

SECOND DIVISION

[G.R. No. 225789, July 29, 2019]

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

DECISION

LAZARO-JAVIER, J.:

The Case

This appeal^[1] assails the Decision^[2] dated October 13, 2015 of the Court of Appeals in CA-G.R CR-H.C. No. 06717 affirming appellant's conviction for violation of Section 5, Article II of Republic Act No. (RA) 9165.^[3]

The Proceedings Before the Trial Court

The Charge

By Information dated October 30, 2009, appellant Altantor dela Torre y Cabalar was charged with violation of Section 5, Article II of RA 9165, thus:

That on or about the 29th day of October, 2009, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ALTANTOR C. DELA TORRE, did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Shabu contained in one (1) heat-sealed plastic sachet weighing more or less 0.5 gram, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.^[4]

The case was raffled to the Regional Trial Court (RTC) – Branch 42, Dagupan City.

On arraignment, appellant pleaded *not guilty*.^[5]

During the trial, P/Insp. Myrna Malojo (Forensic Chemical Officer of PNP Crime Laboratory in Lingayen, Pangasinan), [PO3] Apollo Calimlim, SPO1 Flash Ferrer and PCI Froilan* Lopez testified for the prosecution.^[6] Appellant Altantor dela Torre y Cabalar was the lone witness for the defense.^[7]

The Prosecution's Version

On October 29, 2009, acting on the report of a confidential informant regarding rampant illegal drug activities in Pantal West, Dagupan City, PCI Lopez formed and dispatched a buy-bust team thereto.^[8]

The buy-bust team was composed of members of the local police force, including PO3 Calimlim as poseur-buyer and SPO1 Ferrer as arresting officer. They were accompanied by the confidential informant.^[9]

Around 5 o'clock in the afternoon, the team arrived at Pantal West, Dagupan City. PO3 Calimlim and the confidential informant headed to the front of the postal bank where appellant was waiting. The other members of the buy-bust team waited about seven (7) meters away.

The confidential informant introduced PO3 Calimlim to appellant as interested buyer. As planned, PO3 Calimlim told appellant he was going to buy Php300.00 worth of *shabu*. Appellant took out a plastic sachet containing white crystalline substance and handed it to PO3 Calimlim; in turn PO3 Cahmlim gave appellant three (3) marked Php100.00 bills. After the exchange, SPO3 Calimlim scratched his head to signal the team that the sale had been consummated. On cue, SPO1 Ferrer closed in and arrested appellant.^[10]

Seized from appellant were the marked money and the plastic sachet containing white crystalline substance. PO3 Calimlim immediately marked the plastic sachet with his initials "ALC-1." Thereafter, they brought appellant and the seized items to the Magsaysay Barangay Hall before Barangay Kagawads Junvee Mislant and Eddie Manaois. In their presence, PO3 Calimlim and SPO1 Ferrer inventoried the seized items.^[11]

PO3 Calimlim personally delivered the seized drug to the PNP Crime Laboratory for testing. Forensic chemist Malojo did the test and based on the results found the item positive for methamphetamine hydrochloride a dangerous drug known as *shabu*.^[12]

The prosecution offered the following documentary evidence: Joint Affidavit of Arrest; Inventory of Items Seized; Letter Request dated October 30, 2009; Rubber Stamp Impression of PNP Crime Laboratory; Marked Monies; Initial Laboratory Report dated October 30, 2009; Pictures; *Shabu*; and Final Chemistry Report.

The Defense's Evidence

Appellant denied the charge and claimed he was framed. He testified that on October 29, 2009, he was waiting for his partner when some men introduced themselves as NBI agents and informed him of a case filed against him. Knowing that he had done nothing wrong, he went with the NBI agents to the Lingayen Police Station. He spent the night at the Lingayen Police Station until he was brought to the Justice Hall the following day. Thereafter, he was transferred to the Bureau of Jail Management and Penology in Dagupan City.^[13] Too, appellant contends that he only learned that he was being charged with sale of illegal drugs a year after.^[14]

The Trial Court's Ruling

As borne by its Decision dated January 10, 2014,^[15] the trial court rendered a verdict of conviction, viz:

WHEREFORE, premises considered, the court hereby finds the accused GUILTY, of the crime of Violation of Section 5 of Art. II of R.A. 9165, beyond reasonable doubt, and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos.

Let the shabu subject matter of this case be disposed of in the manner provided by law.

SO ORDERED.^[16]

The trial court found that the prosecution established beyond reasonable doubt that appellant was caught *in flagrante delicto* selling *shabu* to PO3 Calimlim.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite the buy-bust team's alleged non-compliance with the chain of custody requirements.^[17]

First, the records do not show that the marking of the seized item was done in the presence of appellant or his chosen representative;^[18] and

Second, the inventory was conducted in the barangay hall, rather than the place of arrest. Also, there was no representative from the media and the Department of Justice present at the signing of the physical inventory, as well as the photographing of the seized item.^[19]

In refutation, the Office of the Solicitor General (OSG) through Assistant Solicitor John Emmanuel F. Madamba and State Solicitor Jacqueline S. Martin-Balictar defended the verdict of conviction. They relied on pertinent jurisprudence saying that substantial compliance with the legal requirements on handling the seized item is sufficient, as long as the integrity and evidentiary value are preserved.^[20] It added that mere lapses in procedure do not invalidate a seizure.^[21]

The Court of Appeals' Ruling

The Court of Appeals affirmed through its assailed Decision dated October 13, 2015.^[22] It found the prosecution to have proven appellant's guilt to a moral certainty, giving full faith and credit to the testimonies of the arresting officers.^[23] These

testimonies, coupled with the presentation of the *corpus delicti*, convincingly established that appellant was caught *in flagrante delicto* selling shabu.^[24]

Too, inventory of the seized item at the Barangay Hall rather than the place of arrest is an acceptable deviation. For despite such lapse, the prosecution proved the uninterrupted chain of custody over the drug item from seizure until delivery to the PNP Provincial Crime Laboratory.^[25]

The Present Appeal

Appellant now comes before this Court via Notice of Appeal,^[26] urging the exercise of its discretionary appellate jurisdiction to review and reverse the verdict of conviction.

In compliance with Resolution dated September 14, 2016,^[27] both parties submitted their respective Manifestations (In Lieu of a Supplemental Brief), having fully discussed their points of arguments in their respective brief submitted with the Court of Appeals.^[28]

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the marking, inventory and photograph of the seized item?

Ruling

We acquit.

Petitioner is charged with unauthorized sale of dangerous drugs allegedly committed on October 29, 2009. The governing law 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, Instrument/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 added)

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The Implementing Rules and Regulations of RA 9165 further commands:

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 official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (emphases added)

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold by the accused is the same substance presented in court.^[29]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:^[30] **first**, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; **second**, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; **third**, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; **and fourth**, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.^[31]

This is the chain of custody rule. It came to fore due to the unique characteristics of