

THIRD DIVISION

[G.R. No. 220449, July 04, 2016]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUSGIE
GARRUCHO Y SERRANO, APPELLANT.**

D E C I S I O N

PERALTA, J.:

This is an appeal from the Decision^[1] dated March 24, 2015 of the Court of Appeals in CA-G.R. CR. HC. No. 01579, which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Silay City, Branch 69, Sixth Judicial Region, finding appellant Rusgie Garrucho y Serrano guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, in Criminal Case Nos. 8255-69 and 8256-69.

In two (2) separate Informations filed before the RTC of Silay City, appellant was charged with violation of Section 5 of R.A. No. 9165, or *Illegal Sale of Dangerous Drugs*, and Section 11 (3) thereof, or *Illegal Possession of Dangerous Drugs*, respectively, to wit:

Criminal Case No. 8255-69

On or about May 29, 2011, at around 8:30 o'clock in the evening, in Sitio Matagoy, Barangay Rizal, Silay City, Negros Occidental. Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there knowingly, unlawfully and criminally sell, dispense, deliver, transport, distribute or act as broker in the said transaction Zero Point Zero Three (0.03) grams of Methamphetamine Hydrochloride or shabu, a dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 8256-69

On or about May 29, 2011, at around 8:30 o'clock in the evening, in Sitio Matagoy, Barangay Rizal, Silay City, Negros Occidental. Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law [to] possess or use any dangerous drug did then and there, knowingly, unlawfully and criminally have in her possession and control Zero Point Zero Three (0.03) grams of Methamphetamine Hydrochloride or shabu, a dangerous drug.

CONTRARY TO LAW.

During her arraignment on July 13, 2011, appellant, assisted by counsel, pleaded not guilty to both charges. During the joint trial of the cases, the prosecution presented as witnesses the following police officers: PO3 Rayjay Rebadomia, PO2 Ian Libo-on, PO2 Christopher Panes, Police Chief Inspector (*P/C Insp.*) Paul Jerome Puentespina and PO2 Hazel Dorado. On the other hand, the defense presented the testimonies of appellant and her neighbors, Remely Buenavista and Rebecca Alterado.

The prosecution recounted that sometime in the evening of May 29, 2011, members of the Philippine National Police (*PNP*), Silay City, Negros Occidental, received reports that appellant was engaged in illegal sale of drugs within the vicinity of Sitio Matagoy, Barangay Rizal of the same city. PO3 Rebadomia and PO2 Libo-on, members of the Intelligence Division of the Silay City PNP, were on duty when they were advised that they will conduct a buy-bust operation against appellant. During the briefing, a Five Hundred Peso (P500.00) bill was marked, recorded in the police blotter and given to the informant who, in turn, was designated as *poseur-buyer* and was told to raise his right hand over his head to signify a completed purchase.

At around 8:30 o'clock in the evening, the buy-bust team went to the target area in Sitio Matagoy. Wearing civilian clothes, the police officers positioned themselves at a corner, about five (5) meters from where the *poseur-buyer* stood. A few minutes later, a female, later identified as appellant, approached the *poseur-buyer*. Since the target area was well-lighted, the police officers saw the *poseur-buyer* hand the marked money to appellant who, in turn, gave "something" to the *poseur-buyer*. When the *poseur buyer* made a signal by raising his right hand, the police officers rushed towards appellant, and arrested her while introducing themselves as police officers and reading her constitutional rights. The *poseur-buyer* then handed to the police the suspected *shabu* that appellant sold him. Since there were several persons in the area and appellant was shouting and struggling to free herself, the police decided to bring her and the item bought from her to the police station.

With the assistance of PO2 Dorado of the Women's and Children's Desk of the police station, appellant was frisked and found in possession of the P500.00 marked money, an aluminum foil, Twenty-Two Pesos (P22.00) and another sachet of suspected *shabu*. In the presence of appellant, Sangguniang Panglunsod Member Ireneo Celis of Silay City, Kagawad Raymund Amit, PO3 Rebadomia, PO2 Libo and PO2 Dorado, the items were photographed and inventoried. Thereafter, Officer-in-Charge Rosauro Francisco prepared the Request of Laboratory Examination, the Request for Drug Test and the Extract Police Report. PO2 Libo-on turned over the seized items to the provincial crime laboratory for examination. The two plastic sachets were received by PO2 Ariel Magbanua, as shown in the Chain of Custody Form. The contents of the plastic sachets yielded positive for *shabu* per Chemistry Report No. D-094-2011. Also, the urine sample taken from appellant tested positive for *shabu*.

For the defense, appellant denied that she was caught in a buy-bust operation in the evening of May 29, 2011. Appellant claimed that she just went out of her house to buy a diaper from a nearby store. She was surprised when unknown persons suddenly held her arms, dragged her towards a waiting motor vehicle, and brought her to the headquarters of the PNP Silay City. She claimed to have been searched at the police station by a policewoman (later identified as PO2 Dorado) who found no

illegal object from her. She also denied having in her possession a sachet of *shabu* and the marked P500.00 bill, let alone having given to the unnamed poseur-buyer a sachet of *shabu* during a buy-bust operation. Despite appellant's protest, pictures were taken of her while being made to point at the marked bill and the sachets of *shabu* that were already placed on a table. Unable to do anything out of fear, she also claimed to have signed the certificate of inventory because she was ordered to do so, sans the presence of a barangay official or a policewoman.

Meanwhile, Buenavista, appellant's neighbor, testified that when she went outside her house in the evening of May 29, 2011, she saw appellant being dragged by three (3) persons, one of them was PO2 Libo-on, without being subjected to a body search. Alterado, appellant's friend, testified that she was then sitting on a chair while waiting for the store to open when she noticed that appellant was being dragged by 3 persons out of the store towards the road. Alterado shouted for help but when the people responded, appellant was already dragged to the road *sans* a body search on her person, and brought to the city hall.

In a Decision dated September 19, 2012, the RTC rendered a judgment of conviction, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED:

In Criminal Case No. 8255-69, this Court finds accused, Rusgie Garrucho y Serrano GUILTY beyond reasonable doubt of Violation of Section 5 of Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", as her guilt was proven by the prosecution beyond any reasonable doubt.

ACCORDINGLY, this Court sentences accused, Rusgie Garrucho y Serrano, to suffer the penalty of life imprisonment, the same to be served by her at the Correctional Institution for Women, Mandaluyong City, Metro Manila.

Accused named is, further, ordered by this Court to pay a fine of P500,000.00, Philippine Currency.

In Criminal Case No. 8526-69, this Court finds accused, Rusgie Garrucho y Serrano, GUILTY beyond reasonable doubt of Violation of Section 11(3) of Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002". as her guilt was, likewise, proven by the prosecution beyond any reasonable doubt.

ACCORDINGLY, and in application of the pertinent provision of the Indeterminate Sentence Law, this Court sentences accused, Rusgie Garrucho y Serrano, to suffer the penalty of imprisonment for a period of from FOURTEEN (14) YEARS and ONE (1) DAY to SEVENTEEN (17) YEARS, the same to be served by her at the Correctional Institution for Women, Mandaluyong City, Metro Manila.

Accused named is, further, ordered by this Court to pay a fine of P500,000.00, Philippine Currency.

The two (2) sachets of small, heat-sealed transparent plastic sachets containing methamphetamine hydrochloride (shabu), with an aggregate weight of 0.06 grams, are ordered remitted to the Negros Occidental Provincial Police Office (NOPPO), Camp Alfredo Montelibano, Sr., Bacolod City, for proper disposition.

In the service of the sentence imposed on her by this Court, accused named shall be given full credit for the entire period of her detention pending trial.

NO COSTS. SO ORDERED.^[3]

Aggrieved by the RTC Decision, appellant appealed to the Court of Appeals (CA). In a Decision dated March 24, 2015, the CA affirmed with modification the decision of the trial court, thus:

WHEREFORE, the appeal is **DENIED**. The Decision dated September 19, 2012, of the Regional Trial Court, Sixth Judicial Region, Branch 69, Silay City, in Criminal Case Nos. 8255-69 and 8256-69 is **AFFIRMED WITH MODIFICATION**. For violation of Section 11, Article II of RA No. 9165, We impose the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and one (1) day, as maximum, and affirm the line of P300,000.00

Costs against accused-appellant.

SO ORDERED.^[4]

Dissatisfied with the CA Decision, appellant filed a Notice of Appeal. In the Brief for Accused-Appellant, the Public Attorney's Office asserted that the RTC gravely erred, as follows:

I

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF ILLEGAL SALE OF PROHIBITED DRUG DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THAT THE TRANSACTION OR SALE OF SHABU TOOK PLACE;

II

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF ILLEGAL POSSESSION OF SHABU DESPITE THE IRRECONCILABLE INCONSISTENCIES IN THE TESTIMONY OF PROSECUTION WITNESSES;

III

x x x IN FINDING ACCUSED-APPELLANT GUILTY DESPITE THE FAILURE

OF THE PROSECUTION TO PROVE, PRESENT, IDENTIFY AND OFFER IN EVIDENCE THE *CORPUS DELICTI* OF THE CRIME

IV

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF TILL' CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED ITEMS.^[5]

Appellee, through the Office of the Solicitor General, argued that the trial court did not err in convicting appellant of violation of Sections 5 and 11(3), Article II of RA No. 9165, because the prosecution successfully proved the presence of all the elements of said crimes, and that the evidentiary value of the items seized from appellant were duly safeguarded.^[6]

The appeal is impressed with merit.

For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.^[7] The delivery of the illicit drug to the *poseur-buyer* and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.^[8]

In prosecutions for illegal possession of dangerous drugs, on the other hand, it must be shown that (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.^[9] The existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction.^[10]

In *People of the Philippines vs. Enrico Mirondo y Izon*,^[11] the Court stressed that "[i]n the prosecution of criminal cases involving drugs, it is firmly entrenched in our jurisprudence that the narcotic substance itself constitutes the *corpus delicti*, the body or substance of the crime, and the fact of its existence is a condition *sine qua non* to sustain a judgment of conviction. It is essential that the prosecution must prove with certitude that the narcotic substance confiscated from the suspect is the same drug offered in evidence before the court. As such, the presentation in court of the *corpus delicti* establishes the fact that a crime has actually been committed. Failure to introduce the subject narcotic substance as an exhibit during trial is, therefore, fatal to the prosecution's cause."

In this case, the prosecution failed to establish the indispensable element of *corpus delicti* of the drug cases against appellant because it did not proffer, identify and submit in court the two (2) *shabu* sachets allegedly confiscated from her.

Nowhere in the testimonies of PO2 Libo-on and PO3 Rebadomia, the Seizing Officers, and P/C Insp. Puentespin, the Forensic Chemical Officer, can it be