



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated October 3, 2022, which reads as follows:

“G.R. No. 252505 (*People of the Philippines v. Bolawan Sultan y Makote @ “Bolawan,” and Emah Ismael y Menor @ “Em”*). — On appeal is the October 8, 2019 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 11576, which affirmed the February 26, 2018 Decision² of the Regional Trial Court (RTC), Branch 82, Quezon City in Criminal Case No. R-QZN-14-06782-CR, finding accused-appellants Bolawan Sultan y Makote *alias* Bolawan (Sultan) and Emah Ismael y Menor *alias* Em (Ismael) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165,³ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Antecedents

In an Information⁴ dated July 21, 2014, accused-appellants were charged with violation of Sec. 5, Art. II of RA 9165, which alleged:

That on or about the 14th day of July 2014, in Quezon City, Philippines, the said accused conspiring together, confederating with and mutually helping each other, without lawful authority, did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in said transaction, a dangerous drug, to wit: 99.3176 [ninety-nine] point three one seven six) grams of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

¹ *Rollo*, pp. 3-21. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Victoria Isabel A. Paredes and Tita Marilyn B. Payoyo-Villordon.

² *CA rollo*, pp. 54-68. Penned by Presiding Judge Lyn Eborá-Cacha.

³ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved: June 7, 2002.

⁴ Records, pp. 1-2.

CONTRARY TO LAW.⁵

Upon arraignment, accused-appellants pleaded not guilty to the crime charged.⁶ Trial thereafter ensued.

Intelligence Officer I (IO1) Jake Edwin Million (IO1 Mil'ion) and IO2 Wilbert Baccay (IO2 Baccay) testified for the prosecution. The defense, on the other hand, presented the testimonies of the accused-appellants.

Version of the Prosecution

IO1 Million narrated that on July 14, 2014 at around 12:00 noon, a confidential informant (CI) reported to Team Leader IO1 Enrico Lausin (IO1 Lausin) that a certain *alias* Bolawan was involved in an illegal drug trade in the area of Quezon City and nearby cities.⁷ Upon learning such information, IO1 Lausin immediately organized a buy-bust team.⁸ IO1 Million thereafter instructed the CI to call *alias* Bolawan through the latter's cellular phone and to introduce him as a buyer of shabu.⁹ The CI complied with the instructions and IO1 Million was able to speak with *alias* Bolawan.¹⁰ IO1 Million then asked *alias* Bolawan how much shabu could she sell to him and if the item could be given in the afternoon of the same day.¹¹ In response, *alias* Bolawan told IO1 Million that she could sell 100 grams of shabu amounting to ₱200,000.00 and that she could also deliver the item later in the afternoon.¹² IO1 Million and *alias* Bolawan agreed to meet at McDonald's near the vicinity of Ever Commonwealth Mall, Commonwealth Avenue, Batasan Hills, Quezon City.¹³

During the briefing, IO1 Million was designated as the poseur-buyer with IO2 Baccay and Agent Donnie Cordero (Agent Cordero) as back-up arresting officers.¹⁴ It was also agreed upon that IO1 Million will put his two hands on top of his head to indicate that the transaction has been consummated.¹⁵ IO1 Million thereafter prepared the buy-bust money consisting of two pieces of ₱500.00 bills and marked the same with his initials "JLM."¹⁶ Subsequently, IO1 Million placed the said marked buy-bust money on top of two sets of boodle money to make it appear that he would be paying the agreed price amounting to ₱200,000.00.¹⁷ The marked buy-bust money

⁵ Id. at 1.

⁶ Id. at 37.

⁷ TSN, February 22, 2017, pp. 3-4.

⁸ Id. at 4.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 4-5.

¹² Id. at 5.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 6.

¹⁷ Id. at 7.

together with the boodle money were then placed inside a long brown envelope.¹⁸

Thereafter, the buy-bust team, along with the CI, proceeded to the target area. Upon their arrival at around 3:00 p.m. of the same day,¹⁹ IO1 Million instructed the CI to call *alias* Bolawan to inform the latter that they were already at the meeting place.²⁰ IO1 Million, together with the CI, went inside the McDonald's fast-food chain where the transaction will be held while the rest of the team discreetly positioned themselves as perimeter back-up.²¹ Afterwards, two persons arrived at the agreed place of transaction.²² The CI introduced IO1 Million to accused-appellants as the buyer of shabu.²³ Thereafter, accused-appellants asked IO1 Million if he brought with him the agreed amount.²⁴ IO1 Million then showed to accused-appellants the long brown envelope containing the buy-bust money and boodle money and likewise demanded to check the merchandise first before handing over the payment.²⁵ Thereafter, Sultan decided to leave while Ismael stayed with IO1 Million and the CI.²⁶ After an hour, Sultan, together with a male person, who was later on identified as Junaid Sultan (Junaid), arrived and joined IO1 Million in the table.²⁷ Sultan then asked Junaid for the illegal drug to be given to IO1 Million.²⁸ In response, Junaid took out from his right pocket and gave to Sultan one knot-tied transparent plastic ice bag containing suspected shabu.²⁹ In turn, IO1 Million handed over to Ismael the long brown envelope containing the buy-bust money.³⁰

When the transaction between IO1 Million and the accused-appellants finally transpired, and the pre-arranged signal executed, the rest of the team immediately rushed towards the place of transaction.³¹ Thereafter, IO2 Baccay recovered the buy-bust money from accused-appellant Ismael.³² Due to the commotion caused by the arrest of Junaid, IO1 Lausin ordered the team to proceed to the Philippine Drug Enforcement Agency (PDEA) office where the marking, inventory and photographing of the seized items were to be conducted.³³ The inventory was conducted in the presence of the accused-appellants together with *Barangay Kagawad* Tess Palma of *Barangay*

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 7-8.

²² Id. at 8.

²³ Id.

²⁴ Id. at 9.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id. at 10.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id. at 11.

³³ Id.

Pinyahan and media representative Alex Mendoza.³⁴ IO1 Million marked the one knot-tied transparent plastic bag containing white crystalline substance with his initials “EXH. A JLM 7/14/14” and his signature. The Certificate of Inventory was signed by the *barangay kagawad*, media representative, IO1 Million and IO2 Baccay.³⁵ The team requested for a representative from the Department of Justice (DOJ) to witness the inventory but they were informed that none was available during that time.³⁶ Thereafter, IO1 Million prepared the Request for Laboratory Examination on the knot-tied transparent plastic bag containing white crystalline substance recovered from accused-appellants and Junaid and personally brought the request together with the seized transparent plastic bag to the PDEA Crime Laboratory.³⁷

Corroborating the testimony of IO1 Million, IO2 Baccay narrated that on July 14, 2014 at around 12:00 p.m., a CI came to their office and reported to their team leader, IO1 Lausin that he can order shabu from a certain personality.³⁸ Upon learning such information, IO1 Lausin immediately organized a team wherein IO1 Million was designated as poseur-buyer while IO2 Baccay and Agent Cordero as the immediate back-up and arresting officers.³⁹ After the briefing, they proceeded to the target area.⁴⁰ Upon arrival, the buy-bust team waited for almost an hour until two female individuals arrived.⁴¹ Acting as perimeter back-up, IO2 Baccay noticed that one of the female individuals left the area.⁴² After almost an hour, the said female individual returned together with a male individual.⁴³ Thereafter, IO2 Baccay witnessed that the male individual turned over an item to the female individual.⁴⁴ The female individual then handed over the item to IO1 Million, who in turn, gave the brown envelope containing the buy-bust money to the female individual.⁴⁵ When IO1 Million executed the pre-arranged signal, IO2 Baccay together with the rest of the team, rushed towards the place of sale and introduced themselves as agents. Afterwards, IO2 Baccay arrested the accused-appellants.⁴⁶ Due to some commotion brought about by the arrest of Junaid, IO1 Lausin ordered that the inventory be conducted at their office.⁴⁷ The inventory was conducted in the presence of a *barangay* official, media representative, and the accused-appellants.⁴⁸

³⁴ Id. at 12.

³⁵ Id. at 18-19.

³⁶ Id. at 12.

³⁷ Id. at 17.

³⁸ TSN, June 9, 2016, p. 4.

³⁹ Id.

⁴⁰ Id. at 5.

⁴¹ Id.

⁴² Id.

⁴³ Id. at 6.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id. at 8.

⁴⁸ *Rollo*, p. 5

After conducting the qualitative examination, Forensic Chemist Jennifer Flores found that the item seized tested positive for the presence of methamphetamine hydrochloride or shabu and such findings were reduced in Chemistry Report Number PDEA-DD014-150 dated July 15, 2015.⁴⁹

Version of the Defense

Accused-appellants, on the other hand, proffered a different account of the incident and raised the defense of denial. Accused-appellant Sultan narrated that at around 10:00 a.m. of the said date, they were on top of a footbridge located at Ever Gotesco Mall along Commonwealth Avenue.⁵⁰ Sultan averred that she was selling eyeglasses together with Ismael.⁵¹ While selling their wares, they overheard a conversation that someone is threatening to shoot another person.⁵² Thinking that the Metro Manila Development Authority (MMDA) operatives would go after their wares, Sultan shouted at Ismael to get her goods and run.⁵³ Accused-appellants then saw five individuals chasing a male person, who later on was identified as Junaid Sultan.⁵⁴ Accused-appellants denied that they know Junaid.⁵⁵ To their surprise, the male individuals suddenly arrested accused-appellants and boarded them in a vehicle.⁵⁶ They told accused-appellants to look down and not to look at the windows.⁵⁷ One of the male individual asked accused-appellants if they could produce ₱100,000.00 each for their release, which the accused-appellants answered in the negative.⁵⁸ The accused-appellants were then brought to the PDEA office where they were detained.⁵⁹

Ruling of the Regional Trial Court

The RTC, in its Decision⁶⁰ dated February 26, 2018, found accused-appellants guilty beyond reasonable doubt of the offense charged. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Bolawan Sultan y Makote @ “Bolawan” and Emah Ismael y Menor @ “Em” “Guilty” beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.

Accordingly, this Court sentences both the accused Bolawan Sultan y Makote @ “Bolawan” and Emah Ismael y Menor @ “Em” to each suffer

⁴⁹ Records, p.18.

⁵⁰ TSN, January 15, 2018, p. 3.

⁵¹ Id. at 3-4.

⁵² Id. at 4.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id. at 4-5.

⁵⁷ Id. at 5.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ CA *rollo*, pp. 54-68.

the penalty of *Life Imprisonment* and to each pay a Fine in the amount of Five Hundred Thousand (₱500,000.00) Pesos without eligibility for parole in accordance with R.A. 9346.

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.

SO ORDERED.⁶¹

The RTC gave credence to the testimonies of the prosecution witnesses, concluding that the identities of the sellers and the buyer were established. It further ruled that the prosecution cogently established each link in the chain of custody over the *shabu*, from the time it was seized from the accused-appellants up to the time it was presented during the trial as proof of the *corpus delicti*.⁶²

Aggrieved, accused-appellants appealed their conviction before the CA.

Ruling of the Court of Appeals

In its assailed October 8, 2019 Decision,⁶³ the CA affirmed with modification the trial court's Decision finding accused-appellants guilty of violation of Sec. 5, Art. II of RA 9165. It ruled that all the elements of the crime of Illegal Sale of Dangerous Drugs were present in the instant case. It further held that the links in the chain of custody in the subject buy-bust operation were all established by the prosecution.⁶⁴

The appellate court likewise rejected the defense of denial proffered by the accused-appellants, holding that this defense cannot be given greater evidentiary weight absent any showing that the police officers were inspired with ill motive or that they were not properly performing their duties.⁶⁵

Finally, the appellate court affirmed the penalties imposed by the trial court in Criminal Case No. R-QZN-14-06782-CR. The CA, however, deleted the qualification that the same shall be without eligibility of parole.⁶⁶

Thus, the dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Decision dated February 26, 2018 of the Regional Trial Court (RTC), Branch 82, Quezon City finding accused-appellants Bolawan Sultan y Makote and Emah Ismael y Menor guilty beyond reasonable doubt

⁶¹ Id.

⁶² Id. at 63-67.

⁶³ *Rollo*, pp. 3-21.

⁶⁴ Id. at 11-14.

⁶⁵ Id. at 15-19.

⁶⁶ Id. at 19-20.

of Section 5, Article II of Republic Act No. 9165 is AFFIRMED with MODIFICATION in that each of the accused-appellants Bolawan Sultan y Makote and Emah Ismael y Menor is sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

SO ORDERED.⁶⁷

Hence, the instant appeal.

Issue

The issue for Our resolution is whether the CA correctly found accused-appellants guilty beyond reasonable doubt of violation of Sec. 5, Art. II of RA 9165.

Our Ruling

The appeal has merit.

For the prosecution of Illegal Sale of Dangerous Drugs, the following elements must concur, to wit: (a) the identity of the buyer and the seller, the object, and the consideration, and (b) the delivery of the thing sold and the payment.⁶⁸

As testified to by IO1 Million, the sale of the dangerous drug actually took place between him as the poseur-buyer and accused-appellants, and that the latter was positively identified as the very same person subject of the buy-bust operation.

IO1 Million testified on the seizure of one knot-tied transparent plastic ice bag containing shabu which he received from the accused-appellants.

IO1 Million positively and categorically identified the accused-appellants as the persons who sold the plastic bag of shabu to him. The declarations of IO1 Million were likewise corroborated by the Chemistry Report issued and submitted by the forensic chemist stating therein that the subject plastic bag truly contained methamphetamine hydrochloride or "shabu."

However, the prosecution failed to establish an unbroken chain of custody of the seized item.

In the prosecution of drug cases, it is the dangerous drug itself that forms part of the *corpus delicti* of the offense. Thus, the integrity of the *corpus*

⁶⁷ Id. at 20.

⁶⁸ *Belmonte v. People*, 811 Phil. 844, 856 (2017).

delicti must be established with moral certainty through an unbroken chain of custody.

Sec. 21, Art. II of RA 9165 outlined the procedure which the apprehending team must comply in handling the seized drugs in order to ensure that the integrity and evidentiary value of the same are preserved. The pertinent portion of the said section reads:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (a) 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 x x x .

To further ensure the integrity and evidentiary value of the seized drugs, the prosecution must account for each link in its chain of custody:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁶⁹

As can be gleaned from the established facts, the conduct of the inventory was made in the presence of an elected *barangay* official and a media representative, while photographs of the inventory were taken by Agent Randy Tindaan. This fell short of the requirement that the inventory should likewise be witnessed by a representative of the DOJ. It must be stressed that the alleged crime occurred on July 14, 2014 while RA 10640, which requires the presence of an elected official and a representative from the media or the National Prosecution Service took effect only on August 7, 2014. At the time the crime was committed on July 14, 2014, the applicable law requires the presence of the following insulating testimonies to wit: an elected public official, and representatives from the media and DOJ. Here, the DOJ

⁶⁹ *People v. Siaton*, 789 Phil. 87, 98-99 (2016).

representative was not present. The lack of a complete line up of insulating witnesses proved fatal to the prosecution's cause.

Indeed, it is settled that noncompliance with the requirements, under justifiable grounds, shall not render void and invalid the seizures of and custody over the items seized, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team. Unfortunately, the prosecution did not even acknowledge the serious lapse they committed or offered any justification therefor. They merely stated that they requested for a representative from the DOJ but none was available. Surely, they failed to show that they exerted earnest efforts to secure the presence of the DOJ representative.

Accordingly, this lapse seriously compromised the integrity and evidentiary value of the seized drugs casting doubt on the guilt of accused-appellants. Perforce, their acquittal is warranted.

WHEREFORE, the appeal is **GRANTED**. The October 8, 2019 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 11576 is hereby **REVERSED and SET ASIDE**. Accused-appellants Bolawan Sultan y Makote @ "Bolawan" and Emah Ismael y Menor @ "Em" are acquitted of the charge of violation of Section 5, Article II of Republic Act No. 9165 for failure of the prosecution to prove their guilt beyond reasonable doubt. The Director General of the Bureau of Corrections, Muntinlupa City, is **DIRECTED** to cause the release of accused-appellants, unless they are being held for another lawful cause. The Director General is further directed to report to this Court the action taken hereon within five days from receipt of the Resolution.

Let an entry of judgment be issued immediately.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court mtv/lj

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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OCT 13 2022

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