^[14]

Aggrieved, Tubera appealed to the CA.

Ruling of the CA

In the Assailed Decision, the CA affirmed the conviction of Tubera under Section 5 of RA 9165.^[15] The CA gave more credence to the testimony of Investigating Agent Ortiz, which it considered as candid, simple, and straightforward.^[16] As regards compliance with Section 21 of RA 9165, the CA held that the marking of the dangerous drugs at the police station does not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved.^[17] In this case, the CA found that every link in the chain of custody, from the purchase of the seized drug to its eventual surrender to the trial court was duly accounted for despite the procedural lapses.^[18] Further, the CA stated that Tubera failed to rebut the presumption of regularity, considering that he failed to present any proof of ill motive on the part of the arresting officers.^[19] The CA thus concluded that the element of *corpus delicti* in the prosecution for illegal sale of dangerous drugs was established beyond reasonable doubt.^[20]

Hence, the instant appeal.

Issue

Whether the RTC and the CA erred in convicting Tubera of the crimes charged.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Tubera as the prosecution failed to prove his guilt beyond reasonable doubt.

Tubera was charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165. In order to convict a person of the crime charged, the prosecution must prove: 1) the identity of the buyer, the seller, and the object of the consideration, and 2) the delivery of the thing sold and the payment therefor.^[21]

In *People v. Ilagan*,^[22] the Court explained:

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drugs is established with the same unwavering exactitude as that requisite to make a finding of guilt.

In this connection, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. **The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) x x x the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

This must be so because with "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."

As stated, Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means **that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.** In this connection, this also means that **the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation —a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-