



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 04 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 214440

Present:

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

-versus-

ALEX MENDEZ RAFOLS,
Accused-Appellant.

Promulgated:

June 15, 2016

x-----*Wilfredo V. Lapitan*-----x

DECISION

PEREZ, J.:

For review is the Decision¹ of the Court of Appeals in CA-G.R. CR-HC No. 01533 dated 27 June 2014, which affirmed the Judgment² dated 11 July 2012 of the Regional Trial Court (RTC) of Cebu City, Branch 7 in Criminal Case Nos. CBU-81836 and CBU-81837. The RTC convicted Alex Mendez Rafols (appellant) of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with violation of Sections 5 and 11 of Article II of R.A. No. 9165, to wit:

* Additional Member per Raffle dated 23 May 2016.
¹ Rollo, pp. 4-15; Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Gabriel T. Ingles and Marie Christine Azcarraga-Jacob concurring.
² Records (Crim. Case No. CBU-81837), pp. 107-113; Penned by Presiding Judge Enriqueta Loquillano-Belarmino.

CRIMINAL CASE NO. CBU-81836

That on or about the 5th day of December 2007, at about 9:15 in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) small heat sealed plastic pack of white crystalline substance weighing 0.04 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.³

CRIMINAL CASE NO. CBU-81837

That on or about the 5th day of December 2007, at about 9:15 in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control six (6) heat sealed transparent plastic sachet[s] of white crystalline substance weighing 0.24 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug, without authority of law.⁴

Appellant pleaded not guilty to the offenses charged. Joint trial ensued.

The prosecution built its case on the theory that the drug operatives apprehended appellant during a buy-bust operation. During the buy-bust operation, appellant sold one (1) plastic sachet of *shabu* to the *poseur buyer* while a search on appellant's person yielded six (6) plastic sachets of *shabu* which the police seized.

Upon receipt of information that appellant is engaged in illegal drug activities in Sito Riverside, *Barangay Day-as*, Cebu City, a buy-bust team was formed headed by Director Levi S. Ortiz (Dir. Ortiz) of the Philippine Drug Enforcement Agency (PDEA) to apprehend appellant on 5 December 2007, pursuant to an Authority to Operate.⁵ IA3 George Cansancio was designated as *poseur buyer*. The buy- bust money was marked with "LSO," the initials of Dir. Ortiz.⁶

The informant and the *poseur buyer* proceeded to the location while the rest of the buy-bust team strategically positioned themselves at the target area. Seeing the *poseur buyer* with the informant, the appellant asked the

³ Records (Crim. Case No. CBU-81836), p. 1.

⁴ Records (Crim. Case No. CBU-81837), p. 1.

⁵ Id. at 6.

⁶ TSN, 12 January 2012, pp. 4-12.

former if he wanted to buy *shabu*. The *poseur buyer* replied in the affirmative, stated the quantity when asked how much he wanted to purchase, and immediately gave appellant the buy-bust money. Appellant took out from his pocket a silver container out of which he got the plastic sachet containing the white crystalline substance believed to be *shabu*. After the exchange, the *poseur buyer* executed the pre-arranged signal to another police officer, FO3 Priscillano C. Gingoyon (FO3 Gingoyon), who assisted in the arrest of appellant. Appellant was apprised of his constitutional rights and the violation he had committed. A body search on appellant's person yielded six (6) plastic sachets of white crystalline substance and the buy-bust money. The buy-bust team took appellant and the confiscated items to the PDEA office for investigation. After marking, inventory and photographing of the same were done in the presence of appellant, *barangay tanods* and a media representative, the confiscated items were taken to the Philippine National Police (PNP) Crime Laboratory for analysis and examination.⁷ Rendielyn Sahagun (Sahagun), Forensic Chemist of the PNP Crime Laboratory, conducted an examination on the specimens submitted and found them to be positive for the presence of *shabu*.⁸

Appellant testified on his behalf and anchored his defense on denial and frame-up. He denied selling *shabu* and claimed that on the date and time of the incident, he was at his nephew's eatery to ask for money to purchase his mother's medicine. En route to buying medicine, appellant was blocked by two (2) men in civilian clothes. The men grabbed hold of him and brought him to the police station for his supposed participation in a fight between neighbors. There, the police officers allegedly showed him one (1) plastic sachet of *shabu* and a One Hundred Peso (₱100.00) bill as buy-bust money. Appellant admitted on the witness stand to having been previously arrested for possession of illegal drugs but claimed that the evidence against him had been planted. And although in the instant case the evidence was allegedly likewise planted, appellant by his own volition opted not to file a case against the police officers who arrested him.⁹

On 11 July 2012, the RTC convicted appellant of all the charges. The RTC relied on the presumption of regularity in the buy-bust operation and the lack of improper motive on the part of the police officers. The RTC rejected the proffered defenses and found that the prosecution sufficiently established all the elements of the crimes charged and the identity of appellant as the perpetrator. The RTC disposed, thus:

⁷ TSN, 30 July 2009, pp. 4-19; TSN, 3 August 2011, p. 11.

⁸ TSN, 16 April 2009, p. 7; Records (Crim. Case No. CBU-81837), p. 89.

⁹ TSN, 7 June 2012, pp. 5-26.



WHEREFORE, in view of the foregoing, accused Alex Mendez Rafols is hereby convicted beyond reasonable doubt of the crimes charged and is sentenced to suffer the following [penalties]:

1. life imprisonment and a fine of P500,000.00 for violation of Section 5, Article II of RA 9165;
2. twelve (12) years and one (1) day to fifteen (15) years and a fine [of] P300,000.00 for Violation of Section 11, Article II of RA 9165;

The total seven (7) packs of shabu are forfeited in favor of the government.¹⁰

On 27 June 2014, the Court of Appeals rendered the assailed judgment affirming the RTC's decision. The Court of Appeals found appellant guilty of the crimes charged, or violation of Sections 5 and 11, Article II of R.A. No. 9165, disposing as follows:

WHEREFORE, the appeal is **DENIED**. The Judgment of the Regional Trial Court, Branch 7, Cebu City dated July 11, 2012 in Criminal Cases (sic) Nos. CBU-81836 and CBU-81837 finding accused-appellant Alex Mendez Rafols guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of Republic Act (RA) 9165 is hereby **AFFIRMED**.¹¹

On appeal before this Court, we find no reversible error committed by the RTC and the Court of Appeals in convicting appellant of the crimes charged.

The prosecution was able to establish with moral certainty the following elements required for all prosecutions for illegal sale of dangerous drugs: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.¹² Appellant was apprehended, indicted and convicted by way of a buy-bust operation, a form of entrapment to capture lawbreakers in the execution of their criminal plan.¹³ The commission of the offense of illegal sale of dangerous drugs merely requires the consummation of the selling transaction which happens the moment the buyer receives the drug from the seller. The crime is already consummated once the police officer has gone through the operation as a buyer whose offer was accepted by the accused, followed by the delivery of the dangerous drugs to the former.¹⁴

¹⁰ Records (Crim. Case No. CBU-81837), pp. 112-113.

¹¹ *Rollo*, p. 14.

¹² *People v. Almeida*, 463 Phil. 637, 647 (2003).

¹³ *Cruz v. People*, 597 Phil. 722, 728 (2009).

¹⁴ *People v. Unisa*, 674 Phil. 89, 108 (2011).

Appellant was caught delivering one heat sealed plastic sachet containing white crystalline substance to the *poseur buyer* in exchange for ₱100.00. The *poseur buyer*, IA3 Cansancio, positively identified appellant in open court to be the person who sold to him the item which upon examination was confirmed to be *shabu*. Upon presentation thereof in open court, the *poseur buyer* duly identified it to be the same object sold to him by appellant.¹⁵

For a successful prosecution for illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug.¹⁶ Obtained through a valid search the drug operatives conducted pursuant to Section 13, Rule 126 of the Rules of Court,¹⁷ the sachets recovered from appellant's person all tested positive for Methamphetamine Hydrochloride or *shabu*. Mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of any satisfactory explanation of such possession.¹⁸ The burden to explain the absence of *animus possidendi* rests upon the accused, and in the case at bar, this the appellant failed to do.¹⁹

Prosecutions involving illegal drugs depend largely on the credibility of the police officers or drug operatives who conducted the buy-bust operation. Thus, there is general deference to the assessment on this point by the trial court as it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand. An independent examination of the records shows no compelling reason to depart from this rule.²⁰

Records reveal the lack of any ill-motive on the part of the buy-bust team to falsely testify against appellant. The RTC and the appellate court accordingly gave proper credence to the testimony of the drug operatives for the prosecution.²¹ The testimonies of the witnesses were consistent, positive and straightforward. Further, appellant's failure to file cases against the buy-

¹⁵ TSN, 3 August 2011, pp. 3-19.

¹⁶ *People v. Concepcion*, 414 Phil. 247, 255 (2001).

¹⁷ Section 13. *Search incident to a lawful arrest*. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

¹⁸ *Asiatico v. People*, 673 Phil. 74, 81 (2011).

¹⁹ *Abuan v. People*, 536 Phil. 672, 695 (2006).

²⁰ *People v. Alivio*, 664 Phil. 565, 574 (2011).

²¹ *People v. Buenaventura*, 677 Phil. 230, 240 (2011).

bust team for planting evidence reinforces the prosecution's theory that appellant was arrested for being caught *in flagrante delicto* selling *shabu*.²²

Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence simply fails. The defenses of denial and frame-up have been viewed with disfavor due to the ease of their concoction and the fact that they have become common and standard defenses in prosecutions for illegal sale and possession of dangerous drugs.²³ The inconsistencies, if any, in their testimonies, as alleged by appellant, are but a few, involve minor details and do not touch upon the material points and thus, cannot overturn a conviction established by competent and credible evidence.²⁴ The supposed inconsistency, if at all there is one, on whether a prior surveillance had been made does not affect the legality of the buy-bust operation as it has been ruled that a prior surveillance is not necessary especially when the police operatives, as in this case, are accompanied by the informant during the entrapment.²⁵

On the supposed failure to comply with the procedures prescribed by Section 21 of R.A. No. 9165, jurisprudence has it that non-compliance with these procedures does not render void the seizures and custody of drugs in a buy-bust operation.²⁶ It bears underscoring that law and its implementing rules in fact are silent on the matter of the marking of the seized items. Consistency with the "chain of custody" rule however requires that the marking should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.²⁷ These requirements were complied with the marking of the seized items in appellant's presence at the PDEA office. Dir. Ortiz explained that the marking had to be made there to ensure his men's safety as there were only six (6) of them who effected the arrest in a slum area.²⁸ Marking upon immediate confiscation has been interpreted to include marking at the nearest police station, or herein, the office of the apprehending team.²⁹ In any event, what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused.³⁰ The chain of custody requirement ensures the preservation of the

²² *People v. Alivio*, supra note 20 at 575.

²³ *People v. Mantalaba*, 669 Phil. 461, 475 (2011).

²⁴ *People v. Cruz*, 623 Phil. 261, 276 (2009).

²⁵ *People v. Bartolome*, 703 Phil. 148, 164 (2013).

²⁶ See *People v. Daria*, 615 Phil. 744, 758 (2009).

²⁷ *People v. Beran*, 724 Phil. 788, 819-820 (2014).

²⁸ TSN, 12 January 2012, p. 21.

²⁹ See *People v. Somoza*, 714 Phil. 368, 388 (2013).

³⁰ *People v. Amansec*, 678 Phil. 831, 856 (2011) citing *People v. Campomanes*, 641 Phil. 610, 622-623 (2010).

integrity and evidentiary value of the seized items in order to remove unnecessary doubts concerning the identity of the evidence.³¹ The prosecution was able to prove an unbroken chain of custody of the illegal drugs from their seizure, marking, photographing, inventory to their submission to the PNP Laboratory for analysis, to the identification of the same during the trial of the case.³² As long as the chain of custody is unbroken, the guilt of the appellant will not be affected.³³

R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 prescribes life imprisonment to death and a fine ranging from ₱5,000,000.00 to ₱10,000,000.00 as penalties in violation of Section 5, Article II thereof. The passage of R.A. No. 9346³⁴ proscribes the imposition of the death penalty, thus the appellate court correctly affirmed the penalty of life imprisonment and a fine of ₱500,000.00 prescribed by the RTC. Under Section 11, Article II of R.A. No. 9165, illegal possession of less than five (5) grams of *shabu*, is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00. Applying the *Indeterminate Sentence Law*, the minimum period of the imposable penalty shall not fall below the minimum period set by law and the maximum period shall not exceed the maximum period allowed under the law.³⁵ The Court of Appeals likewise correctly affirmed the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum, together with the fine of ₱300,000.00 imposed by the RTC.

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The Decision dated 27 June 2014 of the Court of Appeals in CA-G.R. CR-HC No. 01533 affirming the conviction of Alex Mendez Rafols by the Regional Trial Court, Branch 7, of Cebu City in Criminal Case Nos. CBU-81836 and CBU-81837 in violation of Sections 5 and 11, Article II of Republic Act No. 9165, sentencing him to suffer respectively, the penalty of life imprisonment and a fine of ₱500,000.00, and the indeterminate sentence of twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum and a fine of ₱300,000.00, is hereby **AFFIRMED**.

SO ORDERED.

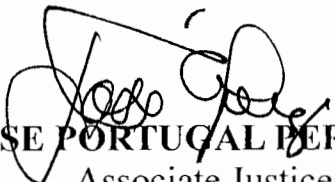
³¹ *People v. Dela Rosa*, 655 Phil. 630, 650 (2011).

³² TSN, 12 January 2012, pp. 10-17, 22.

³³ *People v. Manlangit*, 654 Phil. 427, 442 (2011).


³⁴ *People v. Concepcion*, 578 Phil. 957, 979-980 (2008).

³⁵ *Sy v. People*, 671 Phil. 164, 182 (2011).

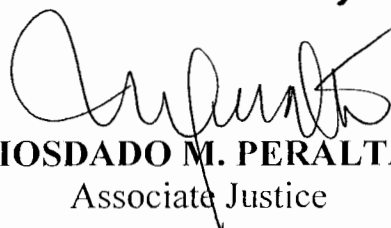


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



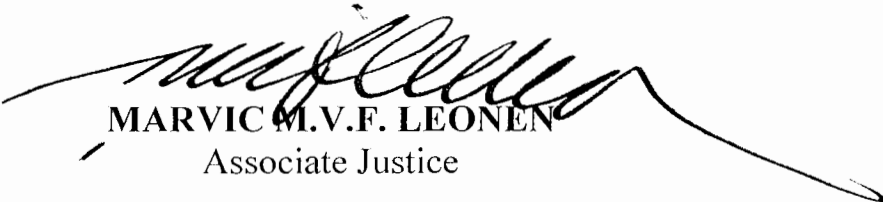
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



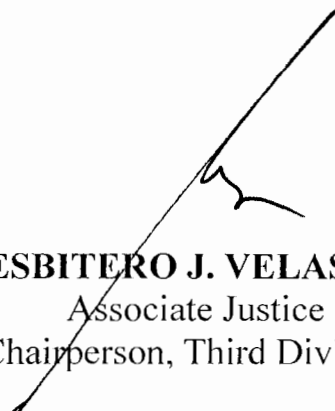
BIENVENIDO L. REYES
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

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

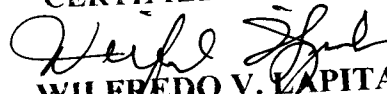
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 04 2016