

SPECIAL TWENTY-SECOND DIVISION

[CA-G.R. CEB-CR No. 02230, January 27, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SHAUN
WAMAR REGIS, ACCUSED-APPELLANT.**

DECISION

HERNANDO, J:

At bench is an Appeal^[1] from the May 14, 2013 Judgment^[2] of the Regional Trial Court (RTC), Branch 57, 7th Judicial Region, Cebu City, which adjudged accused-appellant Shaun Wamar Regis guilty for violation of Sections 11^[3] and 12,^[4] Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On October 6, 2009, two separate Informations were filed against accused, viz:

I. docketed in the RTC as *Criminal Case No. CBU-87161*:^[5]

“That on or about the 4th day of October, 2009, at about 12:15 o’clock A. M., more or less, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control one (1) heat sealed transparent plastic sachet of white crystalline substance weighing 0.02 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.”

II. docketed in the RTC as *Criminal Case No. CBU-87162*:^[6]

“That on or about the 4th day of October, 2009, at about 12:15 o’clock A.M., more or less, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without being authorized by law, did then and there have in his possession the following:

- 1 = one (1) rolled tin foil;
- 2 = disposable lighter and
- 3 = rolled tissue paper

which are instruments and/or equipments fit or intended for smoking, consuming [*sic*], administering, ingesting or introducing any dangerous drug into the body.

CONTRARY TO LAW.”

When arraigned with the assistance of counsel, accused pleaded not guilty to both charges.^[7] After the pre-trial conference,^[8] trial ensued.

The prosecution first presented the forensic chemist of the Philippine National Police (PNP) Regional Crime Laboratory Office 7, Police Senior Inspector (P/SInsp.) Rendielyn Lugtu Sahagun, who conducted the chemical analysis and examination on the white crystalline substance contained in a small plastic packet that was allegedly recovered from the possession of accused-appellant. When P/SInsp. Sahagun was presented, the defense admitted the following:^[9]

1. P/SInsp. Sahagun’s competence and expertise;
2. the existence and due execution of the October 4, 2009 letter-request¹⁰ for laboratory examination;
3. that the small plastic sachet containing white crystalline substance^[11] perceived to be *shabu* was delivered by PO2 Ybañez to the PNP Region 7 Crime Laboratory on October 4, 2009 at 1:15 a.m.;^[12]
4. that the PNP Region 7 Crime Laboratory received, through PO2 Sagun,^[13] the specimen, together with the October 4, 2009 letter-request for laboratory examination;
5. that upon receipt by P/SInsp. Sahagun of the specimen, together with the October 4, 2009 letter-request for laboratory examination, from PO2 Sagun, P/SInsp. Sahagun indicated the weight of the specimen on the letter-request and affixed her signature beside the entry;
6. that P/SInsp. Sahagun examined the specimen submitted and that the examination on the specimen yielded positive for the presence of methamphetamine hydrochloride as indicated in Chemistry Report No. D-932-2009;^[14]
7. that after P/SInsp. Sahagun examined the specimen and prepared the chemistry report, she turned over the specimen, the letter-request and the chemistry report to the evidence custodian, PO1 Joseph Bucayan, and retrieved them prior to presenting them to the trial court; and
8. that P/SInsp. Sahagun will be able to identify the specimen, the letter-request and the chemistry report which she all presented to the trial court.

In their capacity as arresting officers, PO2 Roy Carlo Veloso and PO2 Frederick Ybañez^[15] of the PNP Cebu City Police Station, assigned at the Investigation and Detective Management Branch (IDMB), testified for the prosecution and established

the following facts:^[16]

At around 11:00 p.m. of October 3, 2009, PO2 Veloso and PO2 Ybañez, together with P/SInsp. Juanito R. Pajantoy, PO3 Cesar S. Pandong and PO1 Albert N. Luardo, set off to conduct a checkpoint along New Road Imus Street, *Barangay Day-as*, Cebu City, specifically near the *Barangay Day-as Sports Complex*. In the course of their operation, at around 12:15 a.m. of October 4, 2009, they flagged down a taxicab. PO2 Ybañez approached the vehicle, which cabin light was already on, and with the use of a flashlight, conducted a visual search therein, starting at the passenger side of the vehicle. The team noticed two passengers at the backseat. PO2 Veloso and PO2 Ybañez then saw the passenger seated behind the front passenger seat, who was later identified as accused Shaun Wamar Regis, throwing a plastic pack containing white crystalline substance and sniffing paraphernalia on the floor of the cab. PO2 Ybañez immediately opened the back door of the vehicle, arrested accused and picked up the plastic pack containing white crystalline substance and the sniffing paraphernalia. Accused was then informed of the reason of his arrest and was apprised by PO2 Ybañez of his Constitutional rights. While still at the crime scene and in the presence of accused, the confiscated plastic pack containing white crystalline substance was right away marked by PO2 Ybañez with the initials of accused, "SR," and the sniffing paraphernalia, namely: a disposable lighter, a rolled tin foil and a rolled tissue paper, were collectively marked as "SR1."^[17] The team then brought accused, together with the seized items, to the IDMB office at Gorordo Avenue, Cebu City. On their way to their office, it was PO2 Ybañez who was in custody of all the seized items.

Upon their arrival at the police station, the incident was entered in the police blotter^[18] by PO1 Luardo. The seized items were inventoried^[19] by PO2 Ybañez who declared that he could not recall if the seized items were photographed because their team had no camera at that time. PO2 Ybañez then prepared the letter-request for laboratory examination^[20] of the white crystalline substance contained in the marked sachet and delivered the specimen, together with the letter-request, to the PNP Region 7 Crime Laboratory.^[21] The laboratory examination on the submitted specimen yielded positive for methamphetamine hydrochloride.^[22] Meanwhile, the confiscated drug paraphernalia were kept by PO2 Ybañez in his locker. These were only retrieved by him and turned over to PO2 Veloso for presentation in court during trial.

PO2 Veloso^[23] and PO2 Ybañez^[24] positively identified accused in court. The heat-sealed transparent plastic sachet containing what was perceived to be *shabu* and the drug paraphernalia were also positively identified by the two police officers in court.^[25]

After the prosecution rested its case, the defense presented the accused himself.

In denying the allegation against him, accused, who was a hairstylist and resident of *Barangay Perrelos*, Carcar City, declared^[26] that in the evening of October 3, 2009, he and his gay friend Amanda went to Carbon Market, Cebu City to buy flowers. They then boarded a taxicab to Golden Peak Hotel since accused was hired as make-up artist and florist in a wedding the following day. Later, the taxi driver advised them that there was a checkpoint about twenty (20) meters away, and the driver

turned on the cabin light. When they pulled over, a police officer, whom accused identified in court as PO2 Ybañez, knocked at the car window prompting accused to roll it down. PO2 Ybañez asked him if he had bladed weapons and accused answered in the affirmative. PO2 Ybañez asked him to bring out the bladed items and accused obliged. He presented his pair of scissors and a cutter to be used in cutting flowers. PO2 Ybañez confiscated the pair of scissors and the cutter, and asked accused to disembark. Upon noticing that PO2 Ybañez was drunk, accused bad-mouthed him and this angered the police officer. Accused and Amanda were then brought to the police station, and while Amanda was immediately released, accused was detained. The following morning, the pair of scissors and the cutter were returned to him. It was only at the Prosecutor's Office that he knew of the actual charges against him. Accused further admitted that he was previously charged for reckless imprudence resulting to homicide.

Following its evaluation of the mass of evidence, the trial court accorded full credit to the version of the prosecution rather than that of the accused. The trial court thus pronounced his culpability in this wise:

"WHEREFORE, in view of the foregoing, accused SHAUN WAMAR REGIS is hereby found guilty beyond reasonable doubt of the crimes charged.

He is sentenced to suffer the following penalties:

1. twelve (12) years and one (1) days [sic] to fifteen (15) years and a fine of P300,000.00, for Violation of Section 11, Article II of R[A] 9165;
2. six (6) months and one (1) day to two (2) years and a fine of P20,000.00, for Violation of Section 12, Article II of RA 9165.

He is entitled to a credit for the period during his preventive imprisonment.

The packet of shabu and the drug paraphernalia are forfeited in favor of the government.

SO ORDERED."^[27]

The Issue

Aggrieved, accused-appellant now interposed this Appeal on the sole issue, viz:

"THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT"^[28]

Accused-appellant, in his Appeal Brief,^[29] argues that the argument of the prosecution that he was caught in *flagrante delicto* of committing a crime which led to his warrantless arrest does not hold any semblance of truth. Premised on the situation that accused-appellant was allegedly caught throwing a pack of *shabu* and drug paraphernalia on the floor of the taxicab during a conduct of a visual search, accused-appellant theorizes that no person in his right mind would throw pieces of

incriminating evidence in a conspicuous manner when such may easily be hidden without detection. He further contends that the police officers did not observe the mandatory procedure of preserving the illegal items allegedly seized from him as required by *Section 21, Article II* of RA 9165. Hence, the integrity and the identity of the *corpus delicti* were not duly established.

On the other hand, plaintiff-appellee, through the Office of the Solicitor General (OSG),^[30] postulates that the warrantless arrest of accused-appellant was a valid one pursuant to *Section 5 (a), Rule 113* of the Revised Rules of Criminal Procedure. Further, while there were no photographs taken on the confiscated items, the chain of custody of the seized *shabu* was not broken and the *corpus delicti* has been duly preserved and established by the prosecution.

The issues to be resolved then in this Appeal are: (1) Whether the version of the prosecution concerning the discovery of the illegal substance and drug paraphernalia is credible; and (2) Assuming that the prosecution's version is true, whether the identity of the prohibited drug and the chain of custody were established.

The Court's Ruling

The Appeal is bereft of merit.

First. We find that appellant's defense of denial and frame-up was supported by nothing more than his bare allegation. The testimony of the arresting officers showed that the sachet containing white crystalline substance and drug paraphernalia were thrown by appellant when the police officers started to conduct a visual search on the taxicab he was riding. As a result of chemical analysis thereof, the substance in the plastic sachet was confirmed to be *shabu*.

In *People v. Ventura*,^[31] the Supreme Court ruled:

"Accused-appellant failed to adduce evidence to substantiate her claim of irregularity in the performance of duty on the part of the police officers. This bare allegation of irregularity in the performance of duty remained self-serving and bereft of any supporting evidence.^[32] Neither was any ill motive imputed on the part of the police officers, thus failing to buttress the defense's claim of frame-up. Against the positive testimonies of the prosecution witnesses, accused-appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.^[33] This Court realizes the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts accept in every instance this form of defense, which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. If she were truly aggrieved, it is quite surprising why accused-appellant did not even attempt to file a criminal or an administrative complaint, e.g., for planting drugs, against the arresting officers. Such inaction runs counter to the normal human conduct and behavior of one who feels truly aggrieved by the act complained of.^[34]"

The Highest Tribunal further declared in *People v. Rosialda*:^[35]