

## FIRST DIVISION

[ G.R. No. 192432, June 23, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY MENDOZA Y ESTRADA, ACCUSED-APPELLANT.**

### DECISION

**BERSAMIN, J.:**

The law enforcement agents who conduct buy-bust operations against persons suspected of drug trafficking in violation of Republic Act No. 9165 (RA No. 9165), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, should comply with the statutory requirements for preserving the chain of custody of the seized evidence. Failing this, they are required to render sufficient reasons for their non-compliance during the trial; otherwise, the presumption that they have regularly performed their official duties cannot obtain, and the persons they charge should be acquitted on the ground of reasonable doubt.

#### The Case

This appeal seeks the review and reversal of the decision promulgated on April 26, 2010 in CA-G.R. CR-H.C. No. 03901 entitled *People of the Philippines v. Larry Mendoza y Estrada*,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed the judgment rendered on February 24, 2009 by the Regional Trial Court (RTC), Branch 67, in Binangonan, Rizal finding accused Larry Mendoza y Estrada guilty of a violation of Section 5 and a violation of Section 11, Article II of RA No. 9165.<sup>[2]</sup>

#### Antecedents

The accusatory portion of the information charging the violation of Section 5 of RA No. 9165 reads:

That on or about the 28<sup>th</sup> day of August 2007, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur buyer (PO1 Arnel D. Diocena), 0.03 gram and 0.01 gram or a total weight of 0.04 gram of white crystalline substance contained in two (2) heat-sealed transparent plastic sachets, which substance was found positive to the test for Methylamphetamine hydrochloride also known as "*shabu*", a dangerous drug, in consideration of the amount of Php 500.00, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[3]</sup>

The accusatory portion of the information charging the violation of Section 11 of RA No. 9165 alleges:

That, on or about the 28<sup>th</sup> day of August 2007, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did, then and there willfully, unlawfully and knowingly possess and have in his custody and control 0.01 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which substance was found positive to the test for Methylamphetamine hydrochloride also known as "*shabu*", a dangerous drug, in violation of the above-cited law.

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

After the accused pleaded *not guilty* to both informations,<sup>[5]</sup> the State presented Sr. Insp. Vivian C. Sumobay, PO1 Arnel D. Diocena and Insp. Alfredo DG Lim as its witnesses, while the witnesses for the Defense were the accused himself, Lolita Flores and Analiza Acapin.

The CA summarized the respective versions of the parties in the decision under review as follows:

#### **Evidence for the Prosecution**

As culled from the herein assailed Decision, the prosecution presented the following witnesses:

"x x x **Policemen Arnel Diocena and Alfredo DG Lim** testified that, on September 29, 2007, they received reports that an alias 'Larry' was selling *shabu* at St. Claire Street, Barangay Calumpang, Binangonan, Rizal. They organized a **buy-bust operation** where Diocena acted as the poseur buyer while Lim served as back-up. They proceeded to the target area with their asset at around 10:45 p.m. There Diocena and the asset waited in the corner on their motorcycle while Lim and the other cops positioned themselves in the perimeter. The asset texted Larry and they waited for him to arrive. Later, Larry arrived and told them, '*Pasensya na at ngayon lang dumating ang mga items.*' Larry then asked them how much they were buying and Diocena told P500.00 worth. Larry took out *two plastic sachets of shabu* and gave it to Diocena who gave him a **marked P500 bill (exhibit 'D')**. **Diocena** lit the left signal light of his motorcycle to signal Lim and the other cops that the deal was done. They then arrested Larry who turned out to be the accused. **After frisking him, they recovered another sachet of *shabu* from him.** Diocena marked the first two '**LEM-1**' and '**LEM-2**' while the one taken after the frisk he marked '**LEM-3**' (TSN dated April 23 and July 17, 2008, exhibits 'D', 'E' and 'F'). These were sent to the police crime lab for forensic testing where they tested positive for 0.03 ('LEM-1'), 0.01 ('LEM-2') and 0.01 ('LEM-3') grams for **Methylamphetamine Hydrochloride or *shabu*** respectively (TSN dated December 5, 2007, exhibits 'A', 'B' and 'C'). '**LEM-1**' and '**LEM-2**' were made the basis of the pushing charge while '**LEM-3**' the one for possession."

## **Evidence for the Defense**

The defense witnesses' version of facts, as summarized in the herein assailed Decision, is as follows:

"x x x On that day, he was minding his own business, eating with his wife when his friend Rolly Lopez knocked on the door. **Rolly was wanted by the cops ('may atraso') and asked Mendoza for help to get them off his back.** Rolly texted somebody and after there was another knock. It was the police led by one **Dennis Gorospe** who asked Mendoza for his identity. When he said yes, Gorospe cuffed him after showing him sachets of *shabu* with his initials. Gorospe was then taken to the police station where he was interrogated and asked how much **protection money** he can cough up. When he refused, he was arrested and drug tested. He claims that he was supposed to be a *regalo* to the new police chief. (TSN dated August 27, October 9, November 26, 2008 and February 18, 2009)<sup>[6]</sup>

## **Ruling of the RTC**

On February 24, 2009, the RTC convicted the accused of the crimes charged,<sup>[7]</sup> disposing:

We thus find accused Larry Mendoza **GUILTY** beyond reasonable doubt of violating Section 5 of R.A. No. 9165 and sentence him to suffer a penalty of life imprisonment and to pay a fine of P500,000.00. We also find him **GUILTY** beyond reasonable doubt of violating Section 11 of R.A. No. 9165 and illegally possessing a total of 0.01 grams of Methylamphetamine Hydrochloride or *shabu* and accordingly sentence him to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of P300,000.00

Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.

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

## **Judgment of the CA**

The accused appealed, contending that the identity of the *corpus delicti* and the fact of illegal sale had not been established beyond reasonable doubt; that PO1 Diocena's testimony on the sale of the illegal drugs and on the buy-bust operation had not been corroborated; that the Prosecution had patently failed to show compliance with the requirements of Section 21 of RA No. 9165; and that such failure to show compliance had negated the presumption of regularity accorded to the apprehending police officers, and should warrant his acquittal.<sup>[9]</sup>

On April 26, 2010, the CA affirmed the conviction of the accused,<sup>[10]</sup> holding and ruling thusly:

x x x [I]t is worthy of mention that prosecution of cases for violation of the Dangerous Drugs Act arising from buy-bust operations largely depend on the credibility of the police officers who conducted them. Unless clear and convincing evidence is proffered showing that the members of the buy-bust team were driven by any improper motive or were not properly performing their duty, **their testimonies on the operation deserve full faith and credit.**

Here, accused-appellant failed to present any plausible reason or ill-motive on the part of the police officers to falsely impute to him such a serious and unfounded charge. We thus are obliged to accord great respect to and treat with finality the findings of the trial court on the prosecution witnesses' credibility. After all, it is settled doctrine that the trial court's evaluation of the credibility of a testimony is accorded the highest respect, for the trial court has the distinct opportunity of directly observing the demeanor of a witness and, thus, to determine whether he is telling the truth.

Accused-appellant's argument that the procedural requirements of Section 21, paragraph 1 of Article II of Republic Act No. 9165 with respect to the custody and disposition of confiscated drugs were not complied with is equally bereft of merit.

x x x x

Verily, failure of the police officers to strictly comply with the subject procedure is not fatal [to] **the integrity and the evidentiary value of the confiscated/seized items having been properly preserved** by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or items seized/confiscated from him inadmissible. For, 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 the determination of the guilt or innocence of the accused.

x x x x

It thus behooves Us to believe that **all the links in the chain** – from the moment it was seized from the accused-appellant, marked in evidence and submitted to the crime laboratory, up to the time it was offered in evidence – **were sufficiently established** in this case.

We are thus constrained to uphold accused-appellant's conviction. x x x x

**WHEREFORE**, the instant appeal is **DISMISSED**. The assailed Decision dated February 24, 2009 is **AFFIRMED**.

**SO ORDERED.**<sup>[11]</sup>

### **Issue**

In this appeal, the accused presents the lone issue of whether the CA erred in finding him guilty beyond reasonable doubt of the violations of Section 5 and

### **Ruling of the Court**

The appeal is meritorious.

#### **1.**

**The State did not satisfactorily explain substantial lapses committed by the buy-bust team in the chain of custody; hence, the guilt of the accused for the crime charged was not established beyond reasonable doubt**

The presentation of the dangerous drugs as evidence in court is material if not indispensable in every prosecution for the illegal sale of dangerous drugs. As such, the identity of the dangerous drugs should be established beyond doubt by showing that the dangerous drugs offered in court were the same substances bought during the buy-bust operation. This rigorous requirement, known under RA No. 9165 as the chain of custody, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.<sup>[12]</sup> As the Court has expounded in *People v. Catalan*,<sup>[13]</sup> the dangerous drugs are themselves the *corpus delicti*; hence:

To discharge its duty of establishing the guilt of the accused beyond reasonable doubt, therefore, the Prosecution must prove the *corpus delicti*. That proof is vital to a judgment of conviction. On the other hand, the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 when the dangerous drugs are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.<sup>[14]</sup>

As the means of ensuring the establishment of the chain of custody, Section 21 (1) of RA No. 9165 specifies that:

(1) The apprehending 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.

The following guideline in the Implementing Rules and Regulations (IRR) of RA No. 9165 complements Section 21 (1) of RA No. 9165, to wit:

(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