



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 193670

Present:

- versus -

CARPIO, *Chairperson,*
DEL CASTILLO,
VILLARAMA, JR.,^{*}
MENDOZA, *and*
LEONEN, *JJ.*

VENERANDO DELA CRUZ
y SEBASTIAN,
Accused-Appellant.

Promulgated:

DEC 03 2014

MA Cabalag Perfecto

x - - - - -

RESOLUTION

DEL CASTILLO, J.:

Assailed in this appeal is the June 25, 2010 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01025 that affirmed the March 15, 2005 Judgment² of the Regional Trial Court (RTC) of Naga City, Branch 28, in Criminal Case No. RTC'03-0289 convicting Venerando Dela Cruz y Sebastian (appellant) of Violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

On July 25, 2003, police asset Warren Ebio (Ebio) received information from another asset that he could purchase *shabu* by calling a certain person. He thus called the said person through cellular phone and agreed to meet with him in front of the *barangay* hall of Lerma, Naga City.

Accordingly, a pre-operation plan to entrap the alleged seller was immediately drawn up in coordination with the Philippine Drug Enforcement

^{*} Per Special Order No. 1888 dated November 28, 2014.

¹ CA *rollo*, pp. 100-112; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Sesinando E. Villon and Marlene Gonzales-Sison.

² Records, pp. 176-182; penned by Judge Rosita L. Lalwani.

Mau

Agency. SPO1 Ruben Antonio (SPO1 Antonio), SPO1 Cornelio Morano (SPO1 Morano), PO3 Raul Bongon (PO3 Bongon) and SPO3 Julio Tuason (SPO3 Tuason) then formed themselves into a buy-bust team. Ebio was designated as the poseur-buyer and was given three ₱500.00 bills as buy-bust money, while PO3 Bongon was tasked to apprehend the seller after the consummation of the transaction.

Upon their arrival at the designated area, Ebio, SPO3 Tuason and SPO1 Morano alighted from their vehicle. Ebio proceeded towards the meeting place while the other two positioned themselves nearby. A few minutes later, a man riding a motorcycle arrived. The buy-bust team recognized him as the seller based on his attire as described by him to Ebio. Ebio introduced himself as the buyer. When the man asked for payment, he gave him the buy-bust money. The man then took out two transparent plastic sachets containing white crystalline substance from his right pocket and gave them to Ebio. Thereupon, Ebio took off his hat, the pre-arranged signal that the transaction was already consummated. Immediately, PO3 Bongon, SPO1 Morano and SPO1 Antonio rushed towards the man and apprehended him. They recovered from him the buy-bust money and another plastic sachet containing white crystalline substance. Immediately after Ebio turned over to him the two sachets subject of the sale, PO3 Bongon marked the same with “RSB-1” and “RSB-2.” On the other hand, he marked the third sachet recovered from the seller after he conducted a search on him with “RSB-3.” PO3 Bongon thereafter turned over these seized items together with the marked money to SPO1 Antonio for proper disposition. A police investigation followed where the person arrested was identified as the appellant. Afterwards, SPO1 Antonio brought the sachets to the Philippine National Police Crime Laboratory for examination, during which Forensic Chemist Josephine Macura Clemen (Clemen) found their contents positive for *shabu*. Thus, an Information³ for Violation of Section 5, Article II of RA 9165 was filed against appellant.

Appellant denied the accusation against him and claimed that he was merely a victim of frame-up. In his version of the incident, appellant alleged that

³ Id. at 1. The Information only charged appellant with Violation of Section 5 (sale of dangerous drugs), Article II of RA 9165, although another sachet was found to be in his possession as an incident of the arrest. The Information reads, *viz*:

That on or about 25 July 2003, in the City of Naga, 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 sell, dispense, deliver and/or distribute two (2) heat[-]sealed transparent plastic sachets containing white crystalline substance, tested and found out to be Methamphetamine Hydrochloride or “shabu”, a regulated drug weighing 0.8418 [gram] more or less to Warren Ebio, poseur-buyer, for and in consideration of ₱1,500.00, x x x marked money bill[s], Philippine Currency.

CONTRARY TO LAW.

Records show that three (3) plastic sachets were recovered from appellant and all three were sent to the Crime Laboratory Office for examination. Sachet #1 weighed 1.1864 grams; this was the sachet which was recovered from the possession of appellant; sachets #2 and #3 weighed 0.0863 gram and 0.7555 gram, respectively; these were the sachets sold by appellant to the poseur[-]buyer and collectively weighed 0.8418 gram, now subjects of the instant case. (Id. at 133) The prosecution’s Formal Offer of Evidence (id. at 130) showed that all three sachets were formally offered in evidence.

he was riding his motorcycle towards the Panganiban Bridge near the *Barangay* Hall of Lerma, Naga City in the evening of July 25, 2003. He was going to his parents' house located in the boundary of Lerma and Triangulo Streets to inform them that he and his family would leave early morning of the next day for Camarines Sur to attend the wake of his father-in-law who died a few days earlier. As he was descending the bridge, however, two individuals grabbed his hands. A police officer then suddenly came out of a car and told him to get off his motorcycle. PO3 Bongon frisked him and took his cellphone and telephone directory that contained money. After that, he was made to board a mobile car and was brought to a police station. Thereat, police officers threatened to charge him if he would not cooperate in the arrest of a certain "Habagat," who engaged his services as a computer technician. He did not accede since he knew nothing about the case of "Habagat." Hence, the police officers instead filed a case against him.

In the RTC Judgment dated March 15, 2005, appellant was found guilty as charged and sentenced to suffer the penalty of life imprisonment with a fine of ₱500,000.00. On appeal, the CA rendered its Decision on June 25, 2010 affirming the said RTC Judgment.

Hence, this appeal.

The Issue

Appellant points out the following: (1) it was not made clear by the prosecution where the markings of the three sachets of *shabu* were made; and (2) the prosecution failed to show whether there was already a clear understanding between appellant and the poseur-buyer with respect to the quantity of *shabu* allegedly being purchased. In view of these, appellant asserts that the presumption of innocence in his favor must be upheld.

The Court's Ruling

The appeal lacks merit.

"In a prosecution for illegal sale of dangerous drugs, [such as *shabu*], the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration, and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction."⁴ Here, the prosecution submitted evidence that duly established the elements of illegal sale of *shabu*. It positively identified appellant as the seller of the seized illegal substance which turned out to be positive for methamphetamine

⁴ *People v. Bara*, G.R. No. 184808, November 14, 2011, 660 SCRA 38, 43.

hydrochloride commonly known as *shabu*, a dangerous drug. Appellant sold and delivered the drug for ₱1,500.00 to Ebio, a police asset who acted as poseur-buyer. Verily, all the elements of the sale of illegal drugs were established to support appellant's conviction of the said offense.

We cannot give credence to appellant's argument that failure to mention the place where the three plastic sachets of *shabu* were marked constitutes a gap in the chain of custody of evidence.

Chain of custody is "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction."⁵ It eliminates doubts concerning the proper preservation of the identity and integrity of the *corpus delicti* or the *shabu* in this case. Marking of the seized *shabu* is the initial stage in the chain of custody in buy-bust operations. As requisites, the marking must be made in the presence of the apprehended offender and upon immediate confiscation, and this contemplates even marking at the nearest police station or office of the apprehending team.⁶

In this case, Ebio turned over to PO3 Bongon the two sachets of *shabu* sold to him by the appellant. Together with another sachet of *shabu* he recovered from appellant, PO3 Bongon immediately marked each sachet with "RSB-1," "RSB-2" and "RSB-3," respectively, before giving them to SPO1 Antonio. While it is true that the exact location where the markings were made was not mentioned, it can reasonably be concluded that the same happened during appellant's apprehension, in transit to the police station or before the sachets were turned over to SPO1 Antonio in the police station. Upon receipt, SPO1 Antonio then submitted the sachets to the crime laboratory. PO2 Henry Escalora, Sr. received the three sachets and handed them to Forensic Chemist Clemen whose examination of the contents thereof revealed that they were positive for *shabu*. During trial, Forensic Chemist Clemen presented and identified the specimens. Clearly, the prosecution was able to establish the chain of custody of the *shabu* from its possession by the police officers, testing in the laboratory to determine its composition, until the same was presented as evidence in court. Hence, even if there was no statement as to where the markings were made, what is important is that the seized specimen never left the custody of PO3 Bongon until he turned over the same to SPO1 Antonio and that thereafter, the chain of custody was shown to be unbroken.⁷ Indeed, the integrity and evidentiary value of the seized *shabu* is shown to have been properly preserved and the crucial links in the chain of custody unbroken.

⁵ *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 248, citing the Dangerous Drugs Board Regulation No. 1, Series of 2002.

⁶ *People v. Resurreccion*, 618 Phil. 520, 531-532 (2009).

⁷ *People v. Alejandro*, G.R. No. 205227, April 7, 2014.

We also cannot give credence to appellant's argument that the absence of relevant testimony on any agreement between him and Ebio with respect to the quantity of *shabu* sought to be purchased casts doubt on the existence of a legitimate buy-bust operation. The existence of the illegal sale of the *shabu* does not depend on an agreement about its quantity and price since the offense is consummated after the exchange of the illegal drug for the marked money. Hence, Ebio's testimony that appellant asked for the money before handing over the *shabu* and that he received the sachets of *shabu* after giving appellant the ₱1,500.00, is by itself sufficient.

Anent appellant's defense of frame-up, such is inherently weak and viewed with disfavor for it can be easily concocted.⁸ For this defense to succeed, it must be proven with strong and convincing evidence.⁹ Appellant failed in this regard.

In view of the foregoing discussion, we uphold appellant's conviction of the offense charged.

The penalty for unauthorized sale of *shabu* under Section 5, Article II of RA 9165,¹⁰ regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. However, with the enactment of RA 9346,¹¹ only life imprisonment and fine shall be imposed. We therefore find the penalty of life imprisonment and payment of fine in the amount of ₱500,000.00 imposed by the RTC and affirmed by the CA to be proper. It must be emphasized, however, that appellant shall not be eligible for parole.¹²

WHEREFORE, the Decision dated June 25, 2010 of the Court of Appeals in CA-G.R. CR-HC No. 01025, which affirmed the conviction of appellant Venerando Dela Cruz y Sebastian for Violation of Section 5, Article II of Republic Act No. 9165 by the Regional Trial Court of Naga City, Branch 28 in its March 15, 2005 Judgment, is **AFFIRMED with the modification** that appellant shall not be eligible for parole.

⁸ *People v. De Jesus*, G.R. No. 198794, February 6, 2013, 690 SCRA 180, 201.

⁹ *Id.*

¹⁰ Sec. 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 on 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.

x x x x

¹¹ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

¹² *People v. SPO3 Ara y Mirasol*, 623 Phil. 939, 962 (2009).

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution 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 Resolution 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

