

THIRD DIVISION

[G.R. No. 181039, January 31, 2011]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SEVILLANO DELOS REYES Y LANTICAN, APPELLANT.

D E C I S I O N

VILLARAMA, JR., J.:

The instant appeal assails the Decision ^[1] dated August 9, 2007 of the Court of Appeals (CA) in CA-G.R. CR HC No. 02038 which affirmed with modification the February 27, 2006 Decision ^[2] of the Regional Trial Court (RTC), Branch 36, of Calamba City finding appellant Sevillano delos Reyes guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

On January 22, 2003, two separate informations were filed against appellant charging him as follows:

Criminal Case No. 10733-2003-C

That on or about October 16, 2002 at Sitio Tagpuan, Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named not being licensed or authorized by law did then and there willfully, unlawfully and feloniously sell, dispense, deliver and distribute to a poseur buyer one (1) folded aluminum foil strip containing Methamphetamine Hydrochloride having a total weight of 0.04 grams, a dangerous drug.

CONTRARY TO LAW. ^[3]

Criminal Case No. 10734-2003-C

That on or about October 16, 2002 at Sitio Tagpuan, Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above named not being licensed or authorized by law did then and there willfully, unlawfully and feloniously possess five (5) folded aluminum foil strips containing Methamphetamine Hydrochloride having a total weight of 0.80 grams, a dangerous drug.

CONTRARY TO LAW. ^[4]

When arraigned, appellant pleaded not guilty to both charges. ^[5] During pre-trial,

the prosecution and the defense stipulated on the following facts:

- a. that accused Sevillano delos Reyes was the person charged in the Information and arraigned before this Court; and,
- b. that accused was arrested at about 12:30 p.m. of October 16, 2002 at Sitio Tagpuan, Bayog, Los Baños, Laguna. [6]

In the ensuing trial, the prosecution offered the testimony of three prosecution witnesses: PO2 Joseph Ortega, who was a member of the buy-bust team, P/Insp. Donna Villa P. Huelgas, the forensic chemist who tested the crystalline substance contained in the strip of aluminum foil allegedly confiscated from the appellant, and PO2 Gandergem E. Cabaluna, who delivered the Request for Drug Examination and the six pieces of folded strips of aluminum foil allegedly seized from the appellant to the Crime Laboratory in Camp Vicente Lim, Calamba City, Laguna. The testimonies of P/Insp. Huelgas and PO2 Cabaluna, however, were dispensed with as the matters they were supposed to testify on were admitted by the defense.

Thus, the prosecution's case was established primarily from the testimony of PO2 Ortega and the facts stipulated upon by both parties. The prosecution presented the following antecedents.

On October 16, 2002, the Los Baños Police Station, through SPO1 Camilo Palisoc, received a tip from an informant that appellant was selling *shabu*. Thus, Los Baños Police Chief Police Senior Inspector Raymond Perlado instructed PO2 Ortega and SPO1 Palisoc to conduct a buy-bust operation. P/Sr. Insp. Perlado gave them two fifty-peso bills to be used as marked money.

On even date, around 12:00 noon, PO2 Ortega, SPO1 Palisoc and SPO2 Herminigildo Dino proceeded to appellant's house at Sitio Tagpuan, Barangay Bayog, Los Baños, Laguna to execute the planned buy-bust operation.

Upon reaching the place, PO2 Ortega and SPO2 Dino positioned themselves near a fence six meters behind appellant's house. SPO1 Palisoc, the designated poseur-buyer, on the other hand, proceeded to enter appellant's house. A few minutes later, appellant and SPO1 Palisoc came out of the house. SPO1 Palisoc then handed over the marked money to appellant while the latter in return gave him an aluminum foil containing white crystalline substance.

As pre-arranged signal, SPO1 Palisoc held the hands of appellant. PO2 Ortega and SPO2 Dino thereafter approached the two and introduced themselves as police officers. SPO1 Palisoc recovered the marked money. With the assistance of barangay officials, they entered appellant's house and recovered five plastic sachets of *shabu* on top of the bed. Therafter, appellant was brought to the police station where he was detained. As to the seized folded strips of aluminum foil containing white crystalline substance, SPO1 Palisoc marked the one subject of the transaction with "SLD" while PO2 Ortega marked those recovered inside the house with "SLD 1," "SLD 2," "SLD 3," "SLD 4," and "SLD 5." The specimens were then turned over to PO2 Cabaluna who submitted the same for testing to the Philippine National Police Crime Laboratory Service 4 located in Camp Vicente Lim, Calamba City.

In the chemistry examination conducted by P/Insp. Huelgas, a forensic chemist, the white crystalline substance contained in the folded strips of aluminum foil tested positive for the presence of methamphetamine hydrochloride or *shabu*. P/Insp. Huelgas prepared Chemistry Report No. D-2386-02 [7] to document the results of the examination.

The defense, for its part, presented three witnesses, appellant, Iluminada delos Reyes and Rizza Estevez, whose testimonies presented the following version of the facts:

In the morning of October 16, 2002, Iluminada Reyes (Iluminada), appellant's mother, left for their farm while appellant was sleeping soundly in their house. Appellant was then still asleep as he worked the night shift in a factory.

Around 12:30 in the afternoon, Rizza Estevez, Iluminada's sister-in-law, who lives eight meters away, saw PO2 Ortega kick open the door of appellant's house.

Appellant was not awakened by this but was awakened only when his shoulder blade was hit with a .45 caliber pistol by a certain "Magie," a civilian agent. When he woke up, he saw that two police officers, PO2 Ortega and SPO1 Palisoc, were also in his house. They were looking for marked money but failed to find any so they searched the entire room of his house, took appellant's Nokia 3310 cellular phone and P20,000 cash hidden under his pillow. Thereafter, the three called a barangay official to accompany them on the way to the police station. On the way out of the house, appellant saw that their door was broken.

When Iluminada arrived home, she found their door broken. She asked around and was informed by her cousin, Erlinda delos Reyes, that the police barged into their house and arrested her son.

On February 27, 2006, the RTC rendered judgment acquitting appellant in Criminal Case No. 10734-2003-C (illegal possession of dangerous drugs) but finding him guilty as charged in Criminal Case No. 10733-2003-C (illegal sale of dangerous drugs). The *fallo* of the trial court's decision reads:

WHEREFORE, in Crim. Case No. 10733-2003-C, the Court finds Accused **SEVILLANO DE LOS REYES GUILTY**. The accused is sentenced to *Reclusion Perpetua* and pay the fine of P500,000.00[.]

In Crim. Case No. 10734-2003-C, the Court finds Accused **SEVILLANO DE LOS REYES not GUILTY** for the failure of the prosecution to prove his guilt beyond reasonable doubt.

The Branch Clerk of Court shall, in accordance with law, forward the seized "shabu" in these cases to the Philippine Drug Enforcement Agency for destruction. [8]

In convicting appellant, the trial court held that with the testimony of PO2 Ortega and the facts stipulated upon by the parties, the prosecution was able to establish

the *corpus delicti*.

Appellant in his brief before the CA alleged that:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONY OF THE LONE PROSECUTION EYEWITNESS WHILE TOTALLY DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT. [9]

Appellant argued that PO2 Ortega's testimony was not corroborated by anybody since the other two witnesses for the prosecution, P/Insp. Huelgas and PO2 Cabaluna, were not part of the buy-bust team. Further, it was erroneous for the trial court to convict him of illegal sale of drugs when the alleged poseur-buyer was never presented to testify in court. And even assuming for the sake of argument that there was a buy-bust operation, the buy-bust team did not comply with the mandatory requirements of R.A. No. 9165 rendering void the seizure of the items submitted as evidence.

The Office of the Solicitor General (OSG), on the other hand, argued that the clear and convincing testimony of PO2 Ortega necessarily prevails over appellant's bare denial. It pointed out that the trial court's factual findings are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. Moreover, there is no rule requiring that a testimony has to be corroborated to be adjudged credible since witnesses are weighed and not numbered. Lastly, the OSG argued the implementing rules and regulations of R.A. No. 9165 were not yet in effect at the time appellant was arrested.

On August 9, 2007, the CA rendered a decision affirming with modification the RTC decision and disposing as follows:

WHEREFORE, premises considered, the appealed decision, dated February 27, 2006, of the Regional Trial Court, Branch 36, Calamba City, Laguna, in Criminal Case No. 10733-2003-C is hereby AFFIRMED with MODIFICATION. Accused-appellant Sevillano delos Reyes y Lantican is hereby sentenced to suffer the penalty of life imprisonment instead of reclusion perpetua. The appealed decision is affirmed in all other respects.

SO ORDERED. [10]

The CA held that the non-presentation of the poseur-buyer is not fatal to the establishment of appellant's guilt since there was an eyewitness to the illicit transaction in the person of PO2 Ortega, a member of the buy-bust team who positively identified appellant as the perpetrator of the illegal sale. The CA further ruled that the examination conducted by the forensic chemist on the contents of the folded strips of aluminum foil showed that they contained methamphetamine hydrochloride or *shabu*. Lastly, the appellate court also applied the doctrine of presumption of regularity in the performance of official duties. It held that as there was no evidence that PO2 Ortega was impelled by improper motive in testifying against appellant or that he deviated from the regular performance of his duties.

On February 27, 2008, the Court directed the parties to file their respective supplemental briefs if they desire. ^[11] The Office of the Solicitor General manifested that it is dispensing with the filing of a supplemental brief as the same would constitute a mere rehash or reiteration of matters already presented in its brief and duly considered by the CA. ^[12]

Appellant, for his part, submitted a Supplemental Brief, ^[13] contending that PO2 Ortega's testimony failed to provide substantial information as to warrant the non-presentation of the poseur-buyer. Appellant stresses that PO2 Ortega was six meters away from the poseur-buyer and appellant when the alleged transaction took place. Thus, he could not have clearly seen what was handed by appellant. Likewise, there remains no proof that the item handed to the poseur-buyer was the very same item examined by the forensic chemist. The stipulation on the chemist's testimony should not be taken against appellant since it only refers to the fact that the seized items yielded positive results for *shabu* and does not in any way extend to the matter of ownership thereof. Appellant likewise argues that the police officers deviated from the regular performance of their duties as his arrest was tainted with irregularity. He points to the destruction of the door of his house and more importantly, the buy-bust-team's failure to follow the mandatory requirements of R.A. No. 9165 which consequently resulted in the prosecution's failure to present the *corpus delicti* of the crime.

The appeal is meritorious.

In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti*, i.e., the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction. ^[14]

Considering the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise, there is a need to strictly comply with procedure in its seizure and custody. ^[15] Section 21, paragraph 1, Article II of R.A. No. 9165, provides such procedure: