

THIRD DIVISION

[CA-G.R. CR No. 35527, May 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROGELIO N. DELA CRUZ, ACCUSED-APPELLANT.**

DECISION

BUESER, J.:

Before this Court on appeal is the Decision^[1] dated October 30, 2012, of the Regional Trial Court, Branch 57, of Angeles City ("trial court"), finding accused-appellant Rogelio N. Dela Cruz ("appellant") guilty beyond reasonable doubt of illegal possession of illegal drugs, in violation of Section II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, the dispositive portion of which reads:

"WHEREFORE, the prosecution having presented convincing evidence that the accused is liable for the offense charged and having proven her (sic) guilt beyond reasonable doubt, the Court hereby finds accused ROGELIO N. DELA CRUZ GUILTY of the offense charged for violation of Section II of R.A. 9165 and hereby sentences him to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS as maximum of Reclusion Temporal and a fine of Php300,000.00.

SO ORDERED."

The Facts

An Information for violation of Section II, Republic Act No. 9165 was filed against appellant, it reads -

"That on or about the 30th day of May, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, wilfully, unlawfully and feloniously have in his possession custody and control one (11) heat sealed transparent plastic sachet containing SHABU (METHAMPHETAMINE HYDROCHLORIDE) with an aggregate weight of more or less THREE HUNDREDTHS OF A GRAM (0.03) which is a prohibited dangerous drug without authority whatsoever.

CONTRARY TO LAW."

During arraignment, appellant pleaded not guilty. Trial on the merits ensued.

Prosecution evidence tend to establish that -

On March 30, 2003, Police Station 4 of Balibago, Angeles City, received a call from a concerned citizen, informing them that the Dela Cruz brothers were seen in Purok 4, Barangay Amsic, Angeles City roaming armed with short firearms and hand grenades. Acting on the report, Special Weapons and Tactics Commander P/Supt. Dennis Pasngi ("P/Supt. Pasngi") dispatched SWAT Team Bravo composed of P/SInsp Eduardo Tuazon, Jr. (P/SInsp Tuazon), SPO2 Arnel Mejiano ("SPO2 Mejiano"), PO2 Emerito Ramos ("PO2 Ramos") and PO2 Emmet Nunag ("PO2 Nunag") to assist the police officers of Police Station 5 in apprehending the Dela Cruz brothers.

Upon arrival at the target area, the team spotted the Dela Cruz brothers at the Hidden Valley Resort. When the Dela Cruz brothers saw the police operatives, an exchange of gunshots ensued. Eventually, appellant was apprehended. A body search on him yielded – (1) one caliber .38 revolver with no serial number with four empty cartridges and two live ammunitions in the chamber; (2) one caliber .357 magnum without serial numbers with two empty cartridges and four live ammunitions; (3) two arrows; and (4) one heat sealed transparent plastic sachet containing white crystalline substance ("confiscated item"). Appellant was thereafter taken to the police station.

At the station, PO2 Ramos marked the plastic sachet containing white crystalline substance, that he recovered from appellant's right front pocket, with his initials "EMR." PO2 Ramos then accomplished a confiscation receipt. The confiscated item was forwarded to the PNP Crime Laboratory for examination. Based on Chemistry Report No. D-125-2003, the confiscated item tested positive for methamphetamine hydrochloride otherwise known as shabu.

Appellant denied the allegations. He narrated that on March 30, 2003, he was walking by the creek in Pasig City when he saw male individuals in civilian clothes, armed with firearms, calling him. He did not know who they were so he ran away. They ran after him and was able to catch him. Upon catching him they started hitting him with their firearms and he was taken to the police station.

The Trial Court's Ruling

After due proceedings, the trial court rendered its Decision and found appellant guilty beyond reasonable doubt of the offense charged, viz -

"From the evidence presented, PO2 Emmet Nunag has sufficiently established the following facts:

1. That it was PO2 Emerito Ramos who conducted the bodily search;
2. That one (1) heat sealed transparent plastic sachet was recovered from Rogelio Dela Cruz's front right pocket; and
3. That the plastic sachet was marked by PO2 Ramos at the Police Station with his initial "EMR."

All of the said facts support the theory of the prosecution that the accused was in possession of the plastic sachet containing suspected shabu. The same plastic sachet was brought to the PNP crime laboratory for examination and yielded positive as to the presence of Methamphetamine Hydrochloride, a prohibited drug. The result is embodied in Chemistry Report No. D-127-2003. Furthermore, the same plastic sachet with the marking "EMR" was identified in open court."

Hence, this appeal.

Issue

Appellant raises the sole assignment of error-

THE TRIAL COURT GRAVELY ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED BECAUSE THE PROSECUTION FAILED TO OVERTHROW HIS CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

This Court's Ruling

Appellant claims that the prosecution failed to establish the continuous and unbroken chain of custody of the subject evidence hence, the evidentiary value of the recovered item is highly questionable.

The Office of the Solicitor General ("OSG") seconded the appellant and manifested that appellant's conviction be reversed.^[2]

We find the appeal meritorious.

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the corpus delicti.^[3] In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the corpus delicti, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.^[4] Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

Section 21, paragraph 1, Article II of RA No. 9165 lays down the procedures that the apprehending team should observe in handling the seized illegal drugs, it states -

"Section 21, paragraph 1, Article II of RA No. 9165, states:

1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."

We are aware that the Implementing Rules of RA 9165 offer some flexibility and non-compliance with these requirements under justifiable grounds shall not render void and invalid such seizures of and custody over said item, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer.