

## FIRST DIVISION

[ G.R. No. 215942, January 18, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE V. KUSAIN AMIN Y AMPUAN, A.K.A. "COCOY," ACCUSED-APPELLANT.**

### D E C I S I O N

**SERENO, C.J.:**

This is an appeal assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01179, which affirmed the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 40, Cagayan de Oro City, in Criminal Case No. 2004-010. The RTC found accused-appellant guilty beyond reasonable doubt of the crime of illegal sale of prohibited drugs under Section 5, paragraph 1, Article II of Republic Act (R.A.) No. 9165.

Accused-appellant was charged under the following Information:

That on January 2, 2004, at 5:40 p.m. more or less, at Landless, Colrai, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there wilfully and feloniously have in his possession custody and control one (1) small heated-sealed transparent plastic sachet of white crystalline substance locally known as shabu with approx. weight of 0.09 gram valued to more or less P100 and sold it to a poseur-buyer of PNP-CDO for a consideration of P100.00 marked money one (1) pc one hundred pesos bill with serial number FA246643, well knowing it to be a dangerous drug.

Contrary to law.<sup>[3]</sup>

Upon arraignment, accused-appellant, assisted by counsel, pleaded not guilty to the charge.<sup>[4]</sup> Hence, trial ensued.

On 14 June 2013, the RTC rendered a Decision,<sup>[5]</sup> the dispositive portion of which is herein quoted:

WHEREFORE, the foregoing considered, the prosecution having established all the elements of the crime of illegal sale of a dangerous drug, the Court hereby finds the accused, **Kusain Amin y Ampuan GUILTY** beyond reasonable doubt of the crime of Violation of Sec. 5, par. 1, Article II of R.A. 9165, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine or P500,000.00. The sachet of shabu described in the Information is ordered confiscated in favor of the Government to be disposed of in accordance with law and regulations. No pronouncement as to costs.

SO ORDERED.<sup>[6]</sup>

In so ruling, the RTC gave credence to the testimonies of the prosecution witnesses: Police Inspector (P/Insp.) Penel Ramas; and Senior Police Officers (SPOs)<sup>2</sup> Ricky Bagas, Jameson Alvior, Jr., and Benjamin Dacara (Ret.).<sup>[7]</sup> The trial court held that the prosecution had successfully proved the existence of all the essential elements of the crime, accused-appellant having been "positively identified by the police officers who conducted the buy-bust operation as the seller of the *shabu* presented in the case."<sup>[8]</sup> Likewise, the prosecution established that the "sale actually occurred and that one sachet of *shabu* was sold for the price of P100.00."<sup>[9]</sup> P/Insp. Ramas testified that he was about 10 to 15 meters away when the confidential informant/poseur-buyer handed the marked money to accused-appellant in exchange for *shabu*.<sup>[10]</sup> After relying on the signal given by the poseur-buyer (i.e. removing his eyeglasses), they proceeded to frisk accused-appellant and arrest him immediately. They were able to recover the marked money in the latter's possession.<sup>[11]</sup>

Moreover, the RTC found that the identity of the dangerous drug was sufficiently proven because the prosecution was able to establish the chain of custody, from the time it was sold by accused-appellant to when it was presented in court.<sup>[12]</sup> SPO2 Dacara testified that he had personally received the sachet of *shabu* from their poseur-buyer at the place of arrest and brought it to their office later. After making the appropriate markings (the letter "A" and his initials) on the sachet, he turned it over to SPO2 Bagas for delivery to the Philippine National Police (PNP) Crime Laboratory.<sup>[13]</sup> SPO2 Alvior then identified the sachet as the same item that he had received on 3 January 2004 from SPO3 Sagas at the PNP Crime Laboratory Office, and that he later turned over to the examining forensic chemist, Police Senior Inspector (P/SI) April Garcia Carbajal.<sup>[14]</sup>

In light of the positive testimonies of the prosecution witnesses, the trial court gave scant consideration to the uncorroborated self-serving allegations of accused-appellant that he had been framed. He was sentenced to suffer the penalty of life imprisonment and to pay a fine of five hundred thousand pesos (P500.00) for the crime of illegal sale of prohibited drugs.<sup>[15]</sup>

Upon intermediate appellate review, the CA rendered a Decision on 16 October 2014, the dispositive portion of which reads:

WHEREFORE, the appeal is DENIED. The Judgment dated June 14, 2013 of the Regional Trial Court of Misamis Oriental, 10<sup>th</sup> Judicial Region, Branch 40 in Criminal Case No. 2004-010 is hereby AFFIRMED *in toto*.

**SO ORDERED.**<sup>[16]</sup>

In convicting appellant of the crimes charged, the CA disregarded his position that there was no valid buy-bust operation, because the arresting team had not coordinated the matter with the Philippine Drug Enforcement Agency (PDEA).<sup>[17]</sup> The appellate court maintained that neither R.A. 9165 nor its Implementing Rules and Regulations (IRR) required PDEA's participation in any buy-bust operation. After all, a buy-bust is "just a form of an in *flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of Court [sic], which police authorities may rightfully resort to in

apprehending violators x x x. A buy-bust operation IS not invalidated by mere non-coordination with the PDEA."<sup>[18]</sup>

On accused-appellant's contention that the prosecution's failure to present the poseur-buyer weakened the arresting team's testimonies, the CA held that the non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction, as held in *People v. Berdadero*.<sup>[19]</sup> In any case, the testimonies of SPO2 Dacara and P/Insp. Ramas, who were both within clear seeing distance, "presented a complete picture, providing every detail of the buy-bust operation."<sup>[20]</sup>

Finally, as regards the failure of the police officers to immediately mark the alleged *shabu* at the crime scene (but only at the police station), the CA ruled that "failure to strictly comply with Section 21(1), Article II of RA No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible."<sup>[21]</sup> It further emphasized that "[w]hat is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused."<sup>[22]</sup>

We now resolve the appeal.

### **ISSUE**

From the foregoing, the sole issue before us is whether or not the RTC and the CA erred in finding the testimonial evidence of the prosecution witnesses sufficient to warrant appellant's conviction for the crimes charged.

### **THE COURT'S RULING**

#### **We reverse the appellate court.**

While prior coordination with the PDEA is not necessary to make a buy-bust operation valid,<sup>[23]</sup> we are constrained to reverse the findings of the CA because the non-presentation of the poseur-buyer is fatal to the cause of the prosecution. In *People v. Andaya*,<sup>[24]</sup> the importance of presenting the poseur-buyer's testimony before the trial court was underscored by the Court in this wise:

The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested in *flagranti delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person. The arresting police officer or private person is favored in such instance with the presumption of regularity in the performance of official duty.

Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. This responsibility imposed on the State accords with the presumption of innocence in favor of the accused, who has no duty to prove his innocence until and unless the presumption of innocence in his favor has been overcome by sufficient and competent evidence.<sup>[25]</sup>