

SECOND DIVISION

[G.R. No. 179213, September 03, 2009]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NICOLAS GUTIERREZ Y LICUANAN APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

Assailed in the present appeal is the April 30, 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01991 affirming that of Branch 267 of the Regional Trial Court of Pasig City in Criminal Case No. 12514-D finding Nicolas Gutierrez y Licuanan alias Nick (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with illegal sale of 0.05 gram of *shabu* and illegal possession of paraphernalia "fit or intended for smoking . . . or introducing any dangerous drug into the body" by two separate Informations, both dated June 19, 2003, reading:

First Information

- The Prosecution, through the undersigned Public Prosecutor, charges **Nicolas Gutierrez y Licuanan** with the crime of violation of Section 5, Art. II of R.A. 9165 (SC-AM 99-1-13), committed as follows:

- On or about June 16, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Michael P. Espares, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing five centigrams (0.05 grams) [*sic*] of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.^[1] (Underscoring supplied)

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Second Information

- The Prosecution, through the undersigned Public Prosecutor, charges **Nicolas Gutierrez y Licuanan** with the crime of violation of Section 12, Art. II of R.A. No. 9165, committed as follows:

On or about June 16, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control the following paraphernalias fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body, to wit:

- a. one (1) unsealed transparent plastic sachet containing traces of white crystalline substance marked as exh-B;
- b. one (1) pair of scissors marked as exh.-C; and
- c. one (1) transparent plastic sachet containing five (5) empty transparent plastic sachets marked as exh-D.

x x x x

specimen marked as exh-B was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.^[2] (Underscoring supplied)

On arraignment, appellant pleaded not guilty.^[3] The trial court, after trial, acquitted appellant of the charge subject of the second Information (illegal possession of paraphernalia), hence, this Decision shall dwell only on the review of appellant's conviction of selling *shabu*.

From the testimonies of three members of the team which conducted a buy-bust transaction that spawned the filing of the Informations - PO1 Michael Espares (PO1 Espares),^[4] SPO3 Leneal Matias (SPO3 Matias),^[5] and PO1 Allan Mapula (PO1 Mapula),^[6] the following version of the prosecution is gathered:

At around 5:00 p.m. on June 16, 2003, while on duty at the Drug Enforcement Unit of the Pasig City Police Force, SPO3 Matias received information via telephone from a concerned citizen that a certain alias "Nick," later identified to be appellant, was peddling *shabu* along San Agustin Street, Barangay Palatiw, Pasig City. On the instructions of SPO3 Matias, PO1 Espares and PO1 Mapula proceeded to, and surveilled, the area and confirmed the information.

SPO3 Matias thus formed a buy-bust team, which he headed, with PO1 Espares as poseur-buyer, and PO1 Mapula and PO1 Michael Familiara (PO1 Familiara) as members. Five marked twenty-peso bills were given to PO1 Espares as buy-bust money. The team thereafter went to the target area and met with a confidential asset who was to assist them in the operation.

While the other members of the team were strategically positioned, the asset, accompanied by PO1 Espares, approached appellant and asked him "*Pare, meron ka ba diyang Bibili kami. Bibili ako ng piso.*" Apparently not having heard the entire utterances, appellant replied, "*Magkano ba bibilhin mo?*" (How much are you buying?), to which PO1 Espares replied "*Piso lang, eto pera*" at the same time

tendering the buy-bust money which appellant took and placed in his right front pocket. Appellant then drew from his pants' back pocket a black plastic case, opened it and took one plastic sachet containing a white crystalline substance which he handed to PO1 Espares. PO1 Espares thereupon executed the pre-arranged signal, apprehended appellant, and confiscated the black plastic case which appellant was holding. The case yielded a pair of scissors, an unsealed plastic sachet containing traces of white crystalline substance, and five empty plastic sachets.

Heeding the pre-arranged signal, the other members of the team closed in to assist PO1 Espares who then marked all the seized items including the plastic sachet containing the substance subject of the sale. Appellant was brought to the police station wherein the confiscated items were surrendered to an investigator.

Appellant, for his part, presented the following version:^[7]

At about 7:30 p.m. on June 16, 2003, while he was at home having dinner with his wife Josephine, daughter Jennifer and her husband, someone kicked open the door of their house. Four armed men in civilian clothes immediately entered, handcuffed and frisked him, and confiscated his wallet. On asking them what his offense was, he was simply told to explain at the police station. Jennifer, too, asked the armed men what the offense of appellant was, but she received no answer.

He was thereafter brought to the Pariancillo police precinct where a police officer showed him a plastic sachet and threatened that a case would be filed against him unless he paid P20,000. He failed to pay, however, hence, he was detained and subsequently charged.

Appellant's wife Josephine and daughter Jennifer corroborated appellant's tale on the circumstances surrounding his arrest.^[8]

Appellant's neighbor Jose de Guzman, who also took the witness stand, stated that at about 7:45 p.m. on June 16, 2003, he saw appellant come out of his house handcuffed and escorted by four persons who all boarded an owner-type jeep.^[9]

By Decision of January 18, 2006,^[10] the trial court convicted appellant of illegal sale of *shabu*. As reflected earlier, appellant was exonerated of the charge of illegal possession of paraphernalia. Thus, the trial court disposed:

WHEREFORE, in view of the foregoing considerations, the prosecution having proven the guilt of the accused beyond reasonable doubt, this Court, acting as a Special Drug Court in the above-captioned case, hereby finds NICOLAS GUTIERREZ y LICUANAN, GUILTY as charged and is hereby sentenced in Criminal Case No. 12514-D for *Violation of Section 5, Republic Act No. 9165*, to suffer **LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (Php 500,000.00)**.

In so far as Criminal Case No. 12515-D for *Violation of Section 12, Republic Act No. 9165*, considering that the prosecution failed to prove the guilt of the accused NICOLAS GUTIERREZ y LICUANAN of the said

crime, the latter is hereby acquitted thereof. (Italics in the original; emphasis and underscoring supplied)

In convicting appellant of illegal sale of *shabu*, the trial court found that the prosecution sufficiently established the *corpus delicti* consisting of the buy-bust money paid to appellant and the *shabu* purchased from him. It added that appellant's defense of frame-up was not supported by clear and convincing evidence.

On appeal, the Court of Appeals affirmed appellant's conviction by Decision of April 30, 2007,^[11] hence, the present appeal.

Appellant argues that he was a victim of an invalid warrantless search and arrest. He maintains that he was merely having dinner with his family when four unidentified armed men barged into their house. He cites an inconsistency in the testimonies of PO1 Espares and SPO3 Matias that he claims destroys their credibility, viz: PO1 Espares declared that the pre-arranged signal at the buy-bust operation was that he would light a cigarette, while SPO3 Matias stated that PO1 Espares was to flick the sachet containing shabu.^[12]

The Solicitor General counters that since appellant was caught *in flagrante* in a buy-bust operation, the police officers were not only authorized but were also obligated to effect a warrantless arrest and seizure, adding that frame-up is a common and standard line of defense which appellant failed to support with clear and convincing evidence.^[13]

The appeal is impressed with merit.

Under Section 5, Article II of R.A. No. 9165,^[14] the elements necessary in a prosecution for the illegal sale of *shabu* are: the identity of the buyer and the seller; the object and the consideration; and the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti* -- the body or substance of the crime which establishes the fact that a crime has actually been committed.^[15]

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt.^[16] Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*.^[17] The "chain of custody" rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.^[18]

Section 1 (b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002^[19] which implements R.A. No. 9165 defines "chain of custody" as follows:

b. "Chain of Custody" means the **duly recorded authorized movements and custody** of seized drugs or controlled chemicals or plants source of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory.