

## FIRST DIVISION

[ G.R. No. 185717, June 08, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GARRY DE LA CRUZ Y DELA CRUZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This is an appeal from the Decision<sup>[1]</sup> dated June 30, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02727, which affirmed *in toto* the February 8, 2007 Decision<sup>[2]</sup> in Criminal Case No. Q-03-117814 of the Regional Trial Court (RTC), Branch 82 in Quezon City. The RTC found accused Garry de la Cruz y dela Cruz (Garry) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

#### **The Facts**

In an Information<sup>[3]</sup> filed on June 3, 2003, accused was indicted for the crime allegedly committed as follows:

That on or about the 29<sup>th</sup> of May, 2003, 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, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero two (0.02) gram of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Upon arraignment on July 28, 2003, accused pleaded "not guilty" to the above charge.<sup>[4]</sup> Trial<sup>[5]</sup> on the merits ensued.

#### **Version of the Prosecution**

After conducting surveillance for a week, the Station Drug Enforcement Unit in La Loma, Quezon City planned a buy-bust operation against a certain Garry who was in the *Barangay* Watch List. The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA).

On May 29, 2003, at around 9:00 a.m., the station's Officer-in-Charge (OIC), Police Inspector Oliver Villanueva (P/Insp. Villanueva), gave a briefing on the buy-bust

operation. Police Officer 2 Edcel Ibasco (PO2 Ibasco) was designated as poseur-buyer, while PO1 Roderick Valencia (PO1 Valencia), PO1 Alfredo Mabutol, and PO2 Ronald Pascual were assigned as back-up operatives. Their informant attended the briefing.

Thereafter, the buy-bust team proceeded to Biak-na-Bato corner Mauban Streets, Quezon City and arrived there at around 9:30 a.m. The informant introduced PO2 Ibasco to the accused, who was standing in front of a shanty, as wanting to buy *shabu*. The accused asked for PhP 100, and when PO2 Ibasco paid the amount, the former handed over to him a white crystalline substance in a plastic sachet. Upon PO2 Ibasco's prearranged signal, the other members of the buy-bust team approached them. The accused, sensing what was happening, ran towards the shanty but was caught by PO1 Valencia at the alley. PO1 Valencia introduced himself as a police officer and frisked the accused, in the process recovering the buy-bust money.

The buy-bust team then brought the accused to the station. The accused was turned over to the desk officer on duty, along with the substance in the sachet bought from him and the recovered buy-bust money. After inquest, the Information was filed on June 3, 2003. Accused was then committed to the Quezon City Jail.<sup>[6]</sup>

Consequently, the substance inside the sachet believed to be *shabu* was sent to and examined by a Philippine National Police forensic chemist, Engr. Leonard Jabonillo (Engr. Jabonillo). The laboratory result confirmed that the substance was positive for methamphetamine hydrochloride or *shabu*.

Only PO2 Ibasco and PO1 Valencia testified for the prosecution during the trial. The testimony of Engr. Jabonillo was dispensed with upon stipulation by the defense.

### **Version of the Defense**

The accused denied selling *shabu* to PO2 Ibasco. In short, the accused used the defense of denial and alleged a frame-up by the arresting officers.

The accused testified that he was arrested on May 29, 2003 at around 9:00 a.m. inside his house at *Barangay* Manresa, Quezon City while he was alone drinking coffee. While two neighbors were talking in front of his house, a Tamaraw FX arrived. Five armed men alighted from it, whereupon his neighbors ran away and were chased by them. The armed men then returned, saying, "*Nakatakas, nakatakbo.*" (They had escaped and ran.) One of the armed men saw the accused and entered his house. It was PO2 Ibasco, who frisked him and got PhP 60 from his pocket. PO1 Valencia also entered his house and came out with a shoe box, then said, "*Sige, isakay n'yo na.*" (Take him in the car.) He asked the armed men what his violation was but was told to merely explain at the precinct.

In the police precinct, he was investigated and subsequently detained. They showed him a plastic sachet which they allegedly recovered from him. Then a man approached him and demanded PhP 30,000 for his release, but he said he did not have the money. Thereafter, he was presented for inquest.

A witness, Rodolfo Buencamino (Buencamino), narrated that in the morning of May 29, 2003, he called the police precinct to have a certain "Taba," an alleged drug

pusher in their area, arrested. PO2 Ibasco and other police officers responded immediately. When the police officers arrived, Buencamino pointed to "Taba," who, however, was able to evade arrest. Thereafter, he was surprised to see the accused inside the vehicle of the policemen. But he did not know why and where the accused was arrested since he did not witness the actual arrest.

Another witness, Marbelita Collado Lepiten (Lepiten), testified that she was at the terrace of her house on 135 Manba St., Manresa, San Francisco del Monte, Quezon City, when she noticed the accused talking to a certain "Taba," a resident of the area. When a maroon Tamaraw FX stopped in front of the house of accused, "Taba" ran away and was pursued by two men who alighted from the vehicle. The two men returned without "Taba," who evidently escaped, and entered the house of the accused. She did not know what happened inside the house but she eventually saw the men push the accused outside into their vehicle.

### **The Ruling of the RTC**

On February 8, 2007, the RTC rendered its Decision finding the accused guilty beyond reasonable doubt of the offense charged. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered finding accused GARRY DELA CRUZ guilty beyond reasonable doubt of a violation of Section 5, Article II of R.A. No. 9165, and hereby sentencing him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

SO ORDERED.

In convicting the accused, the RTC relied on and gave credence to the testimony of prosecution witnesses PO2 Ibasco and PO1 Valencia. Citing *People v. Jubail*,<sup>[7]</sup> which enumerated the elements required to be established by the prosecution for the illegal sale of prohibited drugs, the trial court found that the prosecution had established the elements of the crime.

The RTC pointed out that Buencamino may, indeed, have called the police to arrest a certain "Taba," an alleged pusher in the area, but he was not present when the accused was arrested. The trial court likewise did not accord evidentiary weight to the testimony of Lepiten, who testified that she saw the accused talking to "Taba" and that when the police officers entered the house of the accused, she was unaware of what transpired inside. Thus, the RTC concluded that her testimony did not provide clear and convincing justification to cast doubt on the candid and straightforward testimonies of the police officers.

Applying the presumption of the performance of official function, the lack of showing any ill motive on the part of the police officers to testify against the accused, and the principle that the bare denial of an accused is inherently weak, the RTC convicted the accused.

Consequently, with his conviction, the accused started to serve his sentence<sup>[8]</sup> and was subsequently committed to the New Bilibid Prison in Muntinlupa City.

Aggrieved, accused appealed<sup>[9]</sup> his conviction before the CA.

### **The Ruling of the CA**

On June 30, 2008, the appellate court rendered the appealed decision, wholly affirming the findings of the RTC and the conviction of appellant. The *fallo* reads:

WHEREFORE, premises considered, herein appeal is hereby DENIED and the assailed Decision *supra* is hereby AFFIRMED in toto.

SO ORDERED.

The CA upheld the findings of the trial court that the essential elements required for the conviction of an accused for violation of Sec. 5, Art. II of RA 9165 were present in the instant case. The appellate court brushed aside the irregularities raised by accused-appellant by putting premium credence on the testimonies of the arresting police officers, who positively identified accused-appellant in open court. One with the trial court, the CA found no improper motive on the part of the police officers who, it said, were regularly performing their official duties. Besides, relying on *People v. Barlaan*,<sup>[10]</sup> the CA held that the irregularities raised that there was no coordination with the PDEA and that no inventory was made and no photograph taken of the seized drug, if true, did not invalidate the legitimate buy-bust operation conducted. Moreover, the CA found that the *corpus delicti*, i.e., the confiscated *shabu* and the Php 100 bill, were presented as evidence of the commission of the offense.

The CA also ruled that accused-appellant's mere denial, as corroborated by Buencamino and Lepiten, deserved scant consideration vis-à-vis the positive identification by the arresting officers who arrested him *in flagrante delicto*. Anent the questioned chain of custody, the CA found it unbroken and duly proven by the prosecution.

### **The Issues**

Hence, We have this appeal.

Only accused-appellant, however, filed his Manifestation (In Lieu of Supplemental Brief),<sup>[11]</sup> while the Office of the Solicitor General (OSG), representing the People of the Philippines, submitted neither a Manifestation nor a Motion. Consequently, on July 27, 2009, the Court dispensed with the OSG's submission of a supplemental brief.<sup>[12]</sup> Since no new issues are raised nor supervening events transpired, We scrutinize the Brief for the Accused-Appellant<sup>[13]</sup> and the Brief for the Plaintiff-Appellee,<sup>[14]</sup> filed in CA-G.R. CR-H.C. No. 02727, in resolving the instant appeal.

Thus, accused-appellant raises the same assignment of errors, in that:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT NO. 9165.

## II

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL.<sup>[15]</sup>

### **The Court's Ruling**

The appeal is meritorious.

Accused-appellant argues that, *first*, the prosecution has not proved his commission of the crime charged for the following irregularities: (1) the arresting officers did not coordinate with the PDEA, as required under Sec. 86 of RA 9165; (2) no physical inventory was conducted and photograph taken of the alleged seized drug in the presence of public officials, as required by Sec. 21 of RA 9165; and (3) the chain of custody was not duly proved by the prosecution. And *second*, his denial is worthy of credence upon corroboration by the credible witnesses presented by the defense.

After a careful and thorough review of the records, We are convinced that accused-appellant should be acquitted, for the prosecution has not proved beyond reasonable doubt his commission of violation of Sec. 5, Art. II of RA 9165.

A buy-bust operation is "a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime."<sup>[16]</sup> However, where there really was no buy-bust operation conducted, it cannot be denied that the elements for illegal sale of prohibited drugs cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. After all, the indictment for illegal sale of prohibited drugs will not have a leg to stand on.

This is the situation in the instant case.

The courts *a quo* uniformly based their findings and affirmance of accused-appellant's guilt on: (1) the straightforward testimony of the arresting police officers; (2) their positive identification of accused-appellant; (3) no ill motive was shown for their testimony against accused-appellant; (4) the self-serving defense of denial by accused-appellant; (5) the seeming irregularities in the conduct of the buy-bust operation and the arrest of accused-appellant not invalidating the operation; and (6) the testimonies of Buencamino and Lepiten not showing that the buy-bust operation was not conducted.

Although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended, or misapplied in a case under appeal,<sup>[17]</sup>