

THIRD DIVISION

[G.R. No. 194499, January 14, 2015]

**MANUEL R. PORTUGUEZ, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

VILLARAMA, JR., J.:

Before this Court is a petition for review on certiorari^[1] seeking the reversal of the Decision^[2] dated August 12, 2010 and the Resolution^[3] dated November 9, 2010 of the Court of Appeals (CA) in CA-G.R. CR No. 32096. The CA affirmed *in toto* the Decision^[4] dated August 29, 2008 of the Regional Trial Court (RTC) of Pasig City, Branch 70, finding petitioner Manuel R. Portuguez (petitioner) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) No. 9165.^[5]

The case stemmed from the Information^[6] dated April 21, 2003, charging petitioner of the crime of violation of Section 11, Article II of R.A. No. 9165 for illegal possession of five centigrams (0.05 gram) of methamphetamine hydrochloride or *shabu*, the accusatory portion of which reads:

On or about April 16, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the said accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing five centigrams (0.05 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride (*shabu*), a dangerous drug, in violation of the said law.

Contrary to law.

Upon arraignment, petitioner pleaded not guilty to the charge.^[7] Thereafter, trial on the merits ensued.

During the pre-trial conference, the prosecution and the defense stipulated, among others, on the due execution and genuineness of the Request for Laboratory Examination^[8] dated April 16, 2003 and Chemistry Report No. D-687-03E^[9] issued by the Forensic Chemist, Police Senior Inspector Annalee R. Forro (P/Sr. Insp. Forro). The parties also stipulated on the existence of the plastic sachet including its contents which had been the subject of the said Request except for its source or origin.^[10] After entering into the aforementioned stipulations, the testimony of P/Sr. Insp. Forro was dispensed with.^[11]

Version of the Prosecution

The prosecution, through the testimonies of Police Officer 1 (PO1) Aldrin R. Mariano (PO1 Mariano) and PO1 Janet Sabo (PO1 Sabo), established the following:

On April 16, 2003, a confidential asset went to the Pasig City Police Station, City Hall Detachment, to report the illegal drug activities of a certain alias Bobot at Balmores Street, Barangay Kapasigan, Pasig City. Upon receipt of the information, the chief of said station formed a buy-bust team wherein PO1 Mariano was designated as the poseur-buyer. After coordinating with the Philippine Drug Enforcement Agency (PDEA) and preparing the buy-bust money, the team and its asset proceeded to Balmores Street. Arriving thereat, the asset pointed to Bobot as the target person. PO1 Mariano saw Bobot and petitioner transacting illegal drugs. When PO1 Mariano and the asset met petitioner and Bobot on the road, the asset asked petitioner, "*P're, meron pa ba?*" At this point, petitioner looked at PO1 Mariano and thereafter, attempted to run. However, PO1 Mariano was able to take hold of him. Then, the other police operatives arrived. Petitioner was asked to open his hand. Upon seeing the suspected *shabu* on his hand, they arrested petitioner, informed him of his constitutional rights and boarded him on their service vehicle. Before leaving the area, PO1 Mariano placed the markings "*EXH A ARM 04-16-03*" on the seized *shabu*. Thereafter, the police operatives brought petitioner to the Rizal Medical Center for physical examination before they proceeded to the police station for investigation. [12]

On cross-examination, PO1 Mariano testified that at a distance of seven to eight meters, he saw Bobot handing something to petitioner. PO1 Mariano said that the intended buy-bust operation failed because of the commotion petitioner caused when he tried to run away. PO1 Mariano also testified that he got hold of petitioner because he was nearer to him. He claimed that the other police operatives ran after Bobot but they failed to arrest him. [13]

In addition, prosecution witness PO1 Sabo testified that on the same day of April 16, 2003, she delivered the seized *shabu* and the Request for Laboratory Examination [14] to the Philippine National Police (PNP) Crime Laboratory for chemical analysis. [15] Chemistry Report No. D-687-03E [16] prepared by P/Sr. Insp. Forro revealed the following results:

SPECIMEN SUBMITTED:

A – One (1) heat-sealed transparent plastic sachet with markings "*EXH A ARM 04/16/03*" containing 0.05 gram of white crystalline substance.

x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave **POSITIVE** result to the tests for Methamphetamine Hydrochloride, a dangerous drug.

x x x x

CONCLUSION:

Specimen A contains **Methamphetamine Hydrochloride**, a dangerous drug.

Version of the Defense

Petitioner testified that at the time of his arrest, he was fixing the *katam* and was eating in front of his house with his friends Jonjon Reynoso, Jonjing Reynoso and Junior Da Silva. Two persons from the Pasig Police headquarters arrived and spoke to his sister who used to work at the said headquarters. When his sister called him, he was mistaken to be Bobot and thus, they arrested him. Petitioner denied that he was in possession of the *shabu* allegedly seized from him. He claimed that he saw the said *shabu* for the first time at the headquarters. Petitioner also claimed that at the time he was arrested on April 16, 2003, Bobot was actually detained at a jail in Bicutan.^[17]

On cross-examination, petitioner admitted that his sister was a former errand girl at the police headquarters. He divulged that at the time of his arrest, while he was then repairing a "*katam*," two male persons whom petitioner identified as Efren and Dennis approached his sister. Efren told petitioner that the target person of the police officers was Bobot. Petitioner claimed that PO1 Mariano and PO1 Sabo arrived a few minutes thereafter and he was arrested in the presence of his sister, Efren and Dennis. Petitioner also claimed that the target person Bobot is his younger brother, Jovito Portuguese. He admitted that Bobot was admitted to a rehabilitation center in Bicutan since he used to sell illegal drugs. He maintained that the police officers already had with them the sachet of *shabu* when they arrested him.^[18]

Dawn Portuguese, daughter of petitioner, testified that in the afternoon of April 16, 2003, two male persons arrived at the house of her aunt and asked for her father. She testified that petitioner was then sleeping in the nearby house of his friend, Junior. She then called for her father and, upon their return, four persons, one of whom was in police uniform, approached them and arrested petitioner. She informed her mother of what happened and the latter proceeded to the headquarters where petitioner was brought.^[19]

Last to testify for the defense was Maritess Portuguese, petitioner's sister. She testified that her brother was then sleeping in a nearby house when apprehended by the police officers. She averred that after her brother was arrested, they agreed not to file a complaint against the said police officers. On cross-examination, she said that she heard her niece shouting. Sensing a commotion, she hurried in front of their house and there she saw the police officers accosting her brother.^[20]

The RTC's Ruling

On August 29, 2008, the RTC rendered a Decision^[21] finding petitioner guilty as charged. The RTC invoked the principle of the presumption of regularity in the performance of official duty, gave credence to the testimony of PO1 Mariano, and rejected the self-serving testimony of petitioner and the obviously manufactured testimonies of his witnesses. The *falla* of the RTC Decision reads:

WHEREFORE, premises considered, accused MANUEL PORTUGUEZ is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 11, Article II of Republic Act 9165 and is hereby sentenced to **Twelve (12) Years and One (1) Day to Twenty (20) Years** and to pay a **FINE** of **Three Hundred Thousand Pesos (P300,000.00)**.

Pursuant to Section 21 of Republic Act 9165, any authorized representative of the Philippine Drug Enforcement Agency (PDEA) is hereby ordered to take charge and have custody over the plastic sachet of shabu, object of this case, for proper disposition.

Costs against the accused.

SO ORDERED.^[22]

The CA's Ruling

On August 12, 2010, the CA affirmed the decision of the RTC. The CA held that petitioner was deemed to have waived his right to question the irregularity of his arrest since he failed to move to quash the Information on this ground and instead, elected to proceed with the trial. The CA also held that petitioner was caught *in flagrante delicto* when he was arrested by the police officers as PO1 Mariano saw him buying illegal drugs from Bobot. The CA agreed with the RTC that the police officers were presumed to have regularly performed their official duties. The CA opined that the integrity of the seized *shabu* had been preserved by the concerned police officers.

Petitioner's Motion for Reconsideration^[23] was denied by the CA in its Resolution^[24] dated November 9, 2010. The CA held that the lack of inventory or photographs taken after petitioner's apprehension does not render the evidence inadmissible. The CA stressed that the integrity of the evidence taken from petitioner was duly preserved.

Hence, this petition raising the sole assignment of error that the CA erred in affirming the conviction of petitioner by the RTC.

Petitioner avers that the prosecution failed to establish the identity of the *corpus delicti*, as well as the regularity of the chain of custody. He submits that the testimony of PO1 Sabo was insufficient to establish the identity of the *shabu* seized and the regularity of the chain of custody. Petitioner opines that the failure of the police officers to observe the proper procedure, such as the lack of physical inventory and the non-taking of photographs, for the custody of the allegedly confiscated drug compromised its integrity. Moreover, petitioner posits that the prosecution failed to establish a valid buy-bust operation as there was no pre-operation report and coordination report filed with the PDEA. Finally, petitioner argues that, assuming that the alleged *shabu* was recovered from him, the same is inadmissible in evidence for being a fruit of the poisonous tree. Petitioner prays that he be acquitted.^[25]

On the other hand, respondent People of the Philippines through the Office of the