

SECOND DIVISION

[G.R. No. 229037, July 29, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELVIE
BALTAZAR Y CABARUBIAS A.K.A "KAREN," ACCUSED-
APPELLANT.**

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This appeal seeks to reverse the Decision dated June 21, 2016^[1] of the Court of Appeals in CA-G.R. CR-HC No. 06898, affirming the conviction of appellant Elvie Baltazar y Cabambias for violation of Section 5, Article II of Republic Act 9165 (RA 9165)^[2] and imposing on her life imprisonment and Five Hundred Thousand Pesos (P500,000.00) fine.

The Proceedings Before the Trial Court

Appellant Elvie C. Baltazar was charged with violation of Section 5, Article II, RA 9165 under the following Information:

That on or about the 25th day of May, 2010, in Quezon City, Philippines, the above-named accused, without lawful authority, did, then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, one (1) heat sealed transparent plastic sachet containing zero point zero two (0.02) gram of white crystalline substance later identified as Methylamphetamine Hydrochloride commonly known as "Shabu", a dangerous drug.

CONTRARY TO LAW.^[3]

On arraignment, appellant pleaded not guilty.^[4] Trial ensued.

SPO1 Ariel Eufemio, PO2 Mark Joseph Prado, PO1 Andrew Hega, and Forensic Chemist Police Senior Inspector (PSI) May Andrea Bonifacio testified for the prosecution. On the other hand, only appellant Elvie C. Baltazar alone testified for the defense.

Version of the Prosecution

On May 25, 2010, around 5 o'clock in the afternoon, Police Chief Inspector Don Don Llapitan received information from a police asset that appellant was selling *shabu* along Agham Road corner Quezon Avenue, Quezon City. PCI Llapitan formed a buy bust team consisting of the police asset himself, SPO1 Eufemio as poseur buyer, and PO1 Hega as back-up officer. PO1 Hega then coordinated with the Philippine Drug Enforcement Agency (PDEA).^[5]

Around 7 o'clock in the evening, the buy bust team proceeded to Agham Road corner Quezon Avenue where they were meeting up with appellant. The latter arrived at around 8:30 o'clock in the evening.^[6] The confidential informant introduced appellant to SPO1 Eufemio as the buyer. SPO1 Eufemio handed appellant one (1) piece P500.00 bill. Appellant slid it in her pocket. Appellant, in turn, gave SPO1 Eufemio a transparent plastic sachet containing white crystalline substance. As pre-arranged, SPO1 Eufemio removed his bull cap. On cue, PO1 Hega rushed in and arrested appellant.^[7]

SPO1 Eufemio ordered appellant to empty her pockets. Among the contents of appellant's pockets was the buy bust money. SPO1 Eufemio marked the plastic sachet with "EB/AE 5-25-10."^[8]

The group went to the police station where they did the inventory of the seized items in front of PO2 Prado as investigating officer, appellant herself, media representative Rey Argana, and the Chief of SAID-SOTG. PO2 Prado prepared the Inventory Receipt and Request for Laboratory Examination.^[9]

Thereafter, PO2 Prado and SPO1 Eufemio brought appellant and the seized items to the Crime Laboratory. It was SPO3 Calapano who received the seized items including the plastic sachet.^[10] PSI Bonifacio did a qualitative examination of the contents of the plastic sachet^[11] and found them positive for methamphetamine hydrochloride (*shabu*), a dangerous drug. This finding is contained in PSI Bonifacio's Chemistry Report No. D-190-10.^[12]

The prosecution offered the following exhibits: "A" – Referral Letter dated May 26, 2010;^[13] "B" – Joint Affidavit of Arrest dated May 26, 2010;^[14] "C" – Initial Laboratory Report dated May 26, 2010;^[15] "D" – Pre-Operation Report dated May 25, 2010;^[16] "E" – Coordination Form dated May 25, 2010;^[17] "F" – Request for Laboratory Examination dated May 25, 2010;^[18] "G" – Photograph of appellant with the transparent plastic sachet containing white crystalline substance;^[19] "H" – Inventory of Seized Properties/Items dated May 25, 2010;^[20] "I" – one (1) P500.00 bill used as buy-bust money;^[21] "J" – Final Chemistry Report No. D-190-10;^[22] and "K" – one (1) transparent plastic sachet containing white crystalline substance.

Version of the Defense

Appellant testified that on May 25, 2010, around 5 o'clock in the afternoon, she was in Old Balara, Quezon City buying viand when two (2) men approached and forced her to get into a car. She later learned that one of them was SPO1 Eufemio. At the

police station, these men asked her whether she knew a certain "Boy Roxas" and "Gloria." She said she did not know them. They then asked her if she had money. She only had P200.00, the amount she set for her viand. The police officers directed her to call up her relatives to settle the matter. She declined.^[23]

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Decision dated June 30, 2014,^[24] the trial court found appellant guilty as charged, viz:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered ordering the CONVICTION of Accused Elvie Baltazar y Cabarubias for the offense charged and she is hereby sentenced to suffer the penalty of life imprisonment and a fine of Five Hundred Thousand (P500,000.00) Pesos. The period of preventive detention shall be credited in the service of her sentence.

The court cannot forfeit the buy bust money used in the amount of P500.00 because it was a fake bill.

The Branch Clerk of this Court is hereby ordered to turn over the subject specimen covered by Final Chemistry Report No. D-190-10 to the Chief of PDEA Crime Laboratory immediately to be included in PDEA's next scheduled date of burning and destruction.

Let the Mittimus and necessary documents be prepared for the immediate transfer of the custody of Accused Elvie Baltazar Y Cabarubias to the Bureau of Corrections/Correctional Institute for Women in Mandaluyong City, pursuant to the Supreme Court Circular.

SO ORDERED.^[25]

The Proceedings Before the Court of Appeals

Appellant's Argument

On appeal, appellant faulted^[26] the trial court for rendering a verdict of conviction against her. She argued that the prosecution failed to strictly comply with the chain of custody rule under Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165. The apprehending team did not secure the attendance of representatives from the barangay and the Department of Justice (DOJ) to witness the inventory.^[27] Also, the prosecution failed to show how the seized item were examined, the manner by which the PSI Bonifacio handled the specimen, and the safeguards taken while the seized items remained in her possession.^[28]

According to appellant, the IRR excuses some lapses in complying with the prescribed procedure, there must be a reasonable ground therefor. Here, the prosecution did not offer any justification for the attendant lapses. The presumption of regularity in the performance of duty cannot be used as basis for drawing another supposed presumption that the integrity and evidentiary value of the seized items were deemed to have been preserved. Given the nature of a buy-bust operation, courts must carefully scrutinize the testimonies of the prosecution witnesses.^[29]

The People's Arguments

The Office of the Solicitor General (OSG) through Assistant Solicitor General Bernard G. Hernandez and Senior State Solicitor Nelia A. Bandilla-Bustria countered that the prosecution had proved all the elements of illegal sale of dangerous drugs.^[30] SPO1 Eufemio narrated the details leading to the sale of the dangerous drugs from the time PCI Llapitan received the information, to the time the buy-bust team was formed up until appellant handed to him a transparent plastic sachet the contents of which yielded positive result for metamphetamine hydrochloride (*shabu*).^[31]

Non-compliance with the procedure prescribed by the IRR of RA 9165 is not fatal. Too, the incident happened at around 8:30 o'clock in the evening, thus, it was already difficult to secure the presence of representatives from the DOJ and the barangay.^[32]

It was further unnecessary to present all the persons who took possession of the seized item since it has already been proved that what was seized from appellant was the same one examined and eventually presented in court.^[33]

The Court of Appeals' Ruling

By its assailed Decision dated June 21, 2016,^[34] the Court of Appeals affirmed.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for her acquittal.

For the purpose of this appeal, the OSG manifested that in lieu of supplemental brief, it was adopting its appellee's brief before the Court of Appeals.^[35]

Appellant, on the other hand, filed her Supplemental Brief dated July 13, 2017.^[36] She essentially maintains that the police officers failed to prove an unbroken chain of custody here. She adds that SPO1 Eufemio's testimony was marred by inconsistencies pertaining to the buy-bust money and the exact time they met with appellant on May 25, 2010. Also, the prosecution failed to present the confidential informant who played a vital role in the consummation of the alleged sale. More, her warrantless arrest was illegal.

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violation of Section 5, Article II, RA 9165 (illegal sale of dangerous drugs)?

Ruling

Appellant was charged with violation of Section 5, Article II, RA9165 allegedly committed on May 25, 2010. The applicable law, therefore, is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*:

Section 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 his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)

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The IRR of RA 9165 further commands:

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Section 21. (a) The apprehending officer/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 his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public