



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 191360

Present:

- versus -

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

SHERWIN BIS y AVELLANEDA,
Accused-Appellant.

Promulgated:

MAR 10 2014 *Del Castillo*

X-----X

DECISION

DEL CASTILLO, J.:

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. The prosecution is duty-bound to establish with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same prohibited substance seized from him.

For final review is the September 22, 2009 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03348 which affirmed the Regional Trial Court's (RTC) January 31, 2008 Decision² in Criminal Case No. 7555 finding appellant Sherwin Bis y Avellaneda (appellant) guilty beyond reasonable doubt of violating Section 5,³ Article II of Republic Act (RA) No. 9165⁴ and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. *Mellor*

¹ CA *rollo*, pp. 89-105; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Mario L. Guarifa III and Jane Aurora C. Lantion.
² Records, pp. 87-98; penned by Judge Robert T. Cawed.
³ Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.
⁴ The Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

Appellant was charged before the San Fernando, La Union RTC, Branch 29 with violation of Section 5, Article II of RA 9165 committed as follows:

That on or about the 28th day of November 2006, in the City of San Fernando, Province of La Union, and within the jurisdiction of this Honorable Court, the above[-]named accused did then and there, willfully, unlawfully and feloniously distribute, sell and deliver three (3) heat sealed transparent plastic sachet[s] containing methamphetamine hydrochloride otherwise known as “shabu”, with a corresponding weight of ZERO POINT ZERO FORTY THREE (0.043) gram; ZERO POINT ZERO SIXTEEN (0.016) gram; and ZERO POINT ZERO TEN (0.010) gram with a total weight of ZERO POINT ZERO SIXTY NINE (0.069) gram to PO2 Manuel Espejo who posed as the poseur-buyer thereof and in consideration of said shabu, used marked money, a piece of One thousand peso bill (₱1,000.00) with serial number EB 893087, without first securing the necessary permit, license from the proper government agency.

CONTRARY TO LAW.⁵

On January 23, 2007, appellant assisted by his counsel, pleaded not guilty to the crime charged.

Version of the Prosecution

On November 26, 2006, a civilian informant tipped the San Fernando City Police Station about the alleged drug pushing activity of appellant at his residence in Pagdalagan Norte, San Fernando City, La Union. Hence, a team composed of Police Officers Manuel Espejo (Espejo), Jose Arce (Arce) and Joselito Casem (Casem) went to the area on the same day to conduct a surveillance. They stayed at a store about 10 meters away from appellant’s house and from there saw people coming in and out. Another surveillance conducted by the same team on the following evening confirmed that drug activities were indeed happening in that place.

The said police officers immediately reported the matter to their superior who ordered them to conduct a buy-bust operation on November 28, 2006. Espejo was designated as poseur-buyer while Arce and Casem were to serve as back-ups. Following the usual procedure, Espejo was provided with a ₱1,000.00 bill bearing the initials “MCE” as marked money.

At about 10:40 p.m., the team proceeded to the target area on a tricycle. Upon arriving at the *locus criminis*, Arce and Casem posted themselves at a store

⁵ Records, p. 35.

near appellant's house while Espejo approached appellant who was standing in front of his house. He told him, "*Pards pakikuha ng isang bulto.*" Appellant looked at Espejo and asked "where is your money?" After Espejo handed the ₱1,000.00 bill to appellant, the latter went inside the house. He emerged after a while and gave Espejo three plastic sachets placed in another plastic container. Convinced that the white crystalline substance inside the plastic sachets is *shabu*, Espejo made the pre-arranged signal by putting his hand on top of his head. At once, Espejo introduced himself together with Arce and Casem who already rushed to assist him, as members of the San Fernando City Police. Forthwith, appellant was placed under arrest and apprised of his constitutional rights. Thereafter, he was brought to the police station wherein a further search on him by Espejo yielded aluminum foils⁶ and the marked money.

In the meantime, Espejo marked the three plastic sachets he bought from appellant with the initials "MC-1," "MC-2" and "MC-3."⁷ Afterwards, the team brought the Request for Laboratory Examination⁸ together with the confiscated items to the Regional Chief of the PNP Crime Laboratory Service. The results of the laboratory examination on the specimen yielded positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.⁹

Version of the Defense

Appellant denied all the allegations against him. He claimed that while he was going out of his house at around 10:00 p.m. of November 28, 2006, Espejo, whom he did not know at the time, suddenly grabbed him. He was then taken to a place near the highway where he was frisked. When nothing was found on his possession, he was taken to the police station at Pagdalagan. From there, he was whisked away to the main police station in San Fernando City on the pretext that he would be asked on something and would be released the following day. Upon reaching the main police station, however, Espejo showed him three aluminum foils and three plastic sachets containing white crystalline substance which were allegedly found on him.

On cross examination, appellant claimed to not know Espejo, Arce and Casem prior to the November 28, 2006 incident. That except for the said incident, there was no other reason for the said police officers to file a case against him.

⁶ Exhibits "G," "G-1" and G-2;" See Plaintiff-Appellee People of the Philippines' Formal Offer of Exhibits, id. at 67-70.

⁷ Exhibits "F-1," "F-2" and "F-3," id.

⁸ Exhibit "C," id.; See Also Folder of Documentary Exhibits, p. 4.

⁹ Exhibit "B," id.; id. at 2.

Ruling of the Regional Trial Court

According full faith and credence to the version of the prosecution, the RTC found that the elements necessary to prove the illegal sale of dangerous drugs have been sufficiently established.¹⁰ It debunked appellant's denial after considering the positive testimonies of the prosecution witnesses in line with the presumption that law enforcement officers have performed their duties in a regular manner. Consequently, the RTC found appellant guilty beyond reasonable doubt of the crime charged in its Decision¹¹ of January 31, 2008, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused Sherwin Bis, GUILTY as charged and sentences him to suffer the penalty of Life Imprisonment and to pay a fine of Php500,000.00 and to pay costs.

The three (3) sachets of shabu with a total weight of 0.069 gram is hereby confiscated and ordered turned over to PDEA for proper disposition.

SO ORDERED.¹²

Ruling of the Court of Appeals

On appeal, appellant questioned the RTC Decision on the ground that his guilt was not proved beyond reasonable doubt. He also averred that the police officers failed to regularly perform their official functions.

Concurring with the findings and conclusions of the RTC, the CA affirmed the said lower court's judgment in its now assailed Decision¹³ of September 22, 2009, disposing thusly:

WHEREFORE, premises considered, the January 31, 2008 Decision of the Regional Trial Court of San Fernando, La Union, Branch 29, in Criminal Case No. 7555, is AFFIRMED.

SO ORDERED.¹⁴

Unable to accept both lower courts' verdict of conviction, appellant is now before this Court for final determination of the very same issues he submitted before the CA.

¹⁰ Elements to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*: "(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." *People v. Remigio*, G.R. No. 189277, December 5, 2012, 687 SCRA 336, 347.

¹¹ Records, pp. 87-98.

¹² Id. at 98.

¹³ CA *rollo*, pp. 89-105.

¹⁴ Id. at 104.

Our Ruling

We find no merit in the appeal.

Credibility of witnesses not affected by minor inconsistencies.

Appellant points out inconsistencies in the testimonies of prosecution witnesses Espejo and Arce, to wit: (1) Espejo testified that he found the aluminum foils and the marked money tucked on appellant's waistline while Arce testified that he saw Espejo frisk appellant and found the specimen in the latter's pocket; (2) Espejo stated that appellant was then wearing basketball shorts while Arce described him as wearing a six-pocket short pants. Appellant argues that these inconsistent statements render Espejo and Arce incredible witnesses.

The Court is not convinced. While there are indeed minor contradictions in Espejo and Arce's testimonies, the same are nevertheless inconsequential and do not detract from the proven elements of the offense of illegal sale of dangerous drugs. As the CA correctly observed:

The foregoing inconsistencies, however, relate only to minor matters and do not touch on the essence of the crime. Jurisprudence is replete with pronouncement by the Supreme Court that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details which do not touch the essence of the crime do not impair their credibility.¹⁵

It is now too well-settled to require extensive documentation that "inconsistencies in the testimonies of witnesses, which refer only to minor details and collateral matters, do not affect the veracity and weight of their testimonies where there is consistency in relating the principal occurrence and the positive identification of the accused."¹⁶ Significantly, in the case at bench, the testimonies of the said witnesses for the prosecution were in harmony with respect to their positive identification of appellant as the one who sold the illegal drugs to Espejo, the poseur-buyer, in a planned buy-bust operation, as well as to the other surrounding circumstances that transpired during the said operation.

Chain of custody properly established.

Appellant posits that the prosecution did not strictly comply with the procedures laid down in Section 21, Article II of RA 9165 and its Implementing Rules and Regulations regarding the physical inventory and photograph of the

¹⁵ Id. at 99.

¹⁶ *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 34.

seized items. Non-compliance therewith, he argues, casts doubt on the validity of his arrest and the identity of the suspected *shabu* allegedly bought and confiscated from him.

On the matter of handling the confiscated illegal drugs after a buy-bust operation, Section 21(1), Article II of RA 9165 provides:

(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;

Accordingly, Section 21(a) of the Implementing Rules and Regulations of RA 9165 which implements the afore-quoted provision reads:

(a) The apprehending officer/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; *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

Case law has it that non-compliance with the abovequoted provision of RA 9165 and its Implementing Rules and Regulations is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. "What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."¹⁷

In the present case, the totality of the prosecution's evidence shows the integrity of the drugs seized to be intact. The identity of the drugs was proven and the chain of its custody and possession has been duly accounted for and not broken. This can be gleaned from the testimonies of Espejo and Arce who narrated that from the moment the items were seized from appellant, the same

¹⁷ *People v. Del Monte*, 575 Phil. 576, 586 (2008).

were brought to the police station where Espejo marked them with his initials “MC-1,” “MC-2” and “MC-3,” properly inventoried, and, together with the laboratory request, were immediately delivered by Espejo himself to the PNP Crime Laboratory for examination to determine the presence of dangerous drugs. Police Inspector Melanie Joy Ordoño conducted an examination on the specimens submitted with the corresponding markings and concluded that the three heat sealed transparent plastic sachets contained methamphetamine hydrochloride or *shabu*, a dangerous drug. Incidentally, this conclusion is bolstered by the defense’s admission¹⁸ of the existence and due execution of the request for laboratory examination, the Chemistry Report and the specimens submitted. Moreover, Espejo, when confronted during trial, identified the three plastic sachets containing white crystalline substance as the very same items confiscated from the appellant.¹⁹ Under the situation, this Court finds no circumstance whatsoever that would hint any doubt as to the identity, integrity and evidentiary value of the items subject matter of this case. “Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will or proof that the evidence has been tampered with”²⁰ and in such case, the burden of proof rests on the appellant.²¹ Here, appellant miserably failed to discharge this burden. Moreover, and as aptly observed by the CA, appellant did not seasonably question these procedural gaps before the trial court. Suffice it to say that objection to evidence cannot be raised for the first time on appeal.²²

In fine, the prosecution’s evidence positively identified appellant as the seller of white crystalline substance found to be methamphetamine hydrochloride or *shabu*, a dangerous drug, for ₱1,000.00 to Espejo, a police officer who acted as a poseur-buyer in a buy-bust operation. The plastic sachets containing the said substance presented during the trial as Exhibits “F-1 to F-3” were positively identified by Espejo as the same substance which were sold and delivered to him by appellant during the said operation.

Appellant’s defense of denial properly rejected.

Appellant’s defense hinges principally on denial. But such a defense is unavailing considering that appellant was caught in *flagrante delicto* in a legitimate buy-bust operation. “The defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.”²³

¹⁸ CA Decision pp. 5-6, CA *rollo*, pp. 93-94.

¹⁹ TSN, March 7, 2007, p. 13.

²⁰ *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 647.

²¹ *Id.*

²² *People v. Sta. Maria*, 545 Phil. 520, 534 (2007).

²³ *People v. Velasquez*, G.R. No. 177224, April 11, 2012, 669 SCRA 307, 318.

Penalty

Section 5 of RA 9165 provides the penalty for the illegal sale of dangerous drugs, viz:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Pursuant to the above-quoted provision of the law, appellant was properly sentenced by the lower courts to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

WHEREFORE, the Decision dated September 22, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03348, which affirmed the Decision dated January 31, 2008 of the Regional Trial Court, Branch 29, San Fernando City, La Union in Criminal Case No. 7555 finding accused-appellant SHERWIN BIS y AVELLANEDA guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of Life Imprisonment and to pay a fine of ₱500,000.00, is hereby **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

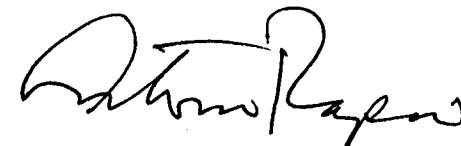

ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

