



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 194606

Present:

- versus -

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

ALFREDO REYES y SANTOS,
Accused-Appellant.

Promulgated:

18 FEB 2015 *May Cabalag/Regido*

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RESOLUTION

DEL CASTILLO, J.:

This is an appeal from the Decision¹ dated June 17, 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03459, which affirmed in *toto* the Decision² dated June 12, 2008 of the Regional Trial Court (RTC), Branch 28, San Fernando City, La Union in Criminal Case No. 6931, finding Alfredo Reyes y Santos (appellant) guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

Factual Antecedents

On June 30, 2005, an Information³ charging appellant with violation of Section 5, Article II of R.A. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended, was filed with the RTC of San Fernando City, La Union. Its accusatory allegations read: *Alde*

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

¹ CA *rollo*, pp 83-93; penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jose C. Reyes, Jr. and Elihu A. Ybañez.

² Records, pp. 101-105; penned by Judge Victor M. Viloria.

³ Id. at 1.

That on or about the 29th day of June 2005, in the City of San Fernando, (La Union), Philippines, and within the jurisdiction of this Honorable Court the above-named accused, did then and there wilfully, unlawfully and feloniously sell and deliver to a poseur-buyer two (2) heat[-]sealed transparent plastic sachets containing methamphetamine hydrochloride otherwise known as “Shabu,” weighing ZERO POINT EIGHTY TWO (0.82) gram and ZERO POINT EIGHTY FIVE (0.85) gram with a total weight of ONE POINT SIXTY SEVEN (1.67) [grams], without first securing the necessary permit, license or prescription from the proper government agency.

CONTRARY TO LAW.⁴

Appellant pleaded not guilty during his arraignment. After the termination of the pre-trial conference, trial ensued.

Version of the Prosecution

On June 28, 2005, a confidential informant (CI) went to the Philippine Drug Enforcement Agency (PDEA) office in Camp Diego Silang, San Fernando City, La Union and reported to SPO1 Rene Acosta (SPO1 Acosta) that appellant was selling *shabu*. SPO1 Acosta relayed the information to his superior officer, Senior Inspector Reynaldo Lizardo (Sr. Insp. Lizardo), who formed a buy-bust team and designated SPO1 Acosta as poseur-buyer. The CI contacted appellant by cellular phone and introduced SPO1 Acosta as a buyer of *shabu*. SPO1 Acosta then talked to appellant and they agreed to meet at around 6:00 a.m. the next day at the monument located in *Barangay* Madayedeg, San Fernando City.

On June 29, 2005, SPO1 Acosta and PDEA Agent Ellizier Ignacio (Ignacio), who would act as back-up, arrived in the designated area at 5:30 a.m. Ignacio positioned himself 10 meters away from SPO1 Acosta. Appellant arrived after 20 minutes with the CI and approached SPO1 Acosta. The CI then introduced SPO1 Acosta to appellant as the buyer of *shabu*. SPO1 Acosta asked appellant if he was the same person he talked to over the phone the previous night. When appellant answered in the affirmative, SPO1 Acosta asked him if he has the stuff and if SPO1 Acosta could see them. Appellant thus handed over to SPO1 Acosta two plastic sachets containing white crystalline substance. SPO1 Acosta then made the pre-arranged signal by removing the towel from his shoulder to indicate the completion of the transaction. Ignacio thus rushed to SPO1 Acosta and together, they arrested appellant.

Anent the seized items, SPO1 Acosta took possession of the same up until they were brought to the police station. Thereat, he marked them with his initials “RA.” On the same day, Sr. Insp. Lizardo prepared and signed a Request for Laboratory Examination⁵ that SPO1 Acosta delivered together with the seized

⁴ Id.

⁵ Exhibit “E,” id. at 9.

plastic sachets to the PNP Crime Laboratory Office in La Union. Police Inspector Valeriano Laya II (P/Insp. Laya) conducted a qualitative examination on the contents of the plastic sachets and confirmed the same to be positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.⁶

Version of the Defense

Appellant denied the accusations against him. He claimed that on June 28, 2005, he was on board a bus bound for San Fernando City, La Union to discuss a business proposal with his wife's nephew, Rolando Pinon, Jr. (Pinon). However, Pinon was not around when he arrived in the early morning of June 29, 2005. Tired from the long journey, appellant boarded a tricycle and instructed the driver to take him to the cheapest hotel. While on their way, a car suddenly blocked the road and three of the four men on board the vehicle alighted and pointed their guns at him. He was instructed to board the car and taken to Carlatan, San Fernando City, La Union. Upon their arrival, his captors ordered him to face the wall and take off his clothes. They also confiscated his bag and then asked him why there was *shabu* inside. He denied possession of the same. Appellant spent the night in detention and was brought to the RTC of San Fernando City, La Union the following morning.

Ruling of the Regional Trial Court

The RTC found appellant guilty as charged and disposed of the case in its June 12, 2008 Decision⁷ as follows:

WHEREFORE, the Court finds accused Alfredo Reyes y Santos GUILTY beyond reasonable doubt for Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and sentences him to suffer life imprisonment, and to pay a fine of [O]ne [M]illion [P]esos (Php1,000,000.00).

The accused, who is a detention prisoner, is credited to the full extent of his preventive imprisonment.

The confiscated 1.67 grams of methamphetamine hydrochloride, otherwise known as "shabu," is turned over to the Philippine Drug Enforcement Agency (PDEA), Regional Office, San Fernando City, La Union, for proper disposition.

SO ORDERED.⁸

⁶ Exhibit "F," id. at 10.

⁷ Id. at 101-105.

⁸ Id. at 104-105.

The RTC approved the notice of appeal⁹ filed by appellant.¹⁰ Hence, the entire records of the case was transmitted to the CA where the appeal was docketed as CA-G.R. CR-H.C. No. 03459.

Ruling of the Court of Appeals

On June 17, 2010, the CA rendered its Decision¹¹ affirming the RTC's judgment of conviction. It ruled that the prosecution's evidence duly established the consummation of the illegal sale of *shabu* and that the seizure, handling, custody and examination of the seized drug were well-documented and undertaken in an uninterrupted manner.

Persistent, appellant filed the instant appeal.¹² When asked to file their supplemental briefs,¹³ both parties opted not to file any as there are no new issues to be raised.¹⁴

Appellant's Argument

Adopting the same issues he raised in the CA, appellant argues that the prosecution was unable to establish the elements of the illegal sale of *shabu* by failing to identify him as the seller of the *shabu* and to prove that payment was given in consideration thereof. He also asserts that there is no proof that the integrity and evidentiary value of the seized *shabu* was preserved in accordance with Section 21(a) of the Implementing Rules of R.A. 9165. Aside from the fact that the marking of the seized items was not done immediately after seizure in the presence of the persons mentioned by the said law, not even a single photograph of the seized items was taken and submitted by the apprehending officers. Appellant likewise calls attention to the absence of marked money in the buy-bust operation, the failure to provide him with a counsel immediately after his arrest, and his detention for more than 24 hours. According to appellant, these considerations disqualify the arresting officers from enjoying the presumption of regularity in the performance of their official duty. Hence, more credence should have instead been given to his defense of denial.

Our Ruling

Appellant's conviction must be sustained albeit with modification.

⁹ Id. at 106-108.

¹⁰ Id. at 111.

¹¹ CA *rollo*, pp. 83-93.

¹² Id. at 96-98.

¹³ Resolution dated January 19, 2011, *rollo*, pp. 18-19.

¹⁴ See Appellant's Manifestation in Lieu of Supplemental Brief, *id.* at 25-27 and the Office of the Solicitor General's Manifestation (In Lieu of Supplemental Brief), *id.* at 30-32.

All elements of illegal sale of dangerous drugs must be proven; receipt of appellant of payment for the purported sale of shabu was not established in this case.

The crime of illegal sale of dangerous drugs, such as *shabu*, has the following elements: “(1) the identity of the buyer and the seller, the object, and consideration; (2) the delivery of the thing sold and the payment therefor.”¹⁵ “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.”¹⁶

In this case, SPO1 Acosta positively identified appellant as the person he transacted with and who handed to him the two sachets of *shabu* presented in court. However, and as correctly pointed out by appellant, the prosecution was unable to discharge its burden of establishing the element of consideration or payment for the sachets of *shabu*. SPO1 Acosta practically admitted in his testimony the lack of consideration or payment for the sachets of *shabu* delivered to him by appellant, viz:

Q Then, after that, Mr. Witness, what happened?

A “Do you have with you the stuff?”, that’s my word.

Q You asked him if he [has the] stuff?

A Yes, ma’am.

Q What was his answer?

A “Yes”, that’s his word.

Q When he answered, “Yes”, what happened?

A “Can I see it?”, that’s my word.

Q What happened after you asked him you wanted to see it?

A I was not sure if it was from his bag or from his pocket, but he brought it out from his side and told me that this is the one.

x x x x

PROS. BONDAD:

Q After that, when he brought out the stuff and showed the same, what happened afterwards?

A Then he gave it to me.

Q When he gave it to you, what happened?

A When I got hold and confirm[ed] that it was shabu, I took off my red towel from my shoulder as a pre-arranged signal and informed the accused that I am a PDEA member.

¹⁵ *People v. Del Rosario*, G.R. No. 188107, December 5, 2012, 687 SCRA 318, 326.

¹⁶ *People v. Guiara*, 616 Phil. 290, 302 (2009).

Q When you informed the accused that you are a police officer assigned at PDEA, what happened?

A Then, “You are under arrest and you will now go to our office”. We informed him of his constitutional right.¹⁷

X X X X

Q During your cross-examination, you stated that you did not get the serial number of the money which you are supposed to use during the transaction supposed to be between you and the accused because the reason was that, it was not actually buy-bust but only delivery.

A Yes, ma’am.

Q Why did you say that it is only a delivery and there is no need for you to go through the procedure of pre-dusting the money and getting the serial number of the money you are going to use?

A First and foremost, it is a delivery. In attempting to sell, there is no need to give the money. The moment that I saw the shabu and I [was] already able to get hold of it, there is no longer need for me to [get] the money.¹⁸

Clearly, the element of receipt of payment for the thing sold is absent in this case. Hence, the offense of illegal sale of *shabu* against appellant cannot stand. However, this finding does not necessarily result in appellant’s exoneration as will be discussed below.

Appellant is guilty instead of illegal delivery of shabu.

The Information states that appellant did “wilfully, unlawfully, and feloniously sell and deliver” to PO1 Acosta plastic sachets containing *shabu* with a total weight of 1.67 grams. Thus, the charge against him was not confined to the sale of *shabu*.¹⁹ To deliver a dangerous drug is an act that is also punishable under the same Section 5, Article II of R.A. 9165, which provides:

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 (₱500,000.00) to Ten million pesos (₱10,000,000.00) 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 such transaction. (Emphasis supplied)

¹⁷ TSN, January 9, 2006, pp. 9-10.

¹⁸ TSN, June 20, 2006, p. 2.

¹⁹ *People v. Concepcion*, 578 Phil. 957, 977 (2008).

Under Article I, Section 3(k) of the same statute, the term “deliver” means “any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.” On the other hand, “sell” as defined in Section 3(ii) refers to “any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.”

To establish the guilt of an accused for the illegal delivery of a dangerous drug, there must be evidence that “(1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery” is not authorized by law; and (3) the accused knowingly made the delivery with or without consideration.²⁰

In this case, there was a prior arrangement between SPO1 Acosta and appellant to meet. During the scheduled meeting, SPO1 Acosta introduced himself and asked appellant for the *shabu*. Appellant responded by taking out from his pocket the *shabu* and handing over its possession to SPO1 Acosta without receiving any payment therefor. Appellant had no authority under the law to deliver the *shabu* since he was working as a carpenter at the time of his arrest.²¹ Appellant likewise knowingly and voluntarily made the delivery. On the basis therefore of the charges against appellant and the evidence presented by the prosecution, he is guilty beyond reasonable doubt of illegal delivery of *shabu* under Section 5, Article II of R.A. 9165.

The police officers complied with the chain of custody rule and Section 21(a) of the Implementing Rules and Regulations of R.A. 9165.

The Court disagrees with the contention of appellant that the police officers did not comply with the chain of custody rule under Section 21(a) of the Implementing Rules and Regulations of R.A. 9165, which reads as follows:

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 officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and

²⁰ *People v. Maongco*, G.R. No. 196966, October 23, 2013, 708 SCRA 547, 560.

²¹ TSN, January 15, 2007, p. 2.

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: Provided that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over the items;

In this case, the Certificate of Inventory²² prepared by the police officers belies the contention of appellant that there was no compliance with the above-quoted provision. While the said certificate was signed only by the DOJ representative, the failure of the police officers to include the signatures of the other persons enumerated under the subject provision does not affect the evidentiary weight of the subject *shabu* as the chain of custody of the evidence remained unbroken.²³ In like manner, the absence of photographs of the seized *shabu* does not render said drugs inadmissible or impair the integrity of the chain of custody of the same.²⁴ As established by the prosecution, the police officers immediately arrested appellant after his delivery of the sachets of *shabu*. They took him to the police station together with the seized items and conducted an investigation on his commission of the criminal offense. The Certificate of Inventory was prepared and Sr. Insp. Lizardo made a formal request for a laboratory examination which SPO1 Acosta personally delivered on the same day to the police crime laboratory together with the sachets of *shabu* marked with his initials “RA.” PO1 Florendo received the items and delivered them to P/Insp. Laya, who conducted qualitative tests on the contents of the sachets that had a total weight of 1.67 grams. The results confirmed that the sachets contained *shabu*. During trial, PO1 Acosta identified the sachets of *shabu* marked with his initials “RA” as the very same sachets given to him by appellant. He likewise identified appellant to be the same person who delivered the seized sachets of *shabu* to him. Undoubtedly, the *shabu* inside the sachets marked “RA” that was submitted for laboratory examination and tested positive was the same dangerous drug delivered by appellant to SPO1 Acosta during the operation and the very same item presented during the trial. Considering that the integrity and evidentiary value of the seized items were properly preserved, strict compliance with the requisites under said provision of the implementing rules may therefore be disregarded.²⁵

Moreover, the marking of the seized sachets of *shabu* a few moments prior to its transfer to the crime laboratory complies with the requirement that such marking be done immediately upon confiscation since it was undertaken while the

²² Exhibit “I,” records, p. 13.

²³ *People v. Hambora*, G.R. No. 198701, December 10, 2012, 687 SCRA 653, 661.

²⁴ *People v. Maongco*, supra note 20 at 567.

²⁵ See *People v. Guru*, G.R. No. 189808, October 24, 2012, 684 SCRA 544, 558.

shabu was still in the police station. There is also no doubt that the marking was done in the presence of appellant since he was also in the police station at the time of the marking. The short period in which these events occurred ensures the preservation of the integrity and evidentiary value of the seized items.

The police officers are presumed to have regularly performed their official duties.

Under the above circumstances, the RTC and CA did not err in giving credence to the narration of the incident by the prosecution witnesses, who as police officers, are presumed to have regularly performed their official duties. This presumption is not overturned by the assertion of appellant that: (1) they failed to present the marked money; (2) they failed to inform him upon arrest of his constitutional right to counsel; and (3) they detained him for 24 hours before the filing of the charges.

The presentation of the marked money is immaterial in this case since the crime of illegal delivery of a dangerous drug can be committed even without consideration or payment. The positive testimony of SPO1 Acosta that appellant was informed of his constitutional rights upon arrest also prevails over the uncorroborated and self-serving testimony to the contrary of the latter. Even assuming that appellant was not informed of his right to counsel upon arrest, the same will not result in his acquittal since the rule is that such an infraction renders inadmissible only the extrajudicial confession or admission made during custodial investigation.²⁶ Here, appellant did not confess or admit the charge against him and even raised the defenses of denial and alibi. His guilt was established by the testimonies of the police officers.

Lastly, there was no unlawful delay in the filing of charges against appellant since the police officers had 36 hours from detention to bring him to the proper judicial authorities. The police officers complied with this requirement since SPO1 Acosta testified that appellant was detained only for more than 24 hours. Notably, neither proof nor allegation exists on record that appellant was detained for a period longer than allowed by law. Moreover, it is worth stressing that while a delay in the delivery of appellant to the proper judicial authorities is a violation of Article 125 of the Revised Penal Code,²⁷ it does not affect the

²⁶ *Aquino v. Paiste*, 578 Phil. 244, 257 (2008).

²⁷ Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

presumption of regularity in the performance of the official duties of the police officers in the absence of criminal charges against them.

Appellant's denial.

As regards appellant's defense of denial, suffice it to say that we have viewed this defense with disfavor for being inherently weak which cannot prevail over the positive and credible testimonies of the prosecution witnesses that appellant committed the crime.²⁸

The Proper Penalty

Under Section 5, Article II of R.A. 9165, the penalty for the unauthorized delivery of *shabu*, regardless of the quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. However, with the enactment of R.A. 9346,²⁹ only life imprisonment and fine shall be imposed. Moreover, appellant is not eligible for parole pursuant to Section 2 of the Indeterminate Sentence Law. Hence, appellant is sentenced to life imprisonment without eligibility for parole and ordered to pay a fine of ₱1 million.

WHEREFORE, the Decision dated June 17, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 03459, which affirmed the Decision dated June 12, 2008 of the Regional Trial Court, Branch 28, San Fernando City, La Union, in Criminal Case No. 6931, is **AFFIRMED with the MODIFICATIONS** that appellant Alfredo Reyes y Santos is declared guilty beyond reasonable doubt of illegal delivery of *shabu* penalized under Section 5, Article II of Republic Act No. 9165, and is sentenced to life imprisonment without eligibility for parole and ordered to pay a fine of ₱1 million.

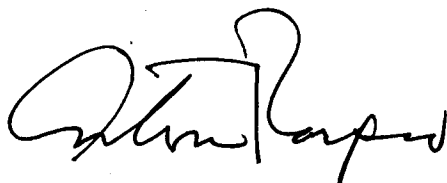
SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

²⁸ *People v. Nelmida*, G.R. No. 184500, September 11, 2012, 680 SCRA 386, 421.

²⁹ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. (Approved on June 24, 2006.)

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*