



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 198024

Present:

- versus -

CARPIO, *Acting Chief Justice*,*
BRION,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

RAFAEL CUNANAN *y* DAVID
alias "PAENG PUTOL",
Accused-Appellant.

Promulgated:

16 MAR 2015

X ----- *HR Cabalag*

RESOLUTION

DEL CASTILLO, *J.:*

On appeal is the January 27, 2011 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04062, which affirmed the July 1, 2009 Decision² of the Regional Trial Court (RTC) of Pasig City, Branch 164 in Criminal Case No. 15143-D finding appellant Rafael Cunanan *y* David *alias* "Paeng Putol" (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 and the costs.

Antecedent Facts

On October 19, 2006, an Information³ was filed charging appellant with the crime of illegal sale of dangerous drugs, the accusatory portion of which reads: *Moore*

* Per Special Order No. 1945 dated March 12, 2015.

¹ CA *rollo*, pp. 101-118; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan.

² Records, pp. 94-99; penned by Judge Librado S. Correa.

³ Id. at 1.

On or about October 14, 2006, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Dario Gunda, Jr., a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing two centigrams (0.02gram), of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.⁴

Appellant pleaded not guilty upon his arraignment on April 30, 2007. Trial on the merits immediately followed. In the course thereof, the testimony of prosecution witness P/Sr. Insp. Lourdeliza G. Cejes (PSI Cejes), the Forensic Chemist of the Eastern Police District (EPD) Crime Laboratory Office, was dispensed with after the prosecution and the defense stipulated on the following:

1. That in relation to the arrest of appellant, a request for laboratory examination was made on October 14, 2006 by P/Sr. Insp. Bernouli D. Abalos (PSI Abalos) of the EPD Anti-Illegal Drugs Special Operation Task Force to the Chief of the EPD Crime Laboratory Service;
2. That attached to the request is one heat-sealed transparent plastic sachet containing an undetermined amount of white crystalline substance suspected to be *shabu* with markings Exh-A RCD/DG dated October 13, 2006, but not as to the source of the specimen;
3. That the request together with the specimen were delivered by PO2 Michael Familiara (PO2 Familiara), recorded by PO1 Menese and received by PSI Cejes;
4. That a qualitative examination on the specimen was conducted by PSI Cejes which gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug, as shown in Physical Sciences Report No. D-452-2006E; and
5. The regularity and due execution of the Physical Sciences Report.⁵

Version of the Prosecution

The prosecution's version of the event as derived from the combined testimonies of PO1 Dario Gunda, Jr. (PO1 Gunda) and PO2 Familiara is summarized as follows:

⁴ Id.

⁵ See RTC Order of July 9, 2007, id. at 48-49.

At about 6:00 p.m. on October 13, 2006, a confidential informant (CI) went to the EPD-District Intelligence Investigation Division (EPD-DIID) Headquarters of Pasig City and informed PSI Abalos that a certain “Paeng Putol,” later identified as the appellant, was engaged in selling illegal drugs in *Purok 4, Barangay Pineda, Pasig City*. Acting on the information, PSI Abalos organized a buy-bust team composed of himself, PO1 Gunda, PO1 Daniel Robiene, PO2 Familara, SPO1 Jessie Bautista, and PO1 Ambrosio Gam, among others, to entrap appellant. PO1 Gunda was designated as the poseur-buyer and was thus given two 100-peso bills⁶ which he marked with his initials “DG,” while the rest of the team would act as back-ups. After a short briefing, PSI Abalos prepared a Pre-Operation Report/Coordination Sheet⁷ and coordinated the buy-bust operation with the Pasig City Police Station and the Philippine Drug Enforcement Agency (PDEA). Thereafter, the team proceeded to and arrived at the target area at 9:20 p.m. PO1 Gunda and the CI walked towards a store along an alley while the others strategically positioned themselves some five to seven meters away. The CI saw a man wearing gloves standing beside the store and informed PO1 Gunda that the man was the appellant. Together, they approached appellant who is familiar to the CI. PO1 Gunda was introduced to appellant as a drug user who wanted to buy *shabu* worth ₱200.00. After receiving the marked money from PO1 Gunda, appellant entered a narrow alley and came back with a small plastic sachet containing white crystalline substance which he handed to PO1 Gunda. Thereupon, PO1 Gunda gave the pre-arranged signal to inform the buy-bust team of the consummated transaction and arrested appellant. When asked to empty his pocket, recovered from appellant were the two marked 100-peso bills used as buy-bust money. Appellant was then informed of his constitutional rights and the nature of the accusation against him and brought to the EPD Headquarters. PO1 Gunda stapled the marked money on a bond paper and wrote thereon “recovered pre-marked buy-bust money dated October 13, 2006.” He also marked the plastic sachet with “Exh-A RCD/DG 10/13/06.” The said items were likewise brought to the EPD Headquarters and turned over to PO2 Familara for further investigation. Later, the seized substance were inventoried and photographed. After this, PO1 Gunda and PO2 Familara brought appellant, together with a request for his drug testing,⁸ and the seized substance, as well as a request for its laboratory examination,⁹ to the EPD Crime Laboratory. The substance with the corresponding marking “Exh-A RCD/DG 10/13/06” on its plastic sachet was received by PSI Cejes in the morning of October 14, 2006. Per Physical Sciences Report No. D-452-2006E issued by PSI Cejes,¹⁰ the substance weighing 0.02 gram was found positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.

⁶ Exhibits “G” and G-1,” id. at 77.

⁷ Exhibit “D,” id. at 74.

⁸ Exhibit “C,” id. at 73.

⁹ Exhibit “B,” id. at 72.

¹⁰ Exhibit “E,” id at 75.

Version of the Defense

Appellant denied the charge and interposed the defenses of denial and frame-up/extortion. He alleged that after eating dinner on October 13, 2006, he was watching a bingo game when three men arrived and held him by both hands. They introduced themselves as policemen and told him that they have a warrant for his arrest. They then handcuffed and frisked him and took away his wallet and cellphone. The men brought him to a police station where PO2 Familara threatened to file a case against him unless he gives the police ₱50,000.00 as settlement. He failed to give the said amount.

Another witness for the defense, Genedina Guevarra Ignacio, testified that she was outside her house between 7:00 p.m. and 8:00 p.m. of October 13, 2006 when she noticed three men passed by her in haste. The men approached appellant who was then watching a bingo game across the street and suddenly handcuffed him. She heard appellant asking the reason for his arrest. She did not know what happened next since she already went inside her house.

Ruling of the Regional Trial Court

In its July 1, 2009 Decision,¹¹ the trial court adjudged appellant guilty of the crime charged, thus:

WHEREFORE, the Court finds accused Rafael Cunanan y David alias “Paeng Putol” GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00) with the accessory penalties provided for under Section 35 of said R.A. 9165.

The plastic sachet containing shabu (Exhibit ‘T’) is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.

With costs against the accused.

SO ORDERED.¹²

Ruling of the Court of Appeals

On appeal, the CA affirmed appellant’s conviction in its January 27, 2011 Decision,¹³ viz:

¹¹ Id. at 94-99.

¹² Id. at 99.

¹³ CA *rollo*, pp. 101-117.

WHEREFORE, there being no reversible error committed by the trial court, the appeal is DISMISSED. The assailed *Decision* dated July 1, 2009 of the RTC, Branch 164, Pasig City, in Criminal Case No. 15143-D, is AFFIRMED.

SO ORDERED.¹⁴

Hence, this appeal where appellant points out that: (1) there was no *in flagrante delicto* arrest as he was not committing any crime at the time he was apprehended but was merely watching a bingo game; (2) it was inconceivable for him to openly sell illegal drugs as PO1 Gunda himself testified that at the time of the alleged sale transaction there were many people around the target area; (3) the apprehending officers failed to comply with the guidelines on the proper custody of the seized dangerous drug, specifically with respect to its inventory and taking of photograph, and this casts doubt on whether the plastic sachet with white crystalline substance identified in court was the same item allegedly seized and confiscated from him; and (4) the testimonies of PO1 Gunda and PO2 Familiaras as to who was in possession of the seized item from the target area up to the police station were conflicting.

Our Ruling

The appeal is without merit.

Appellant was lawfully arrested after he was caught in flagrante delicto selling an illegal drug in a buy-bust operation; contrary to his contention, it was not inconceivable that he would openly sell an illegal drug in public.

Appellant assails the legality of his arrest contending that he was not caught *in flagrante delicto*. Appellant's contention fails to convince. The testimony of PO1 Gunda who acted as the poseur-buyer in the buy-bust operation clearly recounts how the sale transaction between him and appellant transpired, *viz*:

- Q- After you were introduced by this confidential informant to Paeng Putol that you are user of illegal drugs, what was the reaction of the target person, this Paeng Putol?
A- The confidential [informant] asked him, "Paeng, halagang dos, meron ka ba[?], kukuha kami.
- Q- What was the reply of this alias Paeng Putol?
A- Akina iyong pera, sabi niya.

¹⁴ Id. at 117.

- Q- What did you do?
A- I gave to him the two pieces of one[-]hundred peso bill[s].
- Q- What happened?
A- Sinabi niya na antayin ninyo ako diyan. Pumasok siya sa eskinita, hindi kalayuan, mga two to three meters.
- Q- What did he do?
A- He returned and gave me one plastic sachet containing suspected shabu.
- Q- After he handed to you that plastic sachet, what did you do next?
A- Nag pre-arranged signal ako para tulungan ako sa paghuli kay alias Paeng Putol.

x x x x

- Q- What happened?
A- Hinawakan ko siya. Tapos pinakuha ko kung ano iyong laman ng bulsa niya. Ayun na recover ko sa kanyang possession iyong dalawang daan.¹⁵

It is crystal clear from the foregoing that a sale transaction took place between appellant and PO1 Gunda. That the said transaction involved the illegal sale of dangerous drug was sufficiently shown by the prosecution through its establishment of the following elements of the offense: “(1) the identity of the buyer and the seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor.”¹⁶ Undoubtedly, appellant was lawfully arrested after he was caught *in flagrante delicto* selling *shabu* in a buy-bust operation.

In any event, jurisprudence is settled that “any irregularity attending the arrest of an accused should be timely raised in a motion to quash the Information at any time before arraignment, failing [in] which, he is deemed to have waived”¹⁷ his right to question the regularity of his arrest. As the records show, except during the inquest proceedings before the prosecutor’s office, appellant never objected to the regularity of his arrest before his arraignment. In fact, he even actively participated in the trial of the case. With these lapses, he is estopped from raising any question regarding the same.¹⁸

Also not persuasive is appellant’s argument that it is inconceivable that he would openly sell an illegal drug in a place where there were many people. The Court has already stated that drug pushers now sell their prohibited articles to any prospective customer, be he a stranger or not, in private as well as in public places, and even in daytime.¹⁹

¹⁵ TSN, January 10, 2008, pp. 10-11.

¹⁶ *People v. Andres*, G.R. No. 193184, February 7, 2011, 641 SCRA 602, 608.

¹⁷ *People v. Pepino*, G.R. No. 183479, June 29, 2010, 622 SCRA 293, 303.

¹⁸ *Id.*

¹⁹ *People v. Clarite*, G.R. No. 187157, February 15, 2012, 666 SCRA 306, 318, citing *Ching v. People*, 590 Phil. 724, 748 (2008).

The identity and evidentiary value of the seized item have been preserved.

Appellant assails the proof of the *corpus delicti* by pointing out the arresting officers' non compliance with the procedure on the proper custody and disposition of the seized item under Section 21 of RA 9165 and its Implementing Rules and Regulations, particularly with respect to the inventory and taking of photograph of the seized item. He contends that while PO1 Gunda testified that an inventory of the seized item was made and a photograph thereof was taken, such inventory and photograph were not offered as evidence.

Appellant's contention is untenable. "This Court has consistently ruled that non-compliance with the requirements of Section 21 of [RA] 9165 will not necessarily render the [item] seized or confiscated in a buy-bust operation inadmissible. Strict compliance with the letter of Section 21 is not required if there is a clear showing that the integrity and evidentiary value of the seized [item] have been preserved, *i.e.*, the [item] being offered in court as [exhibit is], without a specter of doubt, the very same [one] recovered in the buy-bust operation."²⁰ Thus, the primordial concern is the preservation of the integrity and evidentiary value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.²¹

Here, the records reveal that after the consummation of the sale and the consequent arrest of appellant, the plastic sachet sold by appellant was marked with "Exh-A RCD/DG/10/13/06"²² by PO1 Gunda at the place where it was confiscated. Thereafter, appellant and the seized drug were brought to the police station. And as stipulated by the parties, a request for laboratory examination of a plastic sachet containing white crystalline substance with marking "Exh-A RCD/DG/10/13/06" was prepared; the said request and specimen were delivered by PO2 Familiara and PO1 Menese to EPD Crime Laboratory and received by PSI Cejes; and, a qualitative examination of the specimen by PSI Cejes revealed that the same is positive for metamphetamine hydrochloride or *shabu*, a dangerous drug. During trial, the marked plastic sachet was presented and identified by PO1 Gunda as the same item sold to him by appellant.

From this sequence of events, the prosecution was able to show an unbroken link in the chain of custody of the subject item which is the proof of the *corpus delicti*. Its integrity and evidentiary value were shown not to have been compromised notwithstanding the fact that the inventory and photograph thereof which PO1 Gunda claimed to have been made were not offered in evidence. Besides, "[t]he integrity of the evidence is presumed to have been preserved unless

²⁰ *People v. Roa*, G.R. No. 186134, March 6, 2010, 620 SCRA 359, 371-372.

²¹ *People v. Brainer*, G.R. No. 188571, October 12, 2012, 683 SCRA 505, 525.

²² The said marking represents the initials of appellant and PO1 Gunda and the date of the operation.

there is a showing of bad faith, ill will or proof that the evidence has been tampered with.”²³ In this case, the defense failed to prove ill motive on the part of the apprehending officers that would have impelled them to fabricate a serious crime against appellant. Also, the alleged inconsistency in the testimonies of PO1 Gunda and PO2 Familiarara as to who was in possession of the item from the police station to the EPD crime laboratory did not create any doubt that what was submitted for laboratory examination and later presented in court as evidence was the same drug actually sold by the appellant.

Appellant’s defenses of denial and frame-up/extortion must fail.

Appellant’s defenses of denial and frame-up/extortion must fail in light of the positive testimony of PO1 Gunda, the poseur-buyer, that appellant sold to him the illegal drug. Moreover, it was not shown that appellant filed any criminal or administrative charges against the apprehending officers, thus clearly belying his claim of frame-up/extortion against them.

All told, appellant’s violation of Section 5, Article II of RA 9165 was duly established beyond reasonable doubt by the prosecution. Hence, the Court affirms his conviction.

Penalty

Under RA 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. Here, the penalty of life imprisonment and a fine of ₱500,000.00 imposed upon appellant by the RTC and affirmed by the CA are in order. It must be added, however, that appellant shall not be eligible for parole.²⁴

WHEREFORE, the January 27, 2011 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04062, which affirmed the July 1, 2009 Decision of the Regional Trial Court of Pasig City, Branch 164 in Criminal Case No. 15143-D finding appellant Rafael Cunanan y David guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 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 appellant shall not be eligible for parole.

²³ *People v. De Mesa*, G.R. No. 188570, July 6, 2010, 624 SCRA 248, 257.

²⁴ See Section 2 of the Indeterminate Sentence Law.

SO ORDERED.

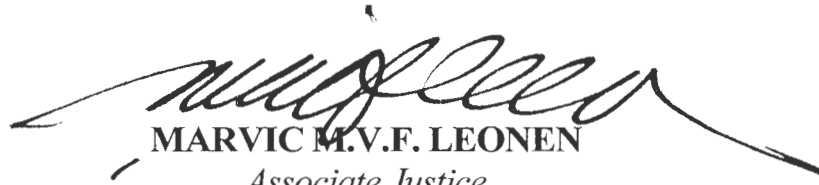

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

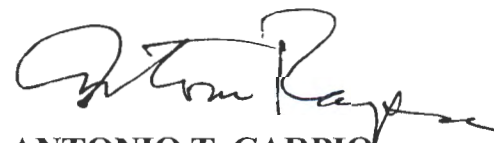

ARTURO D. BRION
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


ANTONIO T. CARPIO
Acting Chief Justice