



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

G.R. No. 215943

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA,* and
LEONEN, JJ.

- versus -

RANDY CLOMA y CABANA,
Appellant.

Promulgated:
16 NOV 2016

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RESOLUTION

CARPIO, J.:

The Case

Before the Court is an appeal assailing the Decision¹ dated 29 September 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00629-MIN. The CA affirmed the Judgment² dated 19 November 2007 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, in Criminal Case No. 2005-598, convicting appellant Randy Cloma y Cabana (Cloma) of violating Section 5, Article II of Republic Act No. 9165 (RA 9165),³ otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

* On official leave.

¹ *Rollo*, pp. 3-14. Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting concurring.

² *CA rollo*, pp. 119-124. Penned by Judge Noli T. Catli.

³ 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.

The Facts

On 6 September 2005, an Information for violation of Section 5, Article II of RA 9165 was filed with the RTC against Cloma. The Information states:

That on or about August 25, 2005, at about 3:30 in the afternoon, at Isla Delta, Consolacion, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, willfully, unlawfully, and feloniously sell, deliver and give away one (1) small heat-sealed transparent plastic sachet of methamphetamine hydrochloride locally known as *shabu* weighing 0.10 gram, a dangerous drug, in consideration of ₱500.00 bearing Serial No. PB789713.

Contrary to and in violation of Section 5, Article 2 of RA 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.⁴

Upon arraignment, Cloma entered a plea of not guilty. Trial ensued.

The prosecution presented SPO1 Efren T. Ellevera (SPO1 Ellevera) and PO2 Michael R. Daleon (PO2 Daleon), members of the buy-bust team. According to them, on 25 August 2005, at 3:30 p.m., elements of the City Mobile Group (“CMG”) of the Cagayan de Oro City Police Office proceeded to Isla Delta, Consolacion, Cagayan de Oro City to conduct an entrapment operation against Cloma. SPO1 Ellevera was assigned as poseur-buyer. During the operation, SPO1 Ellevera approached Cloma and negotiated for the purchase of *shabu* worth five hundred pesos (₱500). SPO1 Ellevera then handed Cloma the marked money with serial number PB789713 and the latter handed a transparent sachet to him. The sachet contained a white crystalline substance.

After the sale, SPO1 Ellevera introduced himself as a police officer but Cloma resisted arrest and jumped into a nearby river. As Cloma swam towards the Kauswagan riverbank, he was intercepted by PO2 Daleon and PO2 Andres C. Alvarez (PO2 Alvarez). After Cloma was arrested and informed of his rights, he was brought to the Office of the CMG at Maharlika Headquarters, Carmen, Cagayan de Oro City for booking and identification. SPO1 Ellevera marked the sachet with the letter “A” in Isla Delta. He surrendered the sachet to PO2 Daleon in Maharlika Headquarters where he affixed his signature on the sachet.

The sachet was brought to the Philippine National Police (PNP) Crime Laboratory for testing. The substance tested positive for Methamphetamine Hydrochloride (*shabu*), a dangerous drug. The urine sample taken from Cloma also tested positive for *shabu*.⁵ The Chemistry Report showing the positive result of the substance and urine was presented

⁴ *Rollo*, p. 4.

⁵ *Id.* at 5.



during trial.⁶ In addition, an affidavit of the Forensic Chemical Officer confirming the findings in the Chemistry Report was shown.⁷

The defense denied all the allegations of the prosecution and presented Cloma as sole witness. Cloma testified that there was no buy-bust operation. He claimed he never sold any *shabu* and the buy-bust team violated his rights under Republic Act No. 7438.⁸ Consequently, all evidence seized from him were inadmissible for being the fruit of the poisonous tree. Lastly, he claimed that the procedure for the handling and custody of evidence prescribed in RA 9165 was not followed.

In its Judgment dated 19 November 2007, the RTC found Cloma guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. The RTC gave credence to the testimonies of the arresting officer and poseur-buyer. The RTC ruled that Cloma was arrested pursuant to an entrapment operation. Hence, there was probable cause to conduct a warrantless arrest and the evidence seized from him was admissible.

The RTC also found that, in the absence of ill motive, the positive testimony of the arresting officer is stronger than the negative self-serving denial by Cloma.

The Judgment listed the elements of the offense that were present, to wit:

The following elements of the crime of an illegal sale of dangerous drugs were all proven:

- a) The sachet of *shabu* (Exhibit "B") is a dangerous drug as shown by (Exhibit "C") Chemistry Report No. [D-]259-2005 made and prepared by Police [Senior] Inspector April G. Carbajal-Madroño, Forensic Chemist of the crime laboratory;
- b) That the seller Randy Cloma y Cabana [had] no legal authority to make the sale;
- c) That Randy Cloma y Cabana had sold and delivered a dangerous drug to a police poseur-buyer;
- d) That at the time he had sold and delivered the sachet of *shabu* (Exhibit "B") he knew that what he sold and delivered was a dangerous drug;
- e) The seller and the buyer were both identified;
- f) The *corpus delicti* (Exhibit "B") was presented in Court.⁹

⁶ Id. at 7.

⁷ Id.

⁸ An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof.

⁹ CA rollo, pp. 121-122.

The dispositive portion of the Judgment of the RTC reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered finding accused Randy Cloma y Cabana guilty beyond reasonable doubt of the crime charged in the information and hereby sentences accused to Life Imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) pesos.

The accused Randy Cloma y Cabana who has undergone preventive imprisonment shall be credited in the service of his sentence consisting of deprivation of liberty, with the full time during which he has undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except those disqualified by law.

Exhibit "B" sachet of *shabu* bought from accused is ordered confiscated and forfeited in favor of the government to be disposed in accordance with law.

SO ORDERED.¹⁰

On appeal, Cloma argued that the RTC erred in convicting him despite the absence of the Transcript of Stenographic Notes of his testimony and the testimony of the prosecution witness Police Senior Inspector April G. Carbajal-Madroño. Moreover, he contended that the prosecution failed to prove his guilt beyond reasonable doubt.

The Ruling of the Court of Appeals

In its Decision dated 29 September 2014, the CA affirmed the RTC's Judgment finding Cloma guilty beyond reasonable doubt of the offense charged. The CA ruled that the essence of any criminal proceeding is that the accused was afforded the opportunity to be heard, to present his side, and to defend his innocence. In the absence of any fact or circumstance that would show that his rights were disregarded, or that the outlined criminal procedure was not followed, the findings of the lower court are usually accorded respect, even to the point of finality.¹¹ The CA found that there was no fact or circumstance present to overturn the findings of the RTC.

The dispositive portion of the Decision of the CA states:

WHEREFORE, premises considered, the appeal is DENIED. The Decision of Branch 25 of the Regional Trial Court, Cagayan de Oro City, in Criminal Case No. 2005-598 is hereby AFFIRMED *in toto*.

SO ORDERED.¹²

Hence, this appeal.



¹⁰ Id. at 124.

¹¹ *Rollo*, p. 9.

¹² Id. at 14.

The Issue

The principal issue to be resolved in this appeal is whether or not Cloma is guilty beyond reasonable doubt of the offense charged.

The Ruling of the Court

After a careful review of the records, the Court finds this appeal to be without merit. Both the RTC and the CA correctly found Cloma guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165.

For the successful prosecution of the offense of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it.¹³ The prosecution must establish proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*.¹⁴

All the required elements are present in this case. SPO1 Ellevera testified that he was the poseur-buyer in the buy-bust operation. He identified Cloma as the seller of the *shabu*. SPO1 Ellevera confirmed the exchange of the five hundred peso (₱500) marked money and *shabu*. Hence, the illegal sale of drugs was consummated. *In People v. Gaspar*,¹⁵ we held that the delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.¹⁶

For his defense, Cloma denied the allegations of the prosecution. We find Cloma's defense self-serving. The defense of denial has been viewed with disfavor for it can be easily concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act.¹⁷ As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.¹⁸

Next, Cloma contends that the procedure for the handling and custody of evidence was not followed. Section 21(a) of the Implementing Rules and Regulations of RA 9165 states:

¹³ *People v. De Guzman*, 564 Phil. 282 (2007), citing *People v. Nicolas*, 544 Phil. 123 (2007).

¹⁴ *Id.*

¹⁵ 669 Phil. 122 (2011).

¹⁶ *Id.* at 135, citing *People v. Encila*, 598 Phil. 165 (2009).

¹⁷ *People v. De Guzman*, supra note 13.

¹⁸ *Zalameda v. People*, 614 Phil. 710 (2009).

(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 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 said items.** (Emphasis supplied)

To establish guilt of the accused beyond reasonable doubt in cases involving dangerous drugs, it is important that the substance illegally possessed in the first place be the same substance offered in court as exhibit.¹⁹ *People v. Kamad*²⁰ explained the four links of custody that must be proven by the prosecution:

- [1] The seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;
- [2] The turnover of the illegal drug seized by the apprehending officer to the investigating officer;
- [3] the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and
- [4] the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²¹

In this case, the proper chain of custody was established. Firstly, SPO1 Ellevera, the poseur-buyer, marked the sachet after seizure from Cloma. We quote his testimony from the records:

Q: Now, Officer, at Maharlika, you said you made the marking on the sachet. Is [this] correct?

A: I did not make the marking at x x x Maharlika but right at the crime scene.

Q: Which has a masking tape?

A: Yes, Ma'am.

Q: So you brought a masking tape with you?

A: Yes, Ma'am.

Q: Including a pentel pen and scissor[s]?

A: Yes, Ma'am.²²

¹⁹ *People v. Climaco*, 687 Phil. 593 (2012), citing *Mallillin v. People*, 576 Phil. 576 (2008).

²⁰ 624 Phil. 289 (2010).

²¹ Id. at 304.

²² TSN, 20 February 2006, pp. 14-15.

Secondly, SPO1 Ellevera turned the sachet over to PO2 Daleon and the members of the buy-bust team. The members then made a request to the PNP Crime Laboratory for the drug dependency test of Cloma and examination of the sachet. We quote PO2 Daleon's testimony:

Q: You said you brought the accused to the PNP Crime Lab which I am showing to you this request for the laboratory examination, please tell us whether this is [the] one you submitted to the PNP Crime Laboratory?

A: Yes, sir, this is the one.

x x x x

Q: And it is mentioned here that you submitted a triangular sachet which I am going to show to you, is this the one you submitted to the PNP Crime Lab?

A: Yes, sir, this is the one.

Q: From whom did you get this sachet?

A: From Randy Cloma, sir.

Q: Who got this sachet?

A: SPO1 Ellevera.

Q: The poseur-buyer?

A: Yes, sir.²³

On cross examination, PO2 Daleon confirmed that he, together with PO1 Tabalon and PO2 Alvarez, personally handled and turned over the sachet to the PNP Crime Laboratory:

Q: But it was not you who brought the request to the PNP Crime Lab?

A: It was me, Tabalon and Andres Alvarez who brought the request to the PNP Crime Lab.

Q: When for the first time did you see this particular sachet?

A: I saw it for the first time after Ellevera gave it to me.

Q: At your office?

A: Yes, Ma'am.

Q: And after he gave it to you, you gave it to somebody else?

A: No, Ma'am. We brought it to the PNP Crime Lab but it was Tabalon who gave [it] to the [person-in-charge].²⁴

Thirdly, the Forensic Chemical Officer, Police Senior Inspector April G. Carbajal-Madroño, confirmed that the same marked sachet she received from the buy-bust team tested positive for Methamphetamine Hydrochloride. We quote the records:

Q: What was your finding on the laboratory examination of the specimen requested?

²³ TSN, 31 July 2006, pp. 6-7.

²⁴ TSN, 31 July 2006, p. 12.

A: Qualitative examination conducted on the specimen (Exhibit "B") gave positive result to the test for the presence of Methamphetamine Hydrochloride, a dangerous drug and the finding is contained in Chemistry Report No. D-259-200[5] (Exhibit "C").²⁵

Fourthly, the marked sachet was identified by SPO1 Ellevera in open court:

Q: I am showing to you this laboratory request marked as Exhibit "A" please tell us whether this is the one you prepared?

A: This is the same request that I prepared signed by PCI Tumanda in my presence.

Q: It mentioned here a sachet for laboratory examination (Exhibit "B"), is this the one that you bought from the accused and presented to the PNP Crime Lab?

A: **Yes, sir, this is the same sachet.**

Q: Why [do] you say that this is the one?

A: **Because it bears my marking and signature.**

COURT:

Q: What is the marking?

A: Capital letter "A" with my signature, Your Honor.²⁶ (Emphasis supplied)

Considering the prosecution's evidence on the links of custody, we find that the chain of custody was observed. The integrity and evidentiary value of the seized drugs were preserved beyond reasonable doubt.

Finally, it is a fundamental rule that findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded respect, when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings.²⁷ This Court sees no reason to disturb the findings of the RTC and the CA. Cloma was correctly found guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.

WHEREFORE, we **DISMISS** the appeal. We **AFFIRM** the Decision dated 29 September 2014 of the Court of Appeals in CA-G.R. CR-HC No. 00629-MIN.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

²⁵ Records, p. 98.

²⁶ TSN, 20 February 2006, pp. 7-8.

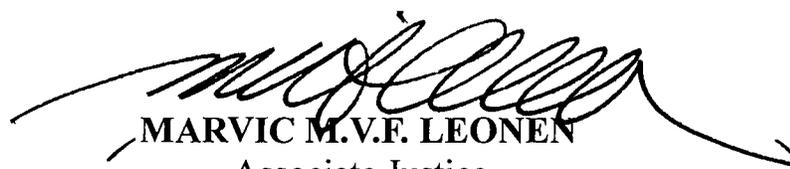
²⁷ *People v. De Guzman*, supra note 13.

WE CONCUR:


ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice

(on official leave)
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