



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

GR. No. 195245

Present:

- versus -

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

JIMMY GABUYA y ADLAWAN,
Accused-Appellant.

Promulgated:
 FEB 16 2015

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RESOLUTION

DEL CASTILLO, J.:

In this appeal, Jimmy Gabuya y Adlawan (appellant) assails the May 19, 2010 Decision¹ of the Court of Appeals (CA) in CA-GR. CR-H.C. No. 01795 which affirmed the December 8, 2005 Joint Decision² of the Regional Trial Court (RTC), Branch 127, Caloocan City in Criminal Cases Nos. C-68369 and C-68370, finding him guilty beyond reasonable doubt of violation of Sections 5 (sale of dangerous drugs) and 11 (possession of dangerous drugs), Article II of Republic Act No. 9165³ (R.A. 9165) and sentencing him to suffer the penalties of life

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

¹ CA rollo, pp. 97-116; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Portia Aliño Hormachuelos and Japar B. Dimaampao.

² Records, pp. 132-142; penned by Acting Presiding Judge Oscar P. Barrientos.

³ Otherwise known as The Comprehensive Dangerous Drugs Act of 2002. Sections 5 and 11, Article II thereof read in part, viz.:

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.

X X X X

Section 11. *Possession of Dangerous Drugs.* - The penalty of life imprisonment to death and

imprisonment and to pay a fine of ₱500,000.00 for illegal sale, and twelve (12) years, eight (8) months and one (1) day to seventeen (17) years and eight (8) months and to pay a fine of ₱300,000.00 for illegal possession, with subsidiary imprisonment in the event of insolvency in both cases.

Factual Antecedents

PO1 Joel Rosales (PO1 Rosales) relayed to Police Inspector Cesar Cruz (P/Insp. Cruz) the information he received from a confidential informant that appellant was selling illegal drugs on Second Avenue, Caloocan City. Thus, P/Insp. Cruz formed a buy-bust team and dusted a ₱100.00 bill with ultraviolet fluorescent powder to be used as marked money. He designated PO1 Rosales as poseur-buyer while the other members, consisting of PO3 Manuel De Guzman (PO3 De Guzman), PO3 Rodrigo Antonio, PO3 Ferdinand Modina and PO2 Amadeo Tayag, would serve as back-ups. When the team arrived at the designated area, PO1 Rosales and the confidential informant went ahead while the rest of the buy-bust team positioned themselves in strategic locations. The confidential informant left after pointing appellant to PO1 Rosales. PO1 Rosales then approached appellant and told him that he wanted to buy illegal drugs worth ₱100.00. He then showed appellant the ₱100.00 marked money who took the same and placed it in his pocket. Thereafter, appellant retrieved from another pocket three plastic sachets containing white crystalline substance and gave one to PO1 Rosales, who thereupon scratched his head as the pre-arranged signal to the buy-bust team that the illegal drug transaction had already been consummated. When the back-ups arrived, PO1 Rosales informed appellant that he is a police officer and immediately caused his arrest. He then confiscated the other two plastic sachets from appellant while PO3 De Guzman recovered the marked money after appellant emptied his pocket.⁴

Appellant, together with the marked money and the specimens recovered from him, were turned-over to the police investigator, PO3 Randolph Hipolito, who marked each sachet with the letters JGA, the initials of appellant.⁵ The seized items and appellant were thereafter brought to the police crime laboratory for examination of the forensic chemist, P/Insp. Jimmy Calabocal (P/Insp. Calabocal).

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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

(5) 50 grams or more of methamphetamine hydrochloride or “shabu”;

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride of “shabu” x x x.

⁴ TSN, January 13, 2004, pp. 3-9.

⁵ Id. at 10.

The results revealed that: (1) the contents of all the plastic sachets were positive for methamphetamine hydrochloride or *shabu*;⁶ (2) the contents of the two sachets recovered from appellant weighed 0.09 gram while the other one subject of the sale weighed 0.05 gram;⁷ and (3) appellant's hand and the marked money were positive for ultraviolet fluorescent powder.⁸

During trial, PO1 Rosales identified appellant as the person who sold him *shabu* for ₱100.00 during the buy-bust operation.⁹ He also identified the sachets of *shabu* that were formally offered in evidence as the same items that were seized from appellant.¹⁰

For his part, appellant pleaded "not guilty" to the crimes charged.¹¹ He testified that while waiting for a jeep to take him home, persons in civilian clothes approached him and asked if he is a Muslim. When he answered in the negative, they invited him to go with them to a *barangay* hall since a complaint had allegedly been filed against him. When he refused, they forced him to go with them. Appellant claimed that he was taken instead to a house and told to produce ₱20,000.00 in exchange for his release. Because he failed to comply, he was transferred to the police station where he was given a cellphone to call someone to post bail for him. On his second day in the police precinct, he was taken to a certain Fiscal Guiyab who signed a document presented by PO1 Rosales. They then proceeded to the hospital for a medical examination before returning to the city jail. As to the result of the examination for the presence of fluorescent powder, appellant explained that his hands tested positive because a certain Antonio gave him a ₱100.00 bill purportedly to be spent for his dinner. He accepted the bill but when he was about to be accompanied out of the detention cell, Antonio took back the money.¹²

Ruling of the Regional Trial Court

In its Joint Decision of December 8, 2005,¹³ the RTC ruled that the prosecution was able to prove the guilt of appellant beyond reasonable doubt for the offenses charged. It found the buy-bust operation to be valid, the warrantless arrest and body search carried out against appellant as justified, and the testimony of PO1 Rosales to be credible. The RTC likewise held that the prosecution was able to establish the unbroken link in the chain of custody of the illegal drugs in both cases. The dispositive portion of its Joint Decision reads:

⁶ TSN, November 10, 2003, p. 6; Folder of Exhibits, Exhibit "B".

⁷ Id.

⁸ Folder of Exhibits, Exhibit "E."

⁹ TSN, January 13, 2004, pp. 8-9.

¹⁰ Id. at 9-10.

¹¹ Records, p. 24.

¹² TSN, July 14, 2005, pp. 3-14.

¹³ Records, pp. 132-142.

PREMISES CONSIDERED, the prosecution having established to a moral certainty the guilt of Accused JIMMY GABUYA Y ADLAWAN, this Court hereby renders judgment as follows:

1. In Crim. Case No. 68370 for Violation of Sec. 5, Art. II of R.A. 9165, this Court in the absence of any aggravating circumstance hereby sentences aforesaid Accused to LIFE IMPRISONMENT, and to pay the fine of Five hundred thousand pesos (₱500,000.00) with subsidiary imprisonment in case of insolvency.

2. In Crim. Case No. 68369 for Violation of Sec. 11, Art. II of [R.A.] 9165, this Court in the absence of any aggravating circumstance hereby sentences same Accused to twelve (12) years, eight (8) months and one (1) day to seventeen (17) years and eight (8) months and to pay the fine of Three hundred thousand pesos (₱300,000.00) with subsidiary imprisonment in case of insolvency.

Subject drugs in both cases are hereby declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

x x x¹⁴

Ruling of the Court of Appeals

In his appeal to the CA, appellant asserted that the RTC erred in finding him guilty beyond reasonable doubt since the failure of the buy-bust team to coordinate with the Philippine Drug Enforcement Agency (PDEA) and to mark the seized items at the place of seizure constituted gaps in the chain of custody. These gaps, according to appellant, created doubts as to whether the items allegedly seized from him were the same items presented during the trial.

In its Decision¹⁵ dated May 19, 2010, the CA ruled that the prosecution ably established the following elements of illegal sale of dangerous drugs: (1) the identity of the buyer and seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. This is considering that PO1 Rosales positively identified appellant as the person who sold to him the *shabu* in exchange for the marked money.

The CA also affirmed the RTC's ruling that appellant is guilty of possession of dangerous drugs as characterized by the following requisites: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. The appellate court took note that PO1 Rosales testified that other sachets of *shabu* were recovered from appellant during the buy-bust operation and that his testimony is corroborated by Physical Sciences Report No. D-630-03 and by the testimony of P/Insp. Calabocal, which both show

¹⁴ Id. at 141-142.

¹⁵ CA *rollo*, pp. 97-116.

that the specimens confiscated from appellant are indeed *shabu*.

The CA held that the RTC did not err in finding the warrantless arrest and search effected upon appellant legally justified since he was apprehended in *flagrante delicto* during a legitimate buy-bust operation. It likewise ruled that aside from the fact that findings of the RTC are accorded high respect, the failure of appellant to prove any ill motive on the part of the buy-bust team justifies the RTC's application of the presumption that the police officers performed their duties regularly.

Moreover, the CA did not find merit in appellant's argument that the failure of the police officers to mark the seized items at the scene of the crime, to conduct an inventory of the subject specimen, and to take photograph thereof are procedural lapses that created gaps in the chain of custody. It held that non-compliance with the procedure for the custody of seized items under paragraph 1, Section 21, Article II of R.A. 9165 does not invalidate the buy-bust operation since the prosecution was nonetheless able to prove that the police officers properly preserved the integrity and evidentiary value of the seized *shabu* as provided in Section 21(a), Article II of the Implementing Rules and Regulations of said law.

In view of the above, the CA ultimately ruled thus:

WHEREFORE, premises considered, the present appeal is hereby DENIED and [the] challenged Decision of the Court *a quo* dated 08 December 2005 STANDS.

SO ORDERED.¹⁶

Insisting on his acquittal, appellant interposes this appeal where he raises as additional issues in his Supplemental Brief¹⁷ the following: (1) the failure of the police officers to mark the seized sachets of *shabu* not only at the scene of the crime but also in his presence; and (2) the lack of information on the whereabouts of the *shabu* after it was examined by the Forensic Chemist, P/Insp. Calabocal, whose testimony did not cover the manner in which the specimens were handled after the examination.

Our Ruling

The appeal has no merit.

After a thorough review of the records of the case *vis-à-vis* the assailed Decision, the Court finds the appellate court's resolution of the issues raised in

¹⁶ Id. at 116.

¹⁷ *Rollo*, pp. 42-51.

Accused-Appellant's Brief, as well as the conclusions reached by it, to be in order. Hence, there is no reason to dwell on them again.

The Court notes, however, that the CA did not touch upon appellant's assertion that the failure of the police officers to coordinate with the PDEA is a serious procedural defect. Be that as it may, it must be made clear that the resolution of the said issue will not result in appellant's exoneration. The omission of the CA to discuss and pass upon the same in its assailed Decision is not a fatal flaw since coordination of the buy-bust operation with the PDEA is not an indispensable element of the crimes of illegal sale and possession of dangerous drugs such as *shabu*.¹⁸

Going now to the issues raised by appellant in his Supplemental Brief, appellant avers that the police officers did not comply with Section 21 of R.A. 9165 and its Implementing Rules, particularly when they failed to mark the seized items at the scene of the crime *in his presence*. He likewise argues that the lack of information on the whereabouts of the *shabu* after its examination by the forensic chemist and the absence of testimony thereon revealed a gap in the chain of custody of the evidence.

It is well to note that the records of the case are bereft of evidence that appellant, during trial, interposed any objection to the non-marking of the seized items in his presence and the lack of information on the whereabouts of the *shabu* after it was examined by P/Insp. Calabocal. While he questioned the chain of custody before the CA, the alleged defects appellant is now alluding to were not among those he raised on appeal. The defects he raised before the CA were limited to the alleged lack of physical inventory, non-taking of photographs of the seized items, and the supposed failure of the police officers to mark the sachets of *shabu* at the crime scene. But even then, it was already too late in the day for appellant to have raised the same at that point since he should have done so early on before the RTC.¹⁹ It bears stressing that the Court has already brushed aside an accused's belated contention that the illegal drugs confiscated from his person is inadmissible for failure of the arresting officers to comply with Section 21 of R.A. 9165.²⁰ This is considering that "[w]hatever justifiable grounds may excuse the police officers from literally complying with Section 21 will remain unknown, because [appellant] did not question during trial the safekeeping of the items seized from him. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of an objection. Without such objection, he cannot raise the question for the first time on appeal."²¹ Besides and as already mentioned, the CA has already concluded that the identity of the seized drugs was established by the prosecution and its integrity preserved, *viz.*:

¹⁸ *People v. Salvador*, G.R. No. 190621, February 10, 2014, 715 SCRA 617, 637.

¹⁹ *People v. Mariacos*, G.R. No. 188611, June 21, 2010, 621 SCRA 327, 349.

²⁰ *People v. Octavio*, G.R. No. 199219, April 3, 2013, 695 SCRA 192, 205-206.

²¹ *Id.* at 206.

Ultimately, We find that the prosecution convincingly proved that the police operatives indeed complied with the required unbroken chain in the custody of the subject illegal drugs, viz: a.) beginning from the lawful buy-bust operation undertaken by the police operatives on 06 June 2003 and the recovery of the subject illegal drugs as well as the marked money resulting from the Appellant's valid warrantless search and seizure; b.) upon seizure of the one hundred (Php100) pesos with serial number #JK623663 used as marked money and the subject drugs by PO1 ROSALES, said specimens remained in his possession until they were turned over to the police investigator PO2 HIPOLITO upon reaching the police headquarters; c.) upon receipt of the subject drugs and buy-bust money, PO2 HIPOLITO marked the specimens "JGA-1" (0.05 gram),"JGA-2"(0.04 gram) and "JGA-3"(0.05 gram) which stands for the Appellant's initials; d.) a Laboratory Examination Request was then prepared by Chief Police Inspector CESAR GONZALES CRUZ (Chief P/Insp. CRUZ) addressed to the Chief PNP, NPD Crime Laboratory Office, Samson Road, Caloocan City, requesting for the examination of the three (3) pieces of small plastic transparent [heat-sealed] sachets containing white crystalline substance that were confiscated from the Appellant; e.) upon receipt of the subject drugs, the same [were] examined by forensic chemist P/Insp. CALABOCAL who found [them] to be positive for *shabu*; f.) thereafter, Chief P/Insp. CRUZ prepared a Referral Slip dated 06 June 2003 addressed to the City Prosecutor of Caloocan presenting as evidence, inter alia, the three (3) plastic sachets confiscated from the Appellant, the Laboratory Examination Report dated 06 June 2003 and the one hundred (Php100) pesos used as marked money; g.) the three (3) plastic sachets were turned over to the custody of the prosecutor which PO1 ROSALES identified on direct examination as the subject drugs sold and confiscated from Appellant during the buy-bust operation; h.) the subject specimens were then marked as Exhibits "C-1", C-2" and "C-3" for the prosecution and was finally surrendered to the court a quo when formally offered as evidence by the prosecution on 19 August 2004.²²

In view of the foregoing, the Court upholds appellant's conviction for violation of Sections 5 and 11, Article II of R.A. 9165 as well as the penalties imposed upon him. It must be added, however, that he is not eligible for parole with respect to the case of illegal sale of *shabu*.²³

WHEREFORE, the assailed May 19, 2010 Decision of the Court of Appeals in CA-GR. CR-H.C. No. 01795 is **AFFIRMED with the MODIFICATION** that appellant Jimmy Gabuya y Adlawan is not eligible for parole with respect to the case of illegal sale of *shabu*.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

²² CA *rollo*, pp. 114-115.

²³ See Section 2, Indeterminate Sentence Law.

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

