

## FIRST DIVISION

[ G.R. No. 200336, February 11, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROWENA TAPUGAY Y VENTURA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

Before this Court for resolution is the appeal filed by Rowena Tapugay y Ventura (appellant) assailing the 8 June 2011 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03032 which affirmed the Regional Trial Court's (RTC) 27 September 2007 Decision<sup>[2]</sup> in Criminal Case No. 11011-16 finding the accused guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

#### **Factual Antecedents**

Appellant was charged before RTC, Branch 16, Laoag City for violation of Section 5, Article II of R.A No. 9165 in an information that reads:

That on or about 8:00 P.M. of 28 November 2003, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously sell to PO2 Dominic Garcia who acted as a poseur-buyer one (1) plastic sachet containing SHABU weighing 0.1 gram including plastic sachet, a regulated drug, without any authority, license or permit to sell the same.

<sup>[3]</sup>

During arraignment, appellant, assisted by his counsel, pleaded not guilty to the crime charged. Pre-trial and trial thereafter ensued.

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

On 28 November 2003, at around 7 o'clock in the evening, the Chief of the Intelligence Section of the Philippine National Police (PNP) of Laoag City, SPO3 Rovimmanuel Balolong (SPO3 Balolong), received a phone call from a concerned citizen reporting the illegal drug activities of Rowena Tapugay (Rowena). SPO3 Balolong immediately relayed the information to their Chief of Police, Col. Joel D. Pagdilao.<sup>[4]</sup>

A team composed of SPO3 Balolong, SPO2 Ernesto Bal, PO1 Jonel Mangapit, and PO2 Dominic Garcia (PO2 Garcia) was immediately formed to conduct a buy-bust operation.<sup>[5]</sup>

Before proceeding to the target area, which is the residence of appellant at

Barangay 17, Laoag City,<sup>[6]</sup> the team discussed the details of the operation as follows: (i) PO2 Garcia, who was designated as the *poseur* buyer,<sup>[7]</sup> would use a Five Hundred-Peso (Php500.00) bill marked with the initials "RVB"<sup>[8]</sup> and with serial number SNJN 693285<sup>[9]</sup> to buy *shabu* from appellant who was described as fat with long hair and wearing a sleeveless red shirt; and (ii) the rest of the team would serve as his back-up.<sup>[10]</sup>

Upon arrival at the *locus criminis* at around 8 o'clock in the evening, PO2 Garcia walked towards three (3) women who were then conversing, while the other members of the team strategically positioned themselves. PO2 Garcia approached the woman in a red sleeveless shirt and told her that he was going to buy *shabu* worth (Php500.00).<sup>[11]</sup>

PO2 Garcia then handed to appellant the marked Five Hundred Peso (Php500.00) bill. Appellant thereafter pocketed the money and asked PO2 Garcia to come near her. Appellant then reached inside her jeans' pocket to get the *shabu* and handed it to PO2 Garcia.<sup>[12]</sup>

It was at this time that PO2 Garcia introduced himself as a police officer and grabbed appellant.<sup>[13]</sup> The other members of the team then rushed in to assist PO2 Garcia in arresting the suspect.<sup>[14]</sup> SPO3 Balolong recovered from Rowena the marked Php500.00 bill.<sup>[15]</sup> Appellant was not able to produce any document showing her authority to sell *shabu* when asked by SPO3 Balolong.<sup>[16]</sup>

After informing appellant of her constitutional rights, the arresting team brought her to the police station.<sup>[17]</sup> The marked Php500.00 bill and the seized suspected *shabu* placed inside a plastic sachet were turned over to SPO2 Loreto Ancheta (SPO2 Ancheta), the Evidence Custodian of the Investigation Section.<sup>[18]</sup>

The plastic sachet containing white crystalline substance was then sent to the PNP Crime Laboratory in San Fernando, La Union for laboratory examination. Police Inspector Valeriano Panem Laya II (P/Insp. Laya), a Forensic Chemist, testified that he conducted an examination on the white crystalline substance and found that it is positive for methamphetamine hydrochloride.<sup>[19]</sup>

### **Version of the Defense**

Appellant denied the accusations against her. The defense insisted that Rowena was having dinner inside her house at around 8 o'clock in the evening of 28 November 2003 when police officers suddenly entered and grabbed her. She was allegedly searched but the policemen did not find anything inside her pocket. Rowena was thereafter forced outside her house, placed inside a police car, and brought to the police station.

### **Ruling of the RTC**

In a Decision<sup>[20]</sup> dated 27 September 2009, the trial court found Rowena guilty beyond reasonable doubt of the offense charged and sentenced her to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos

(Php500,000.00). The trial court ruled that the evidence presented by the prosecution successfully established the elements of illegal sale of drugs as accused was caught in *flagrante delicto* in a valid buy-bust operation. It noted that the defense of denial offered by the accused cannot overturn the presumption of regularity in the performance of official duties accorded to the apprehending officers.

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

On intermediate appellate review, the CA found no reason to disturb the findings of the RTC and upheld in *toto* its ruling. The appellate court agreed with the RTC that credence should be accorded to the testimonies of the prosecution witnesses and in holding that the apprehending officers complied with the proper procedure in the custody and disposition of the seized drugs.

### **Issues**

Whether the trial court gravely erred in convicting appellant despite the prosecution's failure to prove the identity of the *corpus delicti* with moral certainty.<sup>[21]</sup>

Whether the trial court gravely erred in convicting appellant despite the arresting officer's non-compliance with the requirements for the proper custody of seized dangerous drugs under R.A. No. 9165.<sup>[22]</sup>

### **Our Ruling**

We find the appeal bereft of merit and affirm appellant's guilt.

In the prosecution of a case of illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. 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>[23]</sup>

After a careful evaluation of the records, we find that these elements were clearly met. The prosecution's evidence positively identified PO2 Garcia as the buyer and Rowena as the seller of the *shabu*. Likewise, the prosecution presented in evidence one heat-sealed transparent plastic sachet containing *shabu* as the object of the sale and the marked Php500.00 as consideration thereof. Finally, the delivery of the *shabu* sold and its payment were clearly testified to by the prosecution witnesses.

Rowena's defense which is anchored principally on denial and frame-up cannot be given credence. It does not have more evidentiary weight than the positive assertions of the prosecution witnesses. Her defense is unavailing considering that she was caught in *flagrante delicto* in a legitimate buy-bust operation. This Court has ruled that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecution for violation of the

Dangerous Drugs Act.<sup>[24]</sup> Moreover, we noted the inconsistency in the position of the defense. The defense witnesses maintain that the police officers searched and dipped their hands in the pocket of Rowena but did not find any money. During pre-trial, however, the defense admitted that the police officers recovered from Rowena one (1) Five Hundred Peso bill bearing serial number JN 693285.<sup>[25]</sup> It would be difficult to comprehend how the Php500.00 bill which was documented on the police blotter report ended with Rowena unless she received this from PO2 Garcia during the buy-bust operation.

Rowena submits that the trial court failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II, of R.A. No. 9165.<sup>[26]</sup> She alleged that other than the defective marking of a police investigator, who was not even part of the buy-bust team, no physical inventory was made or a photograph of the seized item was ever taken.<sup>[27]</sup> Further, she averred that the laboratory examination of the confiscated item was done three days after its seizure and the report thereon released five days thereafter.<sup>[28]</sup> She maintained that such failure casts doubt on the validity of her arrest and the identity of *shabu* allegedly seized and confiscated from her, forwarded by the apprehending officers to the investigating officer, to the crime laboratory for examination, and later presented in court.

Relevant to the instant case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

The last part of the aforequoted issuance provided the exception to the strict compliance with the requirements of Section 21 of R.A. No. 9165. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient.<sup>[29]</sup> This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.<sup>[30]</sup> What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in