

THIRD DIVISION

[G.R. No. 210617, December 07, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ORLANDO FERNANDEZ Y ABARQUIZ, ACCUSED-APPELLANT.**

DECISION

PEREZ, J.:

This is an appeal filed by herein appellant Orlando Fernandez y Abarquiz (Fernandez) from the Decision^[1] of the Court of Appeals (CA) in CA G.R. CR-HC No. 05626, dated 26 July 2013, affirming the Decision^[2] of the Regional Trial Court of Dagupan City (RTC-Dagupan City) in Criminal Case No. 2009-0659-D, dated 9 May 2012, convicting the appellant for Violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).^[3]

The appellant was charged in an Information^[4] that reads:

That on or about the 18th day of November 2009, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the [herein appellant FERNANDEZ], did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride (*Shabu*) contained in one (1) heatsealed plastic sachet, weighing more or less 0.13 gram, without authority to do so.

Contrary to [Section 5, Article II, RA 91651].

On arraignment,^[5] the appellant pleaded NOT GUILTY to the crime charged. At the pre-trial conference, the parties stipulated as follows:

1. Identity of the [herein appellant] as the same [appellant] who was arraigned and pleaded not guilty to the commission of the crime charged.
2. That the [appellant] was arrested at Gonzales Street, Botman Boquig, Dagupan City, at 4:55 in the afternoon of [18 November 2009].^[6]

Following the pre-trial conference, trial on the merits ensued, where the prosecution presented the following witnesses: (1) Police Senior Inspector Emelda Roderos (PSI Roderos), the Forensic Chemist who examined the specimen subject of the buy-bust operation;^[7] (2) Police Inspector Apollo Calimlim (PI Calimlim), the duty investigator who prepared the Spot Report, the Affidavit of Statement and the Request for Laboratory Examination of the seized items;^[8] (3) PO1 Mario Mondero (PO1 Mondero);^[9] (4) Police Chief Inspector Froilan Lopez (PCI Lopez), the team leader of the buy-bust operation against the appellant;^[10] (5) Police Officer 3 Christopher Baruelo (PO3 Baruelo), the designated poseur-buyer and the one who

prepared the buy-bust money;^[11] and (6) PO3 Noel Domalanta (PO3 Domalanta), the assigned arresting officer;^[12] and.

The testimonies of the aforesaid witnesses established that:

At around 10:00 a.m. of 18 November 2009, the members of the Provincial Anti-Illegal Drug Special Operations Task Group (PAIDSOTG) were summoned by their action officer PCI Lopez to come to their office at Lingayen, Pangasinan, for instruction and briefing as regards the buy-bust operation that they would be conducting against one Orlando Fernandez y Abarquiz (aka "Tatay Lando"), the herein appellant, who is a suspected *shabu* vendor, in Gonzales St., Bonuan Boquig, Dagupan City (target area).^[13] During the briefing, PCI Lopez acted as the team leader, PO3 Baruelo was assigned as the poseur-buyer, PO3 Domalanta was tasked to act as the arresting officer, and the four other members of PAIDSOTG, namely: PO3 Dizon Santos (PO3 Santos), PO1 Mondero, Senior Police Officer 2 Ravago (SPO2 Ravago) and SPO1 Flash Ferrer (SPO1 Ferrer), were the designated back-up officers. PO3 Baruelo then prepared the buy-bust money, *i.e.*, P500.00 peso-bill, marked with his initials "CFB," which was placed before the serial number, and photocopied the same.^[14]

Thereafter, or at around 4:55 in the afternoon of even date, the abovenamed PAIDSOTG members, together with a confidential agent, proceeded to the target area. Upon arrival thereat, PO3 Baruelo and the confidential agent went directly in front of the appellant's house, particularly, near the fence, and waited for him. The rest of the buy-bust team, on the other hand, strategically positioned themselves within a five (5) meter radius therefrom. Later, when the appellant arrived, the confidential agent introduced to him PO3 Baruelo as a user and a buyer of *shabu*. The appellant then asked PO3 Baruelo how much drugs he was willing to buy to which the latter responded "P500.00." Thereupon, the appellant handed to PO3 Baruelo one (1) plastic sachet containing the suspected *shabu*. In turn, the latter gave the former the P500.00 marked money as payment therefor.^[15]

At this juncture, PO3 Baruelo purposely scratched his head, which was their pre-arranged signal that the sale transaction has already been consummated, giving cue to PO3 Domalanta to make the necessary arrest. The appellant tried to escape but PO3 Domalanta chased him and successfully caught him and placed him under arrest. The appellant was then informed of his constitutional rights. Thereafter, PO3 Domalanta bodily searched the appellant and recovered from him the following: (a) one cal. 22 homemade gun; (b) one piece glass tube; (c) several aluminum foil strips; (d) one bundle of empty plastic sachets; (e) two lighters; and (f) the P500.00 peso marked money used in the buy-bust operation. PO3 Domalanta later turned over to PO3 Baruelo the seized items.^[16]

Afterwards the appellant and the seized items were brought to PCP6 Bonuan, Tondaligan, Dagupan City, Pangasinan. It was PO3 Baruelo who was in possession of the seized items during this period. Upon reaching the said place, PO3 Baruelo marked the seized items with his initials "CFB." In particular, the drug paraphernalias, *i.e.*, one bundle of empty plastic sachets, several aluminum foil strips, one piece glass tube water pipe and two lighters, recovered from the appellant during his arrest were marked "CFB-2" "CFB-3" "CFB-4" and "CFB-5," respectively while the plastic sachet containing suspected *shabu* subject of the sale transaction was

marked with "CFB-1."^[17] Thereafter, an inventory^[18] and photographed of the seized items were made in the presence of the appellant and other witnesses, namely: Barangay Kagawad Ramil C. Soy of Barangay Bonuan Tondaligan; Cipriano R. Cayabyab, Chief of the CVO of Barangay Bonuan Boquig; and Peha Lagao of GMA 7, representative from the media.^[19]

The buy-bust team, thereafter, returned to their office in Lingayen, Pangasinan, for further investigation by PI Calimlim, the duty investigator who prepared the Request for Laboratory Examination of the seized items, which request was signed by PCI Lopez. At this time, it was still PO3 Baruelo who was in possession of the seized items. Meanwhile, PO3 Baruelo and PO3 Dorpalanta prepared the affidavit of arrest. The seized items were then handed by PO3 Baruelo to PO1 Mondero. After which, PO1 Mondero, together with PI Calimlim, brought the Request for Laboratory Examination and the seized items to the Philippine National Police (PNP) Crime Laboratory in Lingayen, Pangasinan.^[20] The same was received by PO2 Tajon.^[21]

The qualitative laboratory examination was performed by Forensic Chemist PSI Roderos on 19 November 2009, which confirmed that the contents of the plastic sachet and improvised water pipe confiscated from the appellant were *methamphetamine hydrochloride*, commonly known as *shabu*.^[22]

The defense, on the other hand, presented the appellant as its sole witness, who denied the accusation against him and offered a different set of facts, thus:

The appellant averred that at around 4:30 in the afternoon of 18 November 2009, he was taking a rest in front of his house in Gonzales St., Bgy. Bonuan Boquig, Dagupan City, when a man suddenly approached him and asked if he knows a person who sells *shabu*. The man even told him that in case he could give a referral, he would be given a certain amount as his commission. The appellant then remembered someone from the Muslim area where he used to pasture his cow. Thus, he accompanied the man to the cemetery and pointed to him the person who sells *shabu*.^[23]

The man and the alleged *shabu* seller then negotiated. The man again approached the appellant and they went back in front of the latter's house. Afterwards, the man handed the appellant a P500.00-peso bill as the latter's commission. Upon receiving the said amount, the appellant was already apprehended by several persons by making him face the ground and by handcuffing him. Afterwards, the appellant was boarded on a mobile and was brought to the police station.^[24]

The appellant further alleged that when he was frisked nothing was retrieved from him. As such, he was forced to admit that he was selling prohibited drugs. The appellant likewise avowed that the plastic sachets and other items really came from the man who previously negotiated with the alleged *shabu* seller. The appellant also stated that those who arrested him introduced themselves as members of the PAIDSOTG.^[25]

On 9 May 2012, the trial court rendered a Decision^[26] that reads:

WHEREFORE, judgment is hereby rendered finding [herein appellant **Fernandez**], GUILTY beyond reasonable doubt with Violation of [Section 5, Article II] of RA 9165 x x x and is hereby sentenced to suffer life imprisonment and to pay a fine in the amount of Five Hundred Thousand ([P500,000.00]) pesos.

The subject plastic sachet of *shabu* is hereby ordered disposed of in accordance with law.

With cost against said [appellant].

SO ORDERED.^[27]

The trial court did not give weight on the testimony of the appellant that he was only an agent who referred the buyer to the alleged *shabu* seller, who actually sold the prohibited drugs. The defense that the P500.00-peso bill retrieved from him was only a commission fee was unbelievable especially when it was uncorroborated by any evidence or testimony from other witness.^[28]

On appeal, the CA affirmed the trial court's Decision.^[29]

The CA ruled that the elements of illegal sale of dangerous drugs were clearly established. It explained that what is material is the proof that the transaction or sale actually took place coupled with the presentation in court of the *corpus delicti*. The prosecution established that the illegal drug was sold to the poseur-buyer PO3 Baruelo who, in exchange of the drugs contained in a plastic sachet, gave a marked P500.00-peso bill to the appellant, which was, upon apprehension, retrieved from his pocket.^[30]

The CA also stated that. the defense of the appellant that the police officers failed to mark, photograph and inventory the seized items immediately after the arrest was bereft of merit. Such failure does not automatically impair the reliability of the chain of custody of the seized items as long as their integrity and evidentiary value are preserved by the apprehending team.^[31]

Aggrieved by the aforesaid CA Decision, the appellant went to this Court, once again, raising the failure of the prosecution to establish the unbroken chain of custody, as well as the failure of the police officers to mark, photograph and inventory the confiscated items as required by Section 21, Article II of RA 9165, thus, casting doubt on the guilt of the appellant.

After a careful examination of the records, this Court affirms the CA Decision as the errors alleged herein by the appellant are bereft of merit.

Time and again, in every prosecution for illegal sale of dangerous drugs, the following elements should first be established: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged. The *corpus delicti* in cases involving dangerous drugs is the presentation of