



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 193855

Present:

- versus -

CARPIO, *Chairperson,*
VELASCO, JR.,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

VIRGILIO LARGO PERONDO,
Accused-Appellant.

Promulgated:

18 FEB 2015 *H.M. Cabalag for Perito*

X-----

RESOLUTION

DEL CASTILLO, J.:

This is an appeal from the December 3, 2009 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00738 that affirmed *in toto* the May 30, 2007 Decision² of the Regional Trial Court (RTC) of Cebu City, Branch 58, in Criminal Case No. CBU-66693 finding appellant Virgilio Largo Perondo (appellant) guilty of Violation of Section 5, Article II of Republic Act (R.A.) No. 9165³ and imposing upon him the penalty of life imprisonment and a fine of ₱500,000.00.

Factual Antecedents

An Information⁴ containing the following accusatory allegations was filed against appellant: *Molva*

* Per Special Order No. 1910 dated January 12, 2015.

¹ CA *rollo*, pp. 88-98; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Manuel M. Barrios and Samuel H. Gaerlan.

² Records, pp. 111-119; penned by Presiding Judge Gabriel T. Ingles.

³ Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

⁴ Records, pp. 1-2.

That on or about the 20th day of July 2003, at about 10:45 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer one heat sealed plastic packet of 0.05 gram of white crystalline substance, locally known as “SHABU” containing Methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁵

Appellant pleaded “not guilty” during his arraignment on October 7, 2003. After the pre-trial conference, trial ensued.

Version of the Prosecution

The prosecution presented Police Senior Inspector Mutchit G. Salinas (PSI Salinas), a Forensic Chemist, and buy-bust team members SPO2 Benjamin G. Genzon, Jr. (SPO2 Genzon) and PO3 Simeon A. Tapanan, Jr. (PO3 Tapanan). From their testimonies, the following version of the incident emerged:

On July 20, 2003, SPO2 Genzon, SPO1 James Estrera (SPO1 Estrera), PO3 Emmanuel Sarmiento (PO3 Sarmiento) and PO3 Tapanan were briefed regarding a planned buy-bust operation to be conducted against appellant on that same day in Brgy. San Roque, Cebu City. During the briefing, a civilian asset was designated as the poseur-buyer and two 50-peso marked bills were given to him as buy-bust money.

Thereafter, the team proceeded to the target area and, upon arrival, strategically positioned themselves 10 to 15 meters away from the *barangay* hall where appellant was seen standing. The poseur-buyer approached appellant. After briefly talking to the latter, the poseur-buyer took out the 50-peso marked bills from his pocket and gave them to the appellant. In exchange, appellant handed over to the poseur-buyer a small plastic pack containing white crystalline substance. The poseur-buyer examined it and then touched his head, which was the pre-arranged signal that the transaction was already consummated. The members of the buy-bust team then rushed to the scene and arrested appellant. They recovered from him the buy-bust money. Anent the plastic sachet, PO3 Tapanan retrieved the same from the poseur-buyer while PO3 Sarmiento wrote thereon appellant’s initials. A qualitative examination conducted on the contents of the plastic sachet by PSI Salinas later revealed that the substance is positive for methamphetamine hydrochloride or *shabu*.

⁵ Id. at 1.

Version of the Defense

Appellant denied that a buy-bust operation was conducted against him. Instead, he claimed that at around 9:15 p.m. of July 20, 2003, he was eating and watching television at a barbecue stand when he was suddenly arrested by SPO1 Estrera, PO3 Sarmiento and PO3 Tapanan. He was then taken to a police station and interrogated on the identities of big time drug dealers in Cebu. Because he was not able to provide any information as he is not even from Cebu, the police officers blotted an incident implicating him in the alleged sale of *shabu*.

Ruling of the Regional Trial Court

The RTC gave credence to the testimony of the prosecution witnesses and convicted appellant of the crime charged. In its May 30, 2007 Decision,⁶ it disposed of the case as follows:

Accordingly, this court finds the accused GUILTY as charged and hereby sentences him to Life Imprisonment and to pay a fine of ₱500,000.00.

The pack of shabu, Exhibit “B”, is confiscated in favor of the state for proper disposition.

SO ORDERED.⁷

Appellant filed a Notice of Appeal,⁸ which was approved by the RTC. Hence, the entire records of the case were forwarded to the CA.⁹

Ruling of the Court of Appeals

In his Brief,¹⁰ appellant maintained that the RTC erred in finding him guilty of the offense charged because: (1) the members of the buy-bust team could not give an accurate account of what really transpired during the alleged operation; (2) there was no pre-operation report submitted to the Philippine Drug Enforcement Agency (PDEA); (3) the poseur-buyer was not presented as witness; and (4) the prosecution failed to establish the *corpus delicti*.

On the other hand, appellee, through the Office of the Solicitor General (OSG), averred that: (1) the prosecution was able to prove all the elements of the offense charged; (2) the failure to present the poseur buyer as witness is not fatal since his testimony would merely be corroborative to the testimonies of the police

⁶ Id. at 111-119.

⁷ Id. at 118-119.

⁸ Id. at 122.

⁹ Id. at 123.

¹⁰ CA *rollo*, pp. 34-46.

officers who positively identified appellant as the seller; (3) the presumption of regularity on the part of the police officers was correctly applied by the RTC since no improper motive was attributed to them; (4) a pre-operation report to the PDEA is not a requirement under R.A. 9165; and (5) the prosecution was able to prove the identity of the confiscated drug.¹¹

Agreeing with the OSG, the CA ruled as follows in its December 3, 2009 Decision:¹²

WHEREFORE, premises considered, the assailed Decision dated May 30, 2007 of the Regional Trial Court of Cebu City, Branch 58 is hereby AFFIRMED *in toto*.

No costs.

SO ORDERED.¹³

Hence, this appeal.

Issue

Appellant's lone assignment of error in his Appellant's Brief filed with the CA which he adopted in this appeal per a Manifestation In Lieu of Supplemental Brief¹⁴ is as follows:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF VIOLATING SECTION 5, ARTICLE II OF REPUBLIC ACT 9165 DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹⁵

Our Ruling

There is no merit in the appeal.

All the elements of the offense of Illegal Sale of Shabu were proven in this case.

In a successful prosecution for illegal sale of *shabu*, the following elements must concur: "(1) [the] identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. x x

¹¹ See Appellee's Brief, *id.* at 63-72.

¹² *Id.* at 88-98.

¹³ *Id.* at 98.

¹⁴ *Rollo*, pp. 37-38.

¹⁵ *CA rollo*, p. 34.

x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*.”¹⁶

In this case, the prosecution successfully proved the existence of all the essential elements of illegal sale of *shabu*. Appellant was positively identified by the police officers who conducted the buy-bust operation as the person who sold the *shabu* to the poseur buyer. PO3 Tapanan testified, viz:

Q It was SPO2 Benjamin Genzon, Jr. who conducted the briefing?
A Yes, sir.

Q How was the briefing conducted?
A We have two (2) ₱50.00 peso bills to be used as buy[-]bust money.

Q Who will do the role as poseur[-]buyer?
A Civilian asset.

Q Did you reach the place where you were to conduct buy-bust operation?
A Yes, sir.

Q Where was that place?
A Barangay San Roque.

Q When you were already there, can you tell this court what happened?
A Our poseur[-]buyer was already talking with the subject.

Q Was he alone at that time?
A Yes, sir.

Q How far were you from the police asset and the subject?
A About 15 meters.

Q In that place did you actually see what happened?
A Yes, sir.

Q What did you see?
A The asset was touching his head as a pre-arranged signal which shows that the transaction was already consummated.

Q When you saw the signal, what did you do?
A We immediately approached him.

Q When you said “we” what do you mean, who were with you?
A SPO1 James Estrera, PO3 Emmanuel Sarmiento and SPO2 Benjamin Genzon, Jr.

Q When you reach[ed] near them, what happened?
A We arrested the subject.

¹⁶ *People v. Dilao*, 555 Phil. 394, 409 (2007).

Q What did you recover from the subject?

A (A) Small plastic pack of white crystalline substance and two pieces ₱50.00[-]peso bills used as buy-bust money.

x x x x

Q Do you mean that the shabu was in the possession of the accused?

A The two pieces of ₱50.00 peso bills [were] in his possession but the shabu was in the possession of our asset.

Q When you x x x already arrested the suspect, what did you do?

A We informed him of [his] constitutional rights.

x x x x

Q After you informed him [of] the nature of his crime and his rights, what happened next?

A We detained him.

Q If the suspect Virgilio Largo Perondo the accused is inside the court room, can you still identify him?

A Yes, sir. (Witness points to a person who is raising his right hand and who when asked [of] his name answer[ed] Virgilio Largo Perondo.)

Q When you said you were able to recover one small pack of shabu and 2 pcs. [of] ₱50.00[-]peso bills, where are these now?

A We submitted [them] to the crime laboratory for examination?

Q I have here Exhibit "B," a small pack of shabu that was examined by PSI Mutchit Salinas per Chemistry Report No. D-1252-2003, look at this and tell this Honorable Court whether this is the very same small plastic pack of white crystalline substance that was recovered from the possession of accused Virgilio Perondo?

A Yes, sir, this is the very same evidence.

Q How do you know?

A [It has] the initial[s] [of the] name of the accused.

Q Who wrote the initial[s]?

A PO3 Emmanuel Sarmiento.

Q Were you around when that was marked?

A Yes, sir.

Q Who brought this item to the PNP Crime Laboratory?

A I was the one.

Q Was there a letter-request attached to the specimen?

A Yes, sir, there was.

Q I will show you this letter request, please go over this and tell this Honorable Court if this [is] the one that you are referring to?

A Yes, sir.¹⁷

SPO2 Genzon corroborated the testimony of PO3 Tapanan on material points. He testified as follows:

Q On July 20, 2003, where were you assigned?

A At Police Station 3 Legaspi Extension, Cebu City.

Q At around 10:45 in the evening of the same day, can you remember where you were?

A We conducted a buy-bust operation at Brgy. San Roque, Cebu City.

Q Who was the subject of the buy-bust operation?

A Virgilio Largo Perondo, sir.

Q Who were your companions during that time?

A SPO1 James Estrera, PO3 Emmanuel Sarmiento, PO3 Simeon Tapanan.

Q Where did you conduct this operation?

A At Brgy. San Roque near the barangay hall.

X X X X

Q If this Virgilio Perondo [is] inside the courtroom, will you be able to identify him?

A Yes, ma'am, the third person sitting from the last. (Witness pointed to the third person sitting from the last who when asked answered to the name of VIRGILIO PERONDO.)

X X X X

Q When you arrived at the area where you were supposed to conduct the buy-bust operation, what did you observe if any?

A It was 10:45 in the evening and the subject was near the barangay hall.

Q What did you observe near the barangay hall?

A He was there actively selling dangerous drugs.

Q To whom was he selling these dangerous drugs?

A To our asset who acted as our poseur[-]buyer.

Q How far were you when the accused sold these drugs to your asset?

A I cannot exactly recall, ten (10) to eleven (11) meters.

X X X X

Q What did you observe while you were ten (10) to eleven (11) meters away from the accused?

A The suspect and the poseur-buyer had a conversation.

X X X X

¹⁷ TSN, January 20, 2004, pp. 3-8.

- Q What happened next after you observed that the accused and the poseur[-] buyer had a conversation?
- A The poseur[-]buyer got the buy[-]bust money from his pocket and handed it to the suspect. In return, the suspect gave the small plastic packet containing white crystalline substance believed to be shabu to the poseur[-]buyer.
- Q What happened next after the exchange of the buy-bust money and the shabu?
- A The poseur[-]buyer first examined the plastic pack at the same time signaling us that the transaction was consummated then we rushed up towards them.
- Q After the signal was given[,] what did you do next if any?
- A We hurriedly rushed up to the suspect and the poseur[-]buyer then we introduced ourselves as police officers and arrested the suspect for x x x violation of [S]ec. 5, [A]rt. 2 of R.A. 9165.
- Q What happened next after you arrested the accused?
- A We informed him [of] his constitutional rights.
- Q What happened to the plastic pack which you said your asset bought from the accused and which you said contained shabu?
- A We brought it to our office and made a letter request for a laboratory examination to the PNP Crime Laboratory.
- Q You said that there was a letter-request to the PNP Crime laboratory for the examination of the said plastic pack. I am showing to you what had been previously marked as our Exhibit "A," is this the same letter-request which you said your office prepared for the transmittal of the shabu to the crime laboratory?
- A Yes ma'am, because there is the handwriting of PO3 Tapanan.
- Q If the said plastic pack which you said PO3 Tapanan brought to the crime laboratory as shown to you, will you be able to identify the same?
- A Yes, ma'am.
- Q What would be your basis?
- A The initial[s] of the accused.
- Q [I am] [s]howing to you what had been marked as our Exhibit "B," can you tell this Honorable Court if this is the same plastic pack which PO3 Tapanan, Jr. brought to the crime laboratory?
- A This is the one ma'am.¹⁸

Forensic Chemist PSI Salinas, for her part, examined the confiscated crystalline substance weighing 0.05 gram and found it to be positive for methamphetamine hydrochloride or *shabu*. This finding is contained in Chemistry Report No. D-1252-2003.¹⁹

¹⁸ TSN, July 18, 2005, pp. 3-7.

¹⁹ Records, p. 100.

It is clear from the foregoing that the prosecution was able to establish the elements of illegal sale of *shabu*. “Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.”²⁰ Here, the Court finds no reason to doubt the credibility of the prosecution witnesses and their testimonies. The RTC and the CA are one in finding that their testimonies were direct, definite, consistent with one another in relevant points and also with the physical evidence. It bears to stress that the “findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals,”²¹ as in this case.

The presentation of the poseur buyer is not indispensable to the successful prosecution of the case against appellant.

The Court is not impressed with appellant’s insistence that the failure to present the poseur-buyer is fatal to the prosecution. It must be noted that whatever relevant information the poseur-buyer may have was also equally known to the police officers who testified for the prosecution during trial. This is considering that they all participated in the planning and implementation of the buy-bust operation and were all direct witnesses to the actual sale of the *shabu*, the appellant’s arrest immediately thereafter, and the recovery from him of the marked money. Hence, the testimony of the poseur-buyer was not indispensable or necessary; it would have been cumulative merely, or corroborative at best.²²

There was no evidence of improper motive on the part of the police officers.

Appellant failed to proffer clear and convincing evidence of improper motive to overturn the presumption that the arresting officers regularly performed their duties. There is no evidence on record to corroborate his self-serving declaration that the charges against him were fabricated for his failure to give the names of those engaged in illegal drug trade in Cebu. Thus, there is no basis to suspect the veracity of the statements of the police officers who testified against him.

²⁰ *People v. Hajili*, 447 Phil. 283, 295-296 (2003).

²¹ *People v. Macatingag*, 596 Phil. 376, 388 (2009).

²² *People v. Dag-uman*, G.R. No. 96548, May 28, 1992, 209 SCRA 407, 411-412.

Moreover, appellant's defenses of denial and frame-up do not deserve credence. Denial cannot prevail over the positive testimony of prosecution witnesses. On the other hand, frame-up is viewed with disfavor since it can easily be fabricated and is a common ploy in prosecutions for violation of the Dangerous Drugs Law. For these defenses to prosper, they must be proved with clear and convincing evidence. However, none exists in this case.

Besides, appellant should have filed the proper charges against the police officers if he was indeed a victim of frame-up. "The fact that no administrative or criminal charges were filed lends cogency to the conclusion that the alleged frame-up was merely concocted as a defense scheme."²³

The seized item was the same item presented for examination in the crime laboratory.

Appellant contends that the testimony of PSI Salinas, the Forensic Chemist, was insufficient to conclude that the sachet of *shabu* she examined in the crime laboratory was the same illegal drug allegedly seized from him. This is due to the fact that the specimen, when turned over by PO3 Tapanan to the crime laboratory, was received by one PO1 Abesia and not by PSI Salinas. And since it was not shown that PSI Salinas knew of the manner with which PO1 Abesia handled the specimen or of what happened to the specimen while it was in the latter's custody, it cannot be reasonably concluded from PSI Salinas' testimony that it was the same drug allegedly seized from appellant.

Appellant's contention does not adversely affect the identity, integrity and probative value of the seized *shabu*. Indeed, the Crime Laboratory Request²⁴ shows that it was PO1 Abesia who received the seized plastic sachet with white crystalline substance from PO3 Tapanan on July 21, 2003. Notably, however, Chemistry Report No. D-1252-2003²⁵ reveals that PSI Salinas immediately conducted an examination on the specimen submitted and released the result thereof on that day. The span of time that lapsed from the time the specimen was received by PO1 Abesia until the same was examined by PSI Salinas was, therefore, too short to be considered consequential. Also, the marking placed on the seized item by PO3 Sarmiento matches the label of the heat-plastic packet containing white crystalline substance that, per said Chemistry Report No. D-1252-2003, was examined by PSI Salinas. It is thus reasonable to conclude that the specimen submitted was the same one examined. Besides, appellant's claim that the same may have been altered is just his mere speculation and nothing more.

²³ *People v. Gonzaga*, G.R. No. 184952, October 11, 2010, 632 SCRA 551, 569.

²⁴ Records, p. 102; Exhibit "D."

²⁵ Id. at 100, Exhibit "A."

Lastly, appellant's argument that the buy-bust operation is fatally flawed for failure of the police officers to coordinate with the PDEA deserves scant consideration. Coordination with the PDEA is not a crucial requisite of a proper buy-bust operation;²⁶ it is not invalidated by mere non-coordination with the PDEA.²⁷

All told, there is no reason to disturb the findings of the RTC, as affirmed by the CA, that appellant is guilty beyond reasonable doubt of illegal sale of *shabu*, as defined and penalized under Section 5, Article II of R.A. 9165.

The Proper Penalty

R.A. 9165 imposes the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million for the unauthorized sale of *shabu*, regardless of its quantity and purity. However, with the enactment of R.A. 9346,²⁸ appellant shall only be penalized with life imprisonment and fine,²⁹ as correctly imposed by the RTC and affirmed by the CA. It must be added, however, that appellant shall not be eligible for parole pursuant to Section 2 of the Indeterminate Sentence Law.

WHEREFORE, the Decision dated December 3, 2009 of the Court of Appeals in CA-G.R. CR-HC 00738 which affirmed the Decision dated May 30, 2007 of the Regional Trial Court of Cebu City, Branch 58, in Criminal Case No. CBU-66693, convicting appellant Virgilio Largo Perondo alias Bayot for Violation of Section 5, Article II of Republic Act No. 9165, as amended by Republic Act No. 9346, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, is **AFFIRMED with the MODIFICATION** that he shall not be eligible for parole.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

²⁶ *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 696.

²⁷ *Id.*, quoting *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 369-370.

²⁸ AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY IN THE PHILIPPINES.

²⁹ *People v. Abedin*, G.R. No. 179936, April 11, 2012, 669 SCRA 322, 339.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



PRESBITERO J. VELASCO, 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*