

THIRD DIVISION

[G.R. No. 185715, January 19, 2011]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERLINDA CAPUNO
Y TISON, APPELLANT.**

DECISION

BRION, J.:

We review the May 27, 2008 decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 30215, affirming with modification the April 3, 2006 decision^[2] of the Regional Trial Court (RTC), Branch 75, San Mateo, Rizal. The RTC decision found Erlinda Capuno y Tison (*appellant*) guilty beyond reasonable doubt of illegal sale of *shabu*, under Section 5, Article II of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

ANTECEDENT FACTS

The prosecution charged the appellant with violation of Section 5, Article II of R.A. No. 9165 before the RTC, under an Information that states:

That on or about the 21st day of July 2002, in the Municipality of Rodriguez, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another, one (1) heat-sealed transparent plastic sachet of white crystalline substance weighing 0.04 gram which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, and which substance produces a physiological action similar to amphetamine or other compound thereof providing similar physiological effects.

CONTRARY TO LAW.^[3]

The appellant pleaded not guilty to the charge.^[4] The prosecution presented Police Officer 1 (PO1) Jose Gordon Antonio and PO1 Fortunato Jiro III at the trial. The appellant and Maria Cecilia Salvador took the witness stand for the defense.

PO1 Antonio narrated that at around 11:10 a.m. of July 21, 2002, he was at the Rodriguez Police Station when a civilian informant arrived and told him that a woman was openly selling dangerous drugs on Manggahan Street, *Barangay Burgos*, Montalban, Rizal. Upon receiving this information, he, PO1 Joseph G. Fernandez, and PO1 Jiro planned an entrapment operation: he (PO1 Antonio) was designated as the poseur-buyer, while his two companions would act as back-up. Before leaving

the police station, they asked the desk officer to record their operation.^[5] They went to Manggahan Street, and when they were near this place, the informant pointed to them the appellant. PO1 Antonio alighted from the vehicle, approached the appellant, and told her, "*Paiskor ng halagang piso*"; he then handed the pre-marked one hundred peso bill to her. The appellant pulled out a plastic sachet from her left pocket and gave it to PO1 Antonio. PO1 Antonio immediately held the appellant's arm, introduced himself to her, and stated her constitutional rights. It was at this time that PO1 Fernandez and PO1 Jiro approached them; PO1 Jiro recovered the marked money from the appellant. They brought the appellant to the police station for investigation.^[6] According to PO1 Antonio, the police forwarded the seized item to the Eastern Police District Crime Laboratory for examination.^[7]

PO1 Jiro testified that at around 11:00 a.m. of July 21, 2002, he was at the Rodriguez Police Station when a confidential asset called and informed the police that he saw one "*alias Erlinda*" selling illegal drugs. The police planned a buy-bust operation wherein they prepared a one hundred peso bill (P100.00) marked money, and designated PO1 Antonio as the poseur buyer. Afterwards, PO1 Jiro, PO1 Antonio, PO1 Fernandez, and the confidential asset left the police station and proceeded to Manahan Street. On their arrival there, the confidential asset pointed to them the appellant.^[8] PO1 Antonio alighted from the vehicle, approached the appellant, and talked to her. Thereafter, PO1 Antonio handed the marked money to the appellant; the appellant took "something" from her pocket and handed it to PO1 Antonio.^[9] Immediately after, PO1 Antonio arrested the appellant. He (PO1 Jiro) and PO1 Fernandez approached the appellant; he recovered the marked money from the appellant's left pocket. They brought the appellant to the police station and asked the duty officer to blotter the incident. Afterwards, they brought the appellant to the police investigator; they also made a request for a laboratory examination.^[10]

On cross-examination, PO1 Jiro stated that he was 10 meters away from PO1 Antonio when the latter was transacting with the appellant. He maintained that the buy-bust operation took place outside the appellant's house.^[11] He recalled that the appellant had two other companions when they arrived. When they arrested the appellant, some residents of the area started a commotion and tried to grab her.^[12]

The testimony of Police Inspector Abraham Tecson, the Forensic Chemist, was dispensed with after both parties stipulated on the result of the examination conducted on the specimen submitted to the crime laboratory.

On the hearing of April 14, 2004, the prosecution offered the following as exhibits:

Exhibit "A" - the *Sinumpaang Salaysay* of PO1 Antonio, PO1 Jiro and PO1 Fernandez

Exhibit "B" - the request for laboratory examination

Exhibit "C" - Chemistry Report No. D-1373-02E

Exhibit "D" - the buy-bust money

Exhibit "E" - Chemistry Report No. RD-78-03

Exhibit "F" - the specimen confiscated from the appellant

Exhibit "G" - Police Blotter^[13]

The defense presented a different version of the events.

The appellant testified that at around 11:00 a.m. of July 21, 2002, she was inside her house and lying on the bed, together with her 15-year old daughter, when two persons, who introduced themselves as police officers, entered her house. They wore *maong* pants and *sando*. They asked her if she was Erlinda Capuno and when she answered in the affirmative, they searched her house.^[14] They invited the appellant and her daughter to the Municipal Hall of Montalban, Rizal when they did not find anything in the house. Upon arriving there, the police told her to reveal the identity of the person who gave her *shabu*. When she answered that she had no idea what they were talking about, the police put her in jail.^[15] The appellant further stated that she saw the seized specimen only in court.^[16]

On cross-examination, the appellant denied that she had been selling illegal drugs. She explained that she consented to the search because she believed that the two persons who entered her house were policemen.^[17]

Maria, the appellant's daughter, corroborated her mother's testimony on material points, but stated that the two policemen did not search their house but merely "looked around."^[18]

The RTC, in its decision^[19] of April 3, 2006, convicted the appellant of the crime charged, and sentenced her to suffer the indeterminate penalty of imprisonment for twelve (12) years and one (1) day to twelve (12) years, ten (10) months and twenty (20) days. The RTC likewise ordered the appellant to pay a P100,000.00 fine.

The appellant appealed to the CA, docketed as CA-G.R. CR No. 30215. The CA, in its decision^[20] dated May 27, 2008, affirmed the RTC decision with the modification that the appellant be sentenced to life imprisonment, and that the amount of fine be increased to P500,000.00.

The CA found unmeritorious the appellant's claim that the prosecution witnesses were not credible due to their conflicting statements regarding the place of the buy-bust operation. As the records bore, PO1 Antonio stated that they conducted the entrapment operation on Manggahan Street; PO1 Jiro testified that it was held on Manahan Street. The CA, nevertheless, ruled that PO1 Jiro made a slip of the tongue as there was no Manahan Street in *Barangay Burgos*, Montalban, Rizal.^[21]

The CA added that despite the minor inconsistencies in the testimonies of PO1 Antonio and PO1 Jiro, the records do not show that they were ever motivated by any ulterior motive other than their desire to help wipe out the drug menace. It added that the appellant's denial cannot prevail over the positive identification made by the

prosecution witnesses, who, as police officers, performed their duties in a regular manner.^[22]

Finally, the CA held that all the elements of illegal sale of dangerous drugs had been established.^[23]

In her brief,^[24] the appellant claims that the lower courts erred in convicting her of the crime charged despite the prosecution's failure to prove her guilt beyond reasonable doubt. She harps on the fact that PO1 Antonio and PO1 Jiro gave conflicting statements on how they came to know of her alleged illegal activities. On one hand, PO1 Antonio claimed that an informant went to the police station and told them that the appellant was openly selling illegal drugs; PO1 Jiro, on the other hand, stated that a civilian informant called the police and informed them of the appellant's illegal activities. The appellant also alleges that the testimonies of these two witnesses differ as regards the actual place of the entrapment operation. She further argues that the police did not coordinate with the Philippine Drug Enforcement Agency (*PDEA*) in conducting the buy-bust operation.

The appellant likewise contends that the prosecution failed to show an unbroken chain of custody in the handling of the seized specimen. She claims that the apprehending team did not mark the seized items upon confiscation. Moreover, there was no showing that the police inventoried or photographed the seized items in her presence or her counsel, a representative of the media and the Department of Justice (*DOJ*), and any elected public official.^[25]

For the State, the Office of the Solicitor General (*OSG*) counters with the argument that the testimonies of the police officers prevail over the appellant's bare denial, more so since there was nothing in the records to show that they were motivated by any evil motive other than their desire to curb the vicious drug trade.^[26]

The *OSG* added that when the buy-bust operation took place on July 21, 2002, there was no institution yet known as the *PDEA*, as the Implementing Rules of R.A. No. 9165 (*IRR*) took effect only on November 27, 2002.^[27] It further claimed that the failure to comply with the Dangerous Drugs Board Regulations was not fatal to the prosecution of drug cases.^[28]

THE COURT'S RULING

After due consideration, we resolve to *acquit* the appellant for the prosecution's failure to prove her guilt beyond reasonable doubt.

In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused - in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt.^[29] The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And 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.^[30]

**The requirements of paragraph 1, Section 21
of Article II of R.A. No. 9165**

In a prosecution for the 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. To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the *same* illegal drug actually recovered from the appellant; otherwise, the prosecution for possession or for drug pushing under R.A. No. 9165 fails.^[31]

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory** and **photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

This procedure, however, was not shown to have been complied with by the members of the buy-bust team, and nothing on record suggests that they had extended reasonable efforts to comply with the said statutory requirement in handling the evidence. The deficiency is patent from the following exchanges at the trial:

FISCAL ROMNIEL MACAPAGAL:

Q: Upon arrival at Manggahan Street, what did x x x your group do?

PO1 JOSE GORDON ANTONIO:

A: We proceeded to the place and before we reach[ed] that place[,]
our civilian asset pointed to us the suspect.

Q: After your civilian informer pointed to the suspect, what did your group do?

A: I alighted from our private vehicle at the time and I was the one who talked to Erlinda Capuno.