

THIRD DIVISION

[G.R. No. 185378, September 27, 2010]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JENNEFER CARIN Y DONOGA @ MAE-ANN, APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

Jennefer Carin y Donoga (appellant) was charged before the Regional Trial Court (RTC) of Makati City for violation of Section 5, Article II of Republic Act (RA) No. 9165^[1] allegedly committed as follows:

That on or about the 27th day of November 2003, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero two (0.02) grams of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in consideration of one pc. (*sic*) one hundred (P100.00) pesos.

CONTRARY TO LAW.^[2]

From the evidence for the prosecution consisting of documentary evidence and the testimonies of witnesses PO3 Jay Lagasca (PO3 Lagasca), Ruel Mergal (Mergal) and Edgardo Lumawag (Lumawag), the following version is culled:

On the information of a confidential informant that appellant was selling *shabu* every afternoon "at Davila Street," the Makati City Anti-Drug Abuse Council (MADAC) coordinated with the Anti-Illegal Drug Special Operation Task Force (AIDSOTF) and the Philippine Drug Enforcement Agency (PDEA) to conduct a buy-bust operation. A joint task force appointed PO3 Lagasca as team leader, "MADAC Operative" Mergal as poseur-buyer, and "MADAC Operative" Lumawag as back-up arresting officer. With a P100.00 bill on which "AAM" representing the initials of Drug Enforcement Unit (DEU) Chief SPO4 Arsenio M. Mangulabnan was marked,^[3] the team and the confidential informant walked toward appellant's residence at Davila Street, Barangay Santa Cruz, Makati City at 4:00 p.m. of November 27, 2003.^[4]

After waiting at the street for five minutes, appellant "came out" upon which she was introduced by the informant to Mergal. Told that Mergal wanted to buy *shabu*, appellant "went inside the street" and "*baka po [pumasok] sa bahay.*"^[5] Appellant returned after two minutes and handed Mergal a plastic sachet of white crystalline substance. Mergal in turn gave her the marked bill and executed the pre-arranged

signal^[6] which drew PO3 Lagasca and Lumawag to approach them and arrest her.

Lumawag recovered the marked bill from appellant's left hand and, on PO3 Lagasca's instruction, Mergal marked on the plastic sachet "JCD" representing appellant's initials.^[7]

The seized item was submitted for laboratory examination and found positive for *shabu*.^[8] A drug test conducted on the urine sample of appellant also turned positive for the presence of *shabu*.^[9]

Hence, the filing of the Information^[10] against appellant.

Denying the charge against her, appellant, claiming that she was framed-up, gave the following version:

On November 27, 2003, at about 4:00 to 4:30 in the afternoon, as she was washing clothes beside her house which is located in a squatter's area "in the interior of Davila St.," two men in civilian clothes approached her and asked the whereabouts of her husband, to which she replied that he was at work. They then asked her if they could interrogate her outside, to which she replied that they could interrogate her right there and then.

One of the two men at once drew a gun from his waistline and pointed it at her, handcuffed and dragged her outside the squatters' compound and boarded her inside a white Toyota Revo where a number of MADAC operatives were laughing. They proceeded to South Avenue and stopped at the Makati Public Safety Authority (MAPSA) Office where one of the men alighted from the vehicle, went inside the office, and returned with a plastic sachet of *shabu* which he said was what they had bought from her.

She was thereafter brought to the DEU where she was questioned in the course of which an investigator produced a One Hundred Peso bill and the man who was interrogating her wrote something thereon.^[11]

By Decision^[12] of May 12, 2006, Branch 64 of the Makati City RTC convicted appellant, disposing as follows:

WHEREFORE, in view of the foregoing, judgment is rendered finding the accused JENNEFER CARIN y DONOGA, guilty beyond reasonable doubt of the charge for violation of Section 5, Art. II, RA 9165, and sentencing her to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The period during which the accused is detained shall be considered in her favor pursuant to existing rules.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the one piece of plastic sachet of *shabu* weighing 0.02 gram subject matter of this case for said agency's appropriate disposition.

SO ORDERED.

In convicting appellant, the trial court relied on the presumption of regularity in the performance of official functions of the police officers and discredited appellant's defense of frame-up.^[13]

The Court of Appeals *affirmed* appellant's conviction by Decision^[14] of June 27, 2008. Hence, the present appeal.

Both parties in their manifestations before this Court adopted their respective Briefs filed before the appellate court in lieu of Supplemental Briefs.

In her Brief,^[15] appellant, contending that the prosecution failed to prove her guilt beyond reasonable doubt, raises, among other things, the operatives' failure to observe proper procedure in the conduct of the operation.^[16]

The Court finds that, indeed, the prosecution failed to show that the police complied with Section 21, paragraph (1) of Article II of R.A. 9165^[17] and with the chain of custody requirement under the Act. Thus, PO3 Lagasca admitted on cross-examination:

ATTY REGALA:

Q: Now, Mr. Witness, as team leader, you would know for a fact that in [an] operation like this, photographs are supposed to be taken in the presence of the suspect. **Do you have any photograph, Mr. Witness, to show to the Court that you indeed abide[d] with the rule in conducting a narcotics operation?**

A: **None, sir.**^[18] (emphasis supplied)

In a prosecution for illegal sale of a prohibited drug, 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 body or substance of the crime that establishes that a crime has actually been committed.^[19] Failure to comply with Section 21, paragraph (1) of Article II of RA No. 9165 and its implementing rules results, in certain cases such as in the present one, in failure to establish the existence of the crime.^[20]

The nature of illegal drugs "indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise" requires that strict compliance with the proper procedure is enjoined.^[21] In the present case, the buy-bust team failed to follow the mandatory^[22] procedure.

In another vein, even the version of prosecution witness PO3 Lagasca does not jibe