

SPECIAL EIGHTEENTH DIVISION

[CA-G.R. CR.-HC. No. 01591, July 31, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROCHE
TULLO Y ARROJADO, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

THE CASE

This is an appeal filed by accused-appellant Roche Arrojado Tullo of the Decision^[1] dated November 25, 2010, of the Regional Trial Court, 6th Judicial Region, Branch 16, Roxas City, in Crim. Case No. C-329-05 finding accused-appellant guilty of Violation of Sec. 5, Article II of RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE FACTS

Version of the Prosecution

The Anti-Illegal Drug Operation Team of the Philippine National Police of Roxas City was tasked to monitor and track down illegal activities of persons engaged in illegal drug trade within their area of responsibility. The team members included PO3 Rizalde Alba, PO1 Rodel Ibanez, SPO1 Robenesto Castro, PO3 Ernesto Bautista, Jr., PO2 Domingo Acepcion, SPO2 Antonio Besana and PO1 Jose Dexter Paulin with Police Inspector Nonato Daradar as their team leader.

Two weeks before December 19, 2005, the team conducted a surveillance on accused-appellant. It was confirmed that he was engaged in the sale of illegal drugs.

On December 19, 2005, the team conducted a buy-bust operation against accused-appellant. In the briefing, PO1 Ibanez was designated as poseur-buyer by their team leader and it was agreed that he would be assisted by a police asset who knew accused-appellant. SPO2 Antonio Besana was assigned as evidence custodian/investigator while the other members were constituted as back-up. SPO1 Castro prepared the P500.00 bill with serial number NFO77032 to be used as buy-bust money and was recorded in the police blotter book at the police station. SPO1 Castro then turned over the marked money to PO1 Ibanez. The team members agreed that the pre-arranged signal would be for PO1 Ibanez to give a "missed call" to PO3 Bautista to signify that the sale had been consummated.

Around 8:00 PM on the same day, the team members left the station. PO1 Ibanez and the police asset left together on board a motorcycle. SPO1 Castro, PO3 Bautista, PO3 Alba, PO2 Paulin and PO2 Acepcion proceeded to the target area using a separate vehicle. They alighted in the area near Mabini corner San Roque Street

where accused-appellant resides. The back up force positioned themselves strategically within one (100) hundred meters more or less from accused-appellant's residence.

PO1 Ibanez and the civilian asset parked the motorcycle about two meters away from accused-appellant's house. The asset then proceeded to accused-appellant's house and called him out. An old woman appeared from a store fronting accused-appellant's house and told the asset that accused-appellant was inside. Accused-appellant emerged shortly thereafter at the terrace of the second floor of the house. The asset asked: "*Che, do you have?*". Accused-appellant nodded in response and motioned for him to wait outside a bit farther from his house. The asset was led to a dilapidated uninhabited house along Mabini Street. PO1 Ibanez and the asset waited for accused-appellant and after a few minutes, accused-appellant arrived shirtless and wearing only shorts. The civilian asset said to accused-appellant: "*Pre, we will buy.*" and accused-appellant replied: "*How much?*". The asset said "*ken yen*" or P500.00. Accused-appellant then led them into a room inside the house wherein he lit a candle and sat down facing PO1 Ibanez and the asset. PO1 Ibanez told accused-appellant that he wanted to buy shabu worth P500.00. Accused-appellant took something from the side of his shorts and handed it to PO1 Ibanez who examined its contents and paid P500.00 to accused-appellant. At that point, PO1 Ibanez announced the buy-bust and placed accused-appellant under arrest. While arresting accused-appellant, PO1 Ibanez gave PO3 Bautista a "missed call".

Subsequently, the back up force arrived and the police officers assisted PO1 Ibanez in arresting accused-appellant. At that time, the sachet was already in the hands of PO1 Ibanez. PO3 Bautista informed accused-appellant of his constitutional rights as other team members arrived. PO3 Alba frisked accused-appellant and recovered from his left palm the P500.00 marked money. Later, PO1 Ibanez marked the seized sachet with accused-appellant's initials "RT-1". PO1 Ibanez turned over the subject sachet to SPO2 Besana, then left the scene to take the asset home. SPO2 Besana placed the sachet containing suspected shabu inside a big transparent plastic bag where he wrote the details of the operation. PO3 Alba turned over the P500.00 marked money to SPO2 Besana who prepared a written inventory of the recovered items. P/Insp. Daradar signed the inventory witnessed by SPO1 Castro, PO3 Bautista, PO2 Acepcion and PO1 Paulin. Accused-appellant refused to sign the certificate of inventory. Accused-appellant was then brought to the Roxas City PNP Station where he was booked and detained for illegal sale of drugs. SPO2 Antonio Besana prepared a Spot Report for the PDEA and a letter request for forensic examination of the subject specimen to the crime laboratory which was signed by P/Supt. Domingo Cabillan of the Roxas City Police Station. SPO2 Besana kept the items turned over to him in a steel cabinet at the police station. The next day, on December 20, 2005, the pertinent documents together with the specimen were brought by PO1 Ibanez to the PDEA and PNP Crime Laboratory in Camp Martin Delgado, Iloilo City.

P/Supt. Rea Villavicencio, the forensic chemist assigned at the PNP Crime Laboratory conducted an examination on the subject specimen attached to the formal written request submitted by PO1 Ibanez. After conducting a qualitative examination of the specimen submitted, P/Supt. Villavicencio found the same to be positive for Methamphetamine Hydrochloride, a dangerous drug in Chemistry Report^[2] No. D-370-05.

The Charge

In the Information^[3] dated December 28, 2005 filed against accused-appellant, he was charged with the crime of Violation of Section 5, Article II of RA No. 9165 as follows:

"That on or about the 19th day of December 2005, in the City of Roxas City Philippines and within the jurisdiction of this Honorable Court, said accused with deliberate intent and without any justifiable motive did then and there willfully unlawfully and feloniously sell, distribute and deliver to PO1 RODEL A. IBANEZ (a PNP poseur buyer) one (1) heat sealed transparent plastic packet of methamphetamine hydrochloride or shabu weighing .052 grams, a dangerous drug without the authority to sell and distribute the same.

CONTRARY TO LAW."

On April 6, 2006, accused-appellant was arraigned and pleaded "not guilty" to the crime charged.

Trial ensued. The prosecution presented the following as witnesses: P/Supt. Rea Villavicencio, PO1 Rodel Ibanez, SPO1 Robenesto Castro, PO3 Rizalde Alba, and SPO2 Antonio Besana. On the other hand, only accused-appellant testified in his defense.

Version of Accused-appellant

Accused-appellant claims that around 9:30 PM on December 19, 2005, he was at his house at San Roque Street, Roxas City when he heard someone calling out his name. He peeped through the window and saw his friend Romy who told him that something had happened to his younger brother. He went down to meet Romy who was with a companion he was not familiar with. Romy made a motion for them to go to his old house along Mabini Street which was uninhabited. Upon reaching said place, accused-appellant was told that they were "*going to a place there what they have brought for me (sic).*" Accused-appellant got angry because what they told him did not make sense. He took two steps backward and at that moment, two motorcycles arrived driven by Bing Castro and the late Dodong Alba. Accused-appellant knew the two of them because Bing Castro was his Aunt's bodyguard at Barangay Libas while the late Dodong Alba was his neighbor at Mejorada Subdivision. The latter then announced a buy-bust operation and handcuffed him while Romy and his companion ran away. Accused-appellant was frisked by Dodong Alba who recovered from his right pants pocket a P500.00 bill.

Subsequently, a white automobile arrived and he was pushed inside despite his request to get a shirt. He was taken to the police station and at the investigation room, a policeman named Israel asked him where the half kilo of shabu was. He replied that he did not know what he was talking about so that Israel boxed him, hitting the right side of his body below the breast. Israel used a ladle stick and asked him again about the half kilo of shabu. Israel shoved him when he replied that he had no knowledge about it. He was asked four more times and after each of his denial, he was hit by Israel. When Bing Castro arrived, he was placed inside a bigger cell. Accused-appellant asked for his wife, grandfather and younger brother.

His wife and grandfather arrived and while they were conferring, Israel approached them and offered: *"If you have P20,000.00, you will be free."* Accused-appellant told Israel to wait until the following day. Around 10:30 AM the next day, accused-appellant's wife arrived bringing with her P15,000.00 and she was told by Israel to go to the office with him. Accused-appellant heard a commotion and his wife's voice asking for help. Accused-appellant surmised that Israel got angry with his wife because she failed to bring the full amount of P20,000.00. Israel and his companion then filed a case against his wife. He denied that the shabu came from him as well as the P500.00 marked money. Accused-appellant confirmed that PO1 Ibanez was the companion of Romy on the date in question. He had known Romy for two years but he could not tell the court his family name. Accused-appellant did not bother having his physical injuries recorded in the police blotter nor did he file a case for extortion against the police officers.

THE RTC RULING

Thereafter, on November 25, 2010, the RTC, Branch 16, Roxas City rendered a Decision^[4] against accused-appellant, the pertinent portion of which reads:

"WHEREFORE, accused ROCHE TULLO y ARROJADO is found guilty beyond reasonable doubt of the crime charged in the Information and is sentenced to life imprisonment , and to pay a fine of P500,000.00 and the costs of this suit.

He shall be credited with the full term of his detention period.

The contraband shall be turned over to the Philippine Drug Enforcement Agency.

SO ORDERED."

Accused-appellant filed a Motion for reconsideration which was denied in an Order^[5] dated February 3, 2011.

On March 5, 2011, accused-appellant filed a Notice^[6] of Appeal dated February 28, 2011 which was denied in an Order dated March 22, 2011 for having been filed beyond the reglementary period.

On April 11, 2011, accused-appellant filed a Motion for reconsideration. Meanwhile, an Entry^[7] of Judgment dated March 23, 2011 was received by accused-appellant on April 13, 2011, declaring the RTC Decision dated November 25, 2010 as final and executory on February 17, 2011.

Dismayed, accused-appellant filed a Petition for Certiorari with the Court of Appeals imputing grave abuse of discretion on public respondent judge when he denied his right to appeal the assailed Decision. An Entry of Judgment was made even before accused-appellant could seek a reconsideration of the Order denying due course his right to appeal.

In a Decision^[8] dated September 28, 2012, the Court of Appeals granted his

petition and allowed his appeal. Hence, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning as sole error, to wit:

"THE LOWER COURT ERRED IN FINDING SUFFICIENT EVIDENCE IN HOLDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."

THIS COURT'S RULING

The appeal is impressed with merit.

Prefatorily, although the court a quo'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.^[9]

In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a sine qua non for conviction. The dangerous drug is the very corpus delicti of the crime of violation of the Dangerous Drugs Act.

In ***People vs. Casimiro, GR No. 146277, June 20, 2002***, the Supreme Court acquitted accused-appellant for failure of the prosecution to establish the identity of the prohibited drug which constitutes the corpus delicti. In ***People vs. Mapa, GR No. 91014, March 31, 1993***, the accused-appellant was granted an acquittal after the prosecution failed to clarify whether the specimen submitted to the NBI for laboratory examination was the same one allegedly taken from the accused. In ***People vs. Dismuke, GR No. 108453, July 11, 1994***, the Supreme Court ruled that the failure to prove that the specimen of marijuana examined by the forensic chemist was that seized from the accused was fatal to the prosecution's case. In ***People vs. Laxa, GR No. 138501, July 20, 2001***, the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the accused-appellant. It was held that this deviation from the standard procedure in the anti-narcotics operations produces doubts as to the origins of the marijuana. This question gives rise to surmises and speculations, and cannot prove beyond reasonable doubt the guilt of accused-appellant.

Too, in ***People vs. Partoza, GR No. 182418, May 8, 2009***, the Supreme Court elucidated on the importance of proving the corpus delicti of the offense, enumerating several cases wherein the court favored an acquittal because of failure to prove the corpus delicti, viz:

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In People v. Obmiranis, appellant was acquitted due to the flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from appellant, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibit before it was offered in evidence in court. In Bondad v. People, this Court held that the failure to comply with the requirements of the law compromised the identity of the items seized, which is the corpus delicti of each of the crimes charged against appellant, hence his acquittal is in order. And in People v. de la Cruz, the apprehending