



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

G.R. No. 200915

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

MERLITA PALOMARES y COSTUNA,
Appellant.

Promulgated:

February 12, 2014

X -----

DECISION

ABAD, J.:

This case is about the need for police officers involved in buy-bust operations to mark the items they seize (1) in the presence of the apprehended violator and (2) immediately upon seizure.

The Facts and the Case

On March 21, 2007 the City Public Prosecutor charged the accused-appellant Merlita Palomares y Costuna (Merlita) with selling prohibited drugs in violation of Section 5,¹ Article II of Republic Act (R.A.) 9165 before the Regional Trial Court (RTC) of Manila in Criminal Case 07-251767.²

¹ 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 (P500,000.00) to Ten million pesos (P10,000,000.00) 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.

² Records, p. 1.

PO2 Reynaldo Mallari and PO2 Marvin Flores testified that at around 4:00 p.m. on March 16, 2007 an informant came to their station with the report that a certain *Inday Kirat*, later identified as accused Merlita, was selling *shabu* at Paradise Heights, Balut, Tondo, Manila. PO2 Mallari relayed this information to their chief who then formed a team composed of PO2 Mallari, PO2 Flores, and PO2 Dranreb Cipriano that would undertake a buy-bust operation with Mallari as *poseur* buyer.³ With the marked money ready, the team proceeded to the target place: Unit 52, Building 8, of Paradise Heights.

After the team deployed, PO2 Mallari and the informant found Merlita outside Unit 52 and in conversation with a certain Teresa Ortega (Ortega). Mallari approached Merlita who asked him, “*Iskor ka ba friend?*”⁴ Mallari replied, “*Dalawang piso lang friend.*”⁵ He then handed over the money to Merlita who pocketed it, went inside the unit, and returned with a white plastic sachet containing white crystalline substance. She handed this over to Mallari. Mallari scratched his head as a pre-arranged signal to his companions, introduced himself as a policeman, took back the marked money, and arrested Merlita.

PO2 Flores and PO2 Cipriano came out of hiding and approached Ortega while PO2 Mallari took accused Merlita downstairs to the police service vehicle and waited for the others to come down. Mallari retained custody of the plastic sachet he bought from Merlita as well as the buy-bust money he seized from her. He placed the marking MCP on the sachet and turned it over at the police station to P/Insp. John Guiagui. The latter in turn prepared the report for laboratory examination and forwarded the seized items to the crime laboratory on the same day. The laboratory examination showed that the plastic sachet from Merlita tested positive for methamphetamine hydrochloride or *shabu*.

Accused Merlita testified that at about 5:00 a.m. on March 16, 2007 she was at her shanty located at Pier 18, Dumpsite, Vitas, Tondo, with her live-in partner Rolando Palomares when PO2 Mallari and his companions roused her from sleep. They told her to go with them, she having been pinpointed by a certain Teresa as selling illegal drugs. Merlita denied the accusation but went with the police officers to avoid harm. As she came out of her shanty, she saw her mother-in-law, Teresa Ortega, with other policemen. The police brought the two women to the police station where

³ TSN, August 29, 2007, p. 4.

⁴ Id. at 10.

⁵ Id. at 11.

they were told to pay ₱100,000.00 or face an illegal drugs case.⁶ Rolando Palomares corroborated Merlita's testimony. *Barangay kagawad* Louie Lizano testified that he saw the police officers on the day in question enter Merlita's shanty and arrest her.⁷

On March 18, 2008, the trial court found Merlita guilty as charged and sentenced her to life imprisonment with a fine of ₱500,000.00 and liability for the cost of suit.⁸ Upon review in CA-G.R. CR-HC 03373, the CA rendered judgment⁹ on June 23, 2011, affirming in full the RTC Decision, hence, the present appeal to this Court.¹⁰

The Issue Presented

The issue in this case is whether or not the CA erred in finding, like the RTC before it, that the prosecution succeeded in proving beyond reasonable doubt that accused Merlita sold dangerous drugs in violation of Section 5, Article II of R.A. 9165.

The Court's Rulings

To secure conviction for illegal sale of dangerous drugs, the identity of the prohibited drug seized from the accused must be proved with moral certainty. The prosecution must establish with such measure of certitude that the substance bought or seized during the buy-bust operation is the same substance offered as evidence in court.¹¹ Proof of the chain of custody from the time of seizure to the time such evidence is presented in court ensures the absence of doubt concerning the integrity of such vital evidence.¹² This requires as a minimum that the police mark the seized item (1) in the presence of the apprehended violator and (2) immediately upon confiscation.¹³

Of course, the Court has ruled that immediate marking could be made at the nearest police station or office of the apprehending team.¹⁴ Here, however, the evidence is unclear as to where the responsible police officer marked the seized substance and whether it was done in Merlita's presence.

⁶ TSN, October 10, 2007, pp. 3-5, 10.

⁷ TSN, September 17, 2007, pp. 27-31.

⁸ CA rollo, pp. 56-60.

⁹ Rollo, pp. 2-9.

¹⁰ Id. at 10-11.

¹¹ *People v. Torres*, G.R. No. 191730, June 5, 2013.

¹² See *Zafra v. People*, G.R. No. 190749, April 25, 2012, 671 SCRA 396, 405.

¹³ *People v. Somoza*, G.R. No. 197250, July 17, 2013.

¹⁴ *People v. Angkob*, G.R. No. 191062, September 19, 2012, 681 SCRA 414, 426.

In fact, it is also not clear from the evidence which police officer did the marking since PO2 Mallari and PO2 Flores gave conflicting testimonies on this point.¹⁵ This uncertainty concerning a vital element of the crime warrants overturning the judgment of conviction.¹⁶

Besides, neither PO2 Mallari nor PO2 Flores testified that they conducted a physical inventory and took photos of the article that was seized from Merlita. In fact, their joint affidavit of arrest made no mention of any inventory taking or photographing of the same. And they did not bother at all to offer some justification for the omission.¹⁷

Parenthetically, *barangay kagawad* Lizano, an elected public official, testified that he saw the police officers enter Merlita's shanty and arrest her on the date in question. This testimony from a neutral party strikes at the heart of the prosecution's theory that they arrested Merlita at Unit 52, Building 8, of Paradise Heights in Balut, Tondo. Though Merlita's denial and alibi as a defense are weak, such cannot relieve the prosecution the burden of presenting proof beyond reasonable doubt that an illegal transaction actually took place.¹⁸

WHEREFORE, the Court **GRANTS** the appeal, **REVERSES and SETS ASIDE** the judgments of conviction of the Court of Appeals in CA-G.R. CR-HC 03373 dated June 23, 2011 and the Regional Trial Court of Manila in Criminal Case 07-251767, and **ACQUITS** accused-appellant Merlita Palomares y Costuna of the charge of violation of Section 5, Article II of Republic Act 9165 against her.

The Court **ORDERS** the Director of the Bureau of Corrections to immediately **RELEASE** accused-appellant from custody, unless she is detained for some other lawful cause.

SO ORDERED.



ROBERTO A. ABAD
Associate Justice

¹⁵ TSN, August 6, 2007, p. 7; TSN, August 29, 2007, p. 14.

¹⁶ *People v. Clara*, G.R. No. 195528, July 4, 2013.

¹⁷ *People v. Oniza*, G.R. No. 202709, July 3, 2013.

¹⁸ *Id.*

WE CONCUR:


PRESBITERO J. VELASCO, JR.

Associate Justice

Chairperson


DIOSDADO M. PERALTA

Associate Justice


JOSE CATRAL MENDOZA

Associate Justice


MARVIC MARIO VICTOR F. LEONEN

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.



PRESBITERO J. VELASCO, JR.

Associate Justice

Chairperson, Third Division

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