

## SECOND DIVISION

**[ G.R. No. 194606, February 18, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALFREDO REYES Y SANTOS, ACCUSED-APPELLANT.**

### **R E S O L U T I O N**

**DEL CASTILLO, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated June 17, 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03459, which affirmed in *toto* the Decision<sup>[2]</sup> dated June 12, 2008 of the Regional Trial Court (RTC), Branch 28, San Fernando City, La Union in Criminal Case No. 6931, finding Alfredo Reyes y Santos (appellant) guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

#### ***Factual Antecedents***

On June 30, 2005, an Information<sup>[3]</sup> charging appellant with violation of Section 5, Article II of R.A. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended, was filed with the RTC of San Fernando City, La Union. Its accusatory allegations read:

That on or about the 29<sup>th</sup> day of June 2005, in the City of San Fernando, (La Union), Philippines, and within the jurisdiction of this Honorable Court the above-named accused, did then and there wilfully, unlawfully and feloniously sell and deliver to a poseur-buyer two (2) heat[-]sealed transparent plastic sachets containing methamphetamine hydrochloride otherwise known as "Shabu," weighing ZERO POINT EIGHTY TWO (0.82) gram and ZERO POINT EIGHTY FIVE (0.85) gram with a total weight of ONE POINT SIXTY SEVEN (1.67) [grams], without first securing the necessary permit, license or prescription from the proper government agency.

CONTRARY TO LAW.<sup>[4]</sup>

Appellant pleaded not guilty during his arraignment. After the termination of the pre-trial conference, trial ensued.

#### ***Version of the Prosecution***

On June 28, 2005, a confidential informant (CI) went to the Philippine Drug Enforcement Agency (PDEA) office in Camp Diego Silang, San Fernando City, La Union and reported to SPO1 Rene Acosta (SPO1 Acosta) that appellant was selling

*shabu*. SPO1 Acosta relayed the information to his superior officer, Senior Inspector Reynaldo Lizardo (Sr. Insp. Lizardo), who formed a buy-bust team and designated SPO1 Acosta as poseur-buyer. The CI contacted appellant by cellular phone and introduced SPO1 Acosta as a buyer of *shabu*. SPO1 Acosta then talked to appellant and they agreed to meet at around 6:00 a.m. the next day at the monument located in *Barangay* Madayedeg, San Fernando City.

On June 29, 2005, SPO1 Acosta and PDEA Agent Ellizier Ignacio (Ignacio), who would act as back-up, arrived in the designated area at 5:30 a.m. Ignacio positioned himself 10 meters away from SPO1 Acosta. Appellant arrived after 20 minutes with the CI and approached SPO1 Acosta. The CI then introduced SPO1 Acosta to appellant as the buyer of *shabu*. SPO1 Acosta asked appellant if he was the same person he talked to over the phone the previous night. When appellant answered in the affirmative, SPO1 Acosta asked him if he has the stuff and if SPO1 Acosta could see them. Appellant thus handed over to SPO1 Acosta two plastic sachets containing white crystalline substance. SPO1 Acosta then made the pre-arranged signal by removing the towel from his shoulder to indicate the completion of the transaction. Ignacio thus rushed to SPO1 Acosta and together, they arrested appellant.

Anent the seized items, SPO1 Acosta took possession of the same up until they were brought to the police station. Thereat, he marked them with his initials "RA." On the same day, Sr. Insp. Lizardo prepared and signed a Request for Laboratory Examination<sup>[5]</sup> that SPO1 Acosta delivered together with the seized plastic sachets to the PNP Crime Laboratory Office in La Union. Police Inspector Valeriano Laya II (P/Insp. Laya) conducted a qualitative examination on the contents of the plastic sachets and confirmed the same to be positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[6]</sup>

### ***Version of the Defense***

Appellant denied the accusations against him. He claimed that on June 28, 2005, he was on board a bus bound for San Fernando City, La Union to discuss a business proposal with his wife's nephew, Rolando Pinon, Jr. (Pinon). However, Pinon was not around when he arrived in the early morning of June 29, 2005. Tired from the long journey, appellant boarded a tricycle and instructed the driver to take him to the cheapest hotel. While on their way, a car suddenly blocked the road and three of the four men on board the vehicle alighted and pointed their guns at him. He was instructed to board the car and taken to Carlatan, San Fernando City, La Union. Upon their arrival, his captors ordered him to face the wall and take off his clothes. They also confiscated his bag and then asked him why there was *shabu* inside. He denied possession of the same. Appellant spent the night in detention and was brought to the RTC of San Fernando City, La Union the following morning.

### ***Ruling of the Regional Trial Court***

The RTC found appellant guilty as charged and disposed of the case in its June 12, 2008 Decision<sup>[7]</sup> as follows:

WHEREFORE, the Court finds accused Alfredo Reyes y Santos GUILTY beyond reasonable doubt for Violation of Section 5, Article II of Republic

Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and sentences him to suffer life imprisonment, and to pay a fine of [O]ne [M]illion [P]esos (Php1,000,000.00).

The accused, who is a detention prisoner, is credited to the full extent of his preventive imprisonment.

The confiscated 1.67 grams of methamphetamine hydrochloride, otherwise known as "shabu," is turned over to the Philippine Drug Enforcement Agency (PDEA), Regional Office, San Fernando City, La Union, for proper disposition.

SO ORDERED.<sup>[8]</sup>

The RTC approved the notice of appeal<sup>[9]</sup> filed by appellant.<sup>[10]</sup> Hence, the entire records of the case was transmitted to the CA where the appeal was docketed as CA-G.R. CR-H.C. No. 03459.

### ***Ruling of the Court of Appeals***

On June 17, 2010, the CA rendered its Decision<sup>[11]</sup> affirming the RTC's judgment of conviction. It ruled that the prosecution's evidence duly established the consummation of the illegal sale of *shabu* and that the seizure, handling, custody and examination of the seized drug were well-documented and undertaken in an uninterrupted manner.

Persistent, appellant filed the instant appeal.<sup>[12]</sup> When asked to file their supplemental briefs,<sup>[13]</sup> both parties opted not to file any as there are no new issues to be raised.<sup>[14]</sup>

### ***Appellant's Argument***

Adopting the same issues he raised in the CA, appellant argues that the prosecution was unable to establish the elements of the illegal sale of *shabu* by failing to identify him as the seller of the *shabu* and to prove that payment was given in consideration thereof. He also asserts that there is no proof that the integrity and evidentiary value of the seized *shabu* was preserved in accordance with Section 21(a) of the Implementing Rules of R.A. 9165. Aside from the fact that the marking of the seized items was not done immediately after seizure in the presence of the persons mentioned by the said law, not even a single photograph of the seized items was taken and submitted by the apprehending officers. Appellant likewise calls attention to the absence of marked money in the buy-bust operation, the failure to provide him with a counsel immediately after his arrest, and his detention for more than 24 hours. According to appellant, these considerations disqualify the arresting officers from enjoying the presumption of regularity in the performance of their official duty. Hence, more credence should have instead been given to his defense of denial.

### ***Our Ruling***

Appellant's conviction must be sustained albeit with modification.

***All elements of illegal sale of dangerous drugs must be proven; receipt of appellant of payment for the purported sale of shabu was not established in this case.***

The crime of illegal sale of dangerous drugs, such as *shabu*, has the following elements: "(1) the identity of the buyer and the seller, the object, and consideration; (2) the delivery of the thing sold and the payment therefor."<sup>[15]</sup> "The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction."<sup>[16]</sup>

In this case, SPO1 Acosta positively identified appellant as the person he transacted with and who handed to him the two sachets of *shabu* presented in court. However, and as correctly pointed out by appellant, the prosecution was unable to discharge its burden of establishing the element of consideration or payment for the sachets of *shabu*. SPO1 Acosta practically admitted in his testimony the lack of consideration or payment for the sachets of *shabu* delivered to him by appellant, *viz*:

- Q Then, after that, Mr. Witness, what happened?  
A "Do you have with you the stuff?", that's my word.  
Q You asked him if he [has the] stuff?  
A Yes, ma'am.  
Q What was his answer?  
A "Yes", that's his word.  
Q When he answered, "Yes", what happened?  
A "Can I see it?", that's my word.  
Q What happened after you asked him you wanted to see it?  
A I was not sure if it was from his bag or from his pocket, but he brought it out from his side and told me that this is the one.
- x x x  
x  
PROS. BONDAD:  
Q After that, when he brought out the stuff and showed the same, what happened afterwards?  
A Then he gave it to me.  
Q When he gave it to you, what happened?  
A When I got hold and confirm[ed] that it was *shabu*, I took off my red towel from my shoulder as a pre-arranged signal and informed the accused that I am a PDEA member.  
Q When you informed the accused that you are a police officer assigned at PDEA, what happened?  
A Then, "You are under arrest and you will now go to our office". We informed him of his constitutional right.<sup>[17]</sup>
- x x x  
x  
Q During your cross-examination, you stated that you did not get the serial number of the money which you are supposed to use during the transaction supposed to be between you and the accused because the reason was that, it was not actually buy-bust but only delivery.

- A Yes, ma'am.
- Q Why did you say that it is only a delivery and there is no need for you to go through the procedure of pre-dusting the money and getting the serial number of the money you are going to use?
- A First and foremost, it is a delivery. In attempting to sell, there is no need to give the money. The moment that I saw the *shabu* and I [was] already able to get hold of it, there is no longer need for me to [get] the money.<sup>[18]</sup>

Clearly, the element of receipt of payment for the thing sold is absent in this case. Hence, the offense of illegal sale of *shabu* against appellant cannot stand. However, this finding does not necessarily result in appellant's exoneration as will be discussed below.

***Appellant is guilty instead of illegal delivery of shabu.***

The Information states that appellant did "wilfully, unlawfully, and feloniously sell and deliver" to PO1 Acosta plastic sachets containing *shabu* with a total weight of 1.67 grams. Thus, the charge against him was not confined to the sale of *shabu*.<sup>[19]</sup> To deliver a dangerous drug is an act that is also punishable under the same Section 5, Article II of R.A. 9165, which provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell**, trade, administer, dispense, **deliver**, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any such transaction. (Emphasis supplied)

Under Article I, Section 3(k) of the same statute, the term "deliver" means "any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration." On the other hand, "sell" as defined in Section 3(ii) refers to "any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration."

To establish the guilt of an accused for the illegal delivery of a dangerous drug, there must be evidence that "(1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery" is not authorized by law; and (3) the accused knowingly made the delivery with or without consideration.<sup>[20]</sup>

In this case, there was a prior arrangement between SPO1 Acosta and appellant to meet. During the scheduled meeting, SPO1 Acosta introduced himself and asked appellant for the *shabu*. Appellant responded by taking out from his pocket the *shabu* and handing over its possession to SPO1 Acosta without receiving any