

FIRST DIVISION

[G.R. No. 206738, December 11, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERLINDA MALI Y QUIMNO A.K.A. "LINDA", ACCUSED-
APPELLANT.**

DECISION

REYES, J.:

For review is the Decision^[1] dated January 31, 2013 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00863-MIN which affirmed the Decision^[2] dated August 11, 2010 of the Regional Trial Court (RTC) of Zamboanga City, Branch 13, in Criminal Case No. 5228 (20390), convicting Erlinda Mali y Quimno a.k.a. "Linda" (accused-appellant) of illegally selling methamphetamine hydrochloride or *shabu*.

The Antecedents

On January 26, 2004, a buy-bust operation was carried out in Sucabon, Zone II, Zamboanga City, by the members of the Task Group Tumba Droga, now the Anti-Illegal Drugs Special Operations Task Force,^[3] of the Philippine National Police (PNP) in Zamboanga City. The operation led to the arrest of the accused-appellant^[4] who was charged of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, under the following criminal information, *viz*:

That on or about January 26, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and feloniously, SELL and DELIVER to PO1 Hilda D. Montuno, a member of the PNP, who acted as buyer, one (1) small size heat-sealed transparent plastic pack weighing 0.0188 grams of white crystalline substance which when subjected to qualitative examination, gave positive result to the tests for METHAMPHETAMINE HYDROCHLORIDE (*shabu*), knowing [the] same to be a dangerous drug.

CONTRARY TO LAW.^[5]

On March 17, 2004, an ocular inspection was conducted, whereby the *shabu* stated in the criminal information was presented before the RTC and the accused-appellant by the Forensic Chemist of the PNP Regional Crime Laboratory, Zamboanga City, Police Chief Inspector (PC/Insp.) Mercedes D. Diestro (Diestro). The presentation was witnessed by a representative from the Philippine Drug Enforcement Agency, Senior Police Officer (SPO) 4 Bonifacio Morados.^[6] In the ensuing arraignment, the accused-appellant entered a "Not Guilty" plea. Thereafter, pre-trial and trial were

held.

The prosecution presented the testimonies of the police officers who participated in the buy-bust operation, Police Officer (PO) 1 Hilda D. Montuno (Montuno) and SPO 1 Amado Mirasol, Jr. (Mirasol), as well as the investigator in charge of the case, PO3 Efren A. Gregorio (Gregorio), and PC/Insp. Ramon Manuel, Jr. (Manuel), Officer-in-Charge of the PNP Crime Laboratory Office.

Documentary and object evidence were likewise submitted, such as: Request for Laboratory Examination,^[7] Chemistry Report No. D-024-2004,^[8] Affidavit of Poseur-buyer,^[9] Affidavit of Arresting Officer,^[10] Complaint Assignment Sheet No. 1234,^[11] Acknowledgment Receipt of the buy-bust money,^[12] Case Report,^[13] Forwarding Report,^[14] one piece small size heat- sealed transparent plastic sachet containing *shabu*,^[15] six strips of folded aluminum foils^[16] and marked money consisting of one P100.00 bill with serial number KM678788^[17].

Taken collectively, the foregoing evidence showed that:

On January 26, 2004, at around 1:00 p.m., a confidential informant arrived at the Zamboanga City Police Station and reported to PO1 Montuno about illegal drug activities in Sucabon, Zone II, by a woman known as "Linda". PO1 Montuno forthwith relayed the information to Police Senior Inspector (PS/Insp.) Ricardo M. Garcia (Garcia) who, thereafter, summoned the members of the Task Group Tumba Droga for a briefing. They came up with an entrapment plan to be staged by a buy-bust team composed of PS/Insp. Garcia, SPO1 Mirasol, PO2 Rudy Deleña, PO2 Ronald Cordero, and PO1 Montuno, who was designated as the poseur-buyer.^[18] PS/Insp. Garcia prepared and gave Montuno P100.00 as marked money^[19] with serial number KM678788 for which she signed an Acknowledgment Receipt.^[20]

At around 2:15 p.m., the team proceeded to Sucabon on board an L-300 van which they parked in front of the Bureau of Fire before walking towards the inner portion of Sucabon. PO1 Montuno and the informant sauntered in front of the group with SPO1 Mirasol trailing behind from a distance of about eight to ten meters while the rest of the team followed.^[21]

When they reached the target area, the informant pointed to a lady in brown sleeveless shirt and pants waiting by a table and identified her as Linda.^[22] PO1 Montuno and the informant approached Linda who, upon recognizing the latter, asked how much they intended to buy. PO1 Montuno answered "*piso lang*", which in street lingo means one hundred pesos. Linda then took out a small transparent plastic sachet containing white crystalline substance from her pocket and handed the same to PO1 Montuno, who in turn gave the P100.00 marked money.^[23] Immediately thereafter, PO1 Montuno executed the pre-arranged signal by extending her left hand sideward.^[24]

Upon seeing PO1 Montuno's signal, SPO1 Mirasol, who positioned himself at a nearby billiard hall, approached them.^[25] PO1 Montuno introduced herself as a police officer to Linda and placed her under arrest by asking her to sit. She then frisked Linda and was able to recover from her a small plastic sachet containing six

strips of aluminum foil. Afterwards, she informed Linda of her violation and apprised her of her constitutional rights.^[26]

Linda was taken to the Zamboanga City Police Station where it was learned that her full name is Erlinda Mali y Quimno.^[27] PO1 Montuno marked the plastic sachet suspected as containing *shabu* with her initials "HM" as well as the sachet containing strips of aluminum foil. She also wrote her initials "HDM" on the P100.00 marked money.^[28]

PO1 Montuno turned over the confiscated items, the marked money and the person of accused-appellant to PO3 Gregorio.^[29] Upon receipt, PO3 Gregorio wrote his initials "EG" on the plastic sachet suspected as containing *shabu* and "EAG" on the other sachet of aluminum foil strips.^[30]

Subsequently, PO3 Gregorio prepared the Request for Laboratory Examination and personally brought the same together with the seized evidence to the PNP Crime Laboratory Office.^[31] Forensic chemist, PC/Insp. Diestro conducted a laboratory examination on the specimen subject of the request and it tested positive for the presence of methamphetamine hydrochloride or "*shabu*" as shown in Chemistry Report No. D-024-2004.^[32]

PC/Insp. Diestro was unable to take the witness stand because at the time of trial, she was on official study leave in Manila. Instead, it was PC/Insp. Manuel as the Officer-in-Charge of the Crime Laboratory Office who brought a copy of the chemistry report to the court. The actual evidence custodian of the report is PO1 Christopher Paner who was, however, dispatched to Basilan hence unavailable to testify.^[33]

For her part, the accused-appellant, interposed the defense of denial and frame-up. She and the other defense witness, Kalingalang Ismang (Ismang), claimed that there was no buy-bust operation actually conducted by the police and the prohibited drug presented as evidence was planted. They narrated that at around 2:00 p.m. of January 26, 2004, they were outside the accused-appellant's house in Sucabon playing *Rami-rami*, a cards game, with a certain Golpe. During the game, the accused-appellant left to urinate and when she came back, a woman arrived and asked Ismang who Erlinda was. In reply, Ismang pointed to the accused-appellant who just remained silent.^[34]

The woman, who was with four male companions in civilian clothing but armed, then approached the accused-appellant, held her and brought her inside her house. The woman asked the accused-appellant who was selling *shabu*. The accused-appellant replied that she does not know. Thereafter, the woman's companions searched the accused-appellant's house but found nothing. They then brought the accused-appellant to the police station in Zamboanga City where she was again questioned about the peddler of *shabu* to which she gave the same reply. She was thereafter detained and then brought to the Hall of Justice.^[35]

Ruling of the RTC

The RTC accorded more credence to the straightforward and consistent testimony of

PO1 Montuno which proved all the elements for illegal sale of drugs. Her testimony also showed that the entrapment operation passed the objective test as she was able to narrate the complete details of the transaction, from how she acted as a buyer, to the consummation of the sale and the accused-appellant's eventual arrest. The RTC also noted that in view of the lack of a showing that the arresting officers were impelled by evil motive to indict the accused-appellant, they are presumed to have performed their duties in a regular manner and as such their positive testimonies carry more evidentiary value than the accused-appellant's bare denial, an inherently weak and self-serving defense. Accordingly, the accused-appellant was convicted of the crime charged and sentenced as follows in the RTC Decision^[36] dated August 11, 2010, viz:

WHEREFORE, in the light of the foregoing, this Court finds ERLINDA MALI y QUIMNO guilty beyond reasonable doubt for violating Section 5, Article II of R.A. 9165 and is sentenced to suffer the penalty of life imprisonment and pay a fine of five hundred thousand pesos (P500,000[.00]) without subsidiary imprisonment in case of insolvency.

The methamphetamine hydrochloride used as evidence in this case is hereby ordered confiscated and the Clerk of Court is directed to turn over the same to the proper authorities for disposition.

SO ORDERED.^[37]

Ruling of the CA

On appeal to the CA, the accused-appellant argued that the totality of the evidence for the prosecution did not support a finding of guilt beyond reasonable doubt due to the following errors, viz: (1) no buy-bust operation transpired and the prohibited drug presented by the prosecution as subject of the alleged illegal sale was planted; (2) the arresting officers did not comply with the chain of custody rule under Section 21 of R.A. No. 9165 when they failed to mark, inventory and photograph the prohibited drug allegedly seized from her; (3) the chemistry report was not properly identified during trial by the forensic chemist; and (4) no evidence was presented as to what happened to the sachet from the time it was submitted to the crime laboratory until it was presented in court.

In its Decision^[38] dated January 31, 2013, the CA denied the appeal and concurred with the RTC's findings and conclusions. The CA upheld the veracity of the buy-bust operation. Anent the supposed non-compliance with the marking, inventory and photography requirements in R.A. No. 9165, the CA remarked that the accused-appellant is considered to have waived any objections on such matters since she failed to raise the same before the RTC. At any rate, non-compliance with Section 21 of R.A. No. 9165 is not necessarily fatal to the admissibility of the seized prohibited drug because the apprehending team was able to preserve their evidentiary value and integrity when they immediately turned over the effects of the crime and the buy-bust money to the police investigator on the same day. This, the CA concluded, manifests the prudence of the arresting officers in securing the integrity and probative value of the items confiscated from the accused appellant. Moreover, non-compliance with Section 21 of R.A. No. 9165 concerns not the admissibility of evidence but rather its evidentiary weight or probative value, which, in this case was correctly ruled by the RTC to heavily favor the prosecution.

The CA's judgment is now subject to the Court's automatic review.^[39] In a Resolution^[40] dated July 8, 2013, the Court required the parties to file their supplemental briefs. Instead of so filing, however, the parties manifested that they are instead adopting their respective Briefs before the CA where their legal arguments and positions have already been fully expounded and amplified.^[41] The Manifestations are hereby noted and we shall resolve accordingly.

The Issue

For the Court's resolution is whether or not the guilt of the accused-appellant for illegal sale of methamphetamine hydrochloride or *shabu* was proved beyond reasonable doubt.

The Court's Ruling

We affirm the accused-appellant's conviction and the penalties meted her.

Illegal sale of prohibited drugs, like *shabu*, is committed upon the consummation of the sale transaction which happens at the moment the buyer receives the drug from the seller. If a police officer goes through the operation as a buyer, the crime is consummated when he makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer.^[42]

In any case, the successful prosecution of the offense must be anchored on a proof beyond reasonable doubt of two elements, to wit: (a) the identity of the buyer and the seller, the identity of the object and the consideration of the sale; and (b) the delivery of the thing sold and of the payment for the thing. What is material is the proof showing that the transaction or sale actually took place, coupled with the presentation in court of the thing sold as evidence of the *corpus delicti*.^[43]

The confluence of the above requisites is unmistakable from the testimony of the poseur-buyer herself, PO1 Montuno, who positively testified that the illegal sale actually took place when she gave the P100.00 marked money to the accused-appellant in exchange for the *shabu*, thus:

PROSECUTOR ORILLO:

X X X X

Q: And, what happened next, after the briefing, which according to you, took for, more or less, thirty (30) minutes?

A: We proceeded, at or about 2:15, to the area at Sucabon.^[44]

X X X X

Q: So, what happened next?

A: When we reached near the area, we stopped, because the Informant pinpointed to me that "the lady waiting there, at the wooden table, wearing brown sleeveless shirt and pants is your target".

X X X X

Q: After the Informant pointed to you the place where that certain Linda was, what did you do next?

A: We approached Linda.