



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MANUEL R. PORTUGUEZ,
Petitioner,

G.R. No. 194499

Present:

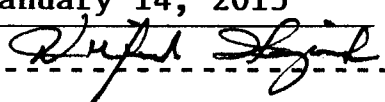
- versus -

VELASCO, JR., *J.*, Chairperson,
PERALTA,
VILLARAMA, JR.,
REYES, and
LEONEN,* *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

January 14, 2015

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DECISION

VILLARAMA, JR., *J.*:

Before this Court is a petition for review on certiorari¹ seeking the reversal of the Decision² dated August 12, 2010 and the Resolution³ dated November 9, 2010 of the Court of Appeals (CA) in CA-G.R. CR No. 32096. The CA affirmed *in toto* the Decision⁴ dated August 29, 2008 of the Regional Trial Court (RTC) of Pasig City, Branch 70, finding petitioner Manuel R. Portuguez (petitioner) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) No. 9165.⁵

The case stemmed from the Information⁶ dated April 21, 2003, charging petitioner of the crime of violation of Section 11, Article II of R.A. No. 9165 for illegal possession of five centigrams (0.05 gram) of methamphetamine hydrochloride or *shabu*, the accusatory portion of which reads:

* Designated additional member per Raffle dated October 22, 2014.

¹ *Rollo*, pp. 10-30.

² CA *rollo*, pp. 150-161. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Mariflor P. Punzalan-Castillo and Samuel H. Gaerlan concurring.

³ Id. at 183-184.

⁴ Records, pp. 180-185. Penned by Judge Louis P. Acosta.

⁵ Comprehensive Dangerous Drugs Act of 2002.

⁶ Records, pp. 1-2.

On or about April 16, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the said accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing five centigrams (0.05 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law.

Contrary to law.

Upon arraignment, petitioner pleaded not guilty to the charge.⁷ Thereafter, trial on the merits ensued.

During the pre-trial conference, the prosecution and the defense stipulated, among others, on the due execution and genuineness of the Request for Laboratory Examination⁸ dated April 16, 2003 and Chemistry Report No. D-687-03E⁹ issued by the Forensic Chemist, Police Senior Inspector Annalee R. Forro (P/Sr. Insp. Forro). The parties also stipulated on the existence of the plastic sachet including its contents which had been the subject of the said Request except for its source or origin.¹⁰ After entering into the aforementioned stipulations, the testimony of P/Sr. Insp. Forro was dispensed with.¹¹

Version of the Prosecution

The prosecution, through the testimonies of Police Officer 1 (PO1) Aldrin R. Mariano (PO1 Mariano) and PO1 Janet Sabo (PO1 Sabo), established the following:

On April 16, 2003, a confidential asset went to the Pasig City Police Station, City Hall Detachment, to report the illegal drug activities of a certain alias Bobot at Balmores Street, Barangay Kapasigan, Pasig City. Upon receipt of the information, the chief of said station formed a buy-bust team wherein PO1 Mariano was designated as the poseur-buyer. After coordinating with the Philippine Drug Enforcement Agency (PDEA) and preparing the buy-bust money, the team and its asset proceeded to Balmores Street. Arriving thereat, the asset pointed to Bobot as the target person. PO1 Mariano saw Bobot and petitioner transacting illegal drugs. When PO1 Mariano and the asset met petitioner and Bobot on the road, the asset asked petitioner, “*P’re, meron pa ba?*” At this point, petitioner looked at PO1 Mariano and thereafter, attempted to run. However, PO1 Mariano was able to take hold of him. Then, the other police operatives arrived. Petitioner was asked to open his hand. Upon seeing the suspected *shabu* on his hand, they arrested petitioner, informed him of his constitutional rights and

⁷ Id. at 13.

⁸ Id. at 78.

⁹ Id. at 79.

¹⁰ Id. at 55-56.

¹¹ Id. at 57.

boarded him on their service vehicle. Before leaving the area, PO1 Mariano placed the markings “EXH A ARM 04-16-03” on the seized *shabu*. Thereafter, the police operatives brought petitioner to the Rizal Medical Center for physical examination before they proceeded to the police station for investigation.¹²

On cross-examination, PO1 Mariano testified that at a distance of seven to eight meters, he saw Bobot handing something to petitioner. PO1 Mariano said that the intended buy-bust operation failed because of the commotion petitioner caused when he tried to run away. PO1 Mariano also testified that he got hold of petitioner because he was nearer to him. He claimed that the other police operatives ran after Bobot but they failed to arrest him.¹³

In addition, prosecution witness PO1 Sabo testified that on the same day of April 16, 2003, she delivered the seized *shabu* and the Request for Laboratory Examination¹⁴ to the Philippine National Police (PNP) Crime Laboratory for chemical analysis.¹⁵ Chemistry Report No. D-687-03E¹⁶ prepared by P/Sr. Insp. Forro revealed the following results:

SPECIMEN SUBMITTED:

A – One (1) heat-sealed transparent plastic sachet with markings “EXH A ARM 04/16/03” containing 0.05 gram of white crystalline substance.

x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave **POSITIVE** result to the tests for Methamphetamine Hydrochloride, a dangerous drug.

x x x x

CONCLUSION:

Specimen A contains **Methamphetamine Hydrochloride**, a dangerous drug.

Version of the Defense

Petitioner testified that at the time of his arrest, he was fixing the *katam* and was eating in front of his house with his friends Jonjon Reynoso, Jonjing Reynoso and Junior Da Silva. Two persons from the Pasig Police headquarters arrived and spoke to his sister who used to work at the said headquarters. When his sister called him, he was mistaken to be Bobot and thus, they arrested him. Petitioner denied that he was in possession of the *shabu* allegedly seized from him. He claimed that he saw the said *shabu* for the first time at the

¹² TSN, September 8, 2003, pp. 3-12.

¹³ TSN, October 7, 2003, pp. 7-10.

¹⁴ Supra note 8.

¹⁵ TSN, November 19, 2003, pp. 4-7.

¹⁶ Supra note 9.

headquarters. Petitioner also claimed that at the time he was arrested on April 16, 2003, Bobot was actually detained at a jail in Bicutan.¹⁷

On cross-examination, petitioner admitted that his sister was a former errand girl at the police headquarters. He divulged that at the time of his arrest, while he was then repairing a “*katam*,” two male persons whom petitioner identified as Efren and Dennis approached his sister. Efren told petitioner that the target person of the police officers was Bobot. Petitioner claimed that PO1 Mariano and PO1 Sabo arrived a few minutes thereafter and he was arrested in the presence of his sister, Efren and Dennis. Petitioner also claimed that the target person Bobot is his younger brother, Jovito Portuguese. He admitted that Bobot was admitted to a rehabilitation center in Bicutan since he used to sell illegal drugs. He maintained that the police officers already had with them the sachet of *shabu* when they arrested him.¹⁸

Dawn Portuguese, daughter of petitioner, testified that in the afternoon of April 16, 2003, two male persons arrived at the house of her aunt and asked for her father. She testified that petitioner was then sleeping in the nearby house of his friend, Junior. She then called for her father and, upon their return, four persons, one of whom was in police uniform, approached them and arrested petitioner. She informed her mother of what happened and the latter proceeded to the headquarters where petitioner was brought.¹⁹

Last to testify for the defense was Maritess Portuguese, petitioner’s sister. She testified that her brother was then sleeping in a nearby house when apprehended by the police officers. She averred that after her brother was arrested, they agreed not to file a complaint against the said police officers. On cross-examination, she said that she heard her niece shouting. Sensing a commotion, she hurried in front of their house and there she saw the police officers accosting her brother.²⁰

The RTC’s Ruling

On August 29, 2008, the RTC rendered a Decision²¹ finding petitioner guilty as charged. The RTC invoked the principle of the presumption of regularity in the performance of official duty, gave credence to the testimony of PO1 Mariano, and rejected the self-serving testimony of petitioner and the obviously manufactured testimonies of his witnesses. The *fallo* of the RTC Decision reads:

WHEREFORE, premises considered, accused MANUEL PORTUGUEZ is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 11, Article II of Republic Act 9165 and is hereby sentenced to **Twelve (12) Years and One (1) Day to Twenty (20)**

¹⁷ TSN, January 19, 2004, pp. 4-7.

¹⁸ Id. at 7-20.

¹⁹ TSN, August 10, 2005, pp. 3-10.

²⁰ TSN, November 16, 2005, pp. 4-18.

²¹ Supra note 4.

Years and to pay a FINE of Three Hundred Thousand Pesos (P300,000.00).

Pursuant to Section 21 of Republic Act 9165, any authorized representative of the Philippine Drug Enforcement Agency (PDEA) is hereby ordered to take charge and have custody over the plastic sachet of shabu, object of this case, for proper disposition.

Costs against the accused.

SO ORDERED.²²

The CA's Ruling

On August 12, 2010, the CA affirmed the decision of the RTC. The CA held that petitioner was deemed to have waived his right to question the irregularity of his arrest since he failed to move to quash the Information on this ground and instead, elected to proceed with the trial. The CA also held that petitioner was caught *in flagrante delicto* when he was arrested by the police officers as PO1 Mariano saw him buying illegal drugs from Bobot. The CA agreed with the RTC that the police officers were presumed to have regularly performed their official duties. The CA opined that the integrity of the seized *shabu* had been preserved by the concerned police officers.

Petitioner's Motion for Reconsideration²³ was denied by the CA in its Resolution²⁴ dated November 9, 2010. The CA held that the lack of inventory or photographs taken after petitioner's apprehension does not render the evidence inadmissible. The CA stressed that the integrity of the evidence taken from petitioner was duly preserved.

Hence, this petition raising the sole assignment of error that the CA erred in affirming the conviction of petitioner by the RTC.

Petitioner avers that the prosecution failed to establish the identity of the *corpus delicti*, as well as the regularity of the chain of custody. He submits that the testimony of PO1 Sabo was insufficient to establish the identity of the *shabu* seized and the regularity of the chain of custody. Petitioner opines that the failure of the police officers to observe the proper procedure, such as the lack of physical inventory and the non-taking of photographs, for the custody of the allegedly confiscated drug compromised its integrity. Moreover, petitioner posits that the prosecution failed to establish a valid buy-bust operation as there was no pre-operation report and coordination report filed with the PDEA. Finally, petitioner argues that, assuming that the alleged *shabu* was recovered from him, the same is inadmissible in evidence for being a fruit of the poisonous tree. Petitioner prays that he be acquitted.²⁵

²² Id. at 184-185.

²³ CA *rollo*, pp. 162-174.

²⁴ Supra note 3.

²⁵ *Rollo*, pp. 125-146.

On the other hand, respondent People of the Philippines through the Office of the Solicitor General (OSG) asserts that the totality of the evidence presented in this case clearly indicates that: (1) the sale of a prohibited drug had taken place; (2) petitioner was caught in the act of buying the prohibited drug; (3) petitioner was immediately arrested by the police officers upon consummation of the sale; and (4) the police officers found in petitioner's possession a prohibited drug, which was later confirmed through the chemistry examination as *shabu*. Moreover, the OSG argues that non-compliance with the procedure laid down in R.A. No. 9165 and its Implementing Rules and Regulations (IRR) does not render void and invalid the seizure of dangerous drugs, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers, as in this case. Lastly, the OSG relies on the CA's ruling on the legality of petitioner's arrest and the admissibility of the confiscated evidence.²⁶

Our Ruling

The petition is bereft of merit.

The essential elements in illegal possession of dangerous drugs are (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug.²⁷

This Court holds that all the aforementioned essential elements in illegal possession of dangerous drugs were proven in this case.

A close look at the sequence of events narrated by the prosecution witnesses particularly by PO1 Mariano indicates that an intended buy-bust operation was about to be carried out against Bobot. Said operation was not successful as no sale took place between the intended poseur-buyer, PO1 Mariano, and Bobot. Bobot was also able to evade arrest.

Nonetheless, PO1 Mariano and the asset chanced upon an ongoing transaction between petitioner and Bobot. It bears stressing that petitioner was particularly identified by PO1 Mariano as the person who bought the suspected sachet of *shabu* from Bobot. When petitioner attempted to run, PO1 Mariano was able to grab him. And when petitioner was asked to open his hand,²⁸ found in his possession was the same sachet that he bought from Bobot. Through chemical analysis, the contents of the same sachet were found to be *shabu*.

The Court gives full faith and credence to the testimonies of the police officers and upholds the presumption of regularity in the apprehending officers' performance of official duty. It is a settled rule that in cases

²⁶ Id. at 67-80.

²⁷ *Rebellion v. People*, 637 Phil. 339, 348 (2010).

²⁸ TSN, September 8, 2003, p. 9.

involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.²⁹ However, petitioner failed to present clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. Except for his bare allegations of denial and frame-up, and that the police officers had mistakenly identified him as Bobot, his younger brother, nothing supports his claim that the police officers were impelled by improper motives to testify against him. Needless to stress, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.³⁰ On petitioner's claim that at the time of his arrest, Bobot was actually confined in a rehabilitation center in Bicutan,³¹ we note that petitioner failed to fulfill his promise³² to prove it as fact.

Likewise, this Court has invariably viewed with disfavor the defenses of denial and frame-up. Such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence.³³

Moreover, it bears stressing that in weighing the testimonies of the prosecution witnesses *vis-à-vis* those of the defense, the RTC gave more credence to the version of the prosecution. This Court finds no reason to disagree. Well-settled is the rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.³⁴ 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 CA as in this case.³⁵

Lastly, petitioner claims that there were no inventory and photographs of the prohibited item allegedly seized from him. He argues that as a result of this failure, there is doubt as to the identity and integrity of the drugs, and there was a break in the chain of custody of the evidence.

The argument does not hold water.

Section 21 of the IRR of R.A. No. 9165 provides:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous*

²⁹ *People v. Marcelino*, G.R. No. 189278, July 26, 2010, 625 SCRA 632, 643.

³⁰ *People v. Mantawil*, G.R. No. 188319, June 8, 2011, 651 SCRA 642, 658.

³¹ TSN, January 19, 2004, pp. 7, 16-17.

³² *Id.* at 20.

³³ *People v. Gonzaga*, G.R. No. 184952, October 11, 2010, 632 SCRA 551, 569.

³⁴ See *People v. Remerata*, 449 Phil. 813, 822 (2003).

³⁵ *People v. Andres*, G.R. No. 193184, February 7, 2011, 641 SCRA 602, 608.

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 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 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 said items[.]** (Emphasis supplied)

Based on the foregoing, this Court has held that non-compliance with the above-mentioned requirements is not fatal. Non-compliance with Section 21 of the IRR does not make the items seized inadmissible. What is imperative is “the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.”³⁶

In this case, the chain of custody was established through the following link: (1) PO1 Mariano marked the seized sachet subject of the *in flagrante delicto* arrest with “EXH A ARM 04-16-03” which stands for his full name, Aldrin Reyes Mariano;³⁷ (2) a request for laboratory examination of the seized item was signed by P/Sr. Insp. Rodrigo E. Villaruel;³⁸ (3) the request and the marked item seized were personally delivered by PO1 Sabo and received by the PNP Crime Laboratory on the same day of the arrest on April 16, 2003; (4) Chemistry Report No. D-687-03E³⁹ confirmed that the marked item seized from petitioner was methamphetamine hydrochloride; and (5) the marked item was duly identified by PO1 Mariano in court and offered in evidence.

Hence, it is clear that the integrity and the evidentiary value of the seized drugs were preserved. This Court, therefore, finds no reason to overturn the findings of the RTC that the drugs seized from petitioner were the same ones presented during trial. Accordingly, we hold that the chain of

³⁶ *People v. Pambid*, G.R. No. 192237, January 26, 2011, 640 SCRA 722, 732-733. (Citations omitted).

³⁷ TSN, September 8, 2003, pp. 9-11.

³⁸ *Supra* note 8.

³⁹ *Supra* note 9.

custody of the illicit drugs seized from petitioner remains unbroken, contrary to the assertions of petitioner.

In sum, we find no reversible error committed by the RTC and CA in convicting petitioner of illegal possession of drugs. It is hornbook doctrine that the factual findings of the CA affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.⁴⁰ This case is no exception to the rule. All told, this Court thus sustains the conviction of petitioner for violation of Section 11, Article II of R.A. No. 9165.

WHEREFORE, the petition is **DENIED**. The Decision dated August 12, 2010 and the Resolution dated November 9, 2010 of the Court of Appeals in CA-G.R. CR No. 32096 are **AFFIRMED**.


Costs against petitioner.

SO ORDERED.




MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:



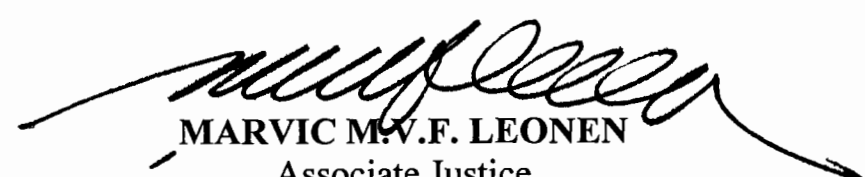
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

⁴⁰ *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 407.

A T T E S T A T I O N

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

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the 1987 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

