

## SECOND DIVISION

[ G.R. No. 218914, July 30, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY DE VERA Y MEDINA, ACCUSED-APPELLANT.**

### DECISION

**CAGUIOA, J:**

This is an Appeal<sup>[1]</sup> filed pursuant to Section 13, Rule 124 of the Rules of Court from the Decision<sup>[2]</sup> dated September 30, 2014 (assailed Decision) of the Court of Appeals, Ninth (9<sup>th</sup>) Division (CA) in CA-G.R. CR-HC No. 06188. The assailed Decision affirmed *in toto* the Decision<sup>[3]</sup> dated April 10, 2013 rendered by the Regional Trial Court of Baguio City, Branch 61 (trial court), in Criminal Case (CC) Nos. 31846-R and 31847-R, which found accused-appellant Henry De Vera y Medina (De Vera) guilty beyond reasonable doubt of violation of Sections 5<sup>[4]</sup> and 11<sup>[5]</sup> of Article II of Republic Act No. (RA) 9165,<sup>[6]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portions of the two (2) Informations filed and consolidated before the trial court against De Vera read:

[Criminal Case No. 31846-R:]

That on or about the 24<sup>th</sup> day of May 2011, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously **sell and deliver** One (1) heat sealed transparent plastic sachet containing 0.61 gram of methamphetamine hydrochloride also known as 'SHABU[,] a dangerous drug, for Php5,000.00 to **Albert Dolinta[,] Jr.**, a member of the City Anti-Illegal Drugs Special Operations Task Group (CAIDSOTG), Baguio City Police Office who acted as poseur buyer, knowing the same to be a dangerous drug, in violation of the aforementioned provision of law.<sup>[7]</sup>

[Criminal Case No. 31847-R:]

That on or about the 24<sup>th</sup> day of May 2011, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody: Three (3) heat sealed transparent plastic sachets, each containing 0.08 gram, 0.06 gram, and 0.06 gram, respectively, of methamphetamine hydrochloride also known as 'SHABU[,] a dangerous drug, without the corresponding

license or prescription from the authorities concerned, in violation of the aforementioned provision of law.<sup>[8]</sup> (Emphasis in the original)

Upon his arraignment on June 27, 2011, De Vera entered a plea of "not guilty" to both offenses charged.<sup>[9]</sup> Trial on the merits, thereafter, was held.

## **The Facts**

### *Version of the Prosecution:*

The prosecution presented two (2) witnesses: SPO2 Albert Dolinta, Jr. (SPO2 Dolinta) and PO2 Marlon Charmino (PO2 Charmino),<sup>[10]</sup> who made the following narration of facts:

On May 24, 2011, at about 8:00 o'clock in the evening, a walk-in Confidential Informant (CI) went to the Office of the City Anti-Illegal Drugs Special Operations Task Group (CAIDSOTG) of the Baguio City Police Office and reported to SPO2 Dolinta that a certain Henry, who turned out to be De Vera, a drug pusher, offered to sell *shabu* worth P5,000.00.<sup>[11]</sup> Upon SPO2 Dolinta's instruction, the CI contacted Henry and told the latter that, the CI did not have enough money but that he would bring along another interested buyer.<sup>[12]</sup> They agreed to meet at around 11:30 p.m. along Upper Brookside, Baguio City.<sup>[13]</sup>

SPO2 Dolinta relayed the matter to the Chief of the Police, Police Senior Inspector Dino W. Cogasi (PSI Cogasi), who verified the information by interviewing the CI.<sup>[14]</sup> Thereafter, PSI Cogasi formed a buy-bust team composed of SPO2 Dolinta as poseur-buyer and team leader; PO2 Charmino as seizing officer; PO3 Jaime Abrera (PO3 Abrera) and PO1 Ramon Christopher Bueno (PO1 Bueno) as back-up officers.<sup>[15]</sup> They coordinated the impending buy-bust operation with the Philippine Drug Enforcement Agency (PDEA) - Cordillera Administrative Region (CAR).<sup>[16]</sup>

After the final briefing at around 11:00 o'clock p.m., the buy-bust team proceeded to the Barangay Upper Brookside, Baguio City.<sup>[17]</sup> SPO2 Dolinta and the CI waited for De Vera near a waiting shed<sup>[18]</sup> while the rest of the team positioned themselves nearby discreetly.<sup>[19]</sup>

Upon arrival of De Vera at around 11:45 p.m., the CI introduced SPO2 Dolinta as the buyer he was referring to earlier in the phone call.<sup>[20]</sup> SPO2 Dolinta brought out the buy-bust money consisting of five (5) one thousand peso (P1,000.00) bills, which he counted in front of De Vera and then handed them to the latter.<sup>[21]</sup> De Vera, in turn, brought out a purse from his front pocket, opened the same and took out one (1) plastic sachet which contained white crystalline substance (drugs subject of sale).<sup>[22]</sup> After assessing the item as *shabu*, SPO2 Dolinta gave the pre-arranged signal by removing his cap, causing the back-up officers to respond to the scene and help in arresting De Vera.<sup>[23]</sup>

After introducing themselves to De Vera and informing him of his violations, SPO2 Dolinta marked the sachet of suspected drugs bought from De Vera by placing his initials, date and signature thereon.<sup>[24]</sup> Meanwhile, PO2 Charmino recovered the

buy-bust money from De Vera which he handed to SPO2 Dolinta as the evidence custodian.<sup>[25]</sup> Upon frisking, PO2 Charmino likewise recovered from De Vera the purse containing three (3) more plastic sachets of suspected *shabu* (drugs subject of the possession case) and 42 pieces of transparent empty plastic sachets<sup>[26]</sup> which PO2 Charmino marked by putting his initials, date and signature thereon.<sup>[27]</sup> PO2 Abrera then stated to De Vera the latter's constitutional rights in the dialect he understood: Ilocano.<sup>[28]</sup>

Thereafter, the buy-bust team brought De Vera to the CAIDSOTG office where the inventory of the confiscated items was conducted in the presence of elected Barangay Official Rico W. Tibong, media representative from ABS-CBN, Meilen B. Pacio and Department of Justice (DOJ) representative, Prosecutor Ramsey Wynn Sudaypan.<sup>[29]</sup> Thereafter, with a request for qualitative examination signed by PSI Cogasi, SPO2 Dolinta and PO2 Charmino brought all four (4) seized drugs to the Regional Crime Laboratory Office, Camp Bado Dangwa (Crime Lab), for laboratory examination. The results yielded positive for methamphetamine hydrochloride.<sup>[30]</sup>

From the time of their seizure from De Vera to their submission to the Crime Lab, SPO2 Dolinta held custody of the drugs subject of sale and the buy-bust money while PO2 Charmino held custody of the drugs subject of the possession case and the 42 pieces of transparent plastic sachets.<sup>[31]</sup>

#### *Version of the Defense:*

The defense called De Vera to the stand, who narrated the following pertinent facts:

On May 24, 2011, De Vera was at a drinking session in his cousin's house in Tiptop, Pacdal until he left for home at around 11:00 o'clock p.m. The driver of the taxi cab he took told him that they were taking a shorter route through Brookside. At the intersection of Rimando Road and Upper Brookside, the taxi cab was blocked by four (4) armed policemen who ordered De Vera to alight as they received information that he was in possession of *shabu*. De Vera was taken to a nearby waiting shed where he was frisked. When the policemen found nothing illegal on De Vera's person, they went inside the taxi cab and after less than two (2) minutes, came out with a brown coin purse which was shown to De Vera.

The policemen brought De Vera to the CAIDSOTG office where the contents of the coin purse, which turned out to be *shabu*, were shown to the latter. SPO2 Dolinta imputed ownership thereof to De Vera, despite the latter's denial. He was thereafter detained and eventually brought to Camp Dangwa where he was ordered to sign an unknown document. All this while, there were no representatives from the media and DOJ or an elected public official present.<sup>[32]</sup>

#### *The Ruling of the trial court*

In the Decision dated April 10, 2013, the trial court found De Vera guilty beyond reasonable doubt of the offenses charged as follows:

**WHEREFORE,** judgment is hereby rendered:

1. In Criminal Case No. 31846-R, finding the accused Henry De Vera **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and a fine of P5,000,000.00;** and,

2. In Criminal Case No. 31847-R, finding the accused Henry De Vera **GUILTY** beyond reasonable doubt and he is hereby sentenced to suffer the penalty of imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine [of] P300,000.00[.]

**SO ORDERED.**<sup>[33]</sup>

The trial court ruled that the prosecution was able to discharge its burden to prove the guilt of De Vera for the separate crimes of sale and possession of illegal drugs. The presumption of regularity in the performance of duties of the buy-bust team *far outweighed* the presumption-of innocence of the accused, as the latter presumption was overturned by the evidence of the prosecution. Moreover, the accused's defense of denial is highly improbable and the defense failed to show ill-motives on the part of the buy-bust team so as to falsely impute upon De Vera the crimes charged.<sup>[34]</sup>

Moreover, the trial court ruled that the police officers conducted a legitimate buy-bust operation; hence, there was valid seizure of the drugs subject of sale and valid warrantless arrest. Consequently, the body search upon De Vera's person which yielded the drugs subject of the possession case after his arrest is, likewise, constitutionally sanctioned. Finally, the integrity of the *corpus delicti* of both crimes charged was preserved, the buy-bust team having complied with Sec. 21 of RA 9165.<sup>[35]</sup>

De Vera appealed to the CA *via Notice of Appeal*.<sup>[36]</sup> He filed his *Brief*<sup>[37]</sup> dated December 16, 2013, while the People, through the Office of the Solicitor General (OSG), filed its *Brief*<sup>[38]</sup> dated May 15, 2014. On June 25, 2014, De Vera filed a *Manifestation*<sup>[39]</sup> waiving his right to file a Reply Brief.

#### *The Ruling of the CA*

In the assailed Decision, the CA affirmed *in toto* the trial court's Decision, thereby disposing of the case as follows:

**WHEREFORE**, the trial court's *Decision* dated April 10, 2013 is **AFFIRMED** *in toto*.

**SO ORDERED.**<sup>[40]</sup> (Emphasis and italics in the original)

The CA held that the prosecution adequately proved all the elements of the crimes charged and that the prosecution's evidence sufficiently established an unbroken link in the chain of custody. On the issue of non-compliance by the buy-bust team with Sec. 21 of RA 9165, the CA pronounced that such does not necessarily render the arrest illegal or the items seized inadmissible as what is essential is that the integrity and the evidentiary value of the seized items are preserved.<sup>[41]</sup> Amidst the objections of the defense, the CA held that the identity and integrity of the seized drugs were proven by the prosecution.

Hence, this recourse.

In lieu of filing supplemental briefs, De Vera and the People filed separate *Manifestations* dated October 6, 2015<sup>[42]</sup> and October 15, 2015,<sup>[43]</sup> respectively, foregoing their right to file supplemental briefs and repleading the arguments raised in their *Briefs* filed before the CA.

### **Issue**

The main issue for the Court's resolution is whether or not accused-appellant De Vera is guilty beyond reasonable doubt of the separate crimes of sale and possession of illegal drugs as defined and punished under Sec. 5 and Sec. 11, respectively, both under Article II of RA 9165.

### **The Court's Ruling**

The Court finds for and accordingly acquits accused-appellant De Vera.

De Vera is charged with selling 0.61 gram, and possessing three (3) sachets of 0.08 gram, 0.06 gram, and 0.06 gram each of dangerous illegal drugs, in particular, Methamphetamine Hydrochloride colloquially known as *shabu*. At the outset, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, being the law in place at the time of the commission of the offense applies in this case.

For a successful prosecution of a case for illegal sale of drugs, the following elements must be proven: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. On the other hand, in prosecuting a case for illegal possession of drugs, the following elements must concur: (1) the accused is in possession of prohibited drugs; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>[44]</sup>

The dangerous drug itself constitutes the *corpus delicti* of the offense of sale and/or possession of dangerous drugs.<sup>[45]</sup> It is important that the State establish, with moral certainty, the integrity and identity of the illicit drugs sold to be the same as those examined in the laboratory and subsequently presented in court as evidence.<sup>[46]</sup> This rigorous requirement, known under RA 9165 as the *chain of custody*,<sup>[47]</sup> performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.<sup>[48]</sup>

By providing for the procedures to be followed in the seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia, Sec. 21 of RA 9165 is a critical means to ensure the establishment of the *chain of custody*.<sup>[49]</sup> The same provides:

Sec. 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