

## SECOND DIVISION

[ G.R. No. 196973, July 31, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUPER POSING Y ALAYON, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

For review through this appeal<sup>[1]</sup> is the Decision<sup>[2]</sup> dated 30 November 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03858 which affirmed the conviction of herein accused-appellant RUPER POSING y ALAYON of illegal sale and illegal possession of dangerous drugs in violation of Sections 5<sup>[3]</sup> and 11<sup>[4]</sup> respectively, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The factual antecedents of the case are as follows:

The prosecution presented SPO1 Purisimo Angeles (SPO1 Angeles), who testified that while on duty on 13 August 2003, at the Station Anti Illegal Drugs (SAID), an asset based at Makabayan St., Brgy. Obrero informed the duty officer about the illegal activities of certain Ruper Posing (Posing), a known drug pusher in their *barangay*. As a result, Chief P/Inspector Arturo Caballes (Chief Caballes) formed a team to conduct a buy bust operation. <sup>[5]</sup> A one hundred peso bill (P100.00) was given by Chief Caballes with his initials, to serve as the marked money.<sup>[6]</sup>

SPO1 Angeles together with PO1 Jesus Cortez (PO1 Cortez), PO1 Ralph Nicart (PO1 Nicart) and the informant were dispatched to Makabayan St., Brgy. Obrero, Kamuning, Quezon City, and upon arrival, the informant and SPO1 Angeles proceeded to the squatter's area. On the other hand, his companions positioned themselves within viewing distance.<sup>[7]</sup>

SPO1 Angeles met Posing beside the basketball court, where he was introduced by the informant as a buyer of *shabu*. The former asked if he could buy one hundred peso (P100.00) worth of *shabu* for personal use. Posing then pulled out one (1) transparent plastic sachet from his pocket and gave it to SPO1 Angeles in exchange for the buy-bust money. Afterwards, SPO1 Angeles took out his cap to alert his companions that the deal was already concluded. PO1 Cortez and PO1 Nicart rushed to the scene and introduced themselves as police officers. Posing was frisked, and the buy- bust money and another transparent plastic sachet were recovered from him. Afterwards, the suspect and the evidence were taken to the station.<sup>[8]</sup>

Prior to the turnover of the evidence to the desk officer, SPO1 Angeles placed his marking on the two (2) small heat sealed transparent plastic sachets.<sup>[9]</sup> The same were then turned over to PO2 John Sales (PO2 Sales), who prepared a request for

laboratory examination.<sup>[10]</sup>

On the same day, the specimens were delivered by PO1 Nicart to the Philippine National Police (PNP) Crime Laboratory for quantitative and qualitative examination, wherein each sachet was found to contain 0.03 gram and tested positive for methylamphetamine hydrochloride or shabu, a dangerous drug.<sup>[11]</sup>

Both parties agreed to dispense with the testimonies of the following witnesses, and entered into stipulations, to wit:

As regards Engr. Leonard Jabonillo (Engr. Jabonillo):

- 1) That he is a Forensic Chemist of the [PNP];
- 2) That his office received a request for laboratory examination marked as Exhibit "A;"
- 3) That together with said request, was a brown envelope marked as Exhibit "B" which contained two (2) plastic sachets marked as Exhibits "B-1" and "B-2;"
- 4) That he thereafter conducted the requested laboratory examination and, in connection therewith, he submitted Chemistry Report marked as Exhibit "C;"
- 5) That the findings thereon showing the specimen positive for methylamphetamine hydrochloride was marked as Exhibit "C-1;"
- 6) That he likewise issued a Certification marked as Exhibit "D" and thereafter turned over the specimen to the Evidence Custodian and retrieved the same for the trial scheduled today; and
- 7) That he has no personal knowledge about the circumstances surrounding the arrest of the accused as well as the source of the substance subject of his examination.<sup>[12]</sup>

As regards PO2 Sales:

- 1) That he was the investigator assigned to investigate this case;
- 2) That in connection with the investigation he conducted and took the Affidavit of Arrest of [PO1 Nicart], [PO1 Cortez] and [SPO1 Angeles] (Exhibit "E");
- 3) That the two (2) plastic sachets marked as Exhibits "B-1" and "B-2" were turned over to him by the arresting officers;
- 4) That he prepared a request for laboratory examination marked as Exhibit "A" and in connection therewith he received a copy of the

Chemistry Report, the original of which was marked as Exhibit "C;"

5) That the buy bust money consisting of one (1) P100.00 bill marked as Exhibit "F" was likewise turned over to him with the updated "Watchlist of [Illegal] Drug Personalities" of Bgy. Obrero, Quezon City (Exhibit "G");

6) That he thereafter prepared the letter referral to the Office of the City Prosecutor, Quezon City marked as Exhibit "H;" and

7) That he has no personal knowledge about the circumstances surrounding the arrest of the accused as well as the source of the substance subject of his investigation.<sup>[13]</sup>

On the contrary, Posing testified that on 13 August 2004, between 4:00 to 5:00 o'clock in the afternoon, he was walking along a basketball court at Makabayan St., Kamuning, Quezon City, when he was arrested by PO1 Cortez and PO1 Nicart, who he came to know based on their name plates.<sup>[14]</sup> When he asked the officers what his violation was, they replied: "*Nag-mamaang-maangan ka pa.*"<sup>[15]</sup> He was then led to their vehicle and was brought to Station 10 wherein he was asked to point to a certain "Nene" whom he did not know. He refused, which was why he was detained and charged with violation of R.A. No. 9165.<sup>[16]</sup>

Based on the above, the following were filed against the accused:

For Criminal Case No. Q-03-120266 for violation of Section 5, Article II of R.A. No. 9165:

That on or about the 13<sup>th</sup> day of August, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport, distribute any dangerous drug, did then and there, wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, 0.03 (zero point zero three) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.<sup>[17]</sup>

For Criminal Case No. Q-03-120267 for violation of Section 11, Article II of R.A. No. 9165:

That on or about the 13<sup>th</sup> day of August, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there wilfully, unlawfully and knowingly have in his/her possession and control 0.03 (zero point zero three) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.<sup>[18]</sup>

Upon arraignment on 2 December 2003, Posing entered a plea of "not guilty" on both charges.<sup>[19]</sup>

On 2 December 2008, the trial court found Posing GUILTY of violation of both

Sections 5 and 11, Article II, of R.A. 9165 in Criminal Case No. Q-03-120266 and Criminal Case No. Q-03-120267, respectively. The disposition reads:

**WHEREFORE**, premises considered, judgement is hereby rendered as follows:

(a) Re: Criminal Case No. Q-03-120266 – The Court finds accused **RUPER POSING y ALAYON guilty** beyond reasonable doubt of a violation of Section 5, Article II of R. A. 9165. Accordingly, he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine in the amount of Five Hundred Thousand (P500,000.00) **PESOS**.

(b) Re: Criminal Case No. Q-03-120267 – The Court finds accused **RUPER POSING y ALAYON guilty** beyond reasonable doubt of a violation of Section 11, Article II of R. A. 9165. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS** and **ONE (1) DAY** as **MINIMUM** to **FOURTEEN (14) YEARS** as **MAXIMUM** and to pay a fine in the amount of **THREE HUNDRED THOUSAND** (P300,000.00) **PESOS**.

The Branch Clerk of Court is hereby ordered to turn over the possession of custody of the dangerous drugs subject hereof to the Philippine Drug Enforcement Agency for proper disposition and final disposal.<sup>[20]</sup>

On appeal, the accused-appellant, contended that the trial court gravely erred when it failed to consider the police officers' failure to comply with the proper procedure in the handling and custody of the seized drugs, as provided under Section 21 of R. A. No. 9165, which ultimately affected the chain of custody of the confiscated drugs.<sup>[21]</sup> Further, it was posited that there was no prior surveillance conducted to verify the informant's tip and that there was no coordination made with the Philippine Drug Enforcement Agency (PDEA).<sup>[22]</sup> Furthermore, the accused-appellant invoked his right to be presumed innocent until proven guilty beyond reasonable doubt.<sup>[23]</sup>

The People, through the Office of the Solicitor General, countered that although the requirements under Section 21 of R. A. No. 9165 has been held to be mandatory, non-compliance with the same, does not necessarily warrant an acquittal.<sup>[24]</sup> In addition, it was averred that the police officers are entitled to the presumption of regularity in the performance of official duties. Finally, the accused-appellant did not interpose any evidence in support of his defense aside from his bare denial.<sup>[25]</sup>

The CA affirmed the ruling of the trial court. The dispositive portion reads:

**WHEREFORE**, the Decision of the Regional Trial Court of Quezon City, Branch 82, dated 2 December 2008, in Criminal Cases Nos. Q-03-120266 and Q-03-120267, is **AFFIRMED**.<sup>[26]</sup>

The appellate court ruled that the requisites laid down under Section 21 of R. A. No. 9165 were complied with, more particularly, through the testimonies of the police

officers which sufficiently established that the integrity and the evidentiary value of the seized items were preserved.<sup>[27]</sup> As to the alleged non-coordination with the PDEA, it was held that although the PDEA is the lead agency, it is not to be considered as the exclusive agency, in enforcing drug-related matters. Lastly, the evidence presented by the prosecution clearly showed that the elements of illegal sale and possession of dangerous drugs were proven by competent evidence, as compared to the bare denial interposed by the accused-appellant.<sup>[28]</sup>

In the instant appeal, accused-appellant, merely reiterated his previous arguments before the appellate court that the prosecution failed to establish the complete and unbroken chain of custody of the plastic sachets of *shabu* allegedly sold and possessed by accused-appellant.<sup>[29]</sup>

Posed for resolution is whether or not the accused-appellant is guilty of illegal sale and possession of dangerous drugs, and in the course of the investigation and trial, whether the integrity of the evidence was preserved.

### **We uphold the ruling of both the trial and the appellate court.**

Both agreed that the illegal sale of *shabu* was proven beyond reasonable doubt. For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the 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 evidence of *corpus delicti*.<sup>[30]</sup>

SPO1 Angeles testified thus:

Q: Now Mr. Witness did you report for duty on August 13, 2003?

A: Yes, sir.

Q: What happened while you were...What time did you report for duty?

A: I reported at around 10:00 in the morning.

Q: What happened while you were on duty on that date and time?

A: At around 5:30 in the afternoon, one of our asset which is based at Makabayan St., Brgy. Obrero, came to our office and informed our duty officer about a certain Ruper Posing who was known as drug pusher at their Barangay.

Q: What happened after this report was given to the desk officer?

A: Since the suspect is also included in our drug watch list, our Chief [SAID] immediately formed a team to conduct buy-bust operation against the suspect.<sup>[31]</sup>

x x x

x

Q: What else transpired Mr. Witness?

A: After forming the said team, our Chief SAID P/Insp. Arturo Caballes gave me one (1) piece Php 100.