

## SECOND DIVISION

[ G.R. No. 227398, March 22, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANASTACIO HEMENTIZA Y DELA CRUZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the October 16, 2015 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06847, which affirmed the January 29, 2014 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 73, Antipolo City (RTC) in Criminal Case Nos. 03-25726 and 03-25727, finding Anastacio Hementiza y Dela Cruz (*accused-appellant*) guilty of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

#### *The Antecedents*

On May 27, 2003, accused-appellant was charged in two (2) separate Informations before the RTC. In Criminal Case No. 03-25726, accused-appellant was charged with possession of *shabu* in violation of Section 11, Article II of R.A. No. 9165. The Informations read:

That on or about the 25<sup>th</sup> day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law, did, then and there wilfully, unlawfully and feloniously have in his possession, custody and control two (2) heat sealed transparent plastic sachets containing 0.03 and 0.06 gram of white crystalline substance or with total weight of 0.09 gram, which after the corresponding laboratory examination conducted thereon by the PNP Crime Laboratory both gave positive results to the test for Methylamphetamine Hydrochloride, also known as "shabu," a dangerous drug, in violation of the above-cited law.

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

In Criminal Case No. 03-25727, accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165 for the sale of shabu. The Information states:

That on or about the 25<sup>th</sup> day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not having been authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there wilfully, unlawfully and feloniously sell, deliver and give away to PO2 Rache E. Palconit, who acted as a poseur-buyer, one (1) heat sealed transparent plastic sachet containing 0.05 gram of white crystalline substance, for and in

consideration of the sum of P-200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave a positive result to the test for Methylamphetamine Hydrochloride, also known as "shabu," a dangerous drug, in violation of the above-cited law.

#### CONTRARY TO LAW.<sup>[4]</sup>

On July 22, 2003, accused-appellant was arraigned and he pleaded not guilty. Thereafter, trial ensued with the prosecution presenting Forensic Chemist P/Insp. Sharon Lontoc Fabros (*Fabros*), PO2 Rache E. Palconit (*Palconit*) and Barangay Captain, Dr. Rina Gabuna Junio (*Dr. Junio*), as its witnesses.

#### *Version of the Prosecution*

On May 25, 2003, at around 1:15 o'clock in the morning, Palconit, SPO2 Gerry Abalos (*Abalos*), PO2 Manuel Bayeng (*Bayeng*), and PO3 Russel Medina (*Medina*), conducted a buy-bust operation at Sitio Lower Sto. Nino, Barangay Sta. Cruz, Antipolo City. A confidential informant (*CI*) told them that a certain Anastacio was peddling drugs in the area. A buy-bust team was formed with Abalos as the team leader and Palconit as the poseur-buyer. Abalos marked two (2) P100.00 bills for the operation. After briefing and coordination with the local police, the team was dispatched to Barangay Sta. Cruz. Upon arrival, the *CI* pointed to their target person. Palconit approached accused-appellant and asked if he could buy shabu. After receiving the marked money, accused-appellant handed to Palconit one (1) small heat-sealed plastic sachet containing *shabu*. At that point, Palconit scratched his head to signal that the sale was consummated, and the rest of the team rushed to the scene. Abalos introduced themselves as police officers and immediately frisked accused-appellant. Abalos recovered the marked money and two (2) other plastic sachets containing *shabu* from the left pocket of accused-appellant's pants. Thereafter, accused-appellant and the seized items were brought to the Philippine Drug Enforcement Agency (*PDEA*) Office in Barangay San Roque, Antipolo City. The seized items were turned over to the case investigator who prepared the corresponding request for laboratory examination. Thereafter, Palconit brought the seized items to the crime laboratory. After examination, Fabros issued a report confirming that the crystalline substance in the sachets were positive for *methamphetamine hydrochloride* or *shabu*.

#### *Version of the Defense*

In his defense, accused-appellant alleged that on May 25, 2003 at around 1:15 o'clock in the morning, he was playing billiards at Sitio Lower Sto. Nino when three (3) armed men suddenly arrived and pointed a gun at him. Without saying anything, the men frisked and handcuffed him but found nothing illegal on him. He was arrested and brought to an office in Lores where he was detained, interrogated, and forced to admit a wrongdoing. He was also asked to point to other persons so that he could be released.

#### *The RTC Ruling*

In its January 29, 2014 decision, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes of violation of Sections 5 and 11, Article II of R.A. No. 9165. Accordingly, the trial court sentenced him to suffer the penalty of life

imprisonment and to pay a fine of P500,000.00 for violation of Section 5 of R.A. No. 9165. It also sentenced him to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day to twenty (20) years and to pay a fine of P300,000.00 for violation of Section 11 of R.A. No. 9165.

The RTC held that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated did not automatically render accused-appellant's arrest illegal or the items seized from him as inadmissible for it was shown that the integrity and evidentiary value of the seized items were preserved by the apprehending officers. It opined that the witnesses presented by the prosecution successfully established the chain of custody of the seized illegal drugs. The *fallo* reads:

WHEREFORE, premises considered, accused Anastacio Hementiza y Dela Cruz is hereby found guilty beyond any shadow of a doubt of the offense charged in the Informations and is sentenced to the penalty of Life Imprisonment in Criminal Case No. 03-25727 with a fine of Php 500,000.00 and in Criminal Case No. 03-25726, the same accused is hereby sentenced to suffer an Imprisonment of Twelve (12) years and one (1) day to twenty (20) years with a fine of Php300,000.00 as provided for under Sec. 11 Par. (3) of RA 9165, as amended.

Anastacio Hementiza y Dela Cruz is to be promptly committed to the National Bilibid Prisons for immediate service of his sentence.

The seized specimens subject of the instant cases are ordered destroyed in the manner provided by law.

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

Aggrieved, accused-appellant appealed before the CA.

#### *The CA Ruling*

In its October 16, 2015 decision, the CA affirmed the conviction of accused-appellant. It explained that the police witnesses had adequately established the conduct of the buy-bust operation which resulted in the consummated sale of the illegal drugs and the recovery of two (2) sachets and the marked money in his possession. The CA added that prior surveillance of the suspected offender was not a prerequisite for the validity of a buy-bust operation and that failure to strictly comply with the provisions of Section 21 (1), Article II of R.A. No. 9165, on the handling of confiscated illegal drugs, as well as its IRR, was not fatal and would not render accused-appellant's arrest illegal or the items seized from him inadmissible. The CA disposed the appeal in this wise:

WHEREFORE, finding no reversible error, the appeal is DENIED. The Decision dated 29 January 2014 of the Regional Trial Court, Branch 73, Antipolo City is AFFIRMED.

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

Hence, this appeal.

## **ISSUE**

### **WHETHER THE GUILT OF THE ACCUSED FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.**

In a Resolution,<sup>[7]</sup> dated December 7, 2016, the Court required the parties to submit their respective supplemental briefs, if they so desired. In his Manifestation in lieu of Supplemental Brief,<sup>[8]</sup> dated February 28, 2017, accused-appellant manifested that he was adopting his Appellant's Brief filed before the CA as his supplemental brief for the same had adequately discussed all the matters pertinent to his defense. In its Manifestation,<sup>[9]</sup> dated February 6, 2017, the Office of the Solicitor General (OSG) stated that all matters and issues raised by accused-appellant had already been discussed in its Brief before the CA and asked that it be excused from filing its supplemental brief.

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

The Court grants the appeal.

The elements necessary in every prosecution for the illegal sale of dangerous drugs are: (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. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged.<sup>[10]</sup>

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>[11]</sup>

The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself. In *People v. Alcuizar*,<sup>[12]</sup> the Court held:

The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drugs unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.<sup>[13]</sup>

Thus, the chain of custody over the dangerous drug must be shown to establish the *corpus delicti*.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,<sup>[14]</sup> which implements R.A. No. 9165, defines chain of custody as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Mallillin v. People*,<sup>[15]</sup> the Court explained the importance of the chain of custody:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was, received, where it was and what happened to it while in the witness possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange. In other words, the exhibits level of susceptibility to fungibility, alteration or tampering without regard to whether the same is advertent or otherwise not dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham v. State* positively acknowledged this danger. In that case where a substance was later analyzed as heroin was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by