

## THIRD DIVISION

[ G.R. No. 217805, April 02, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALSARIF BINTAIB Y FLORENCIO A.K.A. "LENG," ACCUSED-  
APPELLANT.**

### DECISION

**MARTIRES, J.:**

We resolve the appeal from the 24 April 2015 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 01045-MIN. The CA affirmed the conviction of Alsarif Bintaib y Florencio a.k.a. "Leng" (*Bintaib*) for illegal sale of shabu.

### THE FACTS

Bintaib was charged before the Regional Trial Court, Branch 13, Zamboanga City (RTC), in Criminal Case No. 23972 for violating Section 5 of R.A. No. 9165.<sup>[2]</sup> The Information dated 12 November 2008 reads:

That on or about November 11, 2008, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, give away to another, transport or distribute, any dangerous drug, did then and there willfully, unlawfully and feloniously sell and deliver to IO2 ABDULSOKOR S. ABDULGANI, a member of the Philippine Drug Enforcement Agency-9 (PDEA), Upper Calarian, Zamboanga City, who acted as poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.0344 grams of white crystalline substance which when subjected to qualitative examination gave positive result to the tests for the presence of methamphetamine hydrochloride (shabu), knowing the same to be a dangerous drug.

CONTRARY TO LAW.<sup>[3]</sup>

On 7 August 2009, Bintaib, with the assistance of counsel, was arraigned and he entered a plea of not guilty. Pre-trial and trial on the merits followed.

### ***The Prosecution's Evidence***

The prosecution presented two (2) witnesses, namely: (1) Intelligence Officer 1 Maria Niña Belo (*IO1 Belo*), and (2) Intelligence Officer 2 Abdulsokor Abdulgani (*IO2 Abdulgani*). Their version of the facts are:

On 11 November 2008, at around 3:00 P.M., a confidential asset came to the PDEA Regional Office at Upper Calarian, Zamboanga City, and reported that a certain

"Leng" was actively engaged in illegal drug transactions within the city. He also said that he had just recently bought shabu from Leng who agreed to sell the same to him again. Acting on this information, a buy-bust team was organized, among whom IO2 Abdulgani was designated as the poseur-buyer and IO1 Belo was to act as immediate back up and/or arresting officer.

At about 6:00 P.M., the buy-bust team proceeded to the target area where IO2 Abdulgani and the confidential asset waited for this certain Leng to arrive. Shortly thereafter, Bintaib approached them and spoke to the confidential informant in the *Tausug language*. The confidential informant then introduced IO2 Abdulgani to Bintaib and said: "*Ito ang kaibigan ko, bibili.*" After Bintaib told IO2 Abdulgani to wait, he boarded a tricycle and left.

More than an hour later, Bintaib returned and handed IO2 Abdulgani a transparent plastic sachet containing a white crystalline substance. Suspecting the contents to be *shabu*, IO2 Abdulgani scratched his head to signal IO1 Belo and the rest of the PDEA operatives to aid in the arrest. Bintaib and the plastic sachet suspected to contain shabu were then brought to the PDEA Regional Office.

Upon arrival at their office, IO2 Abdulgani marked the plastic sachet with his initials "ASA" and then turned over the same to Intelligence Officer 3 Thessa B. Albaño (*IO3 Albaño*), who also marked the sachet with her initials "TBA." Afterwards, IO3 Albaño conducted the physical inventory and took a photograph of Bintaib with the confiscated plastic sachet. Representatives from the media, the Department of Justice, and the local government signed the certificate of inventory. IO3 Albaño also prepared the letter-request for laboratory examination which she brought with her, together with the seized item, to the crime laboratory.

In the chemistry report, the forensic chemist declared that the contents of the transparent plastic sachet contained 0.0344 grams of methamphetamine hydrochloride, otherwise known as *shabu*, a dangerous drug.

### ***The Version of the Defense***

Bintaib, on the other hand, narrates a different story:

At around 8:30 P.M. of the same day, Bintaib was drinking with his childhood friend at Blue Diamond located within the target area. When done, Bintaib and his friend left the place on a tricycle. Bintaib disembarked at a *sari-sari* store to buy TM load, but the storekeeper said they did not carry it.

While he was walking away from the *sari-sari* store, Bintaib noticed that he was being followed. When he turned around, someone who introduced himself as a PDEA agent punched him, poked a gun at him, and forced him to board a van. At the PDEA office, Bintaib was shown a sachet containing "alum or sugar," and was asked about the whereabouts of a person named "Val." Bintaib begged to be released because the sachet shown to him was not his and that he could not pinpoint Val's whereabouts. The following day, Bintaib was formally charged.

### ***The Ruling of the Trial Court***

In its 28 October 2011 Decision,<sup>[4]</sup> finding all the essential elements of illegal sale of

drugs present and Bintaib's denial and alibi inherently weak, the RTC found him guilty as charged. Hence, the RTC ruled:

WHEREFORE, in light of all the foregoing, this Court finds accused ALSARIF BINTAIB Y FLORENCIO A.K.A. "LENG" GUILTY beyond reasonable doubt for violating Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.<sup>[5]</sup>

The RTC held that even if IO2 Abdulgani did not hand Bintaib money, it was established that they agreed that IO2 Abdulgani would buy shabu even before the drugs were handed to him. A clear manifestation that there was already an understanding between IO2 Abdulgani and Bintaib was the fact that the latter left after the conversation to get shabu and returned with a plastic sachet containing the drug. Further, the RTC said that the nonpayment by IO2 Abdulgani does not obviate the sale between them since payment is not an essential element of sale anyway.<sup>[6]</sup>

As for Bintaib's denial and alibi, the RTC did not give it much weight or credence because (1) he could not give a plausible explanation why he was at the scene of the crime when arrested; and (2) his testimony in itself was self-contradicting aside from being uncorroborated.

### ***The Assailed CA Decision***

On appeal, Bintaib argued that there was no valid buy-bust operation absent any consideration or payment in exchange for the shabu. He hinged on the fact that the prosecution failed to prove the existence of the marked money, suggesting that the operatives had no plan at all to purchase drugs.

With regard to the *corpus delicti*, Bintaib points out the procedural lapses committed by the PDEA operatives notably their noncompliance with the statutory safeguards: (1) the marking was done at the PDEA office and not immediately after the arrest at the crime scene; (2) the representatives from the media, Department of Justice, and the local government were not present during the actual physical inventory but only signed the certification after; (3) the prosecution failed to adduce any valid excuse for non-compliance; and (4) the investigator and forensic chemist failed to testify as to how they handled the seized drugs.

In the assailed decision, the CA affirmed *in toto* the RTC's decision. First, It held that the non-presentation of the buy-bust money is not fatal to the prosecution's case because the moment IO2 Abdulgani went through the entrapment operation as a buyer followed by Bintaib's act of delivery after accepting the offer of sale, the crime had already been consummated. Even granting that the sale did not take place, Bintaib's conviction stands because the very act of delivering, distributing, giving away, dispatching, and transporting a dangerous drug is penalized under Section 5 of R.A. No. 9165.<sup>[7]</sup>

Meanwhile, in addressing the alleged gaps in the chain of custody, the CA said:

The evidence on record does not support appellant's position. On the contrary, the records clearly show that the prosecution had sufficiently established the absence of a gap in the chain of custody and that the *shabu* was properly identified at the trial. To reiterate, during the buy-bust operation, Abdulgani received from the appellant the sachet containing the prohibited drug. At the office, Abdulgani marked the sachet of *shabu* "ASA." The designated investigator also marked the same sachet "TBA." After preparing the letter request, the same investigator personally delivered the item to the crime laboratory for forensic examination. The content of the seized sachet was tested by Forensic Chemist Ade-Lazo and was verified to be methamphetamine hydrochloride (*shabu*). Finally, during trial, the marked sachet of *shabu* was clearly identified by Abdulgani and Belo.

Truly, the foregoing facts confirmed that there was indeed no gap in the chain of custody of the *shabu* as the PDEA officers properly complied with the required procedure in the custody of the illegal drug. Verily, We see no doubt that the sachet marked "ASA" and "TBA," which was submitted for laboratory examination and later to be found positive for *shabu*, was the same one delivered by appellant to Abdulgani on November 11, 2008.

Accordingly, like the RTC, We hold that the integrity and the evidentiary value of the *shabu* coming from appellant was not compromised and that the prosecution was able to establish that the illegal drug presented in court was the very same specimen sold and delivered by appellant at the crime scene.

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WHEREFORE, in light of all the foregoing, We AFFIRM *in toto* the RTC's decision dated November 9, 2011.<sup>[8]</sup>

From this CA decision, the case is now before us for final review.

### **OUR RULING**

There is merit in this appeal.

In prosecuting an offense involving illegal drugs, the most crucial element that must be proven is the existence of the drugs itself; without it, there would not be any illegal drug violation to speak of. For illegal sale, the drug itself is the object of the sale; while in illegal possession, it is the very thing that is possessed by the accused. We often say that the dangerous drug constitutes the *corpus delicti* of the offense or the body of facts or evidence that a crime has been committed. We, therefore, have to carefully scrutinize the evidence on record and determine whether it is enough to reasonably establish the existence of the drug itself.

For this reason, both law and jurisprudence have set procedural guidelines on how confiscated drugs should be handled. The fact that the seized drug exists heavily relies on the preservation of its identity and integrity. The identity of the confiscated drugs is preserved when we can say that the drug presented and offered as

evidence in court is the exact same item seized or confiscated from the accused at the time of his arrest. The preservation of the drug's integrity, on the other hand, means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that casts doubt as to its existence.

To remove any doubt or uncertainty on the identity and integrity of the seized drugs, Section 21 of R.A. No. 9165 outlines the prescribed procedure on how to handle confiscated, seized, and/or surrendered dangerous drugs. Over the years, however, the lower courts have misapplied the rule set therein and, as a result, have come out with reversed decisions and improper convictions. We cannot entirely blame the lower courts because we ourselves have not come up with a standard. This is to be expected given that we evaluate each case differently as they have dissimilar factual circumstances. Nevertheless, this should not hinder us from strengthening ways on how we should resolve and dispose of illegal drugs cases.

Section 21 of R.A. No. 9165 provides:

*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 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject items; *Provided*, that when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of the testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the qualities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours; [x x x]