

THIRD DIVISION

[G.R. No. 177771, May 30, 2011]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARIELITO ALIVIO Y OLIVEROS AND ERNESTO DELA VEGA Y CABBAROBIAS, APPELLANT.

DECISION

BRION, J.:

On appeal to this Court is the Decision,^[1] dated November 30, 2006, of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01138, which affirmed the Decision^[2] of the Regional Trial Court (RTC), Branch 70, Pasig City, in Criminal Case Nos. 12450-52-D. The RTC convicted Arielito Alivio y Oliveros and Ernesto dela Vega (collectively referred to as *appellants*) of violating Sections 5, 11 and 12, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Arraignment and Plea

In Criminal Case No. 12450-D, the Information charged the appellants of selling *shabu*, as follows:

the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Lemuel Laro, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing six (6) centigrams (0.06 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.^[3]

In Criminal Case No. 12451-D, Dela Vega was charged of possessing *shabu* under the following Information:

the 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 ten (10) decigrams (0.10 gram), of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.^[4]

Finally, in Criminal Case No. 12452-D, Alivio was charged of possessing drug paraphernalia consisting of two disposable lighters, an improvised tooter and an improvised burner. The pertinent portion of the Information states:

the accused, not being lawfully authorized to possess paraphernalia or otherwise use

any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession two (2) pcs. of disposable lighters, one (1) improvised tooter and one (1) improvised burner, which are all instruments, equipment, apparatus or paraphernalia, fit or intended for smoking, sniffing, consuming or introducing methamphetamine hydrochloride, commonly known as shabu, a dangerous drug, in violation of the said law.^[5]

The appellants pleaded not guilty to all the charges and trial on the merits followed.

The Version of the Prosecution

The prosecution's case relied on the theory that the police apprehended the appellants during a buy-bust operation conducted at Alivio's residence. During the buy-bust operation, the police found drug paraphernalia at Alivio's residence while a search on Dela Vega's person yielded one plastic sachet of *shabu* which the police seized.

The prosecution's evidence showed that at around 9:30 p.m. of May 20, 2003, the Pasig City Police received a tip from an asset that one "Ariel" was rampantly selling illegal drugs in Bagong Ilog, Pasig City. A buy-bust team was immediately formed in coordination with the Philippine Drug Enforcement Agency. The buy-bust money, which consisted of two (2) 100 peso bills, was prepared and marked with the symbol, "3L." PO2 Lemuel Lagunay Laro was designated to act as the poseur-buyer.

Together with SPO3 Lemuel Matias and PO1 Allan Mapula, PO2 Laro and the asset went to the house of Ariel. While the rest of the buy-bust team strategically positioned themselves at the target area, PO2 Laro and the asset met Ariel. The asset introduced PO2 Laro to Ariel who was later on identified as Alivio. The asset told Alivio that they wanted to buy *shabu*. Alivio asked how much they wanted to buy, to which the asset replied: "*dalawang daan lang p're at saka puwede kaming gumamit d'yan?*" The two were ushered into the second floor of the house where they saw Dela Vega seated in front of a table with drug paraphernalia. PO2 Laro then gave the buy-bust money to Alivio who handed it to Dela Vega. The latter then took out from his pocket one plastic sachet of *shabu* which he gave to Alivio who handed it to PO2 Laro. After the exchange, PO2 Laro introduced himself as a police officer and arrested Alivio and Dela Vega. The asset made a signal for the buy-bust team to come inside the house. SPO3 Matias searched Dela Vega and found him in possession of one plastic sachet of *shabu*. The buy-bust team also retrieved the drug paraphernalia on top of the table, which paraphernalia they correspondingly marked. The buy-bust team took Alivio, Dela Vega and the confiscated items to the police station for investigation. Afterwards, the confiscated items were taken by PO1 Mapula to the PNP Crime Laboratory for examination. The two (2) plastic sachets tested positive for *shabu*.

By agreement of the prosecution and the defense, the testimony of forensic chemist P/Insp. Joseph Perrido was dispensed with and they entered stipulations on:

- 1) The due execution and genuineness of the Request for Laboratory Examination dated May 20, 2003 which was marked in evidence as Exhibit "A" and the stamp showing receipt thereof by the PNP Crime Laboratory as Exhibit "A-1";
- 2) The due execution and genuineness, as well as the truth of the contents, of Chemistry Report No. D-940-03E dated May 12, 2003 issued by Forensic Chemist P/Insp. Joseph M. Perrido of the PNP Crime Laboratory, Eastern Police District, Saint Francis St., Mandaluyong City, which was marked in evidence as Exhibit "B", the finding and conclusion as appearing on the report as Exhibit "B-1" and the signature of the forensic Chemist over his typewritten name likewise as appearing on the report as Exhibit "B-2";
- 3) The existence of the two (2) plastic sachets and other paraphernalia, but not their source or origin, contained in an envelope, the contents of which were the

subject of the Request for Laboratory Examination, which were marked in evidence as follows: as Exhibit "C" (the envelope), as Exhibit "C-1" (the 1st plastic sachet), as Exhibit "D" (the improvised tooter with markings EXH-E AAO dated 05-20-03), as Exhibit "E" (the improvised burner) and as Exhibits "F-1" & "F-2" (the two disposable lighters).^[6]

The Version of the Defense

The appellants anchored their defense on denial and frame-up. They denied selling *shabu* and claimed that they were together that night drinking at the second floor of Alivio's residence. They also claimed that five (5) men (who turned out to be policemen) suddenly barged in on them looking for a person named "Bon-bon." When they replied that neither of them was Bon-bon, the policemen frisked and arrested them. The policemen took from the appellants their earnings for that day and the P5,000.00 cash they found in the house. The appellants tried to resist arrest and suffered injuries as a result.^[7]

Alivio additionally asserted that he could not have sold *shabu* to PO2 Laro since he knew him to be a policeman. Alivio claimed that he was a former driver of Atty. Nelson Fajardo whom he used to accompany to the police station where PO2 Laro was assigned.

The Ruling of the RTC

On February 28, 2005, the RTC convicted the appellants of all charges laid. 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 preferred denial and frame-up as defenses as they are inherently easy to concoct, and found that the prosecution sufficiently established all the elements of the crimes charged and the identity of the appellants as perpetrators. The RTC thus concluded:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

In **Criminal Case No. 12450-D** both accused Arielito Alivio and Ernesto Dela Vega are hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act 9165 (illegal sale of *shabu*) and are hereby sentenced to **LIFE IMPRISONMENT** and to solidarily pay a **FINE** of **Five Hundred Thousand Pesos (PHP500,000.00)**.

In **Criminal Case No. 12451-D** accused Ernesto dela Vega is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 11, Article II, Republic Act 9165 (illegal possession of *shabu*) and is hereby sentenced to **Twelve (12) Years and One (1) Day to Twenty (20) Years** and to pay a **Fine** of **Three Hundred Thousand Pesos (PHP 300,000.00)**.

In **Criminal Case No. 12452-D** accused Arielito Alivio is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 12, Article II, of Republic Act 9165 (illegal possession of drug paraphernalia) and is hereby sentenced to **Six (6) Years and One (1) Day to Four (4) Years** and a **FINE** of **Ten Thousand Pesos (PHP 10,000.00)**.^[8]

The appellants appealed to the CA.

The Ruling of the CA

On November 30, 2006, the CA affirmed the RTC decision. The CA took into account the

consistent testimonies of the prosecution witnesses to support the presumption that the police officers regularly performed the buy-bust operation. The CA likewise ruled that the appellants failed to substantiate their defenses.

The Issue

The appellants raised the following lone assignment of error:

THE [CA] ERRED IN FINDING THE [APPELLANTS] GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF THE PROVISIONS OF REPUBLIC ACT NO. 9165.^[9]

The appellants argue that the lower courts erred in evaluating the testimonial evidence when they placed undue reliance on the presumption of regularity and the absence of improper motive on the part of the police officers to perpetuate the claimed irregularities. The appellants assert that the presumption of regularity cannot take precedence over the presumption of innocence in their favor.

The appellants also fault the lower courts for disregarding the defense's evidence that showed Alivio's familiarity with PO2 Laro as a policeman. They emphasize that this evidence was corroborated by the testimony of defense witness Atty. Fajardo.

Finally, the appellants contend that the identities of the subject *shabu* were not sufficiently proven since the seized items were not marked at the time the appellants were apprehended.

The Court's Ruling

We find no reversible error committed by the RTC and the CA in convicting the appellants of the crimes charged.

While the presumption of innocence is the highest in the hierarchy of presumptions, it remains a rebuttable presumption. In a criminal case, the presumption of innocence can be overcome by the presumption of regularity when the latter is accompanied by strong evidence supporting the guilt of the accused.^[10] Even without the presumption of regularity, a drug conviction can be sustained through competent evidence establishing the existence of all the elements of the crimes charged.

In this case, although the presumption of regularity did not arise considering the evident lapses the police committed in the prescribed procedures, we rule that the prosecution's evidence sufficiently established all the elements of the three (3) crimes charged and the identity of the appellants as the perpetrators.

The existence of the buy-bust operation

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Thus, we generally defer 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.^[11] Our independent examination of the records shows no compelling reason to depart from this rule.

First, the lower courts found the testimonies of PO2 Laro and SPO3 Matias consistent, positive and straightforward. These testimonies were corroborated by PO1 Mapula who testified that the appellants were apprehended through a buy-bust operation.

Second, the records reveal the lack of improper motive on the part of the buy-bust team.

Appellant Alivio even admitted that he had no idea why the police officers filed the present case against him.^[12] Alivio also denied police extortion.^[13]

Third, the appellants' failure to file cases against the buy-bust team for planting evidence undoubtedly supports the prosecution's theory that the appellants were arrested because they were caught *in flagrante delicto* selling *shabu*.

Fourth, the following documentary evidence presented by the prosecution corroborates the existence of an actual buy-bust operation:

- (a) The Pre-Ops Reports, made part of the records, showed that anti-narcotics operations were conducted on May 20, 2003 against one "@Ariel" who was "allegedly involved in selling/trading of dangerous drugs."^[14]
- (b) The existence of the buy-bust money,^[15] bearing the marking "3L," was presented during the trial as part of PO2 Laro's testimony.^[16] According to PO2 Laro, the marking stood for his initials which he placed on the buy-bust money for easy identification.
- (c) The Affidavits of Arrest^[17] by PO2 Laro and SPO3 Matias executed immediately after the arrest of the appellants showed that the arrests were made pursuant to a buy-bust operation.^[18]

Familiarity

The defense failed to sufficiently prove the alleged familiarity of appellant Alivio with PO2 Laro. The testimony of defense witness Atty. Fajardo failed to give out specific details on the dates and occasions when he supposedly talked to PO2 Laro in the presence of Alivio.^[19] Moreover, the evidence also shows a time gap between Alivio's employment with Atty. Fajardo (from 2000 to 2001) and the occurrence of the buy-bust operation (in 2003). As against these sketchy claims, PO2 Laro testified that Alivio failed to recognize him during the buy-bust operation.^[20]

In any event, in *Gwyn Quinicot v. People*,^[21] we held that it is not the existing familiarity between the seller and the buyer, but the agreement and acts constituting the sale and delivery of the illegal drugs, that is crucial in drug-related cases:

What matters in drug related cases is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the sale and delivery of the dangerous drug. Besides, drug pushers, especially small quantity or retail pushers, sell their prohibited wares to anyone who can pay for the same, be they strangers or not. It is of common knowledge that pushers, especially small-time dealers, peddle prohibited drugs in the open like any article of commerce. Drug pushers do no confine their nefarious trade to known customers and complete strangers are accommodated provided they have the money to pay.^[22] [Citations omitted]

In this case, the prosecution's evidence sufficiently established the exchange of the *shabu* and the buy-bust money between the appellants and PO2 Laro.

The identity of the confiscated shabu and/or drug paraphernalia

In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed

procedure under Section 21(1), Article II of R.A. No. 9165 has been complied with or falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165; **and** (b) there was an unbroken link (not perfect link) in the chain of custody with respect to the confiscated items.

Section 21(1), Article II of R.A. No. 9165 -- that prescribes the procedure to be observed by the authorities in handling the illegal drug and/or drug paraphernalia confiscated -- provides:

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

(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;

This provision is elaborated on under Section 21(a) of the IRR which provides a saving clause in case the prescribed procedure is not complied with. Under this saving clause, *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.*

The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines the chain of custody rule in the following manner:

b. 'Chain of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, **from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody [was] of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition[.]

In this case, although the prescribed procedure under Section 21(1), Article II of R.A. No. 9165 was not strictly complied with, we find that the integrity and the evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule.

(a) *The first link* - The records show that the *shabu* and the drug paraphernalia were immediately marked at the scene by PO2 Laro and SPO3 Matias before they proceeded to the police station.^[23] PO2 Laro marked the plastic sachet containing *shabu* subject of the buy-bust sale, with "AAO 05-20-03" that stood for the initials of Alivio and the date of the buy-bust sale.^[24] In turn, SPO3 Matias marked the retrieved *shabu* and the drug paraphernalia with his
^[25]

signature.

(b) *The second link* - The records also disclose that after the respective markings were made, PO2 Laro and SPO3 Matias turned over the confiscated items in their custody at the police station for investigation. As may be gathered from the Request for Laboratory Examination dated May 20, 2003 and prepared by SPO4 Danilo M. Tuano, the following specimens were recovered from the appellants and submitted for laboratory examination:

One (1) pc heat sealed transparent plastic sachet containing undetermined amount of white crystalline substance suspected to be shabu bought from suspect marked as "EXH A AAO 05-20-03";

One (1) pc heat sealed transparent plastic sachet containing undetermined amount of white crystalline substance marked as "EXH B ECDV 05-20-03";

Two (2) pc's (sic) disposable lighter marked as "EXH C1 to C2 AAA 05-20-03";

One (1) pc improvised burner marked as "EXH D AAO 05-20-03";

One (1) pc improvised waterpipe/tooter marked as "EXH E AAO 05-20-03."^[26]

(c) *The third link* - PO1 Mapula testified that he was the one who delivered the request for laboratory examination and the specimens to the PNP Crime Laboratory.^[27] He also testified that he turned over the specimens to one PO1 Chuidan who received them at 1:00 a.m. of May 21, 2003.^[28] Upon receipt of the specimens, PO1 Chuidan stamped the request with a "Control No. 1700-03" and wrote "D-940-03."^[29] In this regard, a facial examination of Chemistry Report No. D-940-03E shows that the very same specimens bearing the same markings stated in the police request were subjected to laboratory examination, completed at 3:15 a.m. of May 21, 2003.^[30]

(d) *The fourth link* - The prosecution and the defense stipulated that the specimens examined by the forensic chemist, contained in the request for laboratory examination, were the ones presented in court. PO2 Laro and SPO3 Matias identified and testified that the *shabu* and the drug paraphernalia examined were the items retrieved from the appellants in the buy-bust operation conducted on May 20, 2003.^[31]

Under the circumstances, the prosecution's evidence clearly established an unbroken link in the chain of custody, thus removing any doubt or suspicion that the *shabu* and drug paraphernalia had been altered, substituted or otherwise tampered with. The unbroken link in the chain of custody also precluded the possibility that a person, not in the chain, ever gained possession of the seized evidence.^[32]

The defenses of Denial and Frame-up

The appellants merely denied the buy-bust sale and their possession of the *shabu* and the drug paraphernalia. They claimed that they were framed by the police who took their earnings and forcibly took them to the police station. In light of the positive and credible testimony and the concrete evidence showing the existence of the buy-bust operation, these defenses are unworthy of belief. Dela Vega's injuries alone cannot rebut the consistent evidence that the appellants were arrested pursuant to a buy-bust operation. We particularly note in this regard that the participating policemen denied that they previously knew the appellants and that they entertained ulterior or illicit motives to frame them.

The Proper Penalties

On the illegal sale of *shabu* (Criminal Case No. 12450-D), the appellants were caught and arrested for selling .06 gram of *shabu*. The RTC and the CA correctly imposed the penalty of life imprisonment and a fine of P500,000.00 against the appellants, in accordance with Section 5, Article II of R.A. No. 9165 which punishes illegal sale of *shabu* with 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).

On the illegal possession of *shabu* (Criminal Case No. 12451-D), dela Vega was caught in possession of .10 gram of *shabu* and was meted the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and to pay a fine of P300,000.00. Section 11, paragraph 2(3), Article II of R.A. No. 9165 provides:

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of xxx methamphetamine hydrochloride or "shabu."

Thus, we sustain the penalties the RTC and the CA imposed as these are within the range provided by law.

Lastly, illegal possession of drug paraphernalia (Criminal Case No. 12452-D) is punished under Section 12, Article II of R.A. No. 9165 that provides a penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years, and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00). We thus uphold the penalty of imprisonment of six (6) months and one (1) day to four (4) years and a fine of P10,000.00 that the RTC and the CA imposed on Alivio.

WHEREFORE, premises considered, we **AFFIRM** the decision, dated November 30, 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 01138 which, in turn, affirmed the decision, dated February 28, 2005, of the Regional Trial Court, Branch 70, Pasig City, in Criminal Case Nos. 12450-52-D.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Penned by Associate Justice Roberto A. Barrios (deceased), with the concurrence of Associate Justices Mario L. Guariña and Lucenito Tagle (retired); *rollo*, pp. 2-10.

[2] Penned by Judge Pablito M. Rojas; dated February 28, 2005. CA *rollo*, pp. 23-32.

[3] CA *rollo*, pp. 9-10.

[4] *Id.* at 11-12.

[5] *Id.* at 13-14.

[6] *Id.* at 25.

[7] Medical Certificate, dated March 2, 2004, issued by the Rizal Medical Center to dela Vega which showed that he had a contusion on his back; records, p. 94.

[8] CA *rollo*, pp. 31-32.

[9] *Id.* at 45.

[10] Dissenting Opinion of Justice Arturo D. Brion in *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 614-615, and *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 276.

[11] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 440; and *People v. Lim*, G.R. No. 141699, August 7, 2002, 386 SCRA 581, 593, citing *People v. Errojo*, 229 SCRA 49 (1994), and *People v. Gomez*, 229 SCRA 138 (1994).

[12] TSN, May 25, 2004, p. 8.

[13] TSN, April 26, 2004, p. 25.

[14] Records, p. 10.

[15] Exhibits "G" and "H."

[16] Records, p. 70.

[17] Dated May 21, 2003.

[18] Records, pp. 5-6.

[19] TSN, July 21, 2004, p. 38.

[20] TSN, October 6, 2003, p. 11.

[21] G.R. No. 179700, June 22, 2009, 590 SCRA 458.

[22] *Id.* at 471-472.

[23] TSN, October 6, 2003, p. 17.

[24] *Id.* at 22-23.

[25] TSN, December 3, 2003, pp. 8-9; and TSN, October 6, 2003, pp. 24- 25.

[26] Records, p. 8.

[27] TSN, February 23, 2004, p. 8.

[28] *Ibid.*; Records, pp. 7- 8.

[29] Records, p. 8

[30] *Id.* at 7.

[31]

Supra note 24, and TSN, December 3, 2003, pp. 13-15.

[32] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.
