

## SECOND DIVISION

[ G.R. No. 182348, November 20, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CARLOS DELA CRUZ, ACCUSED-APPELLANT.**

### DECISION

**VELASCO JR., J.:**

This is an appeal from the November 29, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02286 entitled *People of the Philippines v. Carlos Dela Cruz* which affirmed the September 16, 2005 Decision of the Regional Trial Court (RTC), Branch 77 in San Mateo, Rizal in Criminal Case Nos. 6517 (Illegal Possession of Firearm and Ammunition) and 6518 (Possession of Dangerous Drug). The RTC found accused- appellant Carlos Dela Cruz guilty beyond reasonable doubt of violation of Section 11(2) of Republic Act No. (RA) 9165 or *The Comprehensive Dangerous Drugs Act of 2002*.

#### The Facts

On November 15, 2002, charges against accused-appellant were made before the RTC. The Informations read as follows:

#### **Criminal Case No. 6517**

That, on or about the 20<sup>th</sup> day of October 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a private citizen, without any lawful authority, did then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control One (1) Gauge Shotgun marked ARMSCOR with Serial No. 1108533 loaded with four (4) live ammunition, which are high powered firearm and ammunition respectively, without first securing the necessary license to possess or permit to carry said firearm and ammunition from the proper authorities.

#### **Criminal Case No. 6518**

That on or about the 20<sup>th</sup> day of October 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control one (1) heat-sealed transparent plastic bag weighing 49.84 grams of white crystalline substance, which gave positive results for Methamphetamine Hydrochloride, a dangerous drug.<sup>[1]</sup>

Accused-appellant entered a not guilty plea and trial ensued.

The facts, according to the prosecution, showed that in the morning of October 20, 2002, an informant tipped off the Drug Enforcement Unit of the Marikina Police Station that wanted drug pusher Wifredo Loilo alias "Boy Bicol" was at his nipa hut hideout in San Mateo, Rizal. A team was organized to arrest Boy Bicol. Once there, they saw Boy Bicol by a table talking with accused-appellant. They shouted "Boy Bicol *sumuko ka na may* warrant of arrest *ka*. (Surrender yourself Boy Bicol you have a warrant of arrest.)" Upon hearing this, Boy Bicol engaged them in a shootout and was fatally shot. Accused-appellant was seen holding a shotgun through a window. He dropped his shotgun when a police officer pointed his firearm at him. The team entered the nipa hut and apprehended accused-appellant. They saw a plastic bag of suspected *shabu*, a digital weighing scale, drug paraphernalia, ammunition, and magazines lying on the table. PO1 Calanoga, Jr. put the markings "CVDC," the initials of accused-appellant, on the bag containing the seized drug.

Accused-appellant was subsequently arrested. The substance seized from the hideout was sent to the Philippine National Police crime laboratory for examination and tested positive for methamphetamine hydrochloride or *shabu*. He was thus separately indicted for violation of RA 9165 and for illegal possession of firearm.

According to the defense, accused-appellant was at Boy Bicol's house having been asked to do a welding job for Boy Bicol's motorcycle. While accused-appellant was there, persons who identified themselves as police officers approached the place, prompting accused-appellant to scamper away. He lied face down when gunshots rang. The buy-bust team then helped him get up. He saw the police officers searching the premises and finding *shabu* and firearms, which were on top of a table or drawer.<sup>[2]</sup> When he asked the reason for his apprehension, he was told that it was because he was a companion of Boy Bicol. He denied under oath that the gun and drugs seized were found in his possession and testified that he was only invited by Boy Bicol to get the motorcycle from his house.<sup>[3]</sup>

The RTC acquitted accused-appellant of illegal possession of firearm and ammunition but convicted him of possession of dangerous drugs. The dispositive portion of the RTC Decision reads:

WHEREFORE, the Court based on insufficiency of evidence hereby ACQUITS accused CARLOS DELA CRUZ Y VICTORINO in Criminal Case No. 6517 for violation of P.D. 1866 as amended by RA 8294.

In Criminal Case No. 6518 for Possession of Dangerous Drug under Section 11, 2<sup>nd</sup> paragraph of Republic Act 9165, the Court finds said accused CARLOS DELA CRUZ Y VICTORINO, GUILTY beyond reasonable doubt and is hereby sentenced to Life Imprisonment and to Pay a Fine of FOUR HUNDRED THOUSAND PESOS (P400,000.00).

SO ORDERED.<sup>[4]</sup>

On December 7, 2005, accused-appellant filed a Notice of Appeal of the RTC Decision.

In his appeal to the CA, accused-appellant claimed that: (1) the version of the

prosecution should not have been given full credence; (2) the prosecution failed to prove beyond reasonable doubt that he was guilty of possession of an illegal drug; (3) his arrest was patently illegal; and (4) the prosecution failed to establish the chain of custody of the illegal drug allegedly in his possession.

The CA sustained accused-appellant's conviction.<sup>[5]</sup> It pointed out that accused-appellant was positively identified by prosecution witnesses, rendering his uncorroborated denial and allegation of frame-up weak. As to accused-appellant's alleged illegal arrest, the CA held that he is deemed to have waived his objection when he entered his plea, applied for bail, and actively participated in the trial without questioning such arrest.

On the supposedly broken chain of custody of the illegal drug, the appellate court held that accused-appellant's claim is unpersuasive absent any evidence showing that the plastic sachet of *shabu* had been tampered or meddled with.

On December 20, 2007, accused-appellant filed his Notice of Appeal of the CA Decision.

On June 25, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties later signified their willingness to submit the case on the basis of the records already with the Court.

Accused-appellant presents the following issues before us:

I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL CREDENCE TO THE VERSION OF THE PROSECUTION

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 11, ARTICLE II, RA 9165 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE COMMISSION OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE PATENT ILLEGALITY OF HIS ARREST

IV

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 11, ARTICLE II, RA 9165 DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE ILLEGAL DRUG ALLEGEDLY FOUND IN HIS POSSESSION