

## FIRST DIVISION

[ G.R. No. 199271, October 19, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEHAR REYES, ACCUSED-APPELLANT.**

### DECISION

**BERSAMIN, J.:**

Compliance with the guidelines on the preservation of the chain of custody of the dangerous drugs subject of a prosecution for the illegal sale of dangerous drugs must be clearly and convincingly established by the State. Any lapse in the chain of custody must be affirmatively explained by the Prosecution; otherwise, the chain of custody will be held to be broken and insufficient to support a conviction of the accused. The presumption of regularity of the performance of official duty in favor of the arresting officers cannot prevail over the presumption of innocence in favor of the accused.

#### The Case

This appeal focuses on the decision promulgated on June 13, 2011 in CA-G.R. CEB CR-H.C. No. 00792 entitled *People v. Jehar Reyes*,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed the judgment rendered on March 9, 2007 by the Regional Trial Court (RTC), Branch 10, in Cebu City finding accused Jehar Reyes guilty as charged of a violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).<sup>[2]</sup>

#### Antecedents

The accusatory portion of the information charging the violation of Section 5 of R.A. No. 9165 reads:

That on or about the 27<sup>th</sup> day of November, 2002 at 2:00 o'clock in the afternoon, more or less, at the Municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and without proper authority or permit, did then and there wilfully, unlawfully and feloniously SELL, DELIVER and GIVE away to a poseur buyer for the sum of ONE THOUSAND PESOS (PI ,000.00), Philippine Currency, bill marked money with Serial Nos. HNOI9541, EX212112, ZW886460, FQ954616, DA723857, Q0[0]6140, DE709987, SY315980, FQ950975, BB341926 three (3) silver paper packets of white crystalline substance weighing 1.44 grams, which when subjected to laboratory examination gave positive results for the presence of Methamphetamine Hydrochloride, a regulated drug.

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

After the accused pleaded *not guilty* to the information, the State presented as witnesses PO2 Jesus Rudson Villahermosa, PO1 Januario Miro, PSINSP Arnel Banzon, PO2 Marlon Lumayag and Jude Daniel Mendoza,<sup>[4]</sup> while the Defense had the accused and Cesar Canada as its own witnesses.<sup>[5]</sup>

The CA summarized the respective versions of the parties in the assailed decision as follows:

x x x [O]n 27 November 2002, at around 2:00 p.m., a buy-bust operation was conducted at accused-appellant's residence in Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu. The team was composed of Senior Police Inspector Arnel Banzon (hereafter, "Banzon"), PO2 Jesus Rodson Villahermosa (hereafter, "PO2 Villahermosa") and PO1 Januario Miro (hereafter, "PO1 Miro") (both poseur-buyers). The backup team was composed of Senior Police Inspector Glenn Mayan, SPO2 Jesus Rojas, SP[O]1 Eduardito Brigoli, P[O]3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Marlon Lumayag (hereafter P[O]3 Lumayag), and P[O]2 Aristocles.

The following items were recovered from accused-appellant: three plastic packs (including the plastic pack bought by the poseur-buyers from accused-appellant), containing a (sic) white crystalline substance; and the buy-bust money of ten P100.00 bills with serial numbers HN[0]19541, EX212112, ZW886460, FQ954616, DA723857, QO[0]6140, DE709987, SY315980, [F]Q950975, BB341926. The total weight of the contents of the three plastic packs was 1.44 grams. When subjected to laboratory examination, the contents tested positive for methamphetamine hydrochloride, otherwise known as "shabu". Accused-appellant was thereafter charged with the crime of Illegal Sale of Shabu under Article 2, Section 5, R.A. 9165.

P[O]2 Villahermosa, P[O]1 Miro, Banzon, P[O]3 Lumayag, and Jude Daniel Mendoza, testified for the Prosecution. The evidence of the Prosecution is summarized thus: Several weeks before 27 November 2002, P[O]2 Villahermosa and P[O]1 Miro conducted a 2-week surveillance on accused-appellant, a reported drug pusher, residing at Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu. The surveillance confirmed accused-appellant was engaged in the sale of illegal drugs. A team to conduct a buy-bust operation was formed. P[O]2 Villahermosa and P[O]1 Miro were designated as the poseur-buyers, while Banzon, Senior Police Inspector Glenn Mayan, SP[O]2 Jesus Rojas, SP[O]1 Eduardito Brigoli, P[O]3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Lumayag, and P[O]2 Aristocles, were designated as back-up. The buy bust money consisting of ten P100.00 bills, was marked with the initials "J.C.R." of SP[O]2 Rojas.

PO2 Villahermosa and PO1 Miro proceeded on foot to the target site, the house of the accused-appellant, while the back-up team members

positioned themselves about 5 meters away to observe the transaction.

P[O]2 Villahermosa approached the front of accused-appellant's house and called out the latter's name. Accused-appellant went out of his house. P[O]2 Villahermosa told accused-appellant he wanted to buy P1,000.00 worth of shabu. Accused-appellant took one plastic pack from his pocket, and gave it to P[O]2 Villahermosa. P[O]2 Villahermosa in turn, handed the ten pieces of P100.00 bills to accused-appellant. Upon receipt of the P1,000.00 buy-bust money, P[O]2 Villahermosa immediately accosted accused-appellant. P[O]1 Miro removed his cap, the pre-arranged signal to the backup team, that the transaction had been completed. P[O]2 Villahermosa informed the accused-appellant he was under arrest, and informed him of his constitutional rights. He frisked accused-appellant, and recovered the following: two more plastic packs that contained a white crystalline substance; and the buy-bust money of ten P100.00 bills.

Accused-appellant was brought to the police office, and PO1 Miro marked the items seized, as follows: "JR-B" (for the plastic pack of shabu subject of the buy-bust); "JR-1" and "JR-2" (for the 2 plastic packs of shabu recovered from the frisking). PO1 Miro prepared the letter-request for laboratory examination.

On 27 November 2002, at 5:20 p.m., PO1 Miro delivered the letter-request for laboratory examination, and the plastic packs marked "JR-B", "JR-1" and "JR-2", to PO1 Fiel, the clerk on duty at the PNP Crime Laboratory. P[O]1 Fiel turned over the letter-request, and the three plastic packs, to the Chemistry Branch for examination.

On 28 November 2002, Jude Daniel Mendoza, the forensic analyst, conducted the laboratory examination on the contents of the three plastic packs. Per Chemistry Report No. D-2390-2002, the contents of the three packets tested positive for Methamphetamine Hydrochloride.

Accused-appellant was thereafter charged with violating Article 2, Section 5 of R.A. 9165, or the crime of illegal sale of drugs.

Cesar Cañada (hereafter, "Cañada"), and accused-appellant himself: testified for the Defense. The evidence of the Defense is summarized thus: at around 2:00 p.m. of 27 November 2002, accused appellant was sleeping at his elder sister's house, when several men suddenly barged in, and searched the premises. The men did not have any search warrant. They did not find contraband, nor did they receive money from accused-appellant.

Cañada is a neighbor of the accused-appellant. At around 2:00 p.m., of 27 November 2002, he was at a chapel about 10 meters from accused-appellant's house. He heard a loud bang on the door of accused-appellant's house, and saw five men enter it. The five men later left the house with the accused-appellant, on board a police vehicle.<sup>[6]</sup>

## **Ruling of the RTC**

On March 9, 2007, the RTC convicted the accused of the crime charged, disposing:

WHEREFORE, PREMISES CONSIDERED, this Court finds the accused **JEHAR REYES Y PREMACIO, GUILTY** of violating Section 5, Article II of Republic Act No. 9165. He is sentenced to suffer in prison the penalty of life imprisonment and to pay a fine of P500,000.00

The three plastic packs containing methamphetamine hydrochloride are ordered confiscated and shall be destroyed in accordance with law.

**SO ORDERED.**<sup>[7]</sup>

## **Judgment of the CA**

The accused appealed,<sup>[8]</sup> contending that the illegal sale of *shabu* had not been established beyond reasonable doubt; that the buy-bust operation had not been carried out in accordance with law; that the presumption of regularity in the performance of official duty did not apply because the law enforcers had deviated from the standard conduct of official duty as provided for in the law; that the arresting police officers had failed to make an inventory report of the confiscated items; that the markings on the confiscated items were not clearly established; that the procedural lapses of the police officers created doubt as to the identity of the confiscated items; and that, consequently, the Prosecution did not establish the elements of the crime charged.

On June 13, 2011, the CA affirmed the conviction of the accused, holding and ruling thusly:

In a Prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

The first element is present. There was evidence that the sale of drugs between accused-appellant, and the poseur-buyers PO2 Villahermosa and PO1 Miro, took place. PO2 Villahermosa testified that several weeks before the actual buy-bust operation on 27 November 2002, he and PO1 Miro conducted a 2-week surveillance on accused-appellant, a reported drug pusher, residing at Sitio Cayam, Barangay Ward I, Tiber, MingLanilla, Cebu. The surveillance confirmed accused-appellant was engaged in the sale of illegal drugs. A buy-bust team was formed. P[O]2 Villahermosa and P[O]1 Miro were designated as the poseur-buyers, while Banzon, Senior Police Inspector Glenn Mayan, SP02 Jesus Rojas, SP[O]1 Eduardito Brigoli, P[O]3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Lumayag, and P[O]2 Aristocles were designated as back-up. P[O]2 Villahermosa and P[O]1 Miro proceeded on foot to the target site, the house of the accused-appellant, while the backup team members

positioned themselves about five meters away to observe the transaction. P[O]2 Villahermosa approached the front of accused-appellant's house and called out his name. Accused-appellant went out of his house. P[O]2 Villahermosa told accused-appellant he wanted to buy 1,000.00 worth of shabu. Accused-appellant took one plastic pack from his pocket, and gave it to P[O]2 Villahermosa. P[O]2 Villahermosa in turn, handed to accused appellant the ten pieces of-P100.00 bills. Upon receipt of the P1,000.00 buy-bust money, P[O]2 Villahermosa immediately accosted accused appellant P[O]1 Miro removed his cap, the pre-arranged signal to the backup team, that the transaction had been completed. PO2 Villahermosa informed the accused-appellant he was under arrest, and informed him of his constitutional rights. He frisked accused-appellant. PO2 Villahermosa and (sic) recovered from accused appellant the following: two more plastic packs that contained a white crystalline substance; and the buy-bust money of ten P100.00 bills.

The second element is present. The *corpus delicti*, or the illicit drug subject of the sale, was presented in Court.

x x x x

In the case at bar, the identity of the plastic pack of shabu subject of the buy-bust operation was sufficiently established by the Prosecution. PO1 Miro marked the plastic packs of shabu seized from the accused appellant at the office. The plastic pack of shabu subject of the buy-bust operation was marked "JR-B", while the two plastic packs of shabu recovered from accused-appellant after he was frisked by P[O]2 Villahermosa were marked "JR-1" and "JR-2". Clearly, the identity of the *corpus delicti* was duly preserved and established by the Prosecution, hence there is no doubt as to whether what was presented in Court, was the same plastic pack of shabu purchased from the accused-appellant at the buy-bust operation.

In addition, the evidence the Prosecution presented, is complete to establish the necessary links in the handling of the shabu subject of the buy-bust operation, from the time of its seizure, until its presentation in Court. In other words, the Prosecution was able to comply with the chain of custody rule.

x x x x

It is clear that the integrity and the evidentiary value of the seized drugs were preserved. No convincing proof was shown that the evidence submitted by the Prosecution had been tampered, from the time they were recovered from accused-appellant, until they were turned over for examination. This Court, therefore, finds no reason to overturn the findings of the court *a quo* that the drugs seized from accused-appellant, were the same ones presented during trial. The chain of custody of the drugs seized from accused-appellant was unbroken, contrary to the assertion of accused-appellant.

Accused-appellant argues: since the police officers who arrested him did