

## SECOND DIVISION

[ G.R. No. 206906, July 25, 2016 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FLORDILINA RAMOS, APPELLANT.**

### DECISION

**BRION, J.:**

We resolve the appeal of accused-appellant Flordilina L. Ramos @ "Dinay" (*Ramos*) assailing the **February 2, 2011** and the **July 5, 2012** resolutions<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00983. The CA dismissed Ramos' appeal because she failed to timely file an appellant's brief after she had appealed the RTC decision<sup>[2]</sup> finding her guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act (RA) No. 9165.<sup>[3]</sup>

### THE CASE

In two (2) separate informations, the prosecutor charged Ramos for illegal sale and illegal possession of *shabu*. On arraignment, Ramos pleaded not guilty to both charges.

The evidence for the prosecution reveals that on June 22, 2005, at around 4:00 p.m., police operatives conducted a buy-bust operation against Ramos and another person named Carolina Porponio (*Porponio*). The police officers were inside a tinted vehicle parked about ten (10) meters away from where the confidential informant met with the subjects. From inside the car, they saw their informant hand the pre-marked P100.00 bill to Ramos who, in turn, gave one (1) transparent plastic sachet suspected to contain *shabu* from a Vicks Vaporub jar. When the transaction was completed, the police officers quickly alighted the vehicle and advanced to the place where the sale happened. They immediately arrested the subjects and, after frisking Ramos, they recovered the Vicks Vaporub jar which contained ten (10) more plastic sachets of *shabu*.

Ramos, on the other hand, gave a different version of what transpired. She claimed that in the afternoon of June 22, 2005, on the way home from fetching her daughter from school, she was suddenly arrested by four (4) policemen. Her wallet was taken from her after she was frisked. Thereafter, she was brought to the police station where she was charged for selling *shabu*.

Ramos also testified that she personally knew two (2) of her arresting officers as they were her neighbors. She said that she does not know why they would falsely accuse her of selling *shabu*. However, the trial court solicited from Ramos that she was living with her live-in partner and his father, who were both arrested for illegal drug transactions a few years earlier.

In its July 31, 2007 decision, the RTC found that the elements for illegal sale and possession were substantially proven by the prosecution. The trial court said that even though the poseur-buyer was not disclosed, the police actually saw how the drug sale transpired. It also held that the seized drugs from Ramos were the same drugs that were brought to the crime laboratory for examination and were properly marked, identified, presented, and admitted in evidence.

The RTC accordingly sentenced Ramos to suffer the penalty of life imprisonment for illegal sale of dangerous drugs, and imprisonment of twelve (12) years and one (1) day to fourteen (14) years for illegal possession. Ramos was likewise ordered to pay a fine of P500,000.00 and P200,000.00 for the respective offenses.

When the case was appealed, the CA dismissed it because Ramos' counsel failed to file her appellant's brief within the period required by law.

The Public Attorney's Office (PAO), acting as Ramos's counsel *de officio*, filed a motion for reconsideration and to admit the appellant's brief explaining that the notice from the CA was inadvertently sent to the handling lawyer when he had, at that time, already been relieved of his duties at the PAO Regional Special and Appealed Cases Unit. The handling lawyer admitted that he was unable to track the progress of his cases since he assumed that the present case had already been assigned to another lawyer.

In the attached appellant's brief, Ramos argued that the non-presentation of the poseur-buyer is fatal to the prosecution's case as the identity of the buyer, which was not proven in this case, is one of the essential elements to prove in the illegal sale of dangerous drugs. Considering that Ramos denied outright the allegations and gave a totally different version of the events, it was incumbent upon the prosecution to rebut her allegations by presenting the alleged poseur-buyer. Having failed to do so, the presumption that evidence willfully suppressed would be adverse if produced, therefore, arises.

Moreover, Ramos contended that the police officers could not have seen the minuscule plastic sachet of *shabu* ten (10) meters away from where the alleged transaction had taken place, and taking into account that they were inside a tinted vehicle. Thus, any information that the police officers gathered from the poseur-buyer was indubitably hearsay because he never testified during trial.

With regard to the *corpus delicti*, Ramos pointed out the flaws in the post-seizure custody of the drugs allegedly recovered from her: (1) it was only at the police station - not at the place where the drugs were confiscated - where the police officers marked the confiscated items; and (2) there were no identifying marks placed on the seized drugs immediately after confiscation and prior to the turnover to the investigating officer.<sup>[4]</sup>

Without dwelling on the merits of Ramos's appeal, the CA denied the motion for reconsideration and affirmed the dismissal of her appeal. The appellate court noted that it took Ramos almost two (2) years before she actually filed her brief, and that the explanation given by the PAO lawyer was not persuasive enough to justify the belated filing of the appellant's brief.

Aggrieved, Ramos filed the present appeal before this Court.

### **OUR RULING**

After carefully examining the records of this case, we find merit in **REVERSING** the resolutions of the CA as the evidence against Ramos is insufficient to sustain her conviction for both offenses; accordingly, Ramos should be **ACQUITTED** on grounds of reasonable doubt.

***Failure to file an appellant's brief within the prescribed period is not fatal to the case of the accused if there are substantial considerations in giving due course to the appeal.***

At the onset, our rules of procedure are more lenient to appellants who are represented by a counsel *de officio* when it comes to filing their briefs. The Rules of Court provides that the CA may dismiss the appeal if the appellant fails to file his brief within the period prescribed by the rules; **except where the appellant is represented by a counsel *de officio*.**<sup>[5]</sup>

In *De Guzman v. People*,<sup>[6]</sup> we clarified that if the appellant is represented by a counsel *de parte* and he fails to file his brief on time, the appeal may be dismissed by the CA with notice to the appellant. However, the rule takes exception when the appellant is represented by a counsel *de officio*.<sup>[7]</sup>

In other words, when it comes to appellants represented by a counsel *de officio*, the appeal should not be dismissed outright as the rule on filing briefs on time - applied to appellants represented by a counsel *de parte* - is not automatically applied to them.

In the case at bar, the PAO received the notice to file brief that the CA sent to the PAO in Cebu City, on February 19, 2009. The notice contained an advisory that all the evidence was already attached to the record available to the appellant, and her counsel had thirty (30) days from receipt within which to file brief. The CA *rollo*, however, does not disclose that an appellant's brief was filed as of May 20, 2010.

If Ramos' appeal is denied due course, a person could be wrongfully imprisoned for life over a mere technicality. It is not contended that Ramos failed to perfect her appeal within the reglementary period; her counsel merely failed to file her appellant's brief within the period accorded to her.

We must remember that there is a distinction between the failure to file a notice of appeal within the reglementary period and the failure to file a brief within the period granted by the appellate court. The former results in the failure of the appellate court to acquire jurisdiction over the appealed decision resulting in its becoming final and executory upon failure of the appellant to move for reconsideration.<sup>[8]</sup> The latter simply results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration.<sup>[9]</sup> Considering that we suspend our own rules to exempt a particular case where the appellant failed to perfect its appeal within the reglementary period, we should grant more leeway to exempt a case from the stricture of procedural rules when the appellate court has

already obtained jurisdiction.<sup>[10]</sup>

We concede that it is upon the sound discretion of the CA to consider an appeal despite the failure to file an appellant's brief on time. However, we are not unfamiliar with the time-honored doctrine that procedural rules take a step back when it would subvert or frustrate the attainment of justice, especially when the life and liberty of the accused is at stake. Based on this consideration, we can consider this case as an exception given that the evidence on record fails to show that Ramos is guilty beyond reasonable doubt.

***For an accused to be convicted in illegal drug cases, the prosecution must establish all the elements of the offenses charged, as well as the corpus delicti or the dangerous drug itself.***

In the illegal sale of dangerous drugs pursuant to a buy-bust operation, the details of the purported transaction must clearly and adequately show (1) the initial contact between the poseur-buyer and the pusher, (2) the offer to purchase, (3) the payment of consideration, and (4) the delivery of the illegal drug.<sup>[11]</sup> The manner by which all these transpired, whether or not through an informant, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully led to the commission of an offense.<sup>[12]</sup>

In the present case, it is undisputed that the police operatives had no direct participation in the transaction, it was only the confidential-informant who transacted with Ramos. Such fact was affirmed in the direct testimony of one of the police operatives:

- Q: Who acted as your poseur-buyer in your buy-bust operation?  
A: Our confidential poseur-buyer.  
Q: You mean to say a civilian person?  
A: Yes, sir.  
Q: Was there police officer in your team who went with that civilian asset when the buy-bust operation was made?  
A: Only the confidential agent approached.  
Q: But my question is: Was there any police officer who went with him when he approached the suspect?  
A: None.<sup>[13]</sup>

In convicting Ramos, the trial court said that although the name of the poseur-buyer was not disclosed, the police officers who were there saw the confidential-informant deliver the pre-marked P100.00 bill to Ramos, who then handed over one (1) plastic sachet of *shabu*.

We have previously ruled that failure to present the poseur-buyer is fatal to the prosecution's case under the following circumstances: (1) if there is no person other than the poseur-buyer who witnessed the drug transaction;<sup>[14]</sup> (2) if there is no explanation for the non-appearance of the poseur-buyer and reliable eyewitnesses who could testify in his place;<sup>[15]</sup> (3) if the witnesses other than the poseur-buyer did not hear the conversation between the pusher and poseur-buyer;<sup>[16]</sup> and (4) if