

FIRST DIVISION

[G.R. No. 195528, July 04, 2013]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE CLARA Y BUHAIN, ACCUSED-APPELLANT.

DECISION

PEREZ, J.:

This is an appeal filed by herein accused Joel Clara y Buhain (Joel) from the Decision^[1] of the Court of Appeals (CA) affirming the decision of conviction rendered by the Regional Trial Court of Quezon City for violation of Section 5, Article II of R.A. No. 9165.^[2]

The factual rendition of the prosecution follows:

Prosecution witness P03 Leonardo R. Ramos (P03 Ramos) narrated that he acted as a poseur-buyer in a buy-bust operation conducted by their office, the District Anti-Illegal Drug Special Task Group (DAID-SOTG) of Quezon City on 12 September 2005.^[3] He recalled that on or about 4:00 o'clock in afternoon of the said date, a male informant came to their office with the information that a person named "Ningning" was selling drugs at 22-C Salvador Drive, Balonbato, Quezon City.^[4] Police team leader SPO2 Dante D. Nagera (SPO2 Nagera) endorsed the matter to their Chief of Office Col. Gerardo B. Ratuista (Col. Ratuista) for the conduct of a buy-bust operation.^[5] A buy-bust group was created consisting of SPO2 Nagera, PO1 Peggy Lynne V. Vargas (PO1 Vargas), PO1 Teresita B. Reyes (PO1 Reyes), PO1 Alexander A. Jimenez (PO1 Jimenez) and PO3 Ramos who was designated as the poseur-buyer.^[6] During the briefing, it was agreed upon that P200.00-worth of *shabu* would be bought from "Ningning" by PO3 Ramos. Before leaving for their target, PO1 Reyes prepared a Pre-Operation Report and forwarded it to the Tactical Operation Communication of Philippine Drug Enforcement Agency (PDEA) for coordination.^[7] At 8:00 o'clock in the evening, the team proceeded to the area on board three vehicles: Nissan Sentra, Toyota Corolla and owner-type jeep.^[8] Upon their arrival at 9:35 o'clock in the evening, PO3 Ramos and the informant knocked on the door of the house while the rest of the team positioned themselves ten meters away.^[9] The informant identified "Gigi" as the accused Joel, Ningning's uncle.^[10] Initiating a conversation, the informant introduced to Joel PO3 Ramos as a buyer of P200.00-peso worth of illegal drug. When PO3 Ramos asked for Ningning, Joel answered that she was upstairs. Joel asked for payment and PO3 Ramos handed the P200 marked money.^[11] Joel went upstairs and called Ningning. Ningning opened the door and handed Joel a small plastic sachet of *shabu* which in turn was handed to PO3 Ramos.^[12]

Thereafter, PO3 Ramos touched his head as a pre-arranged signal to prompt the

back-up police officers of the consummation of the illegal sale. Immediately, the rest of the team rushed to the place to arrest Joel.^[13] Joel tried to close the door to prevent the police officers from entering the house but PO3 Ramos was able to grab him. SPO2 Nagera quickly went upstairs to arrest Ningning but the latter was able to escape apprehension.^[14] PO3 Ramos immediately frisked Joel inside the house but failed to recover anything from him; the marked money was given to Ningning when Joel went upstairs to get the plastic sachet.^[15]

Joel was brought to the police station and was informed by PO1 Jimenez of his constitutional rights as a consequence of his arrest.^[16] Afterwards, the small plastic sachet recovered was marked by PO1 Jimenez inside the station and an inventory receipt was prepared.^[17] PO3 Ramos clarified that the plastic sachet was in the possession of PO1 Jimenez from the place of arrest until arrival at the police station. PO3 Ramos added that PO1 Jimenez was present at the time of arrest which explained his possession of the plastic sachet containing *shabu*.^[18]

Inside the courtroom, PO3 Ramos identified Joel as the one involved in the illegal transaction.^[19] He also identified the small plastic sachet of *shabu* as the subject of the illegal transaction through the marking "LRR" he placed on it.^[20] He testified that he brought the plastic sachet containing the specimen to the crime laboratory for examination^[21] where it was tested positive for methamphetamine hydrochloride, as certified by the examining Forensic Chemist Engr. Leonard M. Jabonillo (Forensic Chemist Jabonillo) of Central Police District Crime Laboratory in his Chemistry Report.^[22]

SPO2 Nagera was also called to the witness stand to present his version of the events. However, some inconsistencies surfaced during his examination at the witness stand.

When asked about the gender of the informant who came to their office, he answered that the informant was a female, contradicting the statement of PO3 Ramos.^[23] He also differed from the statement of PO3

Ramos when he testified that only two modes of transportation, instead of three, were used by the buy-bust team in proceeding to the target area, one Nissan Maxima and one owner-type jeep.^[24] He also had difficulty in identifying the accused inside the court room when he was asked upon by the prosecutor to do so.^[25]

Further contradiction was made when SPO2 Nagera narrated that PO3 Ramos was the one holding the plastic sachet before it was turned over to PO1 Jimenez for investigation.^[26] He also admitted in his cross examination that he never saw Ningning during the entire buy-bust operation.^[27] Finally, when asked about on who placed the initial "LRR" on the plastic sachet, he positively identified that it was the investigator who put the same.^[28]

PO1 Jimenez was also presented in court as a prosecution witness to give details of the buy-bust operation. His version, however, also differed from the versions presented by PO3 Ramos and SPO2 Nagera. He testified that the plastic sachet

confiscated was already marked by the apprehending officers when it was turned over to him for investigation, a contradiction of the statements of both PO3 Ramos and SPO2 Nagera that it was him who marked the plastic sachet with the initial "LRR."^[29] He positively identified that he saw the item being marked by the apprehending officers in their office.^[30]

The defense interposed denial.

Accused Joel denied any involvement in the buy-bust operation. He recalled that he was inside his house sleeping between 9:00 to 10:00 o'clock in the evening of 12 September 2005 when five uniformed police officers entered his house.^[31] They got hold of his arm and frisked him but failed to recover anything.^[32] The police officers did not inform him of the reason for his arrest; neither did they recite his constitutional rights. Afterwards, he was made to ride an owner type vehicle and was taken to the police station where he was only asked for his name.³³ He denied having sold drugs and having seen the marked money and plastic sachet containing *shabu*.^[34]

On cross examination, Joel was also inconsistent in portions of his testimony. He testified that all of his siblings were in the province and his only companions in the house at the time of the arrest were his nephew and niece.^[35] However, when asked why the door was still open at around 10:00 o'clock in the evening, he replied that he was waiting for his sister.^[36] He also contradicted his earlier statement that he was sleeping with his nephew and niece downstairs when in his cross examination he said that his niece was staying on the second floor of the house at the time of the arrival of the police officers.^[37]

Joel was eventually charged with Illegal Sale of Dangerous Drugs punishable under Section 5, Article II of R.A. No. 9165 before the Prosecutor's Office of Quezon City. The accusatory portion of the Information reads:

Criminal Case No. 05-136719

That on or about the 12th day of September, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, ZERO POINT ZERO SEVEN (0.07) gram of [Methamphetamine] Hydrochloride (*shabu*), a dangerous drug.^[38]

When arraigned, Joel pleaded not guilty to the offense charged.^[39]

During pre-trial, it was agreed upon by both parties that Forensic Chemist Jabonillo had no personal knowledge as to how the plastic sachet containing specimen positive for illegal drug came to of police officers' possession. The forensic chemist merely examined the specimen and found it to be positive for methamphetamine hydrochloride. As a consequence of these stipulations, his testimony was dispensed

with by the court.^[40]

Ruling of the Trial Court

The trial court on 21 March 2007 found the accused guilty of the offense charged. The dispositive portion of the decision^[41] reads:

ACCORDINGLY, judgment is rendered finding the accused **JOEL CLARA Y BUHAIN GUILTY** beyond reasonable of the crime [in] violation of Sec. 5 of R.A. 9165 as charged (for drug pushing) and he is sentenced to suffer the prescribed jail term of **Life Imprisonment** and pay a fine of **P500,000.00**.

The shabu weighing 0.07 gram involved in this case is ordered transmitted to the PDEA thru DDB for disposal in accordance with R.A. 9165.^[42]

The trial court ruled that Joel directly dealt with the poseur buyer and participated in all the stages of the illegal sale. It found conspiracy between Joel and Ningning. It pointed out that Ningning was able to escape the police dragnet while Joel was being arrested because of her familiarity as a drug operator with police operations.

The police operation and its coordination with the operatives of the PDEA would be recognized by the appellate court as legally performed.^[43] On the contrary the prosecution's scenario that the police officers entered Joel's residence and hauled him out with no reason at all was found to be improbable.^[44]

Ruling of the Court of Appeals

In affirming the ruling of the trial court, the appellate court ruled that all the elements of an illegal sale of dangerous drugs were present.^[45] *First*, Joel, as the seller of illegal drug, was positively identified by the poseur buyer and the police officers; *Second*, the confiscated white crystalline substance which was found by the PNP crime laboratory as positive for Methamphetamine Hydrochloride which is a dangerous drug was presented during trial; and *Lastly*, the illegal sale was for a consideration of P200.00 given by PO3 Ramos as poseur buyer. The appellate court further held that the non-presentation of the marked money was not fatal since the prosecution witnesses were able to establish that the P200.00 bill used to purchase the illegal drug was in the possession of Ningning who was able to evade arrest.^[46]

Our Ruling

After a careful review of the evidence, we resolve to reverse the ruling of conviction and render a judgment of acquittal in favor of the accused.

In his Brief, the accused-appellant contested his conviction due to the inconsistencies in the prosecution's presentation of a supposed buy-bust operation, coupled with its failure to establish with certainty the chain of custody of evidence. He also argued against the presumption of regularity of performance of duties.

Finally, to substantiate his innocence, he pointed out that he was not even the target person in the PDEA Coordination Report and denied any conspiracy and involvement with such target person named "Ningning."^[47]

In spite of the imperfect narration of events by the accused Joel, we are constrained to render a judgment of acquittal due to the lapses of the prosecution that led to its failure to discharge the burden of proof beyond reasonable doubt that the accused committed the crime.

In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.

It is basic in criminal prosecutions that an accused is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required.

Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.^[48] It must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf, in which case, the presumption prevails and the accused should necessarily be acquitted.^[49]

In this case, the prosecution failed to overcome such presumption when it presented inconsistent versions of an illegal sale.

PO3 Ramos identified Joel as the seller who sold to him a small plastic sachet containing shabu in exchange of two hundred pesos. We quote the relevant portions:

FISCAL (to witness)

Q: What happened there?

A: When we reached the house sir, we knocked at the door and alias Gigi open (sic) it.

x x x

x

Q: What was the conversation with you during that time?

A: The informant first introduced me to Gigi that I will be the one to buy shabu.

Q: What was the answer of Gigi at that time?

A: He asked how much.

Q: What was your answer?

A: I said 'dos'.

Q: After informing him that you intend to buy dos of illegal drug, what happened?

A: I first asked where is Ningning.

Q: What was the answer of Gigi?