

TWENTY-FIRST DIVISION

[CA-G.R. CR No. 00930-MIN, January 30, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MILAN CABELTES Y TAN, ACCUSED-APPELLANT.

D E C I S I O N

BORJA, J.:

This is an Appeal under Rule 122 of the Rules of Court assailing the August 11, 2011 Judgment^[1] of the Regional Trial Court (RTC), Branch 25, Cagayan de Oro City, finding Milan Tan Cabeltes guilty beyond reasonable doubt of the crime of Violation of Section 11, Article II of Republic Act 9165, also known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts of the Case

The Information^[2] dated November 12, 2004 alleged:

That on or about October 25, 2004 at more or less 7:45 p.m., at Chavez-Pabayo Streets, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess and violate the law, did then and there willfully and feloniously have in his possession, custody and control two (2) small heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride, locally known as Shabu, a dangerous drug, with a combined weight of 0.23 gram, accused knowing the same to be a dangerous drug.

Contrary to Section 11, Article II of Republic Act No. 9165.

Assisted by counsel, Cabeltes was duly arraigned on August 16, 2005 where he entered a plea of not guilty.^[3]

Trial ensued.

The People's version of the facts, as culled mainly from the joint affidavit of the police officers involved in the buy-bust operation; the testimonies on the witness stand by two of them, PO2 Reymund Seno and SPO1 Roberto Cambi; and the Chemistry Report of the Forensic Chemical Officer, then Senior Inspector April Carbajal-Madroño, is as follows:

For almost two weeks before October 25, 2004, police operatives had been closely monitoring the rampant illegal drug-selling activities going on at Barangay 5, Cagayan de Oro City, where most of the victims were minors.^[4]

Around 7:45 p.m. of October 25, 2008, the police received a report made by a confidential informant that accused was selling prohibited drugs somewhere in

Divisoria Area, Cagayan de Oro City. Immediately thereafter, the operatives formed a team composed of SPO1 Gerry Abella as the team leader, SPO1 Roberto Cambi, PO2 Terencio Virtudazo, PO2 Reymund Seno, SPO2 Edgar Villanueva, SPO1 Julius Roa, and PO2 Rhodora Sasil to conduct a buy-bust operation against accused, with PO2 Seno as the poseur-buyer.^[5]

Upon reaching Room 234 of Nature's Pensionne, located at Chavez-Pabayo Sts., Cagayan de Oro City, the poseur-buyer knocked on the door and told Cabeltes who was occupying the room that he wanted to buy P1,000-worth of shabu. The money, comprised of one P500 bill and five P100 bills, two of which were dusted with fluorescent powder and bearing serial numbers LR328578 and NA424739, exchanged hands. Cabeltes then handed the poseur-buyer a small heat-sealed transparent plastic containing white crystalline substance. That was when the poseur-buyer introduced himself as a policeman, elbowed the door to open it wider, as the other policemen who acted as backup rushed inside the room and arrested the accused.^[6]

SPO1 Cambi then asked Cabeltes to place his hands above his head and was about to frisk the latter's pockets when Cabeltes himself volunteered to empty his pockets of their contents. Four small heat-sealed transparent plastic sachets containing white crystalline substance came out of his front left pocket, and the buy-bust money amounting to P1,000.00 came out of his front right pocket. The team then inspected the premises and saw a pair of scissors, three disposable lighters, a used aluminum foil that is fairly crumpled, one vial, a pyrex test tube, and different sizes of repacking cellophane.^[7]

PO2 Seno also testified that among the paraphernalia found in the room was an improvised tooter,^[8] made of a spark plug rubber cap with a drinking straw attached to the bend of the cap, and a small whisky bottle with the straw serving as its connector.^[9]

The team then brought accused to *Maharlika*, Cagayan de Oro City Jail and prepared him for booking at the station. The evidence seized were then inventoried and marked. The small heat-sealed transparent plastic containing white crystalline substance which was the object of the sale was then marked Exhibit "A." The four sachets which came out from his front left pocket were then marked as Exhibits "B," "B-1," "B-2," and "B-3" respectively. The five 100-peso bills and one 500-peso bill were also marked "H," "H-1," "H-2," "H-3," "H-4," and "H-5" respectively.^[10]

Cabeltes was also tested for the presence of ultraviolet fluorescent powder which yielded a positive result. His urine sample likewise tested positive for the presence of methamphetamine hydrochloride.^[11]

The testimony of Police Chief Inspector April Carbajal Madroño, the Forensic Chemical Officer at the time of the filing of the case, was dispensed with in an order dated June 19, 2006^[12] on the ground that the defense already admitted the due execution of Chemistry Report No. D-493-2004, the document detailing the specimens submitted for examination and finding them positive for methamphetamine hydrochloride or *shabu*. It appeared in the report that the specimens, especially the five small sachets containing white crystalline substances, brought for qualitative examination to the PNP crime laboratory tested positive for methamphetamine hydrochloride.^[13]

For his defense, Cabeltes interposed denial. His version of the facts pointed to being framed-up by his friend and the policemen. He alleged that on October 25, 2004, he was on his way home to Carmen, Cagayan de Oro City when he received a text message from a certain Yolly Lara, his friend who was a Guest Relations Officer, inviting him to go to her room at Nature's Pensionne because she had a problem. Once at the pension house, Cabeltes then inquired at the front desk where the room of Lara was. He then went up to her room, knocked, and was beckoned inside. Lara then asked him to sit on the bed as she was about to leave the room to meet someone for a while. He then waited inside the room and stayed on the bed to watch TV.^[14]

After about thirty minutes, someone was knocking at the door and he heard Lara calling to him so he got up to open the door and was surprised by the policeman who pushed him back inside the room. The police officers then went inside the room and handcuffed him. They then made a thorough search of the room without having shown him any search warrant, and Police Officer Seno kept interrogating him where he hid the *shabu* to which he insistently replied that there was none. Cabeltes added that the team of police did not recover anything from the room and that he first saw the sachet of *shabu* at *Maharlika* Station, as it was placed on the table and a picture was taken of it. He even manifested that the former judge handling the case even scolded the police upon knowing that the picture of the evidence was taken at their office and not at the crime scene.^[15]

He also alleged that when he was at *Maharlika*, his wallet was taken. He had P5,000.00 inside it. The police took and marked the P1,000.00 and pocketed the P4,000.00. Then they brought him to the crime laboratory and forced him to urinate. He alleged he was given no lawyer the whole time he was at the police station.^[16]

As documentary evidence, Cabeltes presented Exhibit "1," a certification from the management of Nature's Pensionne to the effect that Cabeltes was not a registered guest at the hotel on October 25, 2004.^[17] Exhibit "2" was a copy of Sun Star, a local daily, dated August 18, 2010, as evidence of Cabeltes's allegation that one of the arresting officers, PO2 Seno, was charged criminally and administratively by PDEA for alleged serious irregularities in the performance of official duties.^[18] Cabeltes further stated that he believed the reason why the police, in particular Seno, Cambi, and Virtudazo were adamant in filing the case against him was because he was unable to heed their demand of P50,000.00 from him because he had no money at that time.^[19]

By *Judgment*^[20] dated August 11, 2011, the court *a quo* convicted Cabeltes of the crime charged. The dispositive portion read as follows:

WHEREFORE, premises considered, this Court hereby finds the accused MILAN TAN CABELTES, GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 11, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of imprisonment for TWELVE [12] YEARS and ONE [1] DAY to THIRTEEN [13] YEARS and to pay the Fine of P300,000.00 without subsidiary imprisonment in case of non-payment of Fine. The period of his detention before he was granted bail shall be credited in full, for the purpose of service of his sentence.

xxx

SO ORDERED.^[21]

His motion for reconsideration^[22] having been denied,^[23] accused now comes before this Court, alleging that the court a quo committed reversible error in –

I

PERMITTING THE PROSECUTION TO INTRODUCE EVIDENCE NOT ALLEGED IN THE INFORMATION IN VIOLATION OF THE CONSTITUTION;

II

ADMITTING EVIDENCE SEIZED FROM THE ACCUSED IN THE COURSE OF AN ILLEGAL BUY-BUST AND CONCOMITANT ILLEGAL ARREST AND UNREASONABLE SEARCH AND SEIZURE;

III

FAILING TO CONSIDER AS UNCONSTITUTIONAL AND ILLEGAL THE FORCED ENTRANCE OF THE POLICE OFFICERS IN ROOM 234 OF NATURE'S PENSIONNE AND THEIR SUBSEQUENT SEARCH AND SEIZURE UPON ACCUSED OF THE DANGEROUS DRUG WHICH IS A FRUIT OF THE POISONOUS TREE;

IV

...FAILING TO APPRECIATE THE BREAK IN THE CUSTODIAL CHAIN OF THE DANGEROUS DRUG, [GRANTING *ARGUENDO* THE VALIDITY OF THE ARREST, SEARCH AND SEIZURE]; and

V

IGNORING THE NON-COMPLIANCE [BY] THE POLICE OFFICERS OF THE STRICT AND MANDATORY REQUIREMENTS IN THE CONDUCT OF DRUG OPERATION SUCH AS SEIZURE, INVENTORY AND DELIVERY OF DANGEROUS DRUGS WHICH IS FATAL TO THE CAUSE OF THE PROSECUTION.^[24]

It is accused-appellant's contention that the conduct of the buy-bust operation was highly irregular and thus, the resultant arrest and search and seizure were unconstitutional. For one, the police operatives had no prior coordination with PDEA. Secondly, the designation of a police officer as a poseur-buyer was highly irregular, as it was usually the asset who was delegated as such. Finally, he is strong in his contention that what the police did was instigation,^[25] which is an absolatory cause. The arrest and the consequent search and seizure being unconstitutional, it is his position that the evidence obtained thereto should have been inadmissible in court.^[26]

He further avers that even granting *arguendo* that the arrest was valid, the prosecution had not established the *corpus delicti*. The mandatory requirements of inventory and photographing of the evidence "were not immediately undertaken" by the arresting officers. Moreover, SPO3 Villanueva was not even presented in court to

identify the *shabu* turned over to him after having been recovered from Cabeltes. Therefore, he argues, the integrity of the evidence was not preserved.^[27]

In the main, Cabeltes questions the manner of the search and seizure and insists that the evidence should not have been admitted against him for being “fruits of the poisonous tree.” Even assuming *arguendo* that the buy-bust operation was valid, the *corpus delicti* was not established, as the prosecution failed to prove that the evidentiary value of the seized drugs was preserved.

The Ruling of this Court

The appeal must fail.

This Court first addresses the issue of illegal arrest. Cabeltes capitalizes on the fact that the conduct of the buy-bust operation was not in coordination with the PDEA. In building up the second and third errors assigned, he argues that the policemen were bereft of authority to arrest him because they failed to secure detail orders from the PDEA, the main agency tasked to enforce the law.

This argument does not sit well with this Court. Jurisprudence has held that while PDEA is the lead agency tasked to enforce the anti-drugs law, it is not to be treated as the exclusive agency in enforcing the law.^[28] In point of fact, the police operatives involved in this case were assigned at the Cagayan de Oro Drug Enforcement Unit, a Special Operation Unit of the Philippine National Police,^[29] a special unit assigned to aid the government agencies tasked to implement the anti-drug laws. They cannot be said to have no authority in drug-bust operations. Moreover, this Court finds the testimony of SPO1 Cambi as corroborated in material respects by PO2 Seno as straightforward and worthy of credence. From the time they conducted surveillance at Barangay 5 and within the Divisoria Plaza area, Cagayan de Oro City, to the conduct of the buy-bust operation, the statements of the police officers were consistent and reliable.

Denial of the crime charged and allegations of a frame-up constitute the accused-appellant’s defense. Mere denial cannot overcome the positive testimony of police operatives whose regularity of official duties is presumed in the absence of evidence to the contrary.^[30] Accused wants to impress upon this Court that he was merely framed-up and subjected to extortion. This, however, remains a bare allegation. The newspaper clips attached which detailed the criminal and administrative cases filed against one of the police officers involved in the operation, PO2 Seno, pertained to another case and not in any way connected with the case at bench. This Court, therefore, declares that the issue of illegal arrest need not be discussed further. Consequently, a discussion on the issue of whether the evidence seized is “fruit of the poisonous tree” will no longer be useful.

Now we go to the main matter of this disquisition.

The elements of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.^[31] To convict an accused, it is essential that all three elements must be proven, coupled with the presentation in court of evidence of *corpus delicti*, a Latin term which means the body of the crime, or such evidence and facts required to prove that a crime has been committed. The case of *People v.*