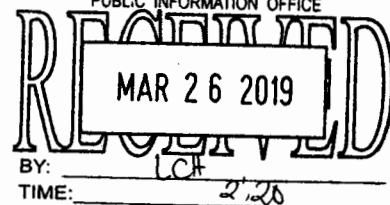




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 233833

Present:

- versus -

PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
CARANDANG,* JJ.

ROMULO ARAGO, JR. y COMO,
Accused-Appellant.

Promulgated:

February 20, 2019

X-----*[Signature]*-----X

DECISION

PERALTA, J.:

This is an appeal of the Court of Appeals' (CA) Decision¹ dated March 28, 2017 in CA-G.R. CR HC No. 07585 dismissing Romulo C. Arago, Jr.'s appeal and affirming the Decision² dated April 17, 2015 of the Regional Trial Court (RTC), Branch 3, Batangas City, convicting the same appellant of Violation of Section 5, Article II, Republic Act No. (R.A.) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The facts follow.

On November 24, 2012, around 10 o'clock in the evening, PO2 Alexander N. Olea (*PO2 Olea*) received an information from his asset that an alias Danica will be delivering *shabu* worth Seven Thousand Pesos (₱7,000.00) for sale on consignment at Phase 2, San Isidro Village, *Barangay San Isidro*, Batangas City. As such, PO2 Olea immediately relayed the

* Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

¹ Penned by Associate Justice Renato C. Francisco with the concurrence of Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios; *rollo*, pp. 2-19.

² Penned by Judge Ruben A. Galvez; *CA rollo*, pp. 40-48.

information to PO1 Pepito Adelantar (*PO1 Adelantar*), PO3 Jonas Guarda (*PO3 Guarda*) and P/Supt. Carlos E. Barde. Afterwards, a team of police officers was formed to plan an operation against the alleged offender.

PO1 Adelantar prepared the Pre-Operation Report and Coordination Form indicating a “buy-bust operation” and sent the same through electronic mail to Philippine Drug Enforcement Agency (*PDEA*), which in turn gave a green light. A police blotter detailing their departure was, likewise, entered by the duty desk officer, PO2 Dennis Piad.

The team, before proceeding to the designated meeting area, stopped over the *barangay* outpost of San Isidro in order to coordinate with the *barangay* officials. When they arrived at San Isidro Village, PO2 Olea, PO3 Guarda, and the asset, waited at the gate of the village. Thereafter, a Honda motorcycle arrived with two (2) men on board, with one of them sporting a long hair. It was then that the asset informed PO2 Olea that the rider was alias Danica or the appellant herein, Romulo Arago, and that the motorcycle driver was later identified as Kerby De Chavez (*De Chavez*). Appellant alighted from the motorcycle which was more or less one (1) meter from the asset, while PO3 Guarda stood around five (5) to seven (7) meters away at the guardhouse of San Isidro Village. Then, appellant brought out a pink coin purse from his pocket that contained a sachet of suspected *shabu* and handed the latter to the asset while saying, “*Yan, pitong libo yan.*” Immediately thereafter, PO2 Olea identified himself as a police officer and arrested appellant. PO3 Guarda approached them and arrested De Chavez, who has been sitting throughout the operation on the motorcycle. Appellant and De Chavez were then informed of their rights. PO2 Olea proceeded to mark the seized plastic sachet and pink coin purse with his initials “ANO” and the date “11-24-11,” while PO3 Guarda took a photograph of the same item.

Eventually, appellant and De Chavez were brought to the *barangay* outpost of San Isidro where they were met by PO1 Adelantar. While on their way to the *barangay* outpost, PO2 Olea retained possession of the seized items and, thereafter, accomplished the Chain of Custody Report. The evidence was, subsequently, turned over to PO1 Adelantar. A Certificate of Inventory was then accomplished before *barangay kagawad* Eustaquio Ronquillo, DOJ Representative Prosecutor Evelyn Jovellanos, and media representative Maricia Lualhati.

The team, together with appellant and De Chavez, proceeded to the Batangas City Police Station where proper documentations were prepared. PO1 Adelantar then brought the Request for Laboratory Examination, along with the specimen, to the Provincial Crime Laboratory. After the conduct of a qualitative examination on the specimen, the latter was found positive for the presence of Methamphetamine Hydrochloride, a dangerous drug.



Consequently, an Information was filed against appellant and De Chavez for violation of Section 5, Article II of R.A. 9165, which reads as follows:

That on or about November 24, 2011 at around 11:45 in the evening at Phase 2, Brgy. San Isidro, Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, not being authorized by law, did then and there, knowingly, willfully, and criminally transport or deliver one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride, more commonly known as shabu, weighing 0.41 gram, a dangerous drug, which is a clear violation of the above-cited law.

That the aggravating circumstance of the use of motor vehicle is attendant in the commission of the offense.

CONTRARY TO LAW.³

Appellant and De Chavez pleaded not guilty to the charge against them. Hence, the trial on the merits ensued.

The prosecution presented the testimonies of PO2 Olea, PO3 Guarda, PO1 Adelantar and PSI Herminia Llacuna, a forensic chemist.

After the court admitted the prosecution's evidence, appellant and De Chavez filed their respective Demurrer to Evidence⁴ with prior leave of court. In an Order⁵ dated July 22, 2014, the RTC denied the Demurrer to Evidence of appellant, but granted the Demurrer to Evidence of De Chavez and dismissed the case against him on the ground of insufficiency of evidence.

Appellant, thereafter, presented his own testimony and that of De Chavez. According to appellant, on November 24, 2011, he and De Chavez were at his house in Sta. Clara, Batangas, when a certain Greg called and invited him to a drinking session at *Barangay* San Isidro. Appellant requested De Chavez to accompany him. De Chavez drove a motorcycle with appellant riding on the back of the vehicle. When they arrived at San Isidro Village, they did not proceed inside the village, as they were told that Greg would fetch them at the gate. While they were waiting at the gate, two (2) masked men approached them and held their hands. Thinking that the two men were robbers, De Chavez handed the keys of the motorcycle to one of the men when one them asked for the said key. The motorcycle's compartment was searched, but yielded nothing. It was then that appellant and De Chavez were handcuffed and arrested.

³ *Id.* at 40.

⁴ Records, pp. 198-206

⁵ *Id.* at 223.

After their pictures were taken beside the motorcycle, appellant and De Chavez were made to board a mobile patrol car and were brought to the Batangas City Police Station. At the police station, they were interrogated about the identity of a certain "Doktora," but both of them denied knowing such person. They were then made to sign a document, the contents of which were not known by appellant and De Chavez, before they were directed to board another mobile patrol car and were brought to the *barangay* hall of San Isidro. At the *barangay* hall, they were asked to identify a pink coin purse which was being alleged to be owned by them. Pictures were taken of them together with the pink coin purse. Thereafter, they were brought back to the Batangas City Police Station where they were again interrogated about the identity of "Doktora."

Appellant and De Chavez were, subsequently, brought to the PNP Provincial Command where they were made to sign another document that was unknown to them. Afterwards, they were brought back to the Batangas City Police Station where they were detained. De Chavez asked the police officers as to the cause of their detention, and the latter replied that it was because he and appellant delivered a pink pouch containing *shabu* to a government asset, which De Chavez categorically denied. De Chavez maintained that he and appellant were only confronted with the pink coin purse for the first time at the *barangay* hall of San Isidro because a search of the compartment of the motorcycle did not yield anything.

The RTC, on April 17, 2015, rendered its Decision finding appellant guilty beyond reasonable doubt of the offense charged in the Information. The dispositive portion of the said Decision reads as follows:

WHEREFORE, viewed from the foregoing, the Court finds the accused Romulo Arago y Como @ Danica GUILTY BEYOND REASONABLE DOUBT for violation of Section 5, Article II of RA 9165, otherwise known as [the] Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to life imprisonment and to pay a fine in the amount of Five Hundred Thousand Pesos (P500,000.00). Said accused shall be given credit for the period of his preventive detention.

The 0.41 gram of Methamphetamine or *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with the law.

SO ORDERED.⁶

Appellant elevated the case to the CA, and on March 28, 2017, the appellate court affirmed with modification the decision of the RTC, thus:



⁶ CA rollo, p. 48.

WHEREFORE, premises considered, the Decision dated 17 April 2015 in Criminal Case No. 17212 rendered by Branch 3 of the Regional Trial Court of Batangas City is AFFIRMED with the MODIFICATION that Accused-Appellant Romulo Arago, Jr. y Como is declared guilty beyond reasonable doubt of illegal delivery of *shabu* penalized under Section 5, Article II of Republic Act No. 9165, and is hereby sentenced to life imprisonment to pay a fine in the amount of Five Hundred Thousand Pesos (P500,000.00). Said Accused-Appellant shall be given credit for the period of his preventive detention.

SO ORDERED.⁷

The motion for reconsideration having been denied by the CA, appellant now comes to this Court for the resolution of his appeal.

In his Brief, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ILLEGAL SALE OF DANGEROUS DRUGS DESPITE THE PROSECUTION'S FAILURE TO PROVE PAYMENT OR CONSIDERATION THEREOF.

II.

THE TRIAL COURT GRAVELY ERRED IN RELYING ON PO2 OLEA'S INCONSISTENT AND INCREDULOUS TESTIMONY.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.⁸

According to appellant, the prosecution was not able to establish the monetary consideration in exchange of the dangerous drugs allegedly sold by him. He claims that in order for a charge of Section 5 of R.A. No. 9165 to prosper, the following elements must be present: (1) identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing being sold and the payment therefor. Thus, he avers that the second element has not been proven.

Appellant also argues that the offense charged against him is fabricated and that the testimony of the police officer is full of inconsistencies and simply incredulous. Hence, appellant maintains that the presumption of regularity of duties cannot prevail over the constitutional right of an accused to be presumed innocent and cannot by itself constitute proof of guilt beyond reasonable doubt.

⁷

Id. at 90.

⁸

Id. at 31-34.

The appeal must fail.

Section 5, Article II of R.A. No. 9165 provides the following:

Section 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.⁹

It is very clear from the above provisions of the law that Section 5 does not only punish the sale of dangerous drugs but also its administration, dispensation, delivery, distribution and transportation. The Information against appellant reads, in part, “knowingly, willfully, and criminally **transport or deliver one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride**, more commonly known as *shabu*.”¹⁰ Hence, appellant was convicted not because of the sale of dangerous drugs which has consideration as its element, but because of the delivery of a dangerous drug. Section 3(k), of R.A. No. 9165 defines delivery as “*any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.*”

The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Thus, delivery may be committed even without consideration.¹¹ The prosecution was able to prove the said elements through the testimony of PO2 Olea:

FISCAL PATULAY:

After recording your coordination with the barangay of your [operation] what did you do next?

WITNESS [PO2 OLEA]

A: After we proceeded to Phase 2 of San Isidro Village and parked at the side of the road near the gate.

Q: Who were with you in going to that place?

A: Our asset and PO2 Guarda, sir.

⁹ Emphasis ours.

¹⁰ CA rollo, p. 40.

¹¹ *People v. Bobotok, Jr.*, G.R. No. 237804, July 4, 2018, citing *People v. Maongco, et al.*, 720 Phil. 488, 502 (2013).

Q: How about [PO1] Adelantar?

A: He did not go with us.

Q: After parking your vehicle at the side of the road near the gate of San Isidro Village[,] what happened next?

A: We alighted from our vehicle and we walked towards the gate together with my asset.

Q: Were you able to reach the gate of that village?

A: Yes, sir.

Q: What happened after reaching the gate?

A: When we were waiting for them the black motorcycle arrived and I noticed two (2) persons were on board of said motorcycle; one is sporting a long hair.

Q: After this motorcycle arrived[,] what happened next?

A: We approached them and the one sporting with (sic) a long hair alighted from the motorcycle he was riding and he had a short talk with the one driving the motorcycle.

Q: After than[,] what happened next?

A: The one sporting [a] long hair got something from his pocket and I noticed it [was] a pink coin purse.

Q: How far were you from this person sporting a long hair when he got something from his pocket?

A: Witness, pointing to a distance of one (1) meter).

Q: Can you describe to us the area, its lighting condition during that day?

A: It was very well lighted because of the light coming from the subdivision.

Q: After noticing this person with long hair getting something from his pocket[,] what happened next?

A: He got a plastic sachet of suspected shabu from the pink coin purse and he said its worth P7,000 ("Yan, pitong libo yan.")

Q: When this person sporting with long hair uttered said [remarks], what was he doing?

A: He was giving it [to the] asset, sir.

Q: Which one was given to your asset?

A: The plastic sachet containing suspected shabu, sir.

Q: Where were you when this person sporting [a] long hair gave that plastic sachet of shabu to your asset?

A: We were near each other. It's just about a meter, sir.

Q: Did your asset receive that plastic sachet?

A: Yes[,] sir.

Q: After receiving that plastic sachet of shabu from the one sporting [a] long hair[,] what happened next?

A: He gave the plastic sachet to me and I saw that the contents [look] like shabu.

Q: After [that,] what happened next?

A: I introduced myself that I am a police officer and I apprehended him and then my companion PO2 Guarda arrived.

Q: After arresting this person sporting [a] long hair, what happened next?

A: I asked him for his name and he introduced [him]self as Romulo Arago, Jr. y Como of Brgy. Sta. Clara, Batangas City[,] and then I apprised him of his constitutional rights. x x x¹²

Appellant insists that the absence of money and the non-presentation of a marked money as evidence negates the finding that he committed the offense laid down in Section 5, Article II of R.A. No. 9165. In *People v. De la Cruz*,¹³ the Court held that the presentation of the marked money, as well as the fact that the money was paid in exchange for the delivery of dangerous drugs, were unnecessary to consummate the crime, thus:

[E]ven if the money given to De la Cruz was not presented in court, the same would not militate against the People's case. In fact, there was even no need to prove that the marked money was handed to the appellants in payment of the goods. The crime could have been consummated by the mere delivery of the prohibited drugs. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering. In the latter case, the act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration, consummates the offense.¹⁴

As found by the RTC and the CA, PO2 Olea was informed by his asset prior to their operation that no money or any form of consideration would be exchanged for the *shabu* that he would be obtaining from appellant, hence, there was no marked money prepared by the police officers. As testified by PO2 Olea:

THE COURT

Q: You were told by the asset that (sic) he was going to be a sale on credit?

WITNESS

A: Yes[,] your Honor. I was only informed that Romulo Arago will deliver the shabu and the payments will be made after the asset has successfully sold the shabu your honor.

Q: So this is not practically an outright sale?

A: Yes[,] your honor[.]

Q: You termed it to be a sale and consignment job?

A: Yes[,] your honor.

Q: And you knew for a fact before you talked with the accused Romulo Arago?

¹² TSN, March 26, 2012, pp. 11-13.

¹³ 263 Phil. 340 (1990), as cited in *People v. Maralit*, G.R. No. 232381, August 1, 2018.

¹⁴ *Id.* at 350.

A: Yes[,] your honor.

Q: You were informed by Arago that that (sic) was going to be a sale and consignment job if (sic) you were informed by him?

A: Yes[,] your honor.

Q: And despite that, you and your asset agreed to that?

A: Yes[,] your honor.

Q: And actually it did happen?

A: Yes[,] your honor.

Q: So it was clear that there was no delivery of money?

A: Yes, your honor.

x x x x

Q: How many times did you incur an experience of this nature?

A: Three (3) or more times, your honor.

Q: You are saying that this is really happening in a buy bust operation?

A: Yes[,] your honor, if there is delivery.

Q: What do you mean if there is delivery?

A: It happens, your honor.

Q: You are being informed by your asset that the mode is like that, consignment?

A: Yes[,] your honor.

Q: And you consider it a buy-bust operation?

A: No[,] your honor.

Q: What do you call of (sic) that condition?

A: Transporting and delivery[,] your honor. x x x¹⁵

The above testimony of PO2 Olea was corroborated by PO3 Guarda, thus:

THE COURT

Q: When you were requested by [PO2] Olea to accompany him, did he tell you that he will be conducting a buy-bust operation, or do you know for a fact that you will be conducting a buy-bust operation?

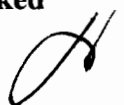
A: No[,] your honor.

Q: So, you do not know exactly what was that operation all about when you accompanied Olea?

A: What I know is delivery, your Honor.

Q: When did you come to know that the operation is about delivery?

A: Before we left[,] your Honor, because we did not prepare a marked money.



¹⁵ TSN, March 26, 2012, pp. 36-38. (Emphasis ours)

Q: So you were informed by Olea before you left the station that your operation would be a delivery and not a buy[-]bust operation. That is correct?

A: Yes[,] your honor. That was my understanding.

Q: So, your understanding was confirmed because there was no buy[-]bust money prepared?

A: Yes, your honor. x x x¹⁶

It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.¹⁷ In this case, appellant failed to present evidence to refute the testimony and credibility of the witnesses for the prosecution. Additionally, in weighing the testimonies of the prosecution's witnesses *vis-a-vis* that of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.¹⁸

As to appellant's defense of denial and claim of frame-up, such cannot prevail over the positive testimonies of the prosecution witnesses. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence,¹⁹ which appellant failed to present in this case. As aptly ruled by the CA:

It is settled in our jurisdiction that uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the *corpus delicti*. The testimonies of police officers who caught Arago *in flagrante delicto* are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence, which Arago failed to do. Other than the denial made by Arago which this Court considers as self-serving, his vague assertion that he was framed by arresting officers for not being able to provide information about a certain "Doktora," there were no other evidence presented to substantiate his claims.²⁰

¹⁶ TSN, September 18, 2012, pp. 39-40. (Emphasis ours)

¹⁷ *People v. Steve*, 740 Phil. 727, 737 (2014).

¹⁸ *People v. Alacdis, et al.*, G.R. No. 220022, June 19, 2017, 827 SCRA 419, 431-432, citing *People v. Asislo*, 778 Phil. 509 (2016).

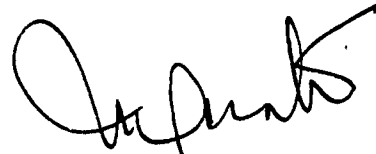
¹⁹ *People v. Lazaro, Jr.*, 619 Phil. 235, 254 (2009).

²⁰ *Rollo*, p. 17. (Citations omitted)

Anent the penalty imposed by the CA, such must not also be disturbed, for being in accordance with law.

WHEREFORE, the appeal of Romulo Arago, Jr. y Como is **DISMISSED** for lack of merit. Consequently, the Decision dated March 28, 2017 of the Court Appeals in CA-G.R. CR HC No. 07585, affirming the Decision dated April 17, 2015 of the Regional Trial Court, Branch 3, Batangas City in Criminal Case No. 17212, convicting appellant of Violation of Section 5, Article II, Republic Act No. 9165, is **AFFIRMED**.

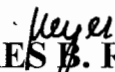
SO ORDERED.




DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

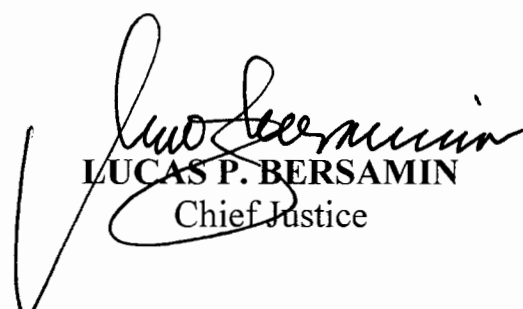
ATTESTATION

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.


DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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.


LUCAS P. BERSAMIN
Chief Justice