

FIRST DIVISION

[G.R. NO. 171019, February 23, 2007]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAFAEL STA.
MARIA Y INDON, APPELLANT.

DECISION

GARCIA, J.:

Under consideration is this appeal by Rafael Sta. Maria y Indon from the Decision^[1] dated November 22, 2005 of the Court of Appeals (CA) in *CA-G.R. CR-H.C. No. 00802*, denying his earlier appeal from and affirming the May 5, 2004 decision^[2] of the Regional Trial Court (RTC) of Bulacan, Branch 20, which found him guilty beyond reasonable doubt of the crime of violation of Section 5,^[3] Article II of Republic Act No. 9165, otherwise known as the **Comprehensive Dangerous Drugs Act of 2002**.

The indicting Information,^[4] docketed in the RTC as Criminal Case No. 3364-M-2002, alleges:

That on or about the 29th day of November, 2002, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat sealed transparent plastic sachet containing methylamphetamine hydrochloride weighing 0.041 gram.

Contrary to law.

Duly arraigned on January 23, 2003, appellant pleaded "Not Guilty" to the crime charged. Trial ensued thereafter.

The prosecution's version of events which led to appellant's arrest and subsequent prosecution under the aforementioned Information is as follows:

On November 27, 2002, at around 10:00 o'clock in the morning, P/Chief Insp. Noli Pacheco, Chief of the Provincial Drug Enforcement Group of the Bulacan Provincial Office based at Camp Alejo Santos, Malolos, Bulacan received an intelligence report about the illegal drug activities in Sitio Gulod, Barangay Pantubig, San Rafael, Bulacan of a certain "Fael," who later turned out to be appellant Rafael Sta. Maria. P/Chief Insp. Pacheco formed a surveillance team to look for a police asset to negotiate a drug deal with appellant. In the morning of November 29, 2002, the surveillance team reported to P/Chief Insp. Pacheco that a confidential asset found by the team had already negotiated a drug deal for the purchase of P200 worth of shabu from appellant at the latter's house at No. 123 Sitio Gulod, Barangay Pantubig, San Rafael, Bulacan between 7:00 and 7:30 in the evening of November 29, 2002. The surveillance team then prepared for a buy-bust operation, with PO3 Enrique Rullan as team leader, and PO1 Rhoel Ventura, who was provided with two (2) marked P100-bills, as poseur-buyer. At the appointed time and place, PO1 Ventura and the confidential informant proceeded to appellant's house and knocked at the door. Appellant opened the door and the confidential informant introduced to him PO1 Ventura as a prospective buyer. PO1 Ventura later handed the

two (2) marked P100-bills to appellant who, in turn, gave him a plastic sachet of shabu. Thereupon, PO1 Ventura sparked his cigarette lighter, which was the pre-arranged signal to the other members of the buy-bust team that the sale was consummated. Appellant was arrested and the two marked P100-bills recovered from him. Also arrested on that occasion was one Zedric dela Cruz who was allegedly sniffing shabu inside appellant's house and from whom drug paraphernalia were recovered. Upon laboratory examination of the item bought from appellant, the same yielded positive for methylamphetamine hydrochloride or shabu weighing 0.041 gram.

The defense gave an entirely different account of what allegedly transpired prior to and at the time of appellant's arrest on that evening of November 29, 2002.

Appellant testified that on November 29, 2002, he was at home with a certain Zedric dela Cruz who was allegedly offering him a cellphone for sale and collecting payment on a loan of his wife. At that time, his wife was out of the house to pay their electric bill. While waiting for his wife, he and Zedric watched television when they heard the barking of dogs. Immediately, three (3) men suddenly barged into the house and announced that they were police officers while three other men stayed outside the house. The police officers frisked him and Zedric and searched the house. He tried to complain about what they were doing but the police officers got mad and accused him of selling shabu. He replied that he does not know anything about drugs. Afterwards, he and Zedric were brought out of the house and handcuffed. While on board the police vehicle, the police officers warned them to cooperate. The police officers also asked him to be their asset and when he said that he does not know anything about it, they told him that they could file a case against him. The police officers also offered to buy drugs from him but he refused the offer because he knows that it is only a plan for them to arrest him.

In a decision^[5] dated May 5, 2004, the trial court found appellant guilty beyond reasonable doubt of the offense charged, and accordingly sentenced him, thus:

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

1). xxx

2). xxx

3). In Criminal Case No. 3264-M-2002, the Court finds accused RAFAEL STA. MARIA Y INDON guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act 9165. He is hereby sentenced to suffer the penalty of life imprisonment and is ordered to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The dangerous drug and drug paraphernalia submitted as evidence in these cases are hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA).

SO ORDERED.

From the aforesaid decision, appellant went directly to this Court. Pursuant to our pronouncement in *People v. Mateo*,^[6] which modified the pertinent provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, the Court transferred the appeal to the CA for appropriate action and disposition, whereat it was docketed as *CA-G.R. CR-H.C. No. 00802*.

On November 22, 2005, the CA promulgated the herein assailed Decision^[7] denying the appeal and affirming that of the trial court, to wit:

xxx The Court sees no reason to disturb the finding of trial court. The evidence presented by the prosecution proves to a moral certainty appellant's guilt of the crime of selling illegal drugs. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized as evidence.

WHEREFORE, the appeal is **DENIED**. The decision of the Regional Trial Court is hereby **AFFIRMED**. Costs de oficio.

SO ORDERED.

The case is again with this Court following its elevation from the CA, together with the case records.

In his Brief, appellant contends that the trial court erred in convicting him because his guilt was not proven beyond reasonable doubt. He maintains that instigation, not entrapment, preceded his arrest. He also faults the appellate court in not finding that the evidence adduced by the prosecution was obtained in violation of Sections 21 and 86 of Republic Act No. 9165.

It is appellant's submission that what transpired on that fateful evening of November 29, 2002 was instigation and not a valid buy-bust operation. He would make much of the fact that the transaction between him and the police informant occurred on November 27, 2002, while the buy-bust operation took place on November 29, 2002. To appellant, the informant, by pretending that he was in need of *shabu*, instigated or induced him to violate the anti-dangerous drugs law. He adds that the prosecution was not able to prove that at the time of the police surveillance, he was indeed looking for buyers of *shabu*, and that were it not for the inducement of the informant that the latter would buy *shabu*, he would not have produced the same on November 29, 2002.

We are not persuaded.

In entrapment, the entrapper resorts to ways and means to trap and capture a lawbreaker while executing his criminal plan. In instigation, the instigator practically induces the would-be-defendant into committing the offense, and himself becomes a co-principal. In entrapment, the means originates from the mind of the criminal. The idea and the resolve to commit the crime come from him. In instigation, the law enforcer conceives the commission of the crime and suggests to the accused who adopts the idea and carries it into execution. The legal effects of entrapment do not exempt the criminal from liability. Instigation does.^[8]

Here, the mere fact that the agreement between appellant and the police informant for the purchase and sale of illegal drugs was made on November 27, 2002, while the buy-bust operation was conducted on November 29, 2002, is of no moment. Without more, it does not prove that said informant instigated appellant into committing the offense. If at all, the earlier agreement and the subsequent actual sale suggest that appellant was habitually dealing in illegal drugs.

It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the offense is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.^[9]

As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant

induced appellant to sell illegal drugs to him.

It is a basic rule in evidence that each party must prove his affirmative allegation.^[10] In this case, apart from appellant's self-serving declaration that he was instigated into committing the offense, he did not present any other evidence to prove the same.

A perusal of the records readily reveals that the police operatives who took part in the buy-bust operation, namely, PO1 Alexander Ancheta, PO1 Rhoel Ventura and PO3 Enrique Rullan, clearly and convincingly testified on the circumstances that led to appellant's arrest. In a credible manner, they narrated in open court the details of the buy-bust operation they conducted on November 29, 2002 in Sitio Gulod, Barangay Pantubig, San Rafael, Bulacan. We thus quote with approval the trial court's findings on this matter:

PO1 Ancheta, PO1 Ventura and PO2 Rullan testified on the aforementioned circumstances concerning the drug buy-bust operation that led to the arrest of accused Sta. Maria, following the purchase from him of P200 worth of shabu by PO1 Ventura posing as poseur-buyer. The testimonies of these officers, as summarized above, are essentially clear credible and convincing. Notwithstanding minor inconsistencies, their declarations in Court dovetail and corroborated one another on material points, and are generally consistent with the narrations contained in their "Joint Affidavit of Arrest" (Exh. "D") executed on December 2, 2002. More significantly, there is no credible showing that the aforementioned police officers were impelled by any improper motive or intention in effecting the arrest of accused Sta. Maria and in testifying against him in Court.

The Court also takes judicial notice of the fact that accused Sta. Maria had other criminal cases before other branches of this Court for involvement in drug activities. He was charged with and convicted by Branch 21 of this Court of Violation of Section 16, Article III of the Republic Act of 6425, as amended, also known as the "Dangerous Drugs Act of 1972," following a voluntary plea of guilty in Criminal Case No. 341-M-2001. He was likewise charged with Violation of Sections 15 and 16 of the same law before Branch 81 under Criminal Cases Nos. 59-M-2000 and 60-M-2000, which were dismissed on mere technicality because of non-appearance of the arresting officers.

The Court is not persuaded by the defense of denial interposed by accused Sta. Maria. According to him, the police officers just barged into his house on November 29, 2002 while he was watching television together with co-accused Dela Cruz. He said, he was frisked and his place searched, and he was arrested for no reason at all by the police officers.

The Court rules that the version bandied about by accused Sta. Maria is purely self-serving. It cannot prevail over the positive declarations of the police officers regarding the drug buy-bust operation and purchase from him of shabu. To reiterate, there is no showing that said police officers were actuated by any ill or improper motive or intention in effecting the arrest of the accused Sta. Maria and in testifying against him in Court. (*See People v. Dela Cruz*, 229 SCRA 754; *People v. Persiano*, 233 SCRA 393).^[11]

Appellant would next argue that the evidence against him was obtained in violation of Sections 21 and 86 of Republic Act No. 9165 because the buy-bust operation was made without any involvement of the Philippine Drug Enforcement Agency (PDEA). Prescinding therefrom, he concludes that the prosecution's evidence, both testimonial and documentary, was inadmissible having been procured in violation of his constitutional right against illegal arrest.

The argument is specious.

Section 86 of Republic Act No. 9165 reads:

SEC. 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* - The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.

It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.^[12]

As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, i.e., the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. To be sure, Section 86 (a) of the IRR emphasizes this point by providing:

(a) Relationship/Coordination between PDEA and Other Agencies - The PDEA shall

be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA xxx. *Provided, finally*, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court.

Appellant next argues that the prosecution failed to show compliance with Section 21 of Republic Act No. 9165 regarding the custody and disposition of the evidence against him.

Appellant demands absolute compliance with Section 21 and insists that anything short of the adherence to its letter, renders the evidence against him inadmissible. Pertinently, Section 21 of the law provides:

SEC. 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.

Regrettably, the pertinent implementing rules, Section 21 of the IRR, states:

Section 21. a. xxx 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.

It is beyond quibbling then that the failure of the law enforcers to comply strictly with Section 21 was not fatal. It did not render appellant's arrest illegal nor the evidence adduced against him inadmissible.

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.^[13]

To recapitulate, the challenged buy-bust operation, albeit made without the participation of PDEA, did not violate appellant's constitutional right to be protected from illegal arrest. There is nothing in Republic Act No. 9165 which even remotely indicate the intention of the legislature to make an arrest made without the participation of the PDEA illegal and evidence obtained pursuant to such an arrest inadmissible. Moreover, the law did not deprive the PNP of the power to make arrests.

WHEREFORE, the appeal is **DENIED** and the appealed decision of the CA, affirmatory of that of the trial court, is **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, and Corona, JJ., concur.
Azcuna, J., on official leave.

[1] Penned by Associate Justice Arturo G. Tayag with Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza, concurring; Rollo, pp. 3-18.

[2] CA Rollo, pp. 16-33.

[3] 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.

[4] CA Rollo, p. 8.

[5] Supra note 2.

[6] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[7] Supra note 1.

[8] *People v. Marcos*, G.R. No. 83325, May 8, 1990, 185 SCRA 154, 164.

[9] *People v. Lua Chu and Uy Se Tieng*, 56 Phil. 44 (1931).

[10] *Jimenez v. NLRC*, G.R. No. 116960, April 2, 1996, 256 SCRA 84.

[11] RTC Decision, pp. 13-14.

[12] *Sesbreño v. Central Board of Assessment Appeals, et al.*, G.R. No. 106588, 270 SCRA 360 (1997).

[13] *People v. Ramon Chua Uy*, G.R. No. 128046, March 7, 2000, 327 SCRA 335.