



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff/Appellee.

G.R. No. 184181

- versus -

Present:

CARPIO, *Chairperson*,
BRION,
PERALTA,*
DEL CASTILLO, *and*
PEREZ, *JJ.*

JOSEPH ROBELO y TUNGALA,
Accused/Appellant.

Promulgated:

NOV 26 2012

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DECISION

DEL CASTILLO, *J.*:

This is another instance where we are called upon to resolve an issue concerning the constitutional presumption of innocence accorded to an accused vis-à-vis the corresponding presumption of regularity in the performance of official duties of police officers involved in a drug buy-bust operation.

Assailed in this appeal interposed by appellant Joseph Robelo y Tungala is the February 27, 2008 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02711, which affirmed the January 26, 2007 Decision² of the Regional Trial Court (RTC) of the City of Manila, Branch 2, finding him guilty beyond reasonable doubt of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs under Sections 11(3) and (5) in relation to Section 26, Article II, respectively, of Republic Act (R.A.) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

¹ Per Special Order No. 1377 dated November 22, 2012.

² *CA rollo*, pp. 100-121; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Juan Q. Enriquez and Marlene Gonzales-Sison.

Records, pp. 78-85; penned by Judge Alejandro G. Bijaša.

Factual Antecedents

At about 10:00 a.m. of March 26, 2004, the Station of Anti-Illegal Drugs Special Operation Task Force (SAID), Police Station 2 in Moriones, Tondo, Manila received information from a civilian informer that a certain alias “Kalbo” (appellant) is involved in the sale of illegal drugs in Parola Compound. Forthwith, the Chief of SAID organized a team composed of eight police officers to conduct a “buy-bust” operation to entrap appellant. PO2 Arnel Tubbali (PO2 Tubbali) was designated as the poseur-buyer and was thus handed a 100 peso bill which he marked with his initials. The rest of the team were to serve as back-ups.

The civilian asset led PO2 Tubbali to the target area while others positioned themselves in strategic places. Not long after, appellant came out from Gate 16, Area 1-b with a companion who was later identified as Teddy Umali (Umali). Upon approaching the two, the civilian informer introduced to them PO2 Tubbali as a friend and a prospective buyer of *shabu*. PO2 Tubbali then conveyed his desire to buy ₱100.00 worth of *shabu* and handed Umali the marked ₱100.00 bill. After accepting the money, Umali ordered appellant to give PO2 Tubbali one plastic sachet of *shabu* to which the latter readily complied. PO2 Tubbali then looked at the plastic sachet, placed it in his pocket, and made the pre-arranged signal by scratching his butt. Whereupon, the rest of the team rushed to the scene and arrested appellant and Umali. When frisked by PO2 Conrado Juano, one plastic sachet suspected to contain *shabu* was found inside appellant’s pocket. He and Umali were afterwards brought to the precinct where the investigator marked the seized items with the initials “JRT-1” and “JRT-2”. The investigator then prepared the Laboratory Request,³ Booking Sheet,⁴ Arrest Report,⁵ Joint Affidavit of Apprehension⁶ and a referral letter for inquest.⁷

² Records, pp. 78-85; penned by Judge Alejandro G. Bijasa.

³ Exhibit “F”, id. at 11.

⁴ Exhibit “E”, id. at 4-5.

⁵ Id.

⁶ Exhibit “D”, id. at 6-10.

⁷ Id. at 12.

After qualitative examination, the forensic chemist found the items positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.

Appellant was accordingly charged with illegal sale and illegal possession of *shabu* in two separate Informations while Umali was indicted in another Information raffled to a different branch of the RTC.

The Informations against appellant read as follows:

CRIMINAL CASE NO. 04-225284

That on or about March 26, 2004, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) transparent plastic sachet containing ZERO POINT ZERO NINETEEN (0.019) gram of white crystalline substance known as *shabu*, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁸

CRIMINAL CASE NO. 04-225285

That on or about March 26, 2004, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, identity and present whereabouts are still unknown and mutually helping each other, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale one (1) transparent plastic sachet containing ZERO POINT ZERO THIRTEEN (0.013) gram of white crystalline substance known as *shabu*, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁹

During arraignment, appellant, assisted by his counsel, pleaded “not guilty” in the two cases. After the termination of the pre-trial, trial on the merits immediately ensued.

Appellant denied being a drug pusher and claimed complete ignorance as to why he was being implicated in the said crimes. He averred that he was repairing

⁸ Id. at 2.

⁹ Id. at 3.

the floor of his mother's house when two police officers in civilian clothes went inside the house, ransacked the closet and without any reason handcuffed and brought him to the precinct. At the precinct, the police officers demanded from him ₱10,000.00 in exchange for his liberty.

Ruling of the Regional Trial Court

After trial, the RTC rendered a verdict of conviction on January 26, 2007,¹⁰ viz:

WHEREFORE, judgment is hereby rendered as follows, to wit:

1. In Criminal Case No. 04-225284, finding accused, Joseph Robelo y Tungala @ "Kalbo", **GUILTY** beyond reasonable doubt of the crime charged, he is hereby sentenced to suffer the indeterminate penalty of 12 years and 1 day as minimum to 17 years and 4 months as maximum; to pay a fine of P300,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.
2. In Criminal Case No. 04-225285, finding accused, Joseph Robelo y Tungala @ "Kalbo", **GUILTY** beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay the fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.¹¹

Ruling of the Court of Appeals

On appeal, the CA concurred with the RTC's findings and conclusions and, consequently, affirmed the said lower court's judgment in its assailed Decision¹² of February 27, 2008, the dispositive portion of which reads:

¹⁰ Id. at 78-85.

¹¹ Id. at 84-85.

¹² CA *rollo*, pp. 100-121.

WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision dated January 26, 2007 is hereby **AFFIRMED**.

SO ORDERED.¹³

Still undeterred, appellant is now before us and by way of assignment of errors reiterates the grounds and arguments raised in his Brief filed before the CA, to wit:

I

THE LOWER COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED NOTWITHSTANDING THE POLICE OFFICERS' FAILURE TO REGULARLY PERFORM THEIR OFFICIAL FUNCTIONS.¹⁴

Our Ruling

The appeal has no merit.

Appellant's first assignment of error basically hinges on the credibility of the prosecution witnesses, particularly in their conduct of the buy-bust operation. He asserts that the alleged buy-bust operation is tainted with infirmity due to the absence of a prior surveillance or investigation. Moreover, per the testimony of PO2 Tubballi, appellant did not say anything when the former was introduced to him as an interested buyer of *shabu*. Appellant points out that it is contrary to human nature that the seller would say nothing to the buyer who is a complete stranger to him.

We sustain the validity of the buy-bust operation.

¹³ Id. at 121.

¹⁴ Id. at 33.

A buy-bust operation has been proven to be an effective mode of apprehending drug pushers. In this regard, police authorities are given a wide latitude in employing their own ways of trapping or apprehending drug dealers in *flagrante delicto*. There is no prescribed method on how the operation is to be conducted. As ruled in *People v. Garcia*,¹⁵ the absence of a prior surveillance or test-buy does not affect the legality of the buy-bust operation as there is no textbook method of conducting the same. As long as the constitutional rights of the suspected drug dealer are not violated, the regularity of the operation will always be upheld. Thus, in *People v. Salazar*,¹⁶ we ruled that “[i]f carried out with due regard to constitutional and legal safeguards, buy-bust operation deserves judicial sanction.”

Neither impressive is appellant’s contention that it is contrary to human nature to sell the illegal stuff to a complete stranger. The law does not prescribe as an element of the crime that the vendor and the vendee be familiar with each other. As aptly held by the CA, peddlers of illicit drugs have been known with ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not.

While indeed there was little or no exchange between the poseur-buyer and the appellant as it was the former and Umali who negotiated for the sale, he still cannot escape liability because of his passive complicity therein. Simply stated, there was conspiracy between appellant and Umali as can be deduced from the testimony of PO2 Tubballi, to wit:

- Q. So when Teddy Umali received this One Hundred Peso-bill (P100.00), what happened next, Mr. Witness?
A. Then he talked to Joseph Robelo alias “Kalbo” to give me a shabu, one (1) plastic sachet, sir.
- Q. Did Robelo compl[y]?
A. Yes, sir.

¹⁵ G.R. No. 172975, August 8, 2007, 529 SCRA 519, 533, 534.

¹⁶ 334 Phil. 556, 570 (1997).

Q. How did, this Joseph...

A. And then Joseph handed me one (1) plastic sachet, sir.¹⁷

Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime suggesting concerted action and unity of purpose among them. In this case, the testimony of the poseur-buyer clearly shows a unity of mind between appellant and Umali in selling the illegal drugs to him. Hence, applying the basic principle in conspiracy that the “act of one is the act of all” appellant is guilty as a co-conspirator and regardless of his participation, is liable as co-principal. Appellant’s silence when the poseur-buyer was introduced to him as an interested buyer of *shabu* is *non-sequitur*.

Appellant denies his complicity in the crime by invoking alibi and frame-up. He claims that in the morning of March 26, 2004, he was at his mother’s house doing some repair job and was just suddenly arrested and brought to the precinct where the arresting officers demanded ₱10,000.00 for his liberty.

We, however, find that the RTC correctly rejected this defense of the appellant.

Time and again, we have stressed virtually to the point of repletion that alibi is one of the weakest defenses that an accused can invoke because it is easy to fabricate. In order to be given full faith and credit, an alibi must be clearly established and must not leave any doubt as to its plausibility and veracity. Here, appellant’s claim that he was at his mother’s house at the time of the incident cannot stand against the clear and positive identification of him by the prosecution witnesses. As aptly held by the RTC, “[t]he portrayal put forward by [appellant] remained uncorroborated. The testimonies of the witnesses presented by the defense do not jibe with one another and that of the claim of the [appellant] himself. x x x Lastly[,] the demand for money worth ₱10,000.00 remained

¹⁷ TSN, July 12, 2005, pp. 10-11.

unsubstantiated. x x x If indeed [appellant] is innocent he or his family who were his witnesses should have filed a case of planting of evidence against the police which is now punishable by life imprisonment.”¹⁸

In fine, no error was committed by the RTC and the CA in giving credence to the testimonies of the prosecution witnesses. The general rule is that findings of the trial court on the credibility of witnesses deserve great weight, and are generally not disturbed, on appeal. We find no reason to depart from such old-age rule as there are no compelling reasons which would warrant the reversal of the verdict.

In his second assignment of error, appellant draws attention to the failure of the apprehending officers to comply with Section 21 of R.A. No. 9165 regarding the physical inventory and photocopy of the seized items. He asserts that this failure casts doubt on the validity of his arrest and the identity of the suspected *shabu* allegedly bought and confiscated from him.

Appellant’s contention fails to convince us.

It should be noted that the alleged non-compliance with Section 21 of Article II of R.A. No. 9165 was not raised before the trial court but only for the first time on appeal. This cannot be done. In *People v. Sta. Maria*,¹⁹ *People v. Hernandez*,²⁰ and *People v. Lazaro, Jr.*,²¹ among others, in which the very same issue was belatedly raised, we ruled:

x x x Indeed the police officers’ alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the

¹⁸ Records, p. 83.

¹⁹ G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

²⁰ G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645.

²¹ G.R. No. 186418, October 16, 2009, 604 SCRA 250, 274.

evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

Moreover, “[n]on-compliance with Section 21 does not render an accused’s arrest illegal or the items seized/confiscated from him inadmissible. What is essential 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.’”²² The records reveal that at no instance did appellant hint a doubt on the integrity of the seized items.

Undoubtedly, therefore, the suspected illegal drugs confiscated from appellant were the very same substance presented and identified in court. This Court, thus, upholds the presumption of regularity in the performance of official duties by the apprehending police officers.

The Penalty

Under Section 5, Article II of R.A. No. 9165, illegal sale of *shabu* carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million irrespective of the quantity and purity of the substance.

On the other hand, Section 11(3), Article II of the same law provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years plus a fine ranging from ₱300,000.00 to ₱400,000.00.

Appellant was found guilty of selling 0.019 gram of *shabu* and of possessing another 0.013 gram. Hence, applying the above provisions, we find the penalties imposed by the RTC as affirmed by the CA to be in order.

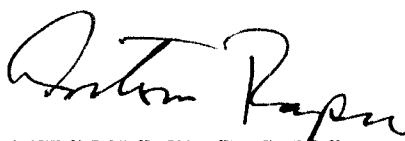
²² *People v. Guiara*, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 329.

WHEREFORE, the appeal is **DISMISSED**. The assailed February 27, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02711 is hereby **AFFIRMED** *in toto*.

SO ORDERED.

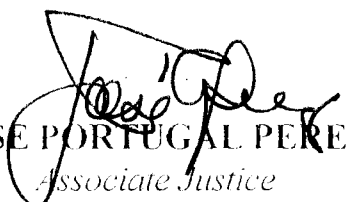

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


JOSE PORTUGAL PEREZ
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

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

