

SECOND DIVISION

[G.R. No. 193855, February 18, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VIRGILIO LARGO PERONDO, ACCUSED-APPELLANT.**

D E C I S I O N

DEL CASTILLO, J.:

This is an appeal from the December 3, 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00738 that affirmed in *toto* the May 30, 2007 Decision^[2] of the Regional Trial Court (RTC) of Cebu City, Branch 58, in Criminal Case No. CBU-66693 finding appellant Virgilio Largo Perondo (appellant) guilty of Violation of Section 5, Article II of Republic Act (R.A.) No. 9165^[3] and imposing upon him the penalty of life imprisonment and a fine of P500,000.00.

Factual Antecedents

An Information^[4] containing the following accusatory allegations was filed against appellant:

That on or about the 20th day of July 2003, at about 10:45 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer one heat sealed plastic packet of 0.05 gram of white crystalline substance, locally known as "SHABU" containing Methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[5]

Appellant pleaded "not guilty" during his arraignment on October 7, 2003. After the pre-trial conference, trial ensued.

Version of the Prosecution

The prosecution presented Police Senior Inspector Mutchit G. Salinas (PSI Salinas), a Forensic Chemist, and buy-bust team members SPO2 Benjamin G. Genzon, Jr. (SPO2 Genzon) and PO3 Simeon A. Tapanan, Jr. (PO3 Tapanan). From their testimonies, the following version of the incident emerged:

On July 20, 2003, SPO2 Genzon, SPO1 James Estrera (SPO1 Estrera), PO3 Emmanuel Sarmiento (PO3 Sarmiento) and PO3 Tapanan were briefed regarding a planned buy-bust operation to be conducted against appellant on that same day in

Brgy. San Roque, Cebu City. During the briefing, a civilian asset was designated as the poseur-buyer and two 50-peso marked bills were given to him as buy-bust money.

Thereafter, the team proceeded to the target area and, upon arrival, strategically positioned themselves 10 to 15 meters away from the *barangay* hall where appellant was seen standing. The poseur-buyer approached appellant. After briefly talking to the latter, the poseur-buyer took out the 50-peso marked bills from his pocket and gave them to the appellant. In exchange, appellant handed over to the poseur-buyer a small plastic pack containing white crystalline substance. The poseur-buyer examined it and then touched his head, which was the pre-arranged signal that the transaction was already consummated. The members of the buy-bust team then rushed to the scene and arrested appellant. They recovered from him the buy-bust money. Anent the plastic sachet, PO3 Tapanan retrieved the same from the poseur-buyer while PO3 Sarmiento wrote thereon appellant's initials. A qualitative examination conducted on the contents of the plastic sachet by PSI Salinas later revealed that the substance is positive for methamphetamine hydrochloride or *shabu*.

Version of the Defense

Appellant denied that a buy-bust operation was conducted against him. Instead, he claimed that at around 9:15 p.m. of July 20, 2003, he was eating and watching television at a barbecue stand when he was suddenly arrested by SPO1 Estrera, PO3 Sarmiento and PO3 Tapanan. He was then taken to a police station and interrogated on the identities of big time drug dealers in Cebu. Because he was not able to provide any information as he is not even from Cebu, the police officers blotted an incident implicating him in the alleged sale of *shabu*.

Ruling of the Regional Trial Court

The RTC gave credence to the testimony of the prosecution witnesses and convicted appellant of the crime charged. In its May 30, 2007 Decision,^[6] it disposed of the case as follows:

Accordingly, this court finds the accused GUILTY as charged and hereby sentences him to Life Imprisonment and to pay a fine of P500,000.00.

The pack of shabu, Exhibit "B", is confiscated in favor of the state for proper disposition.

SO ORDERED.^[7]

Appellant filed a Notice of Appeal,^[8] which was approved by the RTC. Hence, the entire records of the case were forwarded to the CA.^[9]

Ruling of the Court of Appeals

In his Brief,^[10] appellant maintained that the RTC erred in finding him guilty of the

offense charged because: (1) the members of the buy-bust team could not give an accurate account of what really transpired during the alleged operation; (2) there was no pre-operation report submitted to the Philippine Drug Enforcement Agency (PDEA); (3) the poseur-buyer was not presented as witness; and (4) the prosecution failed to establish the *corpus delicti*.

On the other hand, appellee, through the Office of the Solicitor General (OSG), averred that: (1) the prosecution was able to prove all the elements of the offense charged; (2) the failure to present the poseur buyer as witness is not fatal since his testimony would merely be corroborative to the testimonies of the police officers who positively identified appellant as the seller; (3) the presumption of regularity on the part of the police officers was correctly applied by the RTC since no improper motive was attributed to them; (4) a pre-operation report to the PDEA is not a requirement under R.A. 9165; and (5) the prosecution was able to prove the identity of the confiscated drug.^[11]

Agreeing with the OSG, the CA ruled as follows in its December 3, 2009 Decision:^[12]

WHEREFORE, premises considered, the assailed Decision dated May 30, 2007 of the Regional Trial Court of Cebu City, Branch 58 is hereby AFFIRMED in *toto*.

No costs.

SO ORDERED.^[13]

Hence, this appeal.

Issue

Appellant's lone assignment of error in his Appellant's Brief filed with the CA which he adopted in this appeal per a Manifestation In Lieu of Supplemental Brief^[14] is as follows:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF VIOLATING SECTION 5, ARTICLE II OF REPUBLIC ACT 9165 DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[15]

Our Ruling

There is no merit in the appeal.

All the elements of the offense of Illegal Sale of Shabu were proven in this case.

In a successful prosecution for illegal sale of *shabu*, the following elements must

concur: "(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 therefor. x x x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*."^[16]

In this case, the prosecution successfully proved the existence of all the essential elements of illegal sale of *shabu*. Appellant was positively identified by the police officers who conducted the buy-bust operation as the person who sold the *shabu* to the poseur buyer. PO3 Tapanan testified, viz:

Q It was SPO2 Benjamin Genzon, Jr. who conducted the briefing?

A Yes, sir.

Q How was the briefing conducted?

A We have two (2) P50.00 peso bills to be used as buy[-]bust money.

Q Who will do the role as poseur[-]buyer?

A Civilian asset.

Q Did you reach the place where you were to conduct buy-bust operation?

A Yes, sir.

Q Where was that place?

A Barangay San Roque.

Q When you were already there, can you tell this court what happened?

A Our poseur[-]buyer was already talking with the subject.

Q Was he alone at that time?

A Yes, sir.

Q How far were you from the police asset and the subject?

A About 15 meters.

Q In that place did you actually see what happened?

A Yes, sir.

Q What did you see?

A The asset was touching his head as a pre-arranged signal which shows that the transaction was already consummated.

Q When you saw the signal, what did you do?

A We immediately approached him.

Q When you said "we" what do you mean, who were with you?

A SPO1 James Estrera, PO3 Emmanuel Sarmiento and SPO2 Benjamin Genzon, Jr.

Q When you reach[ed] near them, what happened?

A We arrested the subject.

Q What did you recover from the subject?

A (A) Small plastic pack of white crystalline substance and two pieces P50.00[-]peso bills used as buy-bust money.

x x x

x

Q Do you mean that the shabu was in the possession of the accused?

A The two pieces of P50.00 peso bills [were] in his

possession but the shabu was in the possession of our asset.

Q When you x x x already arrested the suspect, what did you do?

A We informed him of [his] constitutional rights.

x x x

x

Q After you informed him [of] the nature of his crime and his rights, what happened next?

A We detained him.

Q If the suspect Virgilio Largo Perondo the accused is inside the court room, can you still identify him?

A Yes, sir. (Witness points to a person who is raising his right hand and who when asked [of] his name answer[ed] Virgilio Largo Perondo.)

Q When you said you were able to recover one small pack of shabu and 2 pcs. [of] P50.00[-]peso bills, where are these now?

A We submitted [them] to the crime laboratory for examination?

Q I have here Exhibit "B," a small pack of shabu that was examined by PSI Mutchit Salinas per Chemistry Report No. D-1252-2003, look at this and tell this Honorable Court whether this is the very same small plastic pack of white crystalline substance that was recovered from the possession of accused Virgilio Perondo?

A Yes, sir, this is the very same evidence.

Q How do you know?

A [It has] the initial[s] [of the] name of the accused.

Q Who wrote the initial[s]?

A PO3 Emmanuel Sarmiento.

Q Were you around when that was marked?

A Yes, sir.

Q Who brought this item to the PNP Crime Laboratory?

A I was the one.

Q Was there a letter-request attached to the specimen?

A Yes, sir, there was.

Q I will show you this letter request, please go over this and tell this Honorable Court if this [is] the one that you are referring to?

A Yes, sir. ^[17]

SPO2 Genzon corroborated the testimony of PO3 Tapanan on material points. He testified as follows:

Q On July 20, 2003, where were you assigned?

A At Police Station 3 Legaspi Extension, Cebu City.

Q At around 10:45 in the evening of the same day, can you remember where you were?

A We conducted a buy-bust operation at Brgy. San Roque, Cebu City.

Q Who was the subject of the buy-bust operation?

A Virgilio Largo Perondo, sir.