

SECOND DIVISION

[G.R. No. 213919, June 15, 2016]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VIRGILIO A. QUIM,
APPELLANT.**

D E C I S I O N

CARPIO, J.:

The Case

This is an appeal from the 24 April 2014 Decision^[1] of the Court of Appeals in CA-G.R. CR-HC No. 01018, affirming with modification the Decision^[2] of the Regional Trial Court, Branch 13, Cebu City (trial court), in Criminal Case No. CBU-69184, convicting appellant Virgilio A. Quim (appellant) for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The Information against appellant reads:

That on the 3rd day of April 2004 at around 9:50 A.M., in Barangay Valladolid Municipality of Carcar, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously SELL and DELIVER one (1) heat-sealed transparent plastic packet of 0.04 gram of white crystalline substance to a poseur buyer in a buy-bust operation for and in consideration of the sum of One Hundred Pesos (P100.00), with Serial Number HC872365, and when subjected for laboratory examination gave positive result for the presence of Methylamphetamine [sic] Hydrochloride, a dangerous drug.^[3]

Upon arraignment, appellant pleaded not guilty. The prosecution presented PO2 Jose Yamasaki Repompo (PO2 Repompo) as its lone witness. PO2 Repompo testified that after a report confirmed appellant as selling shabu in Carcar, Cebu, the police officers applied for a search warrant which was granted. A team was then formed to conduct a buy-bust operation. The team was composed of SPO3 Rolando Cayubit (SPO3 Cayubit), SPO1 Roland Navales (SPO1 Navales), SPO1 Meliton Agadier, Jr. (SPO1 Agadier), PO2 Repompo, the civilian asset as a poseur buyer, and other Philippine National Police personnel (PNP). On 3 April 2004, at around 9:15 a.m., the civilian asset who acted as poseur buyer approached appellant who was just outside his house. The police officers who composed the buy-bust team were positioned about 10 to 15 meters from where the transaction occurred. The poseur buyer then handed the P100 marked money to appellant who gave the poseur buyer one packet of shabu. The police team then arrested appellant and they were able to recover

from appellant P290, including the P100 marked money. SPO1 Navales marked the shabu specimen with "VAQ-1." Appellant was then brought to the police station. The Chief of Police prepared a letter-request for laboratory examination and PO2 Repompo delivered the shabu specimen to the PNP Crime Laboratory, where the specimen was found positive for methamphetamine hydrochloride or shabu.

The defense presented five witnesses: (1) Darlene Quim, (2) Asuncion Quim, (3) Gerard^[4] Quim, (4) Evelyn Lapenia, and (5) appellant.

Darlene Quim, the daughter of appellant, testified that on 3 April 2004, her father and brother were fixing a fluorescent lamp outside their house when policemen came and arrested them. One of the policemen poked a gun at her and she shouted for help. The police officers frisked her father and brother but nothing was recovered from them. Sometime later, a barangay official arrived. The police officers entered and searched their house three times.

Asuncion Quim, appellant's wife, testified that in the morning of 3 April 2004, she was inside their house with her daughter. From the sala where she was reading a pocketbook, she could see her husband and their son fixing a fluorescent lamp just outside their house. Police officers suddenly entered their house and one policeman poked a gun at her daughter, who shouted for help. The other police officers searched their bedrooms. Meanwhile, her husband and son were being handcuffed by police officers. When the barangay officials arrived, the police officers searched their bedrooms again. During the search, her husband and son were brought outside the house, while she and her daughter were made to stay in the living room. The police officers who searched the rooms did not recover anything. She later learned at the police station that her husband was charged with possession and sale of illegal drugs.

Gerard Quim, son of appellant, testified that at around 9:00 a.m. on 3 April 2004, he was with his father fixing a fluorescent lamp outside their house. His mother and sister were inside their house. Around 10 policemen arrived, and some went inside their house while the others handcuffed him and his father. When his father asked what was happening, one of the police officers told his father to return the firearm pledged to him by Wilson. Some of the police officers entered the bedrooms but recovered nothing. When the barangay officials arrived, he and his father were frisked by police officers but nothing was recovered from them.

Evelyn Lapenia, a barangay official, testified that on 3 April 2004, she was asked to go to appellant's house. When she arrived at appellant's house, there were several police officers present. Together with two other barangay officials, they accompanied the police officers inside the toilet and bedroom, which was already topsy-turvy. She surmised that the bedroom was already searched even before they arrived, but she did not see anything recovered by the police officers from their search. She was then led outside the house where she saw a table with some items on top. She was made to sign a piece of paper which listed the items laid on the table. The police officers told her these were the things found by the police officers in the rooms searched.

Appellant testified that at around 10:00 a.m. on 3 April 2004, he and his son Gerard were fixing the electric lamp just outside their house. His daughter Darlene was inside the house sitting by the door, while his wife was also inside the house.

Appellant noticed that the house of their neighbor, Nerio Marte, was surrounded by policemen. Some police officers proceeded to their house. Two police officers, SPO1 Navales and SPO3 Cayubit, approached him and his son, while the rest of the policemen entered their house. SPO3 Cayubit then showed him a search warrant and asked if he was Virgilio Quim, to which he answered yes. He was about to read the search warrant when he heard his daughter cry out for help. He and his son rushed inside the house and he saw Saki poking a gun at his daughter. When the Judge^[5] asked appellant about Saki's identity, appellant told the Judge that Saki is PO2 Jose Yamasaki Repompo. Appellant told the Judge that PO2 Repompo was known as Saki in their place. Upon further interrogation by the Judge, appellant testified that a week before the incident, PO2 Repompo, SPO1 Agadier, and SPO1 Navales went to his house to get the firearm which was pledged to him by Wilson. He told them that the firearm was not in his possession. When they attempted to enter his house, he told them that they needed a search warrant.

Continuing his testimony on the alleged incident, appellant said that the police officers searched the rooms twice but nothing was recovered. When the barangay officials arrived, the police officers again searched the rooms but still recovered nothing. The police officers kept asking him to just turn over the firearm which was pledged to him but which was no longer in his possession. He was then handcuffed by the police. Police Officer Avila arrived together with Nerio Marte, who was already handcuffed. Avila then threw a blue plastic bag on the table, which was opened by SPO1 Navales. SPO1 Navales placed the items on the table and listed the items on a piece of paper. SPO1 Navales then asked appellant to sign the paper but appellant refused because the items enumerated were not his.

The Ruling of the Trial Court

On 4 August 2008, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused Virgilio A. Quim guilty beyond reasonable doubt of the crime of Violation of Sec. 5, Article II, RA 9165 and sentence him to life imprisonment plus a fine in the sum of P400,000.00.

The shabu described in the information and presented in court is hereby ordered confiscated in favor of the government and destroyed.

With costs against the accused.

SO ORDERED.^[6]

The trial court held that the positive assertion of the prosecution witness prevails over the negative general denial of the defense. The trial court found that the prosecution proved all the elements of the crime charged.

The Ruling of the Court of Appeals

On appeal, appellant contended that the prosecution failed to prove his guilt beyond reasonable doubt.

The Court of Appeals affirmed the trial court's decision but increased the fine imposed from P400,000 to P500,000. The Court of Appeals held that the prosecution had sufficiently established all the elements constituting the sale of shabu by appellant: the identity of appellant and the shabu, his act of selling shabu in exchange for P100 buy-bust money and the actual delivery thereof to the poseur buyer.

Hence, this appeal.

The Issue

The issue is whether appellant is guilty of sale of methamphetamine hydrochloride under Section 5, Article II of RA 9165.

The Court's Ruling

We find the appeal meritorious.

Appellant was convicted based on the sole testimony of PO2 Repompo. PO2 Repompo testified that he was 10 to 15 meters away from the alleged transaction:

ATTY. LIGTAS

Q You testified before that when you reached the area of the accused you hid yourself a distance at around ten (10) to fifteen (15) meters away, do you recall that in your direct testimony?

A Yes ma'am.

Q How did you conceal yourself?

A We were stooping down in that banana plantation.

Q And you were ten (10) to fifteen (15) meters away, is that correct? You will confirm that, from the accused and informant?

A Yes, ma'am.

Q And from that distance you, of course, could not hear what was being spoken between the accused and your informant?

A No ma'am.

Q By the way, you were hiding behind some banana tress [sic]?

A Yes ma'am.

Q And there were [a] number of these banana trees?

A Yes ma'am.

Q And the banana [trees] were so planted that they were not in a line?

A I could not recall. It was planted but there were so many banana plants in the place.

Q You claimed Mr. Witness that you saw the accused handed over [a] deck of shabu to the informant or poseur buyer, is it not right?

A Yes, after the poseur buyer handed the P100.00 bill and the accused handed the one deck of shabu to the poseur-buyer.

Q Is it the one you have identified?

A Yes ma'am.

Q As the one allegedly handed by the accused to the poseur buyer?

A Yes ma'am.

Q Could you please tell the Honorable Court on estimate of the size of this deck of shabu, this plastic packet?

A Small plastic packet.

Q Would you agree with me Mr. Witness that this small pack could be hidden between two fingers of the person's hand?

A Maybe.

Q Would you try to hold it between two fingers and see if it can be concealed by your two fingers?

INTERPRETER

The witness is holding the said sample, Your Honor, and based on the way he hold[s] it, only part or half of the plastic packet is hidden.^[7]

Appellant in this case is accused of selling 0.04 gram of shabu contained in a plastic sachet. PO2 Repompo, who was hiding behind the banana trees approximately 10 to 15 meters away, would indeed find it hard to have a clear view of the alleged transaction, much less see the small plastic sachet containing the 0.04 gram of shabu allegedly being passed from appellant to the poseur buyer. Since appellant denied selling the shabu or that the drug transaction happened, the prosecution should have presented the poseur buyer to rebut appellant's testimony instead of just relying on the lone testimony of PO2 Repompo, who admitted that he observed the alleged transaction from a distance of 10 to 15 meters.^[8] Neither did the prosecution present the other members of the buy-bust team as witnesses to corroborate the testimony of PO2 Repompo.

Even if PO2 Repompo did see clearly the alleged transaction, still the substantial gaps in the chain of custody of the seized illegal drug raise doubts on the authenticity of the evidence presented in court.

In drug-related prosecutions, the State should not only establish all the elements of the sale and possession of shabu under RA 9165, but also prove the *corpus delicti*, the body of the crime, to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt.^[9] The illegal drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital for the conviction of the accused.^[10]

Section 21, paragraph 1, Article II of RA 9165 states the initial stage in the custody and disposition of the confiscated illegal drugs:

- (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 the 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;

The Implementing Rules and Regulations of RA 9165 provide the guidelines in the custody and disposition of the confiscated illegal drugs, thus: