

## FIRST DIVISION

[ G.R. No. 212160, February 04, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DENNIS SUMILI, ACCUSED-APPELLANT.**

### DECISION

**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated January 29, 2014 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01075, which affirmed *in toto* the Decision<sup>[3]</sup> dated August 10, 2009 of the Regional Trial Court of Iligan City, Branch 3 (RTC) in Crim. Case No. 12595 finding accused-appellant Dennis Sumili (Sumili) guilty beyond reasonable doubt of violating Section 5,<sup>[4]</sup> Article II of Republic Act No. (RA) 9165,<sup>[5]</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

#### The Facts

On June 30, 2006, an Information<sup>[6]</sup> was filed before the RTC charging Sumili of violating Section 5, Article II of RA 9165, *viz.:*

Crim. Case No. 12595

That, on or about June 7, 2006, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without having been authorized by law, did then and there willfully, unlawfully and feloniously sell one (1) sachet of Methamphetamine Hydrochloride, a dangerous drug commonly known as *Shabu* for the amount of P200.00.

Contrary to and in violation of Sec. 5, ART. II, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

City of Iligan, June 30, 2006.

According to the prosecution, on June 7, 2006, the Philippine Drug Enforcement Agency Iligan City Sub-Office received a report from a confidential informant that Sumili was selling *shabu*. Acting on the same, SPO2 Edgardo Englatica<sup>[7]</sup> (SPO2 Englatica) dispatched SPO2 Diosdado Cabahug (SPO2 Cabahug) to conduct surveillance on Sumili, which confirmed the truth and veracity of the aforesaid report. Consequently, SPO2 Englatica organized a team divided into two (2) groups and briefed them on the buy-bust operation. He also prepared the marked money, consisting of one (1) two hundred peso (P200.00) bill, with serial number L507313.<sup>[8]</sup>

At around 5:10 in the afternoon of the same day, the buy-bust team headed to the target area. Upon arrival, the poseur-buyer approached Sumili’s house to buy *shabu*. After Sumili let the poseur-buyer in, the latter gave the pre-arranged signal that the sale has been consummated. Almost immediately, the buy-bust team stormed the house but Sumili escaped by jumping through the window, throwing the marked money at the roof beside his house. The poseur-

buyer turned over the sachet of suspected *shabu* to SPO2 Englatiera, who marked the same with “DC-1,” representing the initials of SPO2 Cabahug.<sup>[9]</sup> SPO2 Englatiera then prepared a request for laboratory examination and instructed Non-Uniform Personnel Carlito Ong (NUP Ong) to bring the sachet together with the request to the PNP Crime Laboratory for examination. However, NUP Ong failed to do so on the same day as the PNP Crime Laboratory was already closed.<sup>[10]</sup> It was only on June 9, 2006, or two (2) days after the buy-bust operation, that NUP Ong was able to bring and turn-over the seized sachet to the PNP Crime Laboratory.<sup>[11]</sup> Upon examination, it was confirmed that said sachet contained 0.32 grams of methamphetamine hydrochloride, or *shabu*.<sup>[12]</sup>

In his defense, Sumili denied selling *shabu*. He and his daughter claimed that he was a fishball vendor, and that on the date and time of the incident, he was at the market buying ingredients. When he returned to his residence, his wife told him that policemen were looking for him.<sup>[13]</sup>

### **The RTC Ruling**

In a Decision<sup>[14]</sup> dated August 10, 2009, the RTC found Sumili guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and accordingly, sentenced him to life imprisonment, and ordered him to pay a fine in the amount of P500,000.00.<sup>[15]</sup>

The RTC found that a buy-bust operation indeed occurred where Sumili sold the seized sachet to the poseur-buyer. In this regard, it gave credence to the straightforward and categorical testimonies of prosecution witnesses detailing how the police officers received information that Sumili was selling *shabu*, investigated and confirmed that he indeed was selling *shabu*, conducted the buy-bust operation, recovered, marked, and transmitted the seized item from Sumili to the PNP Crime Laboratory, and that the laboratory results yielded positive for *shabu*. Conversely, it did not give weight to the defense testimonies which merely denied the existence of the buy-bust operation and insisted that Sumili was not selling drugs.<sup>[16]</sup>

Dissatisfied, Sumili appealed<sup>[17]</sup> his conviction to the CA.

### **The CA Ruling**

In a Decision<sup>[18]</sup> dated January 29, 2014, the CA affirmed Sumili’s conviction *in toto*.<sup>[19]</sup> It agreed with the RTC’s finding that a buy-bust operation actually occurred, resulting in the seizure of a sachet containing *shabu*.<sup>[20]</sup> Further, the CA also held that despite the police officers’ non-compliance with the procedure enshrined in Section 21, Article II of RA 9165, the identity and integrity of the *corpus delicti*, or the seized drug itself, was nevertheless preserved and, thus, Sumili’s conviction must be sustained.<sup>[21]</sup>

Finally, the CA opined that Sumili failed to rebut by clear and convincing evidence the presumption of regularity in the performance of official duties enjoyed by the police officers involved in the buy-bust operation.<sup>[22]</sup>

Aggrieved, Sumili filed the instant appeal.<sup>[23]</sup>

### **The Issue Before the Court**

The issue for the Court’s resolution is whether Sumili’s conviction for violation of Section 5, Article II of RA 9165 should be upheld.

### **The Court’s Ruling**

The appeal is meritorious.

In order to convict an accused for violation of RA 9165, or the crime of sale of dangerous drugs, the prosecution must establish the concurrence of the following elements: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.<sup>[24]</sup> Note that what remains material for conviction is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.<sup>[25]</sup> It is also important that the integrity and evidentiary value of the seized items be preserved. Simply put, the dangerous drug presented in court as evidence against an accused must be the same as that seized from him. The chain of custody requirement removes any unnecessary doubts regarding the identity of the evidence.<sup>[26]</sup> As held in *People v. Viterbo*:<sup>[27]</sup>

In every prosecution for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following elements must concur: (a) the identities of the buyer and the seller, object, and consideration; and (b) the delivery of the thing sold and the corresponding payment for it. As the dangerous drug itself forms an integral and key part of the corpus delicti of the crime, it is therefore essential that the identity of the prohibited drug be established beyond reasonable doubt. Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*.

Elucidating on the custodial chain process, the Court, in the case of *People v. Cervantes* [(600 Phil. 819, 836 [2009])], held:

As a mode of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. x x x.

The chain of custody requirement “ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed.”<sup>[28]</sup> (Emphases and underscoring supplied)

To expand, Section 21<sup>[29]</sup> of RA 9165 provides the “chain of custody rule” outlining the procedure that the apprehending officers should follow in handling the seized drugs, in order to preserve its integrity and evidentiary value. It requires, *inter alia*, that: (a) the apprehending team that has initial custody over the seized drugs immediately conduct an inventory and take photographs of the same in the presence of the accused or the person from whom such items were seized, or the accused's or the person's representative or counsel, a representative from the media, the Department of Justice, and any elected public official who shall then sign the copies of the inventory; and (b) the seized drugs be turned over to the PNP Crime Laboratory within 24 hours from its confiscation for examination purposes. While the “chain of custody rule” demands utmost compliance from the aforesaid officers, Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165,<sup>[30]</sup> as well as jurisprudence nevertheless provide that non-compliance with the requirements of this rule will not automatically render the seizure and custody of the items void and invalid, so long as: (a) there is a justifiable ground for such non-compliance; AND (b) the evidentiary value of the seized items are properly preserved. Hence,

any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated items.<sup>[31]</sup>

After a judicious review of the records, the Court finds that the prosecution failed to establish the identity of the substance allegedly confiscated from Sumili due to unjustified gaps in the chain of custody, thus, militating against a finding of guilt beyond reasonable doubt.

As may be gleaned from the established facts, the buy-bust operation was conducted on June 7, 2006. When SPO2 Englatica seized the sachet from Sumili, he marked the same with the initials "DC-1" and, later, he returned to the police station to prepare the request for the examination of the sachet's contents. Thereafter, he ordered NUP Ong to bring the sachet as well as the request to the PNP Crime Laboratory for examination. However, NUP Ong failed to do so within 24 hours after the buy-bust operation as he only delivered the sachet to the PNP Crime Laboratory on June 9, 2006, or two (2) days after the buy-bust operation. No other than SPO2 Englatica and NUP Ong attested to these facts in their respective testimonies, to wit:<sup>[32]</sup>

Prosecutor Celso Sarsaba (Pros. Sarsaba): Who prepared this request for laboratory examination?

SPO2 Englatica: I myself, sir.

Q: What did you do with the request for the laboratory examination together with the one sachet of *shabu*?

A: I instructed [NUP Ong] to turn-over the evidence and bring for laboratory examination (sic).

Q: Was [NUP Ong] able to bring the request for laboratory examination together with the sachet of *shabu* to the crime laboratory on that same day?

A: The following day.

Q: Why?

A: Because it was already 5:00 o'clock (sic) sir I think it was Friday sir, the laboratory was already closed.

x x x x

As for NUP Ong:<sup>[33]</sup>

Pros. Sarsaba: And how about the one sachet of *shabu* allegedly bought from the accused, who was in possession of that *shabu* at that time?

NUP Ong: SPO2 [Englatica] placed it inside the cellophane attached together with the request.

Q: And who was supposed to bring that request for laboratory [examination] and the one sachet of *shabu* allegedly purchased from the accused to the PNP crime laboratory?

A: No, it was already late at night so we agreed to do it on the following day.

Q: So June 7, 2006, do you recall what day was that?

A: I think it was [a] Friday.

Q: And when did you bring this request for laboratory [examination] to the [PNP] crime laboratory, on what date?

A: It was delivered on June 9, 2006.

x x x x

To justify the delay in the turn-over of the *corpus delicti*, SPO2 Englatica and NUP Ong insist that the PNP Crime Laboratory was already closed on June 7, 2006, and since it was a Friday, the delivery of the seized sachet was only done on June 9, 2006. However, contrary to their claims, June 7, 2006 is not a Friday, but a Wednesday.<sup>[34]</sup> Thus, if the PNP Crime Laboratory was indeed closed on June 7, 2006, the delivery of the seized sachet could have easily been done on the next day, or on June 8, 2006, instead of doing it two (2) days after the buy-bust operation. This glaring fact, coupled with the absence in the records as to who among the apprehending officers had actual custody of the seized sachet from the time it was prepared for turn-over until its delivery to the PNP Crime Laboratory, presents a substantial and unexplained gap in the chain of custody of the alleged *shabu* seized from Sumili. Undoubtedly, the integrity and evidentiary value of the *corpus delicti* had been compromised.

It must be emphasized that in criminal prosecutions involving illegal drugs, the presentation of the drugs which constitute the *corpus delicti* of the crime calls for the necessity of proving with moral certainty that they are the same seized items.<sup>[35]</sup> Failing in which, the acquittal of the accused on the ground of reasonable doubt becomes a matter of right,<sup>[36]</sup> as in this case.

In sum, since the identity of the prohibited drugs had not been established by proof beyond reasonable doubt, Sumili's conviction must be immediately set aside.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated January 29, 2014 of the Court of Appeals in CA-G.R. CR HC No. 01075 is hereby **REVERSED** and **SET ASIDE**, and accordingly, accused-appellant Dennis Sumili is **ACQUITTED** of the crime of violation of Section 5, Article II of Republic Act No. 9165. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held for any other reason.

**SO ORDERED.**

*Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perez, JJ.*, concur.

---

[1] Notice of Appeal dated February 7, 2014; *rollo*, pp. 10-11.

[2] Id. at 3-9. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras concurring.

[3] CA *rollo*, pp. 27-30. Penned by Presiding Judge Albert B. Abragan.

[4] The pertinent portion of Section 5, Article II of RA 9165 reads:

*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.

x x x x

[5] Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES” (July 4, 2002).

[6] Records, p. 1. Signed by Prosecutor I Celso M. Sarsaba.

[7] “Inglatera” in some parts of the records.

[8] *Rollo*, p. 4.

[9] Id. at 4-5.

[10] See Transcript of Stenographic Notes (TSN), August 6, 2007, pp. 16-17.

[11] Id. at 8.

[12] See *rollo*, pp. 5 and 7. See also Chemistry Report No. D-91-06 examined by Police Inspector, Forensic Chemical Officer Leaslie C. Segualan, RMT, records, p. 48, and TSN, May 28, 2007, pp. 3-6.

[13] Id. at 5-6.

[14] CA *rollo*, pp. 27-30.

[15] Id. at 30.

[16] See id. at 29-30.

[17] See Notice of Appeal dated September 18, 2009; id. at 8.

[18] *Rollo*, pp. 3-9.

[19] Id. at 9.

[20] Id. at 7.

[21] Id. at 7-8.

[22] Id. 9.

[23] See Notice of Appeal dated February 7, 2014; id. at 10-11.

[24] *People v. Almodiel*, G.R. No. 200951, September 5, 2012, 680 SCRA 306, 316.

[25] Id., citing *People v. De La Cruz*, G.R. No. 185717, June 8, 2011, 651 SCRA 597, 609.

[26] See *People v. Almodiel*, supra note 24, at 323-324.

[27] See G.R. No. 203434, July 23, 2014.

[28] See id.

[29] The pertinent portions of Section 21 of RA 9165 read:

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;

(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

[30] See Section 21 of the IRR of RA 9165.

[31] See *People v. Viterbo*, supra note 27, citing *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791, 813.

[32] TSN, August 6, 2007, pp. 16-17.

[33] Id. at 8.

[34] “Calendar for year 2006 (Philippines),” (visited January 14, 2015).

[35] See *People v. Viterbo*, supra note 27, citing *People v. Almorfe*, G.R. No. 181831, March 29, 2010, 617 SCRA 52, 61.

[36] See id., citing *Mallillin v. People*, 576 Phil. 576, 593 (2008).