

SECOND DIVISION

[G.R. No. 177222, October 29, 2008]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RANILO DE LA CRUZ Y LIZING, APPELLANT.

D E C I S I O N

TINGA, J.:

On appeal is the Decision^[1] dated 30 November 2006 of the Court of Appeals in C.A.-G.R. CR No. 01266 affirming in *toto* the judgment^[2] dated 14 June 2004 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 211, finding appellant Ranilo Dela Cruz y

Lizing guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165) and sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of P500,000.00.^[3]

On 13 September 2002, Dela Cruz was charged with the violation of the aforesaid offense in an Information^[4] that reads:

That on or about the 12th day of September 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did then and there willfully, unlawfully and feloniously deliver, distribute, transport or sell to poseur-buyer PO2 Nick Resuello[,] one (1) heat-sealed transparent plastic sachet containing 0.03 gram each of white crystalline substance, which were found positive to the test for Methamphetamine Hydrochloride, commonly known as "*shabu*," a dangerous drug, for the amount of P100.00 with Serial No. XY588120, without the corresponding license and prescription, in violation of the above-cited law.

CONTRARY TO LAW.^[5]

On arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued with the prosecution presenting as witnesses arresting officers PO2 Braulio Peregrino, PO2 Nick Resuello, PO2 Marcelino Boyles, PO2 Allan Drilon, investigator-on-case PO3 Virgilio Bismonte and Forensic Chemist Joseph Perdido.

Prosecution evidence shows that on 12 September 2002, the Office of the Station Drugs Enforcement Unit (SDEU), Mandaluyong City received information that appellant, alias "*Boy Tigre*," of No. 73, Dela Cruz Street, Barangay Old Zaniga, Mandaluyong City was engaging in the trade of illegal drugs. A team composed of Peregrino, Boyles, Drilon and Resuello was dispatched to conduct a buy-bust operation in the area at around 2:00 p.m. of the same day. Peregrino, Boyles, and Drilon positioned themselves at a nearby area while Resuello, the designated

poseur-buyer, approached appellant described as a long-haired, medium built, not-so-tall male, sporting a moustache and frequently seen wearing short pants.^[6] At the time, appellant was standing outside of their gate and kept on glancing from side to side.^[7] Resuello then told appellant that he wanted to buy *shabu*. Dela Cruz looked surprised prompting Resuello to repeat what he had said and handed him the P100 bill with Serial No. XY 588120. Appellant, in turn, handed him a plastic sachet containing the white crystalline substance. At which point, Resuello executed the pre-arranged signal and Peregrino immediately rushed to the scene. ^[8]

Peregrino, identifying himself as a policeman, held appellant and informed him of his constitutional rights. Peregrino then recovered the buy-bust money from appellant. Subsequently, appellant was brought to SDECU for investigation. Thereat, Peregrino placed his initials (BP) on the plastic sachet containing the white crystalline substance before sending it to the Eastern Police District Crime Laboratory for chemical examination. The sachet was later tested positive for methamphetamine hydrochloride, a dangerous drug. Subsequently, Peregrino and Resuello accomplished the booking and information sheets regarding the incident. Peregrino also executed an affidavit on the matter.^[9] Appellant was later identified as Ranilo Dela Cruz y Lising.^[10]

On cross-examination, Peregrino and Resuello admitted that the buy-bust money had neither been dusted with fluorescent powder nor marked. They only made a photocopy of it prior to the operation for purposes of identification.^[11] Peregrino also testified that appellant had not been tested for the presence of fluorescent powder; neither was a drug examination conducted on him. After the arrest, Peregrino narrated that his office made a report on the matter which was forwarded to the Philippine Drug Enforcement Agency (PDEA).^[12] Boyles testified likewise on cross-examination that at the time of the arrest, they had no coordination with PDEA.^[13] Drilon, on the other hand, testified that he had not actually seen the transaction.^[14]

Forensic Chemist Perdido testified that the plastic sachet was found to contain methamphetamine hydrochloride. He, however, admitted that he examined the specimen and had made the markings on the same without the presence of appellant.^[15]

For the defense, appellant testified that on 12 September 2002, at around 1:00 to 2:00 p.m., he was in his house watching television with his wife when he heard a knock at the door. Outside, he came upon two men looking for "*Boy Tigre*." After admitting that it was he they were looking for, he was told that the barangay captain needed him. He went with the two men to see the barangay captain. Thereat, the barangay captain asked whether he knew of anyone engaged in large-scale drug pushing. Appellant replied in the negative and in response, the barangay captain stated that there was nothing more he (the barangay captain) can do. Appellant was then told to go to the City Hall. At first, his wife accompanied him there but he later asked her to go home and raise the money Bismonte had allegedly demanded from him in exchange for his freedom. When appellant's wife failed to return as she had given birth, a case for violation of Section 5, Article II of R.A. No. 9165 was filed against him.^[16] Appellant added that he used to be involved in "video-karera" and surmised that this involvement could have provoked the barangay captain's wrath.

[17]

Appellant's wife, Jocelyn Dela Cruz, corroborated appellant's testimony. She further stated that after appellant had identified himself as "*Boy Tigre*," the two men held on to him and asked him to go with them to the barangay captain. There, the barangay captain asked appellant if he knew a certain "Amon" of *Pitong Gatang*. When appellant replied that he did not, he was then brought to the SDECU where Bismonte allegedly demanded P100,000.00 from them or else a case without bail will be filed against appellant. [18]

Finding that the prosecution had proven appellant's guilt beyond reasonable doubt, the RTC rendered judgment against him, sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of P500,000.00. On appeal to the Court of Appeals, the challenged decision was affirmed *in toto* by the appellate court, after it ruled that the trial court did not commit any reversible error in finding appellant guilty of the offense charged.

Before the Court, appellant reiterates his contention that the apprehending police officers' failure to comply with Sections 21^[19] and 86^[20] of R.A. No. 9165 and that failure casts doubt on the validity of his arrest and the admissibility of the evidence allegedly seized from him.^[21] Through his Manifestation (In Lieu of Supplemental Brief) dated 4 September 2007, appellant stated that he had exhaustively argued all the relevant issues in his Brief filed before the Court of Appeals and thus, he is adopting it as Supplemental Brief.^[22]

The Office of the Solicitor General (OSG) manifested that it was dispensing with the admission of a supplemental brief.^[23] Earlier, in its Appellee's Brief, the OSG maintained that despite the non-compliance with the requirements of R.A. No. 9165, the seized drugs are admissible in evidence because their integrity and evidentiary value were properly preserved in accordance with the Implementing Rules and Regulations of R.A. No. 9165.^[24]

At the outset, it is well to restate the constitutional mandate that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum 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.^[25]

In prosecutions for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.^[26] The dangerous drug is the very *corpus delicti* of the offense.^[27]

Section 21 of R.A. No. 9165 states that:

- (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;

The IRR of the same provision adds a proviso, to wit:

Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

In the case at bar, the Court finds that the arresting officers failed to strictly comply with the guidelines prescribed by the law regarding the custody and control of the seized drugs despite its mandatory terms. While there was testimony regarding the marking of the seized items at the police station, there was no mention whether the same had been done in the presence of appellant or his representatives. There was likewise no mention that any representative from the media, DOJ or any elected official had been present during the inventory or that any of these people had been required to sign the copies of the inventory. Neither does it appear on record that the team photographed the contraband in accordance with law. Peregrino testified as follows:

Q While you were at the office, what did you do with the physical evidence, subject of the buy-bust operation?

A When we were at the office[,] we marked the subject physical evidence and requested for physical examination[,] Ma'am.

ACP Indunan:

Q What were the markings placed on the physical evidence?

A What we put is initial "BP"

Q What does this BP means [*sic*]?

A My initial Ma'am, Braulio Perigrino [*sic*].^[28]

Resuello likewise testified in this wise:

ACP Indunan:

Q Before you brought this item to the crime laboratory[,] what other markings you placed on the sachet?

A We put a marking BP, Ma'am.

Q That BP stands for what[,] Mr. witness?

A Braulio Perigrino[,] Ma'am.^[29]

Following the rule that penal laws shall be construed strictly against the government, and liberally in favor of the accused,^[30] the apprehending team's omission to observe the procedure outlined by R.A. 9165 in the custody and disposition of the seized drugs significantly impairs the prosecution's case.

Now, the prosecution cannot seek refuge in the proviso of the IRR in the absence of proof of entitlement to such leniency. The prosecution rationalizes its oversight by merely stating that the integrity and evidentiary value of the seized items were properly preserved in accordance with law. The allegation hardly sways the Court save when it is accompanied by proof. According to the proviso of the IRR of Section 21(a) of R.A. No. 9165, non-compliance with the procedure shall not render void and invalid the seizure of and custody of the drugs only when: (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Clearly, there must be proof that these two (2) requirements were met before any such non-compliance may be said to fall within the scope of the proviso. Significantly, not only does the present case lack the most basic or elementary attempt at compliance with the law and its implementing rules; it fails as well to provide any justificatory ground showing that the integrity of the evidence had all along been preserved.^[31]

Failing to prove entitlement to the application of the proviso, the arresting officers' non-compliance with the procedure laid down by R.A. No. 9156 is not excused. This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. We resolve the doubt in the integrity and identity of the *corpus delicti* in favor of appellant^[32] as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.^[33] Considering that the prosecution failed to present the required quantum of evidence, appellant's acquittal is in order.

It is well to recall that in several cases that came before us, we have repeatedly emphasized the importance of compliance with the prescribed procedure in the custody and disposition of the seized drugs. We have over and over declared that the deviation from the standard procedure dismally compromises the integrity of the evidence.^[34]

Anent the argument that the buy-bust operation was conducted without the assistance or consent of PDEA, in violation of Section 86 of R.A. No. 9165, it must be pointed out that the second paragraph of the same provision states that the transfer, absorption and integration of the different offices into PDEA shall take effect within eighteen (18) months from the effectivity of the law which was on 4 July 2002.^[35] In view of the fact that the buy-bust operation was conducted on 12 September 2002, it is excusable that the same was not done in coordination with PDEA.

All told, the totality of the evidence presented in the instant case does not support appellant's conviction for violation of Section 5, Article II, R.A. No. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense. Following the constitutional mandate, when the guilt of the appellant has not been proven with moral certainty, as in this case, the presumption of innocence prevails and his exoneration should be granted as a matter of right.