

SECOND DIVISION

[G.R. No. 179717, February 05, 2010]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NIEVA ALBERTO Y DE NIEVA, APPELLANT.

DECISION

DEL CASTILLO, J.:

In a prosecution for violation of the Dangerous Drugs Law, the pivotal issue usually boils down to the question of credibility of witness. The testimonies of the police officers who apprehended the accused in a buy-bust operation are usually accorded credence because of the presumption of regularity in the performance of their duty, which presumption may be overturned only if there is clear and convincing evidence to the contrary or that they were inspired by improper motive.^[1]

Moreover, non-compliance by the apprehending/buy-bust team with Section 21 of the Dangerous Drugs Law is not fatal as long as there is justifiable ground therefor and the integrity and evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team.^[2]

The Charge

The present appeal stems from an Information filed before the Regional Trial Court of Makati, which was subsequently docketed as Criminal Case No. 03-470 and raffled to Branch 135 of said court. The Information charging appellant Nieva Alberto y De Nieva with violation of Section 5, Article II of Republic Act (RA) No. 9165 reads:

That on or about the 27th day of January 2003, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously [sic] sell, deliver and distribute Methylamphetamine Hydrochloride, a dangerous drug, weighing zero point twenty-five (0.25) gram, in consideration of P500.00.

CONTRARY TO LAW.^[3]

On March 5, 2003, the appellant, assisted by counsel, pleaded not guilty to the offense charged. Pre-trial conference was then conducted and, upon its termination, trial ensued. The prosecution and the defense presented different versions of the incident.

The Version of the Prosecution

On January 23, 2003, an informant went to the Drug Enforcement Unit (DEU) of the Makati Police Station to inform PO1 Alex Inopia (PO1 Inopia) that appellant Nieva Alberto y De Nieva was selling *shabu*. An entrapment team was thus immediately formed consisting of SPO4 Arsenio Mangulabnan, PO1 Jaime Laura, PO1 Inopia and PO1 Randy Santos (PO1 Santos). PO1 Inopia was designated as poseur-buyer and was provided with a P500.00 bill

marked money.

The informant contacted the appellant through a cellular phone and they agreed to meet at J.P. Rizal Extension, Comembo, Makati City, to consummate the transaction. Whereupon, the informant and the police team proceeded to the designated area.

Upon their arrival thereat, the informant approached the appellant and introduced the poseur-buyer, PO1 Inopia. The appellant asked PO1 Inopia how much *shabu* he needed and the latter handed over the P500.00 buy-bust money. The appellant then gave a small plastic sachet containing a white crystalline substance. Thereafter, PO1 Inopia lighted his cigarette, which was the pre-arranged signal for the consummation of the illegal sale. PO1 Santos responded and together with PO1 Inopia arrested the appellant and retrieved from her the buy-bust money.

The sachet containing the white crystalline substance was marked with the initials "NDA"^[4] and sent to the crime laboratory for examination. The examination showed that the contents of the plastic sachet weighed 0.25 gram and are positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.

The Version of the Defense

The disparate version of the incident by the appellant consisted of denial and frame-up. According to the appellant, she was engaged in the buy and sell of used cellular phones. A certain Angie Angeles (Angeles) assisted her in searching for prospective sellers.

On January 23, 2003, Angeles informed her that somebody was looking for a buyer of a cellphone for P1,500.00. The appellant went to the house of Angeles in Comembo, Makati to meet the seller, but the latter was not there. The appellant wanted to leave but Angeles prevailed upon her to stay, believing that the seller may still arrive. When she could no longer wait and was about to leave, several persons barged into the house and announced that they were conducting a raid. They poked a gun at her, handcuffed her, searched her person, and confiscated her money which was intended as payment for the cellphone. At around seven o'clock in the evening, she was taken to the Criminal Investigation Division.

The appellant claimed that during her detention, a certain Wilmer Antonio demanded P50,000.00 from her so that she would not be charged with any offense. She alleged that she could not file a complaint against the people responsible for her apprehension since nobody could help her while she was already detained.

The Decision of the Regional Trial Court

On November 28, 2003, the trial court rendered its Decision,^[5] the dispositive portion of which reads as follows:

WHEREFORE, it appearing that the guilt of accused NIEVA ALBERTO y DE NIEVA was proven beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165, as principal, with no mitigating or aggravating circumstances, accused is hereby sentenced to suffer life imprisonment, to pay a fine of P500,000.00, and to pay costs.

Let the zero point twenty-five (0.25) gram of Methylamphetamine Hydrochloride be turned over to the PDEA for proper disposition.

SO ORDERED.^[6]

The trial court found that all the elements for the illegal sale of *shabu* were satisfactorily established by the prosecution. The identity of the buyer and the seller, the object, and the

consideration were proven. Likewise, the delivery of the thing sold and the payment therefor were established.

Thus, appellant filed an appeal raising the following assignment of errors:

I.

THE COURT A *QUO GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO INCREDIBLE TESTIMONY OF THE PROSECUTION'S SOLE WITNESS.*

II.

THE COURT A *QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.^[7]*

The Decision of the Court of Appeals

In its Decision^[8] promulgated on January 19, 2006, the appellate court affirmed the decision of the trial court. It held that the trial court did not err in convicting appellant for violation of Section 5, Article II of RA 9165.

Our Ruling

The appeal lacks merit.

In a successful prosecution for offenses involving the illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof.^[9] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.^[10]

In the present case, all the elements of the crime have been sufficiently established. Prosecution witness PO1 Inopia consistently testified that a buy-bust operation took place. As the poseur-buyer, he positively identified the appellant as the seller of a sealed sachet containing a white crystalline substance for a sum of P500.00. The sachet was confiscated and marked with initials "NDA" and taken to the crime laboratory for examination, where a chemical analysis on the contents thereof confirmed that the same are indeed methylamphetamine hydrochloride or "shabu". The sachet containing said dangerous drug was positively identified by PO1 Inopia during the trial as the very sachet with white crystalline substance sold and delivered to him by the appellant. Thus, appellant's defense of denial is unavailing. It has been consistently held that mere denial cannot prevail over the positive testimony of a prosecution witness. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters.^[11]

Likewise unavailing is the defense of the appellant that the police officers arrested her to extort P50,000.00 and that the case was filed after she refused to give said amount. This defense of frame-up is viewed with disfavor since, like alibi, it can easily be concocted and is a common ploy in most prosecutions for violations of the Dangerous Drugs Law.^[12] In fact, aside from the bare assertions of the appellant that she was a victim of frame-up and extortion, there is no clear and convincing evidence to substantiate such claim. On the other hand, she admits that

there was no existing rancor between her and the arresting officers,^[13] and that there is no reason why the buy-bust team would single her out for the sole purpose extorting money from her.

Appellant likewise assails the credibility of the lone prosecution witness. According to the appellant, considering the circumstances under which the buy-bust operation was conducted as narrated in open court by PO1 Inopia, it is difficult to believe that the buy-bust team seized only a single sachet of "shabu" from her. Likewise unbelievable, per appellant's contention, is the amount of P500.00 paid by PO1 Inopia for the alleged 0.25 gram of "shabu", which is grossly inadequate compared to its prevailing street value. Besides, PO1 Inopia's testimony is not worthy of credence for want of corroborative evidence.

We are not persuaded.

It is well-settled that the trial court's determination on the issue of credibility of witnesses and its consequent findings of facts must be given great weight and respect on appeal, unless certain facts or substance have been overlooked, which, if considered, might affect the result of the case. This is so because of the judicial experience that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.^[14]

In the case at bench, we have thoroughly reviewed the records and, like the appellate court, did not find any justification to disturb the findings of the trial court. Our re-examination of the testimony of PO1 Inopia follows the trial court's conclusion that his testimony was given in a straightforward and simple manner. Besides, appellant is questioning the testimony of PO1 Inopia only on matters pertaining to minor details of the incident that do not, in any way, affect her conviction. The inconsistencies ascribed to PO1 Inopia involve minor details, too trivial to adversely affect his credibility as prosecution witness,^[15] and do not negate his positive identification of the appellant as the perpetrator of the crime.^[16] On the other hand, the testimony of PO1 Inopia on the circumstances that occurred on the date of the entrapment operation against the appellant - from the moment he received a confidential tip from his informer until the time the buy-bust team apprehended the appellant - deserves to be given weight and significance as it emanated from the mouth of a policeman who enjoys the presumption of regularity in the performance of his duty. Police officers are presumed to have acted regularly in the performance of their official functions in the absence of clear and convincing proof to the contrary or proof that they were moved by ill will.^[17]

The argument of the appellant that the prosecution's account of the buy-bust operation is unworthy of belief since no corroborative testimony was presented, fails to impress. There is no law requiring that in drug cases the testimony of a single witness has to be corroborated to be believed. Corroborative evidence is vital only when there are reasons to suspect that the witness twisted the truth, or that his or her observation was inaccurate. Evidence is assessed in terms of quality, not quantity. It is to be weighed, not counted. Thus, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of a lone witness.^[18] Moreover, it is on record that the appellant no longer required the presentation of corroborative testimony. During the trial, the prosecution was ready to present another witness in the person of PO1 Santos. However, the parties agreed to dispense with his testimony since it would only be corroborative in nature.^[19]

The appellant further asserts that there is a serious doubt as to the veracity of the offense charged since the Information alleges that the offense was committed on January 27, 2003 while the prosecution witness categorically averred that they arrested her in a buy-bust operation conducted on January 23, 2003. It does not escape our attention, however, that this issue has made its debut only in the Court of Appeals. In this regard, the rule is that issues not raised in the lower courts cannot be raised for the first time on appeal without offending the

basic rules of fair play, justice and due process.

Lastly, the appellant maintains that serious doubt exists on whether the alleged "shabu" was actually seized from her due to the failure of the buy-bust team to observe the proper procedure in the seizure of the alleged *shabu* and the subsequent delay in transmitting the same for laboratory examination. The appellant argues that, under the law, the buy-bust team is mandated to physically inventory and photograph the seized drug in his presence, or in the presence of his representative or counsel, and representatives from the media and the Department of Justice.^[21] She further contends that it was also imperative for the prosecution to submit the alleged *shabu* to the Philippine Drug Enforcement Agency (PDEA) Forensic Laboratory for qualitative and quantitative examinations within 24 hours from its confiscation.^[22] However, the laboratory report shows that the said item was submitted for examination only five days after the alleged buy-bust operation.

The defense of the appellant of alleged non-compliance by the apprehending police officers with existing procedure is based on Section 21 of RA 9165. It reads:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instrumental 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:

- (1) The apprehending 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;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

x x x x

However, the prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated will not result to appellant's acquittal of the crime charged.^[23] Non-compliance with the above-provisions of RA 9165 is not fatal and will not render the arrest of an accused illegal or the items seized from her inadmissible.^[24] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the appellant.^[25]

Here, there is no doubt that the integrity and the evidentiary value of the drug confiscated from the appellant during the entrapment operation were properly preserved and safeguarded. The specimen was immediately and adequately marked. Thereafter, it was sent to the crime laboratory for the requisite chemistry report. In other words, the sachet of drug seized from the appellant and subsequently marked with initials "NDA" was the same specimen submitted to the crime laboratory for chemical analysis. It was not shown to be contaminated in any manner.

The white crystalline substance contained therein was later on determined to be positive for methylamphetamine hydrochloride, commonly known as "shabu", as shown in Chemistry Report No. D-109-03S dated January 28, 2003.^[26] At this point, it is worth noting that the testimony of the forensic chemist was dispensed with after both parties stipulated that the specimen submitted by the police officers was subjected to laboratory tests and the results are shown in said chemistry report.^[27]

Further, appellant did not assail the chain of custody or the issue of the disposition and preservation of subject drug before the trial court. Consequently, she cannot now be allowed to question its integrity and evidentiary value. Objection to the admissibility of evidence raised for the first time on appeal cannot be considered.^[28]

The Penalty

Having ruled that the guilt of the appellant of the crime charged has been established beyond reasonable doubt, a determination of the appropriate imposable penalty is now in order. Section 5, Article II of RA 9165 penalizes the sale of *shabu* as follows:

SEC. 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.^[29]

For selling 0.25 gram of methylamphetamine hydrochloride to poseur-buyer PO1 Inopia, we find that the trial court, as affirmed by the CA, correctly imposed the penalty of life imprisonment. We also find the fine of P500,000.00 imposed on appellant to be in accordance with law.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CR No. 00894 dated January 19, 2006 which sustained the Decision of the Regional Trial Court of Makati, Branch 135, finding appellant Nieva Alberto y De Nieva, guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 and sentencing her to suffer the penalty of life imprisonment and a fine of P500,000.00 is **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] *People v. Garcia*, G.R. No. 172975, August 8, 2007, 529 SCRA 519, 533.

[2] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842,

[3] Records, p. 1.

[4] Exhibit "E-1", id. at 32.

[5]

Id at 44 - 47; penned by Judge Francisco B. Ibay.

[6] Id. at 47.

[7] CA *rollo*, p. 30.

[8] Id. at 90-102; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang.

[9] *People v. Dumla*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 770.

[10] Id.

[11] *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 375, 390.

[12] *People v. Astudillo*, 440 Phil. 205, 224 (2002).

[13] TSN, October 1, 2003, p. 13.

[14] *People v. Vallador*, 327 Phil. 303, 310-311 (1996).

[15] *People v. Ondalok*, 339 Phil. 17, 25 (1997).

[16] *People v. Daen, Jr.*, 314 Phil. 280, 292 (1995).

[17] *People v. Mateo*, supra note 11 at 390.

[18] *People v. Ayupan*, 427 Phil. 200, 208-209 (2002).

[19] TSN, June 25, 2003, pp. 17-18.

[20] *Pascual v. People*, G.R. No. 160540, March 22, 2007, 518 SCRA 730, 738.

[21] Dangerous Drugs Board Resolution No. 01, Section 2.

[22] Id., Sec. 3.

[23] *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595.

[24] Id.

[25] *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[26] Records, p. 35.

[27] Id. at 23.

[28] *People v. Mateo*, supra note 11 at 410.

[29] Republic Act No. 9165, Article II, Section 5.

