

THIRD DIVISION

[G.R. No. 237977, August 19, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOMER WISCO Y FAILANO, ACCUSED-APPELLANT.

DECISION

INTING, J.:

This is an appeal from the Decision^[1] dated November 29, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07468 which affirmed the Decision dated March 23, 2015 of the Regional Trial Court (RTC), Branch 19, Bangui, Ilocos Norte, in Criminal Case No. 2154-19. The RTC found accused-appellant Nomer Wisco y Failano (Wisco) guilty beyond reasonable doubt of illegal sale of dangerous drugs in violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

Antecedents

On November 5, 2013, Wisco was charged with the crime of violation of Section 5, Article II of R.A. No. 9165 for selling methamphetamine hydrochloride (shabu). The Information alleged:

That on or about 10:00 o'clock in the evening of November 2, 2013 at Brgy. 4, Poblacion, municipality of Pasuquin, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully, feloniously and knowingly sell two (2) heat-sealed transparent plastic sachets containing 0.0619 gram and 0.1080 gram of methamphetamine hydrochloride commonly known as "shabu", a dangerous drug, in the amount of One Thousand Pesos (P1,000.00) to an agent of the PNP Pasuquin, Ilocos Norte acting as poseur-buyer, without any authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.^[2]

On November 18, 2013, Wisco, assisted by counsel *de officio*, was arraigned and pleaded not guilty to the charge.^[3]

Version of the Prosecution

The facts according to the prosecution are as follows:

At 10:00 P.M. [o]f November 2, 2013, a confidential informant went to Pasuquin Municipal Police Station and reported the rampant selling of shabu by Nomer Wisco in Barangay 4, Poblacion, Pasuquin, Ilocos Norte. SPO1 Caldito verified this through text message and confirmed that

Wisco was indeed involved in the sale of illegal drugs.

A briefing was then conducted by Police Chief Lauro Milan for a buy bust operation against Wisco. PO1 Rosal was designated as the poseur-buyer to be accompanied by the informant during the transaction. A one thousand peso bill was marked with "AR" to serve as the buy bust money. It was agreed that the pre-arranged signal was the removal of the cap by PO1 Rosal to signify the consummation of the transaction. SPO1 Caldito and PO3 Bulosan were designated as the back-up.

Upon proceeding to the target area, particularly along the barangay road I (sic) front of Guanzon Building, PO1 Rosal and the informant went ahead of the team. At the area, Wisco was already waiting and asked what PO1 Rosal and the informant needed. The informant replied that they will buy and PO1 Rosal handed the marked money. Wisco in turn brought out two (2) plastic sachets containing white crystalline substance and handed one sachet to PO1 Rosal. After examining it, PO1 Rosal then removed his bullcap, signifying the completion of the transaction. Wisco, then recognizing him to be a police officer, immediately ran away towards the direction where SPO1 Caldito was positioned. SPO1 Caldito was able to intercept him after a brief chase wherein they fell into a canal.

Immediately after his apprehension, Wisco was frisked and the police officers were able to recover one (1) cellphone, a lighter and another plastic sachet with white crystalline substance. PO1 Rosal then marked the plastic sachet containing suspected shabu bought from Wisco as "AR" and the second plastic sachet seized as "AR1" at the place of the arrest and in the presence of Barangay Chairman Armando Aguinaldo and two (2) Barangay Kagawads.

Once the inventory was concluded, PO3 Bulosan, together with PO1 Rosal, PO2 Jolly Bacud and PO1 Kingsley Luna proceeded to the PNP Crime Laboratory in Camp Valentine Juan, Laoag City for submission of the seized item for laboratory analysis.

PO3 Mervin Reyes received the items from PO2 Bacud. He turned the items over to Forensic Chemist Police Inspector Arniel y Ann Navarro for examination. It was determined that the two (2) plastic sachets containing white crystalline substance tested positive for methamphetamine hydrochloride, a dangerous drug. After examining them, she placed the two (2) transparent plastic sachets in a transparent plastic sachet or ice bag and sealed it with masking tape with markings written on it. She then prepared the Final Chemistry Report No. D-138-2013-IN and turned over the specimens to the evidence custodian, PO3 John Edwin Padayao, for safekeeping.

Per Chemistry Report Number D-138-2013-IN, the two (2) transparent plastic sachets each containing white crystalline substance with markings (1) A1 (AR) = 0.0619 gram, and (2) A2 (AR1) = 0.1080 gram, gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug.^[4] (Citations omitted.)

Version of the Defense

Wisco interposed the defense of denial in this wise:

For his part, accused Nomer Wisco interposed the defense of denial. He alleged that in the evening on 2 November 2013, he went outside his house to buy "empanada" for his daughter. He was riding his bicycle at the vicinity of Guanzon Store, Barangay 4, Poblacion, Pasuquin, Ilocos Norte, when someone aboard a motorcycle went beside him and held the handle of his bicycle. He knew them to be Police officers (sic) Jonathan Caldito, Frederick Bulosan and Mario Corcoro. The bicycle fell and they immediately held him. He asked them, "Why, Sir?" He was wearing basketball short pants when they frisked him and he only had his cellphone and money to buy "empanada." He was then handcuffed and brought to the Police Station. When they could not get anything from him, he was brought (sic) back to the vicinity of Guanzon Store and he was placed in front of the patrol car. Police Officer Caldito place (sic) two (2) plastic sachets in front of the patrol car and talked to Brgy. Chairman Armando Aguinaldo and took photographs. Thereafter, he was brought back to the Police Station and locked up.^[5]

Ruling of the Regional Trial Court

In its Decision^[6] dated March 23, 2015, the RTC found Wisco guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165.

The RTC ruled that: (1) the buy-bust operation was valid;^[7] (2) the prosecution was able to establish the elements for the prosecution of illegal sale of dangerous drugs;^[8] (3) Wisco's arrest was valid and his plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, was unavailing in the light of the fact that Wisco was caught *in flagrante delicto* selling shabu to the poseur-buyer;^[9] (4) the chain of custody was clearly established;^[10] and (5) no other evidence was offered by the defense to overcome the evidence presented by the prosecution.^[11]

The dispositive portion provides:

WHEREFORE, the court finds the accused Nomer F. Wisco GUILTY beyond reasonable doubt of Violation of Section 5, Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and hereby imposes upon him the penalty of life imprisonment plus a fine of Five hundred thousand pesos (P500,000.00), and to pay the costs.

The methamphetamine hydrochloride subject of this case is hereby declared forfeited in favour of the government, to be destroyed in accordance with the aforesaid law. The Clerk of Court is directed to coordinate with the Philippine Drug Enforcement Agency for this purpose.

SO ORDERED.^[12]

Dissatisfied with the RTC's verdict, Wisco appealed to the CA.^[13]

Ruling of the Court of Appeals

In its Decision^[14] dated November 29, 2016, the CA affirmed the RTC's judgment. The CA did not give credence to Wisco's defense anchored mainly on denial and frame-up considering that he was caught *in flagrante delicto* in a legitimate buy-bust operation.^[15] Moreover, the CA ruled that Wisco's denial cannot prevail over the positive and categorical identification and declarations of the police officers.^[16] The CA also ruled that the chain of custody of the seized drugs was not broken.^[17]

The CA disposed as follows:

FOR THESE REASONS, the Decision dated 23 March 2015, of the Regional Trial Court, Branch 19, Bangui, Ilocos Norte, in Criminal Case No. 2154-19, finding the accused-appellant guilty beyond reasonable doubt for the crime of violation of Sections 5, Article II, of Republic Act No. 9165, is AFFIRMED.

SO ORDERED.^[18]

Hence, the appeal.^[19]

The parties adopted their respective Appellant's and Appellee's Briefs filed before the CA as their Supplemental Briefs before the Court.^[20]

Our Ruling

The appeal is meritorious.

Section 5, Article II of R.A. No. 9165, which penalizes illegal sale of dangerous drugs, provides in part:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

In *People vs. Ismael*,^[21] the Court ruled that "[t]o secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor."^[22] Moreover, "[w]hat is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized

from the accused."^[23]

At the outset, while the penalty to be imposed under Section 5, Article II of R.A. No. 9165 does not depend on the quantity of dangerous drugs sold, the Court rules that without prejudice to the Court's determination as to whether the chain of custody requirement was satisfied, Wisco, *at the most*, can only be convicted for selling 0.0619 gram of shabu as contained in the transparent plastic sachet marked as "AR." This finding is based on the testimonies of PO1 Alexon Rosal (PO1 Rosal) and SPO1 Jonathan Caldito (SPO1 Caldito).

In PO1 Rosal's testimony, he described the alleged shabu sold to him as contained in a small plastic sachet which he subsequently marked as "AR." On the other hand, the other sachet of alleged shabu which was subsequently marked as "AR1" was recovered by SPO1 Caldito from Wisco following the latter's arrest and upon frisking him. PO1 Rosal's testimony during direct examination is quoted as follows:

Q By the way, what was that he sold to you?

A The alleged shabu, sir.

Q *Can you describe the thing that he sold to you, what was that?*

A *White Crystalline Substance placed in a small plastic sachet.*
sir.

Q And when he handed that plastic sachet to you, what happened next?

A I looked at the item he gave me, sir when I saw that it was a crystalline substance and I put [it] in my pocket and then removed my bull cap, sir.

Q And after you executed the signal it was the removal of your cap, what happened next?

A Perhaps Wisco recognized me as a Police Officer, so he ran away, sir.

Q And what did you do when you noticed that he run (sic) away?

A I ran after him, sir but he was met by SPO1 Caldito.

Q After SPO1 Caldito met the accused, what did Caldito do, if any?

A He apprehended him, sir he handcuffed him and he informed him (sic) his constitutional right.

Q From the place where you transacted with the accused to the place where the accused was caught by Police Officer Caldito, how far was that?

A Ten (10) meters, sir.

Q At what place in that vicinity did Police Officer Caldito catch the accused?

A I think right infront (sic) of Guanzon's building where there is a canal, sir.

Q *After you mentioned that the accused was eventually caught and handcuffed and he was apprised of his constitutional*