

TWENTIETH DIVISION

[CA-G.R. CEB-CR HC NO. 01216, April 25, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR LOPEZ ALIAS "EGA", ACCUSED-APPELLANT.

DECISION

HERNANDO, J:

Before Us is an Appeal from the Decision^[1] dated March 12, 2010 rendered by the Regional Trial Court (RTC), Branch 57 of Cebu City in Crim. Case No. CBU-70989 finding accused-appellant Edgar Lopez alias "Ega" guilty beyond reasonable doubt for Violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as "*The Comprehensive Dangerous Drugs Act of 2002*." The dispositive portion of the assailed Decision reads:

For all the foregoing, the guilt of the accused duly established beyond reasonable doubt, accused Edgar Lopez, is hereby sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00.

The one plastic sachet of shabu is forfeited in favor of the government.

SO ORDERED.^[2]

The Antecedents:

Accused-appellant was charged with a Violation of Section 5, Article II of R.A No. 9165 in an Information^[3] dated July 22, 2004, the accusatory portion of which reads:

That on or about the 10th day of April, 2004, at about 12:45 in the morning, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer one (1) plastic packet weighing 0.08 gram of white crystalline substance locally known as "SHABU" containing Methylamphetamine hydrochloride, a dangerous drugs.

CONTRARY TO LAW.

When arraigned on November 25, 2004, accused, with the assistance of counsel, entered a plea of not guilty.^[4] After the pre-trial was terminated, trial on the merits ensued.^[5]

To establish the guilt of accused Edgar Lopez, the prosecution presented the following witnesses: (1) Forensic Chemist, P/Sr. Insp. Alexander Patriana; (2) Senior

Police Officer (SPO1) Elmo Rosales; and (3) Police Officer (PO) 3 Patrick Mumar.

Version of the Prosecution

On April 9, 2004, a confidential informant notified the police office of Cebu City regarding the alleged illicit drug activities of accused Edgar Lopez alias "Egay" in Abi-Abi Drive, A. Lopez Street, Calamba, Cebu City. Pursuant to said information, a police team, consisting of SPO1 Elmo Rosales, PO3 Gil Garcia, PO2 Cirilo Luague, PO1 Dindo Lumapac and PO3 Patrick Mumar, was organized to conduct a buy-bust operation against accused in the said place. PO3 Mumar was designated as the poseur buyer and was furnished with a hundred peso bill as buy-bust money.

On April 10, 2004 at 12:45 in the morning, the buy-bust team proceeded to Abi-Abi Drive, A. Lopez Street, Cebu City. PO3 Mumar and the confidential asset alighted from the police service vehicle ahead of the team and were met thereafter by accused and a certain Neil Maturillas Gaviola. The rest of the team, on the other hand, followed the two and strategically positioned themselves in the area.

Initially, accused asked the confidential asset how much *shabu* he was going to buy. The latter then introduced PO3 Mumar as his friend who was willing to buy *shabu*. Appellant then got one plastic sachet containing white crystalline substance from Gaviola and gave the same to PO3 Mumar. In turn, PO3 Mumar handed the pre-marked one hundred peso bill to accused as payment thereof and the latter gave it to Gaviola. At that point, PO3 Mumar then executed the pre-arranged signal by calling the cellphone of one of the buy-bust team members.

When accused and Gaviola noticed that the buy-bust team was approaching, they scampered away. PO3 Mumar, however, was able to grab Gaviola but accused evaded arrest.

PO3 Mumar then apprised Gaviola of his constitutional rights and was asked to empty his pockets. PO3 Mumar recovered the buy-bust money from the right side pocket of Gaviola's short pants and another plastic sachet containing white crystalline substance was recovered from his left pocket. Thereafter, PO3 Mumar gave the two plastic packs containing suspected *shabu* to SPO1 Rosales. The latter then marked them at the crime scene. The first plastic sachet which was recovered from the transaction was marked with "NMG" while the second plastic pack seized from Gaviola's pocket was marked with "NMG-1". "NMG" represented the name of Neil Maturillas Gaviola. Moments later, Gaviola and the confiscated items were brought to the police station. On their way, SPO1 Rosales remained in possession of the confiscated items.

In the station, a letter-request request and the necessary reports were prepared by SPO1 Rosales. Thereafter, the letter-request and the confiscated item marked as "NMG" were brought by PO1 Lumapac accompanied by SPO1 Rosales and PO3 Mumar to the PNP Crime Laboratory where the item was received by PO1 Cabahug. When the specimen was subjected to a laboratory examination, it yielded positive for the presence of methylamphetamine hydrochloride, a dangerous drug, per Chemistry Report No. D-640-2004.

Version of the Defense

Accused Edgar Lopez interposed the defense of denial. He testified that on April 10, 2004 at around 12:45 in the morning, he was at home looking after his children who were then watching television. He recalled that there was nothing unusual that happened that night.

On cross-examination, accused declared that he knew Neil Gaviola and learned from a friend that Gaviola's house located in *Sitio* Sto. Nino, A. Lopez St., Labangon, Cebu City was searched on April 10, 2004. He alleged that Gaviola was arrested as a result of the said raid and not because Gaviola sold *shabu* to a police officer. Accused further declared that his house was about 75 meters away from that of Gaviola. Hence, he was surprised to be implicated in the instant case. He, however, admitted in court that he was previously convicted of violation of Section 11, Art. II of R.A. 9165.

On March 12, 2010, the court *a quo* rendered its assailed Decision finding accused Edgar Lopez guilty as charged.

Hence, this appeal by the accused-appellant anchored on a lone assignment of error:

The Assigned Error:^[6]

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE COMMISSION OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.

The Court's Ruling:

We affirm the conviction of accused-appellant for violation of Section 5, Article II of Republic Act No. 9165.

In praying for his acquittal, appellant raises two points. First, he asserts that his identity as the seller was not adequately proven; and second, the prosecution failed to indisputably show that the integrity of the *corpus delicti* had been preserved.

In support of his first assertion, appellant points out that the seized item was marked with "NMG" which are not his initials. He further alleged that the transaction took place in a dimly-lighted area and that PO3 Mumar was not familiar with and had no personal knowledge of the physical attributes of the subject person in the buy-bust operation as in fact, it was only the asset who pointed and identified him as the one allegedly involved in illegal transactions.

These arguments fail to persuade Us. On the contrary, We find overwhelming evidence on record to support appellant's conviction of the crime charged.

For a successful prosecution of the offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.^[7] What is material is proof that the transaction

or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.^[8] Clearly, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.^[9]

Here, contrary to the belief of appellant, his identity as the seller was more than sufficiently established. This is evident from the positive, categorical and straightforward testimony of PO3 Mumar, who personally witnessed appellant's commission of the crime being the poseur buyer during the conduct of the buy-bust operation against appellant. The narration of PO3 Mumar on what had transpired in the morning of April 10, 2004 is worth emphasizing, thus:

Q: If you can recall, where were you on April 10, 2004 at around 12:45 in the morning?

A: We were at the Abi-abi Drive, Barangay Calamba conducting buy bust operation against a certain Egay.

Q: Abi-abi Street is in what city?

A: Cebu City.

Q: Is Egay male or female?

A: Male, maám.

Q: What was your particular role if any, during this operation?

A: I was the poseur buyer.

Q: And as poseur buyer, what were you supposed to do during this buy bust operation?

A: As a poseur buyer I will be the one to transact the buying of the illegal stuff against the subject.

Q: What illegal stuff are you referring to particularly?

A: Shabu.

Q: How much shabu are you going to buy in this buy bust operation from Egay?

A: P100.00 worth of shabu.

Q: So how much money were you going to use during this buy bust operation?

A: At this buy bust operation we used only P100.00 paper bill.^[10]

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Q: What happened once you get at Abi-abi Drive?

A: Once we arrived at the vicinity of Abi-abi Drive, I was dropped by the team with the asset and we walked directly to the interior portion of Abi-abi Drive.

Q: Did you know this subject Egay prior to your arrival in Abi-abi Drive?

A: No, ma'am.

Q: So how did you recognize the subject once you are in Abi-abi Drive?

A: Our asset already gave me the information because our asset is a regular customer of the subject.

Q: So you could identify the subject through the asset who was with you at that time?

A: Yes, maám.

Q: So what happened next?

A: After we reached the interior portion of Abi-abi Drive, we were met by two persons whom we later on knew as the subject Edgar Lopez and Neil Maturillas Gaviola alias Neil.

Q: So this subject Egay is the same as Edgar Lopez?