

SECOND DIVISION

[G.R. No. 191730, June 05, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MYLENE TORRES Y CRUZ, ACCUSED-APPELLANT.**

D E C I S I O N

PEREZ, J.:

This is an appeal from the Decision^[1] dated 11 February 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03454, affirming *in toto* the Decision^[2] dated 17 August 2007 of the Regional Trial Court (RTC) of Pasig City, Branch 154, in Criminal Case No. 15342-D, finding herein appellant Mylene Torres y Cruz guilty beyond reasonable doubt of illegal sale of *shabu*, under Section 5,^[3] Article II of Republic Act No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*, thereby, sentencing her to suffer the penalty of life imprisonment and ordering her to pay a fine of P1,000,000.00.

In an Information^[4] dated 19 January 2007, appellant Mylene Torres y Cruz was charged with violation of Section 5, Article II of Republic Act No. 9165, docketed as Criminal Case No. 15342-D, the accusatory portion of which reads:

On or about [17 January 2007], in Pasig City and within the jurisdiction of this Honorable Court, [herein appellant], did then and there willfully, unlawfully and feloniously **sell, deliver and give away** to PO1 Jayson Rivera, a police poseur[-]buyer, **one (1) heat-sealed transparent plastic bag containing 0.04 gram of white crystalline substance**, which was **found positive to the test for methylamphetamine hydrochloride**, a dangerous drug, in violation of the said law.^[5] (Emphasis supplied).

On arraignment, appellant, with the assistance of counsel *de officio*, pleaded NOT GUILTY^[6] to the crime charged.

At the pre-trial conference, the parties stipulated on the following: (1) the existence and due execution of the Request for Laboratory Examination^[7] and the Forensic Chemist Report^[8] with the qualification made by the defense that the *shabu* alleged to be the subject thereof was not taken from appellant, and if ever it was taken from her, the same was illegally obtained; (2) the existence and due execution of the Joint Affidavit of Arrest;^[9] and (3) the specimen described in the Request for Laboratory Examination was the same specimen submitted to the crime laboratory for examination, which yielded positive result for *methylamphetamine hydrochloride*, but without admitting that the forensic chemist had knowledge as to

its origin or that it came from appellant.^[10]

There being no other facts proposed for further stipulation between the parties, the pre-trial conference was terminated and trial on the merits thereafter ensued.

The prosecution presented as witnesses Police Inspector 1 Jayson Rivera (PO1 Rivera) and PO1 Jeffrey Male (PO1 Male), who were the designated *poseur*-buyer and immediate back-up officer, respectively, in the buy-bust operation conducted against appellant. Both are members of the Philippine National Police (PNP) assigned at the Eastern Police District, District Anti-Illegal Drugs Special Operation Task Force (DAIDSOTF), Pasig City.

The evidence for the prosecution reveals the following facts:

While on duty at DAIDSOTF on 17 January 2007, PO1 Rivera received information from an unidentified caller that a certain Mylene, who turned out later to be the appellant, was engaged in the sale of dangerous drugs in Pinagbuhatan, Pasig City. On the basis thereof, the police conducted surveillance and casing operation with a positive result. Thereafter, a team was formed to conduct a buy-bust operation, which was composed of PO1 Rivera (*poseur*-buyer), PO1 Male (immediate back-up officer), a certain Senior Police Officer 1 Bautista, PO2 Floriano Resco, PO2 Michael Familiara, Police Senior Inspector Glade Esguerra (PS/Insp. Esguerra - team leader) and the confidential informant. The buy-bust money of two 100-peso bills^[11] was given to PO1 Rivera. A Pre-Operation Report/Coordination Sheet^[12] was also prepared and sent to the Philippine Drug Enforcement Agency (PDEA) for compliance with the required coordination.^[13]

At around 3:00 p.m., the team proceeded to the target area, *i.e.*, appellant's house in Baltazar St., Pinagbuhatan, Pasig City, on board two tricycles and two motorcycles. On arrival, they parked their vehicles five meters away from appellant's house. Then, PO1 Rivera and the confidential informant went ahead to appellant's house while the rest of the buy-bust team strategically positioned themselves nearby. Upon reaching appellant's house, the confidential informant immediately identified appellant. Right away, PO1 Rivera, together with the confidential informant, approached appellant saying: "*Iiskor ako panggamit*" to which the latter replied: "*Oo pards meron ako.*"^[14] PO1 Rivera then gave to appellant the P200.00 buy-bust money and the latter, in turn, handed to the former the one heat-sealed transparent plastic sachet containing white crystalline substance. Thereupon, PO1 Rivera scratched his head, which was the agreed pre-arranged signal that the sale was consummated, grabbed appellant, introduced himself to her as a police officer and apprised her of her violation. At this juncture, PO1 Male, who was just seven to eight meters away from the target area and witnessed the sale, rushed to the scene and assisted PO1 Rivera in arresting appellant.^[15] PO1 Male then recovered from appellant the buy-bust money. PO1 Rivera, on the other hand, remained in possession of the one heat-sealed transparent plastic sachet containing white crystalline substance subject of the sale. PO1 Rivera and PO1 Male, together with the rest of the buy-bust team, subsequently brought appellant and the confiscated item to their office where appellant was further investigated.^[16]

At their office, PO1 Rivera placed a scotch tape and put his initials "JLR" on the one

heat-sealed transparent plastic sachet subject of the sale and turned it over to the investigator.^[17] A Request for Laboratory Examination of the said specimen was prepared. The request and the specimen were brought to the crime laboratory for examination.^[18] Police Senior Inspector Isidro L. Carino (PS/Insp. Carino), Forensic Chemical Officer of the PNP Crime Laboratory, Eastern Police District Crime Laboratory Office, examined the specimen. It tested positive for *methylamphetamine hydrochloride* or *shabu*.^[19]

For its part, the defense presented appellant and Flordeliza De Vera (Flordeliza), daughter of appellant's live-in partner, whose testimonies consisted of bare denials. Their version of what transpired on 17 January 2007 is as follows:

Between 2:00 p.m. to 3:00 p.m. of 17 January 2007, appellant was sleeping at the second floor of her house located in Baltazar St., Pinagbuhatan, Pasig City. At around 3:00 p.m., appellant was suddenly awakened by a commotion coming from the stairs. Upon checking, appellant saw armed police officers inside her house. The police simply ignored her and, instead, began to search the place. Though nothing was found in appellant's possession, the police officers still frisked her and invited her to the police station. Upon reaching the police station, appellant was incarcerated. When asked for the reason why so, the police officers, in turn, asked appellant for the whereabouts of a certain Allan, who is known for selling *shabu*. Appellant denied that she knew such person. She was then brought to the crime laboratory and subjected to a drug test. The result was not made known to her.^[20]

Appellant's narration was corroborated by Flordeliza on all material points. She testified that at around 3:00 p.m. of 17 January 2007, she was at the ground floor of their house (in the yard) washing clothes. Appellant was sleeping on the second floor of their house, together with her one-year old daughter. While doing the laundry, five police officers (four male and one female) suddenly barged inside their house, went upstairs and searched the place. Afterward, the police officers brought appellant with them. Flordeliza was similarly invited by the police officers to go with them but appellant told the police about her one-year old daughter. The police officers brought with them only the appellant. Flordeliza affirmed that when the police officers went to their house and took appellant, they were looking for a certain Allan.^[21]

Giving credence to the testimonies of the prosecution witnesses as having established with competent and convincing evidence all the elements of the crime charged, the trial court rendered a judgment of conviction against appellant in its Decision dated 17 August 2007, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered finding the [herein appellant] **MYLENE TORRES y Cruz GUILTY** beyond reasonable doubt of the offense charged in the Information and she is sentenced to suffer **LIFE IMPRISONMENT**. She is also ordered to pay a fine of **ONE MILLION PESOS**[.]^[22] (Emphasis supplied).

On appeal,^[23] appellant submitted the following assigned errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [HEREIN APPELLANT] DESPITE THE FAILURE TO COMPLY WITH SECTION 21 OF REPUBLIC ACT NO. 9165.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.^[24]

In a Decision dated 11 February 2010, the Court of Appeals affirmed *in toto* the Decision of the trial court. It held that all the elements of the crime charged, *i.e.*, illegal sale of drugs, have been proven and established beyond reasonable doubt by the prosecution. The same was coupled with the presentation in court of *corpus delicti* as evidence. It also found the prosecution witnesses' testimonies sufficient to establish the various links in the chain of custody of the seized prohibited drug. This, despite the police officers' failure to take photographs and to inventory the drug seized from appellant, the prosecution was able to preserve the integrity and evidentiary value of the illegal drug. The police officers were found not to have any motive other than their duty to enforce the law.

Appellant is now before this Court contending that the police officers did not comply with the mandatory procedure for handling dangerous drugs set forth in Section 21 of Republic Act No. 9165, particularly the physical inventory and the taking of photograph of the seized item; and that the prosecution failed to prove beyond reasonable doubt that the one-heat sealed transparent plastic sachet containing white crystalline substance that was admitted in evidence during trial was the same item seized from her during the buy-bust operation. Such gap in the chain of custody of the seized item created reasonable doubt on appellant's culpability, thus, merits her acquittal from the crime charged.

Appellant's contentions fail to persuade.

To begin with, it is a fundamental principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings.^[25] This is so because the trial court is in a unique position to observe the witnesses' demeanor on the witness stand.^[26] The above rule finds an even more stringent application where said findings are sustained by the Court of Appeals,^[27] like in the case under consideration.

In a catena of cases, this Court laid down the essential elements to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous or prohibited drugs, like *shabu*, under Section 5, Article II of Republic Act No. 9165, to wit: (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 payment therefor.^[28] Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the

marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.^[29]

In this case, the prosecution successfully established all the above-mentioned elements beyond moral certainty. Prosecution witnesses PO1 Rivera and PO1 Male amply proved that a buy-bust operation actually took place. On the occasion thereof, appellant was caught red-handed delivering one-heat sealed transparent plastic sachet containing white crystalline substance to PO1 Rivera, the *poseur*-buyer, in exchange for P200.00. Being the *poseur*-buyer, PO1 Rivera unwaveringly and positively identified appellant in open court to be the same person who sold to him the aforesaid one-heat sealed transparent plastic sachet containing white crystalline substance for a consideration of P200.00.^[30] The white crystalline substance contained in the one-heat sealed transparent plastic sachet handed by appellant to PO1 Rivera was examined and later on confirmed to be *methylamphetamine hydrochloride* or *shabu* per Physical Sciences Report No. D-63-07E dated 17 January 2007 issued by PS/Insp. Carino, Forensic Chemical Officer of the PNP Crime Laboratory, Eastern Police District Crime Laboratory Office. Upon presentation thereof in open court, PO1 Rivera duly identified it to be the same object sold to him by appellant.^[31]

Undoubtedly, the prosecution established beyond reasonable doubt appellant's guilt for the offense of sale of *shabu* in violation of Section 5, Article II of Republic Act No. 9165.

Equally important in every prosecution for illegal sale of dangerous or prohibited drugs is the presentation in evidence of the seized drug as the *corpus delicti*. The identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit.^[32] In this regard, paragraph 1, Section 21, Article II of Republic Act No. 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized,^[33] to wit:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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