

FIRST DIVISION

[G.R. No. 220333, November 14, 2016]

**ANTONIO GAMBOA Y DELOS SANTOS, PETITIONER, VS. PEOPLE
OF PHILIPPINES, THE RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*^[1] filed by petitioner Antonio Gamboa y Delos Santos (Gamboa) assailing the Decision^[2] dated May 28, 2015 and the Resolution^[3] dated August 25, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35709, which affirmed the Decision^[4] dated September 25, 2012 of the Regional Trial Court of Angeles City, Branch 62 (RTC) in Crim. Case Nos. 03-171, 03-172, and 03-173 finding Gamboa and Elizabeth Musni y Sarona (Elizabeth) guilty beyond reasonable doubt of violating Section 11,^[5] Article II of Republic Act No. (RA) 9165,^[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from three (3) Informations filed before the RTC accusing Gamboa and Elizabeth of violating Sections 11 and 12, Article II of RA 9165, viz.:

Criminal Case No. 03-171^[7]

That on or about the 1st day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Elizabeth], did then and there willfully, unlawfully and feloniously have in her possession, custody and control one (1) small transparent plastic sachet containing Methamphetamine Hydrochloride (SHABU) weighing more or less FIVE TENTHS (5) OF A GRAM, which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.

Criminal Case No. 03-172^[8]

That on or about the 1st day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Gamboa], did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) small transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE (SHABU),

weighing more or less FIVE TENTHS (5) OF A GRAM, which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.

Criminal Case No. 03-173^[9]

That on or about the 1st day of May 2003, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, [Elizabeth and Gamboa], conspiring and confederating together and mutually aiding and abetting each other, without authority whatsoever, did then and there willfully, unlawfully and feloniously have in their possession and control a lighter, empty pieces of small plastic sachet with *shabu* residue, crumpled aluminum foils, scissor[s], empty plastic packets and improvised tin burner, which are fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body.

CONTRARY TO LAW.

The prosecution alleged that at around 6 o'clock in the evening of May 1, 2003, Police Officer I (PO1) Wendy Sahagun (PO1 Sahagun) and Senior Police Officer I (SPO1)^[10] Roberto Manuel (SPO1 Manuel) received information from a confidential informant (agent) that a certain Jun Negro (Negro) was engaged in illegal drug activity in Angeles City. They relayed the information to their Deputy Chief, Inspector Elaine Villasis (P/Insp. Villasis),^[11] who then formed a buy-bust team composed of herself, SPO1 Manuel, PO3 Jerry Espadera, a certain PO2 Lagman, PO1 Sahagun, and the agent. PO1 Sahagun was designated as the poseur-buyer and was provided with two (2) P100.00 bills as buy-bust money, while the rest would serve as back-up officers. At around 6:30 o'clock in the evening, the buy-bust team proceeded to the target area at Hadrian Extension 3, Sitio Ipil-Ipil, Pulung Maragul, Angeles City.^[12]

Upon their arrival at the target area, PO1 Sahagun and the agent encountered Negro. They approached him and the agent told him that they wanted to buy P200.00 worth of *shabu*. Negro then handed a plastic sachet containing suspected *shabu* to PO1 Sahagun and, in exchange, she gave him the buy-bust money. With the sale consummated, she executed the pre-arranged signal – by placing her hand on top of her head – prompting the back-up officers to rush in and arrest Negro. Negro, however, sensed that something was afoot and ran into a nearby house. PO1 Sahagun gave chase, but Negro managed to elude her. Inside the house, she discovered Gat1boa and Elizabeth seated by a table which had *shabu* paraphernalia on top, and accordingly, arrested them with the assistance of the back-up officers. PO1 Sahagun frisked Elizabeth and recovered one (1) plastic sachet containing *shabu* residue from her pockets, while SPO1 Manuel confiscated one (1) plastic sachet of *shabu* from Gamboa.^[13] They were then brought to the police station together with the seized items. At the office, PO1 Sahagun marked the sachet subject of the sale and the one she seized from Elizabeth with "WPS" A and B, respectively, while SPO1 Manuel marked the sachet he confiscated from Gamboa with "RLM."^[14] Thereafter, they prepared the request for laboratory examination^[15]

dated May 2, 2003, among other necessary documents.^[16] The next day, SPO1 Manuel delivered the seized items to the crime laboratory for examination, which was examined by Forensic Chemist Divina Mallare Dizon,^[17] who found that the seized sachets contained methamphetamine hydrochloride or *shabu*, an illegal drug.^[18]

In his defense, Gamboa denied the charges leveled against him. He claimed that at around 6 o'clock in the evening of May 1, 2003, he was at Rolly Musni's (Rolly) house to pick up the television set he had dropped off for repairs. As he was chatting with Rolly outside the latter's house, two (2) men came and dragged them inside the house, where they were frisked along with Elizabeth and, thereupon, made it appear that illegal drugs were recovered from them. Thereafter, they were all handcuffed and taken to the police station.^[19]

Upon arraignment, Elizabeth and Gamboa pleaded not guilty to the charges against them.^[20] While awaiting trial, Elizabeth jumped bail.^[21]

The RTC Ruling

In a Decision^[22] dated September 25, 2012, the RTC found Gamboa and Elizabeth guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 in Crim. Case Nos. 03-171 and 03-172, for illegal possession of dangerous drugs and sentenced them to each suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years, and to pay a fine in the amount of P300,000.00.^[23]

The RTC held that a valid buy-bust operation had been conducted, and the subsequent warrantless arrests were lawful. It noted that although the officers failed to mark the items at the scene of the crime and instead, brought them to the police station where they were marked and thereafter, to the crime laboratory for examination, they were able to preserve their integrity and identity. However, it dismissed the charge of illegal possession of drug paraphernalia against Gamboa and Elizabeth in Crim. Case No. 03-173 for the prosecution's failure to establish who had actual control or possession of the same.^[24]

Aggrieved, Gamboa elevated his conviction before the Court of Appeals (CA).^[25]

The CA Ruling

In a Decision^[26] dated May 28, 2015, the CA affirmed the RTC ruling *in toto*,^[27] finding that the prosecution had established beyond reasonable doubt that Gamboa illegally possessed dangerous drugs in violation of Section 11, Article II of RA 9165.^[28]

The CA held that a valid buy-bust operation was conducted despite the lack of coordination with the Philippine Drug Enforcement Agency (PDEA). It opined that the buy-bust operation was an *in flagrante delicto* arrest sanctioned by Section 5, Rule 113 of the Revised Rules of Criminal Procedure. It gave no credence to

Gamboa's claim that the police officers' failure to abide by Section 21 of RA 9165 was fatal to the case, considering that the seized items may be marked at the nearest police station or office of the apprehending team instead of the place of arrest. Further, the absence of inventory or photographs neither raised doubts as to the identity of the illegal drugs seized nor rendered the same inadmissible as evidence, as the integrity and evidentiary value of the same had been preserved. Consequently, it ruled that the prosecution had shown an unbroken chain of custody over the illegal drugs confiscated from Gamboa.^[29]

Unperturbed, Gamboa moved for reconsideration,^[30] which was, however, denied by the CA in a Resolution^[31] dated August 25, 2015; hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not Gamboa's conviction for illegal possession of dangerous drugs defined and penalized under Section 11, Article II of RA 9165 should be upheld.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.^[32] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.^[33]

In this case, Gamboa was charged with illegal possession of dangerous drugs under Section 11, Article II of RA 9165. In order to secure the conviction of an accused charged with illegal possession of dangerous drugs, the prosecution must prove that: (a) the accused was in possession of an item or object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.^[34]

Notably, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.^[35]

In his petition before the Court, Gamboa averred that the police officers violated Section 21, Article II of RA 9165 and its Implementing Rules and Regulation (IRR) in that: (a) no photographs of the *shabu* and drug paraphernalia were taken; (b) the marking and inventory were not done at the place of search and in the presence of the accused or his representative; (c) no representative from the Department of