

EIGHTEENTH DIVISION

[CA G.R. CEB-CR-H.C. NO. 01641, February 26, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR TALABUCON Y ALMEIDA, ACCUSED-APPELLANT.

D E C I S I O N

LOPEZ, J.:

Before this Court is an Appeal assailing the Decision^[1] dated October 18, 2010 of Branch 17, Regional Trial Court of Roxas City (hereafter, the "court *a quo*") in Criminal Case No. C-123-03, entitled "*People v. Edgar Talabucon y Almeida*", which found Edgar Talabucon (hereafter, "accused-appellant") guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the Judgment reads:

WHEREFORE, premises considered, accused Edgar Talabucon, is hereby found guilty beyond reasonable doubt of the crime of selling shabu weighing 0.03 grams, without any authority to sell, as charged in the Information, and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00. The subject dangerous drugs is to be turned over to the PDEA for appropriate disposition, while the two P100 bills are to be returned to the Roxas City PNP Station.

Accused Edgar Talabucon Y Almeida shall be credited in the service of his sentence with the period of his preventive detention.

SO ORDERED.

In an Information^[2] docketed as Criminal Case No. C-123-03, herein accused-appellant was charged with violation of Section 5, Article II of Republic Act No. 9165, *viz*:

That on or about the 21st day of April, 2003, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without any justifiable motive, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to PNP poseur buyer one (1) plastic sachet, containing Methamphetamine Hydrochloride (shabu), with a weight of 0.03 grams, a dangerous drug, without the authority to sell and distribute the same.

CONTRARY LAW.

On July 15, 2003, accused-appellant was arraigned.^[3] He pleaded not guilty. Pre-trial was conducted. Thereafter, trial on the merits ensued.

The Version of the Prosecution

The Prosecution's evidence as synthesized by the Office of the Solicitor General (OSG) is as follows:^[4]

On April 21, 2003 at around 10:00 o'clock in the evening, PO3 Gaulencio Azarcon (now SPO2 Azarcon) and PO3 Antonio Buenvenida (PO3 Buenvenida) of the PNP Roxas City Police Station were directed by their Chief of Police, P/Supt. Ildefonso S. Catedral to conduct a buy-bust operation against a certain Edgar Talabucon (appellant) a notorious peddler along Asis Street, Roxas City.

They pre-marked two (2) pieces of one hundred peso bills bearing serial number HT158694 and FR 421370. It was agreed that SPO2 Azarcon will act as the poseur buyer while PO3 Buenvenida will be his back-up. Afterwards, they proceeded to the target area.

When the police officers arrived at Asis Street, they immediately saw appellant conversing with a male companion. They approached him and transacted for two hundred pesos (Php 200) worth of shabu. After giving the marked money, appellant gave to SPO2 Azarcon a plastic sachet containing suspected shabu. Then SPO2 Azarcon introduced himself as a police officer and arrested appellant. Immediately, PO3 Buenvenida frisked appellant and was able to recover from his possession the marked money and three (3) sliced aluminum foil.

Thereafter, they proceeded to the Roxas City Police Station where the joint affidavit of arrest, letter-request for drug test and other necessary documentation were made.

The confiscated sachet recovered from appellant was immediately marked after his arrest with the initials "MAR". The qualitative examination of the specimen yielded positive for the presence of Methamphetamine Hydrochloride, otherwise known as "shabu", a dangerous drug.

The Version of the Defense

On the other hand, the version of the defense is synthesized by the Public Attorney's Office:^[5]

EDGAR TALABUCON testified that in the evening of April 21, 2003, he was at home in Mabini St., Roxas City. Then his neighbor woke him up informing him that somebody is looking for him. His neighbor then requested to accompany him in seeing a friend in McKinley St. of the same City. However, when they arrived he was suddenly grabbed and handcuffed by unknown persons. He was then made to board a tricycle and brought to a police station in the city. He denied the allegations that he was in possession of dangerous drugs.

On October 18, 2010, the court *a quo* rendered the assailed Decision,^[6] which found accused-appellant guilty beyond reasonable doubt of violation of Section 5,

Article II of Republic Act No. 9165.

On November 4, 2010, a Notice of Appeal^[7] was filed by accused-appellant. In the Order^[8] dated December 3, 2010, the Notice of Appeal was given due course, and the Records of the case were ordered elevated to this Court.

On November 27, 2013, accused-appellant filed his Appellant's Brief^[9] with the following assignment of errors:

I

THAT THE COURT A QUO ERRED IN CONVICTING EDGAR TALABUCON FOR VIOLATION OF SECTION 5 OF REPUBLIC ACT 9165 DESPITE FAILURE OF THE PROSECUTION TO PROVE THE IDENTITY OF THE CORPUS DELICTI;

II

THAT THE COURT A QOU (*SIC*) ERRED IN CONVICTING EDGAR TALABUCON DESPITE FAILURE OF THE PROSECUTION TO ADDUCE EVIDENCE SUFFICIENTLY SHOWING GUILT BEYOND REASONABLE DOUBT.

The sole issue for resolution is whether or not there is proof beyond reasonable doubt to convict accused-appellant of the crime of illegal sale of drugs.

In his Appellant's Brief, accused-appellant strongly asserts that he should have been acquitted because the identity of the *corpus delicti* is dubious as no inventory and photographs were taken subsequent to the recovery of the contraband. It was also posited that there was failure to comply with Section 21, paragraph 1, Article II of Republic Act No. 9165, and that there were missing links in the chain of custody of the seized drugs. Moreover, accused-appellant points out that the presumption of regularity in the performance of official duty of the police officers should not prevail over the presumption of innocence and constitutionally protected rights of an individual.

The Office of the Solicitor General (OSG) in its Brief^[10] alleges that the prosecution was able to prove beyond reasonable doubt the guilt of accused-appellant as all the elements necessary for his prosecution were present in this case. Further, the OSG asserts that the integrity and evidentiary value of the seized drug was preserved and the chain of custody not broken as there was substantial compliance with the law. The OSG claims that the defense of denial deserves scant consideration.

The Ruling of the Court

We grant the appeal.

The elements necessary for the prosecution of illegal sale of drugs are: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.^[11] What is material is the proof that the transaction or sale actually took place, coupled with

the presentation in court of the prohibited or illegal drug.

While the Chemistry Report confirmed that the substance subject of the sale transaction contained methamphetamine hydrochloride or "*shabu*", still accused-appellant cannot be convicted as charged because the Prosecution failed to establish the integrity of the *corpus delicti*.

Notably, the identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. [12]

In the instant case, the Prosecution failed to convincingly establish the identity of the sachet of *shabu* purportedly received from accused-appellant. There is no proof of the whereabouts of this item, from the time it came into the possession of the police officers, to the time it was tested in the laboratory, and up to the time it was offered in evidence before the court *a quo*.

We quote the testimony of SPO2 Azarcon during the cross-examination: [13]

Q: Now, upon reaching the Roxas City Police Station, what did you do with that items that you recovered?

A: I presented it to the police investigator to have it blotted, and after it was blotted I turned it over to the duty investigator.

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Q: And who turned it over the recovered items to the police investigator?

A: I turned it over my recovered items same as Buenvenida.

Q: So, you were the one who personally delivered the alleged items you recovered to the police investigator?

A: Yes, sir, because before that he questioned us.

Q: But you could not recall anymore the police investigator to whom you transmitted the alleged items you recovered?

A: Yes, sir, I forgot.

Q: Now, after you turned over the items to the police investigator, what did you do then if any?

A: No more, sir, it was the duty investigator to investigate, to file the case, and bring it to the crime laboratory.

Q: Are you telling us Mr. Witness, that after you turned over the items that you recovered to the police investigator, you have no idea anymore of what did the police investigator did with the items that you recovered?

A: They took us some affidavit.

xxx

Q: Now, Mr, Witness, how about the items that you recovered. Do you know after you transmitted or turn it the same to the police investigator, do you know what happened to your alleged recovery?