

## **NINTH DIVISION**

**[ CA-G.R. CR NO. 33304, April 30, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RANDY DE GUZMAN Y SALES @ MATA, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**GARCIA-FERNANDEZ, J.:**

This is an appeal from the decision of the Regional Trial Court, Branch 2, Manila dated February 24, 2010 in Criminal Case No. 09-267028, finding accused-appellant Randy de Guzman guilty beyond reasonable doubt of illegal possession of 0.010 gram of Methamphetamine Hydrochloride or shabu in violation of Section 11 (3), Article II of Republic Act No. 9165 (RA 9165), otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged in an information<sup>[1]</sup> dated March 9, 2009, which reads:

"That on or about March 5, 2009, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet marked as "RDGS" containing zero point zero one zero (0.010) grams of methylamphetamine hydrochloride or shabu, a dangerous drug.

CONTRARY TO LAW."

During his arraignment, accused-appellant, assisted by counsel, Cesar Arnel M. Arcega, pleaded "not guilty".

Record shows that during the presentation of the evidence for the prosecution, the following transpired:

1. The parties stipulated on the qualification of P/Sr. Insp. Erickson Calabocal as a Forensic Chemist as well as on the genuineness and due execution of the following documentary evidence together with the specimen, to wit: 1) letter request dated March 5, 2009<sup>[2]</sup> (Exh. A, stamped receipt (Exh. A-1); 2) specimen with the marking "RDGS" (Exh. B); 3) letter brown envelope (Exh. B-1); 4) Final Chemistry Report<sup>[3]</sup> (Exh. C), findings and conclusions (Exh. C-1), the signatures (Exh. C-2).<sup>[4]</sup>
2. The parties admitted that P/Sr. Insp. Calabocal who conducted the laboratory examination of the subject specimen does not have

personal knowledge as to the ultimate source of the subject specimen and that he received a letter request on March 5, 2009 from PO2 Donato Godoy and attached to it was the specimen with markings "RDGS" which he subjected to qualitative examination.<sup>[5]</sup>

3. PO1 Julius Enderio (PO1 Enderio), sole witness for the prosecution, testified.

The prosecution's account of the facts as found by the trial court, is as follows:

"PO1 Enderio testified that on March 5, 2009, he, along with PO2 Daniel Miriam, was at Zobel Roxas St., San Andres Bukid, Manila; that at a distance of five to eight meters, they observed one (1) female person handing a small transparent heat-sealed plastic sachet to one (1) male person, later identified as accused; that upon approaching the duo, the female person noticed them and immediately ran away; that he accosted the accused, with the assistance of PO2 Miriam; that when he searched the accused, he recovered one (1) plastic sachet containing white crystalline substance, which he marked as "RDGS", initials of the accused, in the presence of the accused at the place of arrest; and that he turned over the specimen to the Investigator who prepared the request for laboratory examination, the Booking Sheet<sup>[6]</sup>, the Arrest Report<sup>[7]</sup>, and the Inventory. He identified the accused through the photographs attached to the accused's bailbond<sup>[8]</sup> (Exhibit "D" to "D-2"), the specimen (Exhibit "B") with submarking "RDGS", the Joint Affidavit of Apprehension and his signature therein<sup>[9]</sup> (Exhibits "E" and "E-1"), respectively), and the Inventory of the Seized Item<sup>[10]</sup> (Exhibit "F") in Court.

On cross, he testified that they were conducting foot patrol surveillance but were not in uniform at the time of the incident; and that he cannot recognize the contents of a plastic sachet at a distance of eight meters."

The defense, on the other hand, presented accused-appellant and his brother, Ramil de Guzman, as witnesses.

Accused-appellant denied the charge against him, claiming that between 11:00 p.m. to 12:00 midnight of March 5, 2009, he was at the house of his brother and they were having drinking session;<sup>[11]</sup> that the police officers who were then arresting a woman entered all the houses in their place;<sup>[12]</sup> that while he was in the comfort room, he was taken by said police officers, handcuffed and boarded to a minicab; that he saw a woman who was arrested before him in the same minicab and he knew this person to be a new renter in their place;<sup>[13]</sup> that he and said woman were brought to the police precinct; and that he denied having talked to one female person who handed to him a small sealed transparent plastic sachet.<sup>[14]</sup>

The second witness for the defense, Ramil de Guzman, testified that on March 8 or 9, 2009, at around 10:00 in the evening, his brother, accused-appellant, was in his house having drinking session with him; that a police officer entered inside their compound and arrested his brother who was then inside the comfort room adjacent to his house; that after his brother was arrested, one of the police officers

threatened him and said, "Wag ka nang magulo, kung 'di isasama na kita dito sa kapatid mo."<sup>[15]</sup> And that he told said officers, "Saan n'yo po dadalihin ang kapatid ko, wala naman po'ng alam 'yan?"<sup>[16]</sup> On cross-examination, the witness stated that he and accused-appellant did not file a case against said police officers despite their claim that the action of the latter in arresting accused-appellant was illegal.<sup>[17]</sup>

The trial court rendered the assailed decision<sup>[18]</sup> finding accused-appellant guilty of the offense charged. It held:

"In *People of the Philippines vs. Amadeo Tira, et. al.* (G.R. No. 139615, May 28, 2004) the Supreme Court held that the essential elements of the crime of possession of regulated drugs are the following:

- 1) The accused is found in possession of a regulated drug;
- 2) The person is not authorized by law or duly constituted authorities; and
- 3) The accused has knowledge that the said drug is a regulated drug.

The accused failed to show any ill motive on the part of PO1 Julius Enderio to testify falsely against him. Indeed the prosecution showed that the police were conducting surveillance at Zobel Roxas, St., Sta. Ana, Manila when they saw one (1) female person handing a plastic sachet to the accused. The police was able to accost the accused, whose search yielded one heat-sealed transparent plastic sachet containing white crystalline substance. PO1 Enderio marked the specimen as "RDGS", initials of the accused, in the presence of the accused at the place of arrest. The specimen tested positive for methylamphetamine hydrochloride when examined by the Forensic Chemist (Exhibit C).

The claim of the accused that without committing any wrong he was just arrested and charged by the police was not substantiated. Evidence to be believed must not only come from a credible witness but must in itself be credible. If indeed he is innocent he being bonded should have filed a case of planting of evidence against the police which is now punishable by life imprisonment.

Accused's brother, Ramil de Guzman, testified that the arrest occurred either on 8 or 9 March 2009. This is contrary to the evidence of the prosecution and the claim of the accused that indeed he was arrested on 5 March 2009. Besides, testimonies of close kin are suspect and cannot prevail over that of the complaining witnesses. x x x

"In fine it should be pointed out that in a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of credibility of witnesses and their testimonies. x x x

"Like alibi, we view the defense of frame-up with disfavor as it can easily be concocted and commonly used as a standard line of defense in most prosecution arising from violations of the Dangerous Drugs Act."xxx

x x x

At this point, it bears stressing that mere possession of the prohibited substance is a crime per se and the burden of proof is upon the accused to show that he has a license or permit under the law to possess the prohibited drug. Xxx

The positive identification of accused by the prosecution witness should prevail over the former's denials of the commission of the crime for which they are charged, since greater weight is generally accorded to the positive testimony of the prosecution witness than the accused's denial. Denial, like alibi, is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. x x x"

The trial court found accused-appellant guilty as charged and sentenced him to an indeterminate penalty of twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum; to pay a fine of P300,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

Hence, this appeal<sup>[19]</sup> by the accused-appellant with the lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

Accused-appellant questions the credibility of the lone prosecution witness based on the alleged improbabilities of the latter's account of events which led to his arrest; that it is unbelievable that he would deal with drugs in a busy street without precaution given the clandestine nature of illegal drug dealings; that he assails the legality of his arrest and the admissibility against him of the confiscated drug in the plastic sachet marked as "RDGS"; and that the prosecution failed to establish the chain of custody of the seized item.

The contentions of the accused-appellant are devoid of merit.

First, well-settled is the rule that credibility of witnesses are matters best left to the appreciation of the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, which opportunity is denied to the reviewing tribunal.<sup>[20]</sup> Secondly, after a painstaking review of the record of the instant case, this Court found no significant facts and circumstances which appear to have been overlooked and disregarded by the trial court which, if considered, would have altered the outcome of the case.<sup>[21]</sup>

Accused-appellant was convicted on the basis of the testimony of the lone witness for the prosecution, PO1 Enderio. The trial court found PO1 Enderio's testimony as positive and credible. In the prosecution of illegal drugs case, it is not unlikely that the lone testimony of a credible witness is sufficient to convict.<sup>[22]</sup> The Supreme Court has declared on numerous occasions that it is possible to convict an accused on the testimony of single witness as long as it is positive and credible<sup>[23]</sup>. This