

EIGHTEENTH DIVISION

[CA-G.R. CR NO. 01820, February 27, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BUENAVENTURA T. CERE, ACCUSED-APPELLANT.**

DECISION

LOPEZ, J.:

Accused-appellant Buenaventura Cere appeals the *Judgment*^[1] of the Regional Trial Court, Branch 57 of Cebu City dated July 4, 2011 convicting him, together with co-accused Estella Estella of the charge of Violation of Section 11, Article II of Republic Act 9165, the decretal portion of which reads, to wit:

"WHEREFORE, finding guilt beyond reasonable doubt, accused Estella Estella and Buenaventura Cere are hereby sentenced each to suffer the penalty ranging from twelve (12) years and one (1) day to fifteen (15) years and a fine of P300,000.00.

Accused Cere is credited for the period during his preventive imprisonment.

The two packs of shabu are forfeited in favor of the government for proper disposal.

ORDERED."^[2]

ANTECEDENT FACTS

Accused-appellant Buenaventura Cere was charged with violation of Section 11, Article II of Republic Act 9165 otherwise known as the *Comprehensive Dangerous Drugs Act of 2002 in an Information*^[3] dated October 3, 2008 docketed as Criminal Case No. CBU-84462, which read as follows:

"That on or about the 22nd day of September, 2008 at about 9:45 o'clock in the evening, 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, without authority of law."^[4]

Accused is currently detained at the New Bilibid Prisons, Muntinlupa City, Philippines by virtue of an *Order of Commitment*^[5] issued on August 9, 2011.

On November 27, 2008, a joint arraignment and pre-trial was conducted^[6] against accused-appellant Buenaventura Cere and another accused in Criminal Case No. 84461 Estella Estella considering that both their cases involve the same parties and issues. After having the two (2) *Informations* read to them in the Cebuano-Visayan dialect, each of the accused entered separate pleas of not guilty.

Thereafter, pre-trial transpired. No stipulations or admissions were admitted; both parties agreed to have their pieces of documentary evidence marked during the course of the trial; and the issues presented were (1) Whether or not both accused are guilty of the offense charged; and (2) Whether or not the search and arrest was legal.

Trial thenceforth ensued.

Evidence of the Prosecution

On September 22, 2008 at around 9:45 in the evening, upon the instruction of CIIB Chief P/Supt. Pablo G. Labra to intensify the drive against all illegal drug activities, a group of police operatives PO3 Benigno Andrew Ilagan, PO3 Helario Coderos, PO3 Bezaleel Olmedo, Jr. and PO2 Ruben Quita, headed by PO3 Cesar Pandong, went to the interior portion of Sitio Missionary, Barangay Pasil, Cebu City.^[7]

While they were in the area, they chanced upon two (2) persons sitting on a bench approximately two (2) to three (3) meters away from them, exchanging something in their palms as if experimenting on something. When they got closer to the two (2) persons, the police officers confirmed that what the two (2) people were looking into were sachets of shabu.^[8]

Resultantly, the police operatives introduced themselves to the two (2) accused – Buenaventura Cere and Estella Estella and informed them of their constitutional rights. PO2 Quita held Estella Estella after recovering one (1) sachet of shabu from her while PO3 Coderos was the one holding accused-appellant Buenaventura Cere.^[9]

Thenceforth, the police brought the two (2) accused to their service vehicle parked near the San Nicolas Church and proceeded to the police station at Gorordo Avenue, Cebu City. At that place, PO2 Quita marked the seized evidence from Estella with "EE-1" while PO3 Coderos did the same on the plastic sachet recovered from accused-appellant Cere with the marking "BCT". Letter-requests^[10] were then prepared for the examination of the seized articles. Thence, PO2 Quita and PO3 Coderos delivered the confiscated items, together with the letter-requests, to the PNP Crime Laboratory. They then waited for the results.^[11]

Based on *Chemistry Report No. D-983-2008*^[12] issued by Forensic Chemist Police Inspector Rendielyn L. Sahagun, the one (1) heat-sealed transparent plastic sachet with marking "BCT" containing 0.02 gram of white crystalline substance gave POSITIVE results for the presence of methamphetamine hydrochloride, a dangerous drug.

After the presentation of their witnesses, the prosecution formally offered Exhibits

"A" to "H" with their respective sub-markings on November 25, 2010^[13]. There being no comments/objections, the trial court admitted the same in an *Order*^[14] dated December 13, 2010.

Evidence of the Accused-appellant

Accused-appellant vehemently denies the charge against him.^[15]

He claims that on September 22, 2008, while he was doing his daily routine of sitting on the bench beside his house after dinner, he was approached by his neighbor Estella. She sat and told him that she will wait for their neighbor, Liza Monceda as she is supposed to claim her payment for the laundry job she rendered to the latter. Accompanying them was their neighbor named Christopher Menguito, but he immediately left.^[16]

While they were seated on the bench for only fifteen (15) to twenty (20) minutes, two (2) unknown people arrived and offered to pawn a cellphone to Estella Estella. She declined because she had no money.^[17]

After a few minutes, five (5) police officers in civilian attire came towards the bench. They requested the two (2) accused to stand up and invited them to go to the police station. Thinking that they have done nothing wrong, they heeded the request.^[18]

On their way towards the service vehicle of the police officers, they questioned them on why they were invited to go to the police station. However, they were forcibly taken to the service vehicle and were frisked. They recovered One Hundred Thirty-Five Pesos (PhP135.00) from Estella.^[19]

When they were at the CIIB Office at Gorordo Avenue, Cebu City, they were ordered to sit down and were shown two (2) packs of shabu taken from a drawer. PO2 Quita showed them the shabu and told them that each of the accused owns one pack of shabu.^[20]

After the presentation of the two (2) witnesses for the defense – accused-appellant himself and Estella, they rested their case as they offered no exhibit.^[21]

On July 4, 2011, the trial court found accused-appellant Buenaventura Cere guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs.^[22] The court *a quo* ruled that the pieces of evidence presented by the prosecution prevailed over accused-appellant's claim of planting of evidence. The RTC proclaimed no doubt that the packs of shabu recovered from the accused were the very same items presented in court.

Seeking relief from his conviction, accused-appellant Buenaventura Cere files the instant appeal with the following assigned errors, to wit:

I.

THE TRIAL COURT IN FINDING THE ACCUSED-APPELLANT GUILTY EVEN WHEN THERE IS DOUBT IN THE AUTHENTICITY OF THE EVIDENCE

ADMITTED AGAINST HIM DUE TO SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY;

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON THE IMPROBABLE TESTIMONY OF THE ARRESTING OFFICERS^[23]

OUR RULING

Accused-appellant insists on his innocence and assails his conviction on the basis of the following reasons, to wit:

1. The marking on the seized specimen was done not upon immediate confiscation but only at the police station;
2. It was admitted by the arresting officers that no inventory nor photographs were taken in violation of Section 21 of the Dangerous Drugs Act;
3. Moreover, while it may be true that Section 21 of RA 9165 provides a saving clause in case of failure to strictly comply with its requirements, such clause is conditioned upon a clear showing of a plausible explanation for such lapse. However, no such explanation or justification was provided by the arresting police officers;
4. The lapses committed by the arresting police officers in the arrest of accused-appellant cannot be cured by mere presumption of regularity in the performance of their official duties;
5. The testimony of the police officers were conflicting as to who prepared the letter-request for the examination of the seized specimen;
6. There was a gap in the chain of the custody of the seized articles as the testimony of Forensic Expert Sahagun was dispensed with without stipulating as to who handled or took custody of the seized drugs after its examination.

Moreover, accused-appellant insists that the testimony of the police officers were contrary to normal human behavior as it was highly improbable that:

1. At a distance of about two (2) to three (3) meters, the police officers can clearly see that accused-appellant was holding a plastic pack containing white crystalline substance;
2. that someone who was in possession of something illegal would so carelessly examine the same way as it was described by the prosecution witnesses.

In the main, the core issue in this appeal is whether the prosecution was able to establish beyond reasonable doubt the guilt of accused-appellant Cere.

The prosecution failed to establish accused-appellant's guilt beyond reasonable doubt, hence, a reversal of his conviction is justified and called for.

In order for prosecution for illegal possession of a dangerous drug to prosper, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.^[24]