

EIGHTH DIVISION

[CA-G.R. CR-H.C. NO. 05085, October 31, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLAND MANINANG Y LUMBIS A.K.A. "KOSA," ACCUSED-
APPELLANT.**

D E C I S I O N

GARCIA-FERNANDEZ, J.:

This is an appeal filed by accused-appellant Roland Maninang y Lumbis a.k.a. "Kosa", from the decision issued by the Regional Trial Court (RTC) of Iriga City, Branch 34 dated May 4, 2011^[1] in Criminal Case Nos. IR-8215 and IR-8216 which found accused-appellant guilty beyond reasonable doubt of illegal possession of drug paraphernalia and violation of Sec. 5, Article III on sale of prohibited drug, both defined under Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002 (RA 9165).

The facts based on the record are as follows:

Accused-appellant was charged in two informations both dated March 11, 2008, which read:

Criminal Case No. IR-8215^[2]

That on March 10, 2008 at around 8:30 o'clock in the evening in San Roque, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and feloniously have in his possession, control and custody the following shabu paraphernalias: one (1) piece disposable lighter, and one (1) aluminum foil, to the damage of public interest.

Criminal Case No. IR-8216^[3]

That on March 10, 2008 at 8:30 o'clock in the evening at San Roque, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of the law, did, then and there willfully, unlawfully and feloniously sell one (1) sachet containing shabu, a dangerous drug, weighing more or less 0.1 gram, to a police asset who acted as poseur-buyer using two (2) 100-peso bills with Serial Nos. AR561963 and K697062, marked money, to the damage of public interest.

Crim. Case No. IR-8215 was raffled to RTC Iriga City Br. 34 while Crim. Case No. IR-8216 was raffled to RTC Iriga City Br. 37. Accused-apellant entered a plea of "not guilty" to both charges when he was arraigned in both cases^[4]. Upon motion^[5] of

the accused-appellant, Crim. Case No. IR-8216 was consolidated with Crim. Case No. IR-8215 which was pending in RTC Iriga City Br. 34^[6].

The prosecution presented as witnesses Special Police Officer 4 Andrew P. Belleza, Police Inspector Wilfredo I. Pabustan, Jr., Police Officer 2 Zandro Iriola and Police Inspector Ireneo P. Andalis, Jr. It offered the following documents as evidence: 1) Chemistry Report No. D-53-08 (Exh. "A" with sub-markings); 2) plastic sachet containing methamphetamine hydrochloride (shabu) with signature of Police Inspector Pabustan (Exh. "B" with sub-markings); 3) Letter Request for Laboratory Examination (Exh. "C"); 4) Pre-Operation Report (Exh. "D"); 5) Spot Report for selling of prohibited drug (Exh. "E"); 6) Sport Report for possession of drug paraphernalia (Exh. "F"); 7) Coordination Report (Exh. "G"); 8) Booking Sheet and Arrest Report (Exh. "H"); 9) Photocopies of the money used in the buy bust operation (Exh. "J"^[7]); 10) one disposable lighter (Exh. "K"); 11) aluminum foil (Exh. "L"); 11) pictures taken of the accused and of the items seized or found in possession at the time of the arrest (Exh. "M" and sub-markings); 12) Letter of detail as PDEA operatives (Exh. "N")^[8].

SPO4 Belleza testified that he is a member of the Anti-Illegal Drug Task Force, a special group formed by the Philippine National Police dealing with the Philippine Drug Enforcement Agency (PDEA) for the purpose of enforcement of RA 9165; that the task force conducted a buy-bust operation on March 10, 2008 at about 10:30 in the evening at San Roque, Iriga City, the subject of the operation being accused-appellant; that in preparation for this buy-bust, SPO4 Belleza prepared a pre-operation report and coordination form, which he submitted to PDEA; that during the buy bust operation, police officers Andalis and Iriola, along with their asset, managed to purchase one (1) transparent plastic containing suspected shabu, after which Andalis made a pre-arranged signal call to the rest of the team; that the team arrested accused-appellant and Iriola turned the sachet of suspected shabu to SPO4 Belleza, which he marked with the initials "A.P.B."; and that they brought the accused-appellant to the police station. SPO4 Belleza also stated that upon arriving at the police station, accused-appellant was searched by Andalis and Iriola and they were able to recover one (1) disposable lighter and one (1) piece of aluminum foil, both of which were turned over to Belleza, who marked the paraphernalia with the initials "A.P.B."; that anent the money used for sale, Belleza stated that it was turned over to him by police officer Andalis; that Belleza prepared a spot report and a booking sheet, as well as a letter requesting laboratory examination of the sachet containing suspected shabu^[9]; and that Iriola delivered the letter-request, along with the plastic sachet containing the suspected shabu to the crime laboratory on March 11, 2008.

During cross-examination^[10], Belleza stated that the team conducted surveillance on the accused-appellant two weeks prior to the buy bust operation, but made no record regarding the surveillance; that they did not prepare any document or inventory of the items seized from the accused-appellant but recorded the buy-bust operation and the seized items in the police blotter. When asked about where he placed the seized specimen after it was marked and before it was delivered to the crime laboratory next year, Belleza stated that he placed it in his personal drawer secured with a padlock. As for the paraphernalia seized from the accused-appellant, Belleza stated that after marking the paraphernalia, he placed the items in a safe cabinet/drawer.

Forensic Chemist Police Officer Wilfredo Pabustan, Jr. testified^[11] that he received a letter request from the Iriga City police station to test a heat-sealed sachet with APB marking containing suspected shabu weighing more or less 0.1 grams on March 11, 2008 at 12:40 in the afternoon; that after testing, Pabustan confirmed that the specimen is shabu; that Pabustan resealed the sachet by placing a piece of masking tape on the portion he opened and placed his signature, initial, the chemistry report number and his marking; that Pabustan placed the specimen inside a bigger plastic, which he sealed with masking tape and placed his initials, date of examination, the chemistry report number and signature on the overlapping portion of the tape and that he identified Chemistry Report No. D-53-08 as the report he prepared after conducting the examination.

During his cross-examination^[12], Pabustan stated that after conducting the examination, the specimen was turned over to the evidence custodian SPO1 Alejandro Usi.

For his part, SPO1 Iriola testified^[13] that he was the one who acted as the poseur-buyer during the buy-bust operation on March 10, 2008 conducted outside of the BSO Development Center at San Roque, Iriga City; that before the operation, Iriola stated that Belleza handed to him two (2) pieces of 100 peso bills with serial numbers AR561963 and K697062; that Iriola and the informant met accused-appellant whom which he identified in open court, and gave the latter 200 pesos, after which accused-appellant gave him the sachet containing suspected shabu, which he also identified in open court; that the sachet was turned over to Belleza for marking and was delivered to the crime laboratory the next day; that he was the one who conducted a search on the accused-appellant after the latter was arrested and brought to the police station^[14]; that he was able to recover the two (2) pieces of 100 peso bill; and that when he was asked why no inventory was made on the seized items, Iriola answered that it is considered as practice in Iriga City that inventory reports are only made pursuant to search warrants.

Police Inspector Ireneo P. Andalis^[15] corroborated the testimony of Iriola and stated that he and the other members of the team searched accused-appellant after the latter's arrest and arrival at the police station, where they were able to recover drug paraphernalia, i.e., an aluminum foil and disposable lighter in the accused-appellant's left side pocket, which he identified in open court; and that he turned the paraphernalia over to Belleza, who marked and documented the items.

After the prosecution rested its case, accused-appellant filed a motion to dismiss (demurrer to evidence)^[16], on the ground that the police failed to comply with the chain of custody. The RTC denied the motion to dismiss in the order dated February 4, 2011^[17] and considered the case submitted for decision since the motion was made without leave of court.

After trial, the RTC rendered a decision dated May 4, 2011^[18], the dispositive portion of which reads as follows:

"For all the foregoing, this Court finds the accused guilty beyond reasonable doubt and hereby imposes the penalty:

For Criminal Case No. IR-8215, for illegal possession of drug paraphernalia, the accused is sentence [sic] to suffer a penalty of imprisonment of Six (6) months and one (1) day to four (4) years and a fine of Php10,000.00.

For Criminal Case No. IR-8216, for Violation of Sec. 5, Art. II, for selling of prohibited drug, the accused is sentence [sic] to suffer the penalty of life imprisonment and a fine of Php500,000.00. The accused shall be entitled to be credited for the period of this confinement to be deducted from his sentence."

In this appeal^[19], accused-appellant assigns the following errors to the RTC:

1. THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE ALLEGEDLY SEIZED DRUG AND DRUG PARAPHERNALIA.
2. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PREVAILING IRREGULARITIES IN THE APPREHENDING OFFICERS' PERFORMANCE OF THEIR OFFICIAL DUTIES AND THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Accused-appellant alleges that a review of the testimonial and documentary evidence presented by the prosecution will prove non-compliance with the inventory and photograph requirements under Section 21 of the Implementing Rules of RA 9165; that there was no inventory made and that the photograph offered by the prosecution fails to show that it was done in the presence of the official enumerated under RA 9165; that non-compliance with these requirements marred the integrity of the corpus delicti in this case since there was no assurance that the sachet recovered from the accused-appellant was the same drug submitted to the crime laboratory for examination and found to be shabu; that the prosecution did not include the testimony of the alleged evidence custodian, SPO1 Alejandri Usi, which resulted to a failure to prove the whereabouts of the seized specimen after the laboratory testing; that these flaws show that the chain of custody required under RA 9165 had been broken, producing grave doubts on accused-appellant's guilt; and that the RTC erred in upholding the presumption of regularity in the performance of the police officers for failure to comply with the legal requirements under the law.

The appeal is impressed with merit.

In *People vs. Ancheta*^[20], the Supreme Court elucidated on the stringent application of the procedural safeguards specifically crafted by Congress in R.A. 9165 in buy-bust operations, to quote:

In the very recent case *People v. Umipang*, we explained that the nature of a buy-bust operation necessitates a stringent application of the procedural safeguards specifically crafted by Congress in R.A. 9165 to counter potential police abuses. We held thus: