

SECOND DIVISION

[G.R. No. 190749, April 25, 2012]

**VALENTIN ZAFRA Y DECHOSA AND EROLL MARCELINO Y REYES,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

For review before this Court is the Decision of the Court of Appeals (CA) in CA-G.R. CR No. 31713 dated 30 October 2009,^[1] affirming the decision of the Regional Trial Court (RTC), Branch 76, Malolos, Bulacan,^[2] which found petitioners Valentin Zafra y Dechosa (Zafra) and Eroll Marcelino y Reyes (Marcelino) guilty beyond reasonable doubt of Possession of Dangerous Drugs in violation of Section 11, Article II of Republic Act (RA) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002) and imposing on each of them the penalty of imprisonment of twelve (12) years and one (1) day as the minimum term, to thirteen (13) years as maximum, and of fine of Three Hundred Thousand Pesos (P300,000.00).

The Facts

The prosecution charged Zafra and Marcelino with violation of Section 11, Article II of RA No. 9165^[3] before the RTC of Bulacan under the Information below:

That on or about the 12th day of June, 2003, in the municipality of Balagtas, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in **their possession and control dangerous drug consisting of two (2) heat-sealed transparent plastic sachet of methylamphetamine hydrochloride (shabu) weighing 0.061^[4] gram, in conspiracy with one another.**^[5]

The prosecution's **lone witness**, SPO4^[6] Apolinario Mendoza (SPO4 Mendoza), Chief of the Investigation and Drug Enforcement Unit of the Philippine National Police of Balagtas, Bulacan, testified that on 12 January 2003, at around 4:30 in the afternoon, he conducted surveillance in front of a *sari-sari* store at the corner of Miraflor Subdivision and P. Castro Street in Balagtas, Bulacan, due to reported drug trafficking in the area. SPO4 Mendoza found there the group of Zafra, Marcelino, and a certain Marlon Daluz (Daluz) standing and facing each other.^[7] In that position, he saw Zafra and Marcelino holding *shabu*, while Daluz was holding an aluminum foil and a disposable lighter.^[8] Seeing this illegal activity, SPO4 Mendoza single-handedly apprehended them. He grabbed the *shabu* from the hands of Zafra

and Marcelino, and confiscated the drug paraphernalia from Daluz. Then, he ordered the three to lie down; he frisked them. Boarding a tricycle, he brought them to the Balagtas Police Station,^[9] where he personally marked the confiscated two (2) sachets of *shabu*, one with VSD, the initials of Valentin Zafra y Dechosa and the other with EMR, the initials of Eroll Marcelino y Reyes.^[10]

On the following day, 13 June 2003, SPO4 Mendoza brought the accused and the items to the crime laboratory for urine sampling and laboratory examination, respectively.^[11] The test of the items resulted to positive presence of *methylamphetamine hydrochloride*.^[12]

The RTC, Branch 76, Malolos, Bulacan, in a decision dated 11 June 2008, convicted Zafra and Marcelino for the crime of possession of *shabu*:

WHEREFORE, finding guilt of the accused beyond reasonable doubt in Criminal Case No. 2297-M-2003, accused **VALENTIN ZAFRA y DECHOSA** and accused **EROLL MARCELINO y REYES** are hereby **CONVICTED** for possession of sachets of methylamphetamine hydrochloride commonly known as *shabu*, with a weight of 0.31 gram and 0.30 gram, respectively, which are classified as dangerous drugs in violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and are each **SENTENCED** to suffer the **IMPRISONMENT** of, applying the Indeterminate Sentence Law, **TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO THIRTEEN (13) YEARS, AS THE MAXIMUM TERM**, and to pay the **FINE of THREE HUNDRED THOUSAND PESOS (P300,000.00)**.^[13]

Daluz, on the other hand, who was charged of possession of drug paraphernalia in violation of Section 12 of RA No. 9165 pleaded guilty to the charge and was released after serving his sentence of eight (8) months.^[14]

Zafra and Marcelino appealed; but the CA affirmed *in toto* the RTC Decision:

WHEREFORE, premises considered, the instant appeal is **DENIED** for lack of merit. Accordingly, the assailed 11 June 2008 Decision of the Court *a quo* **STANDS**.^[15]

Hence, this appeal on the following grounds: *first*, the arrest was unlawful; *second*, the prohibited drugs are inadmissible in evidence; *third*, Section 21 of RA No. 9165 was not complied with; and, *finally*, the prosecution failed to prove petitioners' guilt beyond reasonable doubt.

The Court's Ruling

We resolve to **ACQUIT** petitioners Zafra and Marcelino on the following grounds:

First, the prosecution's lone witness, SPO4 Mendoza,^[16] testified that, from a distance, he saw Zafra and Marcelino holding *shabu* by their bare hands, respectively, while Daluz was holding an aluminum foil and a disposable lighter.^[17] Seeing this illegal activity, he single-handedly apprehended them.^[18] He grabbed the *shabu* from the hands of Zafra and Marcelino, and confiscated the drug paraphernalia from Daluz.

In his affidavit, however, SPO4 Mendoza stated, that:

Na, nitong nakaraang Hunyo 12, 2003 ng 4:30 ng hapon humigit kumulang, sa P. Casto St., Barangay Borol-1, Balagtas Bulacan, habang ako ay nagsasagawa ng surveillance sa Suspected Drug Pusher sa nasabing lugar ay aking nakita ang tatlo (3) kalalakihan na nakatalikod sa isang corner ng tindahan sa P. Castro St., na nakilala ko na sina Valentine D. Zafra @ Val, Eroll R. Marcelino @ Eroll, at Marlon B. Daluz @ Marlon na pawang mga residente ng Borol-1, Balagtas, Bulacan.

Na, ako ay lumapit na naglalakad kina Valentine Zafra, Errol Marcelino at Marlon Daluz at sa aking paglapit sa kanilang tatlo ay aking nakita at naaktuhang **inabot ni Valentine Zafra kay Eroll Marcelino ang isang (1) plastic sachet ng shabu** may timbang na 0.30 grams, at isa pang plastic sachet ng shabu na si Marlon Daluz ay hawak ang isang disposable lighter at 2 piraso ng aluminum foil na inaayos na nilalagyan ng lupi at 7 piraso ng empty plastic sachet. (Emphasis supplied)^[19]

x x x x

On cross examination, SPO4 Mendoza testified that it was Zafra and not Daluz, who was holding the aluminum foil (contrary to his earlier testimony that Zafra was holding *shabu*);^[20] that Daluz (whom he claimed during the direct examination to be holding the aluminum foil) and Marcelino were holding handkerchiefs and on top of them were *shabu*;^[21] When the defense confronted SPO4 Mendoza about the inconsistency, he told the court that his version during his direct testimony was the correct one.^[22]

While, it is hornbook doctrine that the evaluation of the trial court on the credibility of the witness and the testimony is entitled to great weight and is generally not disturbed upon appeal,^[23] such rule does not apply when the trial court has overlooked, misapprehended, or misapplied any fact of weight or substance.^[24] In the instant case, these circumstances are present, that, when properly appreciated, would warrant the acquittal of petitioners.

Certainly, SPO4 Mendoza's credibility has to be thoroughly looked into, being the only witness in this case. While in his affidavit, SPO4 Mendoza claimed that he saw the sachet of *shabu* (0.30 gram) because Zafra was in the act of handing it to Marcelino, his testimony during the direct examination reveals another version, that is, from a distance, he saw Zafra and Marcelino holding *shabu*, respectively, hence, he approached them from behind and confiscated the *shabu* from both of them and the paraphernalia from Daluz. How he saw a 0.30 gram of *shabu* from a distance in

a busy street, baffles this Court. Asked, however, on cross examination, who among the three were holding the *shabu* and drug paraphernalia, SPO4 Mendoza failed to be consistent with his earlier testimony and pointed to Daluz as the one holding *shabu* with a handkerchief in his hand and Zafra as the one in possession of drug paraphernalia. These inconsistencies are not minor ones, and, certainly, not among those which strengthens the credibility of a witness. Possession of drug paraphernalia *vis-à-vis shabu*, are two different offenses under RA No. 9165. That Zafra was holding drug paraphernalia and not *shabu* is material to this case, to the accusation against him, and to his defense.

Second, a reading of the RTC decision on this matter reveals that the conviction was arrived at upon reliance on the presumption of regularity in the performance of Mendoza's official duty.^[25]

It is noteworthy, however, that presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence.^[26] Evidence of guilt beyond reasonable doubt and nothing else can eclipse the hypothesis of guiltlessness. And this burden is met not by bestowing distrust on the innocence of the accused but by obliterating all doubts as to his culpability.^[27]

Third, SPO4 Mendoza was the lone arresting officer, who brought the petitioners to the police station,^[28] who himself marked the confiscated pieces of evidence sans witnesses, photographs, media, and in the absence of the petitioners. His colleagues were nowhere.^[29] And, worse, he was the same person who took custody of the same pieces of evidence, then, brought them on his own to the crime laboratory for testing.^[30] No inventory was ever done;^[31] no inventory was presented in court.

The solo performance by SPO4 Mendoza of all the acts necessary for the prosecution of the offense is unexplained and puts the proof of *corpus delicti*, which is the illegal object itself in serious doubt. No definite answer can be established regarding the question as to who possessed what at the time of the alleged apprehension. More significantly, we are left in doubt whether not the two sachets of *shabu* allegedly seized from the petitioners were the very same objects offered in court as the *corpus delicti*.

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty.^[32] The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.^[33] Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt.^[34] Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt.^[35] More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.^[36] The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence