

EIGHTH DIVISION

[CA-G.R. CR-H.C. NO. 05748, March 27, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOAN
ABDUL Y SANI @ "JOE" @ "JAMILAH ABDULLA Y SARIP",
ACCUSED-APPELLANT.**

D E C I S I O N

REYES, JR., J.C., J.:

On appeal is the July 26, 2012 Decision (Records, pp. 214-223) of the Regional Trial Court of Muntinlupa City, Branch 204 convicting herein accused-appellant Joan Abdul y Sani aka Jamilah Abdulla y Sarip for Violation of Section 5 and 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Drugs Act of 2002".

The facts:

In two Informations both dated July 14, 2008, accused-appellant Joan Abdul was charged with the crime of violating Sections 5 and 11, Article II of Republic Act No. 9165 otherwise known as "The Comprehensive Dangerous Drugs Act of 2002". The accusatory portions of which reads:

CRIMINAL CASE NO. 08-473

"On or about the 11th day of July 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully and unlawfully sell, trade and dispense a dangerous drug, as she did then and there sell to SPO3 Pablo A. Agawin, Jr. for Two Thousand Pesos (P2,000.00) EPHEDRINE, a dangerous drug, with a total weight of 0.68 gram contained in transparent plastic sachet, without proper authorization or license therefor.

Contrary to law." (Records, p.1)

CRIMINAL CASE NO. 08-474

"On or about the 11th day of July 2008, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is not authorized by law to possess any dangerous drug, did then and there, willfully and unlawfully possess EPHEDRINE, a dangerous drug, with a total weight of 2.71 grams contained in four transparent plastic sachets (two of those sachets have 0.68 gram of Ephedrine each, whereas, the other two contain 0.63 gram and 0.72 gram of Ephedrine) that she did then and there place in the front pocket of her pants while seated in a motor vehicle then parked in front of Chowking Alabang.

Contrary to law." (Records, p. 3)

During arraignment on September 25, 2008, accused-appellant pleaded NOT GUILTY. (Records, p.35)

Trial on the merits ensued with the Prosecution presenting SPO3 Pablo Agawin and PO2 Renato Ibañez as witnesses while the Defense presented accused-appellant herself.

The prosecution tends to establish that an information was received from a confidential informant that a certain Marlon was engaged in selling of shabu hence, a surveillance was made by the District Anti-Illegal Drugs Special Operation Task Force (DAID-SOTF). As a result, Police Senior Inspector Rodolfo Placido (PS/Insp. Placido) formed a team who will conduct a buy-bust operation together with the confidential informant so as to have the suspected drug pusher arrested. A Pre-Operation Report and Coordination Form were prepared and submitted to the Philippine Drug Enforcement Agency (PDEA), who in turn sent back a Coordination Form with control number to DAID-SOTF.

On July 11, 2008 around 3:00 o' clock in the afternoon PS/Insp. Placido conducted a briefing and designated SPO3 Pablo Agawin (SPO3 Agawin) as poseur-buyer in the buy-bust operation against said drug pusher. SPO3 Agawin was handed four (4) five hundred peso bills marked money and marked them with "AS" representing the initials of their commanding officer, Adolfo Samala. The marked money were photocopied as well.

It was agreed during the briefing that PO2 Renato Ibañez (PO2 Ibañez) will serve as SPO3 Agawin's immediate back up and the pre-arranged signal will be the switching of the hazard light of the vehicle they are going to use. Should the transaction take place outside the vehicle, the pre-arranged signal was the removal of SPO3 Darwin Bolser's headgear.

The team was dispatched between 6:30 – 7:30 in the evening on board three vehicles heading Muntinlupa with the confidential informant riding the vehicle driven by SPO3 Agawin. On their way, Marlon sent a text message to the confidential informant that he could no longer meet them. In lieu of his absence, his trusted partner, herein accused-appellant will meet them instead at Chowking Restaurant located beside Liana's Supermarket in Alabang, Muntinlupa City.

Upon reaching their destination, the confidential informant identified accused-appellant as the one with whom they will transact with. The rest of the buy-bust team parked near Chowking. They met with accused-appellant as soon as they alighted the vehicle. The confidential informant introduced SPO3 Agawin as a talent scout who needs to buy shabu for his talents. Accused-appellant asked if they were the ones that Marlon talked to. When they agreed, accused-appellant informed them that she was hesitant to proceed with their transaction in the said area as there were quite a number of people in the vicinity so they went inside the vehicle of SPO3 Agawin.

Inside the vehicle, SPO3 Agawin handed the 4 marked five hundred peso bills and accused-appellant then handed a plastic sachet containing the alleged illegal drug.

SPO3 Agawin saw several more sachets which came from her pocket so he asked accused-appellant if she had more, however, she replied that the other sachets were considered sold as they were pre-ordered.

Upon completion of the transaction, SPO3 Agawin then turned on the signal light as agreed so the buy-bust team headed to their vehicle. SPO3 Agawin then arrested accused-appellant and informed her of her constitutional rights. PO2 Ibañez frisked accused-appellant to search for the other sachets that were previously seen in her possession. SPO3 Agawin asked accused-appellant to empty her pockets so the other sachets and marked money were retrieved from her. The seized items were marked and inventoried by SPO3 Agawin. The Certificate of Inventory was prepared and signed by SPO3 Agawin and PO2 Ibañez in the presence of accused-appellant. At that time however, there was no media representative and the barangay tanod who was present during the arrest did not sign the Certificate of Inventory.

The buy-bust team together with accused-appellant headed to the police station where the seized items were turned over for documentation purposes. The following documents were prepared as well: Drug Test Request, Request for Examination of Specimen, Spot Report, Affidavit of Arrest and Inventory of Evidence. All the pieces of evidence were photographed. SPO3 Agawin delivered the retrieved sachets to the crime laboratory for examination which yielded positive for Ephedrine, a dangerous drug as stated by PS/Insp. Abraham Tecson, Forensic Chemist of the PNP Crime Laboratory Makati City.

Accused-appellant meanwhile avers that there was no valid buy-bust operation that took place on July 11, 2008. On said date, accused-appellant declared that she even withdrew money from the Automated Teller Machine (ATM) to pay her creditors. She asserts her version that on July 14, 2008 around 4:30 o'clock in the afternoon while she was eating with her sister, five (5) men entered their house looking for a certain Marlon. When accused-appellant failed to identify the whereabouts of Marlon, the four (4) men searched the second floor for thirty (30) minutes while the other one was left to guard them. Not finding Marlon, the policemen invited her to the police station for interrogation. Accused-appellant resisted thus, she was handcuffed and dragged to a trolley then brought to Fort Bonifacio.

The police men threatened to charge accused-appellant with drug pushing if she will not get in touch with her relatives to settle the case. For her failure to get in touch with anybody, she was then detained. She revealed that the police officers fabricated a criminal charge against her because she failed to identify the whereabouts of Marlon.

On July 26, 2012 the RTC rendered its decision which reads:

"WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of Violations of Secs. 5 and 11 of Republic Act No. 9165, JOAN ABDUL y SANI aka JAMILAH ABDULLA y SARIP, in Crim. Case No. 08-473 is sentenced to Life Imprisonment and to pay a fine of Php 500,000.00; and in Criminal Case No. 08-474, JOAN ABDUL y SANI aka JAMILAH ABDULLA y SARIP is sentenced to an Indeterminate penalty of TWELVE (12) YEARS and ONE (1) day as minimum to FOURTEEN (14) YEARS as maximum and to pay a FINE of Php 300,000.00.

The subject drug evidence consisting of five (5) packets of "EPHEDRINE" are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The preventive imprisonment undergone by the accused shall be credited in her favor.

SO ORDERED."

Dissatisfied with the RTC decision, she filed this appeal before this Court with the following errors:

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 5 AND 11, ARTICLE II, OF REPUBLIC ACT NO.9165.

II.

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION'S WITNESSES ON THE ALLEGED BUY-BUST OPERATIONS.

III.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PRESENT THE CONFIDENTIAL INFORMANT.

The appeal is meritorious.

Accused-appellant contends that the RTC erred in convicting her based solely on the testimonies of the police officers. She argued that the confidential informant should have been presented in court. In her Brief, accused-appellant also claimed that no photograph and inventory of the seized item were taken in the presence of the witnesses enumerated by R.A. 9165. Thus, the guilt of the accused was not proven beyond reasonable doubt.

On the contrary, the plaintiff-appellee insists on the presumption that official duty had been regularly performed and that the prosecution was able to establish all the elements of illegal sale of drugs.

Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal. (People v. Pedronan, 452 Phil. 226, 233 [2003]);

We begin with the precept that in criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of