



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **February 12, 2020**, which reads as follows:*

“G.R. No. 236457 (People of the Philippines, Plaintiff-Appellee, v. Wilmore Talaue y Lotivio, Accused-Appellant) – This appeal¹ seeks to reverse and set aside the Decision² promulgated on 30 June 2017 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 08304, which affirmed the Decision³ dated 14 April 2016 of Branch 5, Regional Trial Court (RTC) of Legazpi City, Albay in Criminal Case Nos. 12154-12155, finding accused-appellant Wilmore Talaue y Lotivio (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 11(3), Article II of Republic Act No. (RA) 9165.⁴

Antecedents

Accused-appellant was charged with violation of Sections 5 and 11 (3), Article II of RA 9165, in two (2) separate Informations, the accusatory portions of which read:

Crim. Case No. 12154

That on or about the 11th day of May, (sic) 2012, at more or less 3:35 in the afternoon[,] at Balaguer St., Brgy. Market Site, Municipality of Daraga, Province of Albay, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, did[,] then and there[,] willfully, unlawfully and knowingly, sell to a poseur[-]buyer, Agent Edward Kenn S. Ampongan, a PDEA Operative, one (1) heat sealed transparent plastic sachet[,] containing Methamphetamine Hydrochloride[,] weighing 0.072 gram, without any authority from the proper government agencies, to the damage and prejudice of the public welfare.

¹ *Rollo*, pp. 16-17.

² *Id.* at 2-15; penned by Associate Justice Mariflor P. Punzalan Castillo, and concurred in by Associate Justices Florito S. Macalino and Maria Elisa Sempio Diy of the Ninth Division, Court of Appeals, Manila.

³ *CA rollo*, pp. 46-49; penned by RTC Judge Pedro R. Soriao.

⁴ Comprehensive Dangerous Drugs Act of 2002.

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ACTS CONTRARY TO LAW.⁵

Crim. Case No. 12155

That on or about the 11th day of May, (sic) 2012, at more or less 3:35 in the afternoon[,] at Balaguer St., Brgy. Market Site, Municipality of Daraga, Province of Albay, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, did[,] then and there[,] wil[l]fully, unlawfully and knowingly, have in his possession and control[,] dried marijuana fruiting tops[,] considered a dangerous drugs (sic) with total net weight of 6.265 grams, without any authority from the proper government agencies, to the damage and prejudice of the public welfare.

ACTS CONTRARY TO LAW.⁶

Upon arraignment, accused-appellant pleaded not guilty to the charges filed against him.⁷ After pre-trial,⁸ trial on the merits ensued.

Version of the Prosecution

On 11 May 2012, a team from the Philippine Drug Enforcement Agency (PDEA) Albay Provincial Office conducted a buy-bust operation in Brgy. Market Site, Daraga, Albay against one "Boy Demonyo," later identified as the accused-appellant.⁹ During the buy-bust, accused-appellant sold P500.00 worth of *shabu* to Intelligence Officer Edward Kenn Ampongan (IO Ampongan), the poseur-buyer.¹⁰ Intelligence Officer I Samuel Detera (IO1 Detera) frisked and recovered from accused-appellant eight (8) sachets containing dried leaves suspected to be marijuana.¹¹ The team marked the buy-bust money and the items recovered from accused-appellant at the place of arrest in the presence of two (2) *barangay* officials.¹²

The team brought accused-appellant and the seized items to the police station where they conducted the inventory and photograph-taking of the seized items in the presence of two (2) *barangay* officials, a representative from the media, and a representative from the Department of Justice (DOJ).¹³ The seized items were thereafter brought to the crime laboratory for examination, which confirmed that the seized item (subject of sale) was positive for methamphetamine hydrochloride or *shabu* while the contents of

⁵ Records, Crim. Case No. 12154, p. 1.

⁶ Records, Crim. Case No. 12155, p. 1.

⁷ Records, Crim. Case No. 12154, p. 68.

⁸ *Id.* at 75-78.

⁹ *Rollo*, p. 3.

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Id.*

the eight (8) sachets (subject of possession) were positive for marijuana.¹⁴

Version of the Defense

Accused-appellant denied the charges filed against him and claimed that on 11 May 2012, while he was resting by a bridge on Balaguer St., Brgy. Market Site, Daraga, Albay, two (2) men on their motorcycles whom he later identified as PDEA agents, stopped in front of him.¹⁵ Each of them stood by his side and asked if he was “Boy Demonyo.” One (1) of them put his hand inside accused-appellant's pocket when he answered in the negative.¹⁶ He tried to shove the agent's hand but the latter struck him with a gun and then handcuffed him.¹⁷

Ruling of the RTC

On 14 April 2016, the RTC rendered its Decision,¹⁸ convicting accused-appellant of the offenses charged, thus:

WHEREFORE, [p]remises [c]onsidered, this Court renders judgment, as follows, to wit (sic):

1. In Criminal Case No. 12154, this Court finds the accused[,] Wilmore Talaue y Lotivio[,] Guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, sentencing him to life imprisonment, as well as to pay a fine of 500,000 pesos. He shall pay the costs of suit;
2. In Criminal Case No. 12155, this Court finds the accused[,] Wilmore Talaue y Lotivio[,] Guilty beyond reasonable doubt of violating Section 11, paragraph (3), Article II of Republic Act No. 9165, sentencing him to an imprisonment of an indeterminate penalty[,] ranging from twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, as well as to pay a fine of 300,000 pesos. He shall pay the costs of suit;
3. The [*shabu*] and marijuana in question are confiscated in favor of the government, this Court ordering their destruction as the law directs.

SO ORDERED.¹⁹

In convicting accused-appellant, the RTC found that the testimonies of the prosecution witnesses were more credible than accused-appellant's

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 6.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *CA rollo*, pp. 46-49.

¹⁹ *Id.* at 49.

version of the incident.²⁰ The RTC also upheld the presumption of regularity in PDEA agents' performance of duty. It found that the chain of custody of the *shabu* and marijuana was strictly monitored, while the integrity of the evidence was kept intact until their presentment in court.²¹

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In its Decision²² dated 30 June 2017, the CA affirmed accused-appellant's conviction. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision of the Regional Trial Court of Legazpi City, Albay, Branch 5, dated 14 April 2016, is **AFFIRMED**.

SO ORDERED.²³

The CA held that the prosecution has proved all the elements of the illegal sale of *shabu* and illegal possession of marijuana by accused-appellant. Likewise, it held that the integrity and evidentiary value of the seized dangerous drugs were preserved and were the very same items listed in the inventory, tested in the laboratory, and later presented during the trial in court.²⁴

Hence, this appeal.

Issue

The sole issue in this case is whether or not the CA correctly affirmed accused-appellant's conviction for illegal sale and illegal possession of dangerous drugs under Sections 5 and 11(3), Article II of RA 9165.

Ruling of the Court

We dismiss the instant appeal.

In a case for illegal sale of dangerous drugs, the prosecution must be able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the

²⁰ *Id.* at 49.

²¹ *Id.* at 48.

²² *Rollo*, pp. 2-15.

²³ *Id.* at 14.

²⁴ *Id.* at 9-12, 13.

delivery of the thing sold and its payment.²⁵ The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the illegal sale transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.²⁶ Upon the other hand, for a successful prosecution for the illegal possession of prohibited drugs, the following elements must be proved: (1) the accused was in possession of the object identified as a prohibited drug; (2) the drug possession was not authorized by law; and (3) the accused freely and consciously possessed the drug.²⁷

The RTC, as affirmed by the CA, found that the prosecution established all the foregoing elements of illegal sale of *shabu* and illegal possession of marijuana. The Court sees no reason to disturb their common findings. Factual findings of the appellate court, affirming those of the trial court, are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error, which accused-appellant failed to establish in this case.²⁸

In Criminal Case No. 12154, the prosecution proved the guilt of accused-appellant for illegal sale. IO Ampongan positively identified accused-appellant as the one who sold him the *shabu* wrapped in an aluminum foil for P500.00. The sale was consummated after the exchange of buy-bust money and *shabu* between IO Ampongan and accused-appellant. In *People v. Magalong*,²⁹ the Court held that in the offense of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money, consummate the illegal transaction. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.³⁰

In Criminal Case No. 12155, the prosecution established the elements of illegal possession with the testimony of IO1 Detera, and the presentation of the *corpus delicti* in court. The records show that after arresting accused-appellant *in flagrante*, IO1 Detera found in accused-appellant's possession eight (8) transparent plastic sachets containing 6.265 grams of marijuana, a prohibited drug, which accused-appellant was not authorized to possess.

The Court likewise upholds the common findings of the RTC and the CA that there was compliance with the law as to the preservation and disposition of the dangerous drug, along with chain of custody requirements.

²⁵ *People v. Ygot*, 790 Phil. 236-248 (2016); G.R. No. 210715, 18 July 2016, 797 SCRA 87.

²⁶ *People v. Amaro*, G.R. No. 207517, 01 June 2016, 792 SCRA 1.

²⁷ *People v. Gaspar*, 669 Phil. 122-137 (2011); G.R. No. 192816, 06 July 2011, 653 SCRA 673.

²⁸ *People v. Bontuyan*, 742 Phil. 788-803 (2014); G.R. No. 206912, 10 September 2014, 735 SCRA 49.

²⁹ G.R. 231838, 04 March 2019.

³⁰ *De Lima v. Guerrero*, 819 Phil. 616-1211 (2017); G.R. No. 229781, 10 October 2017, 843 SCRA 1.

Here, We find that the prosecution established the necessary links in the chain of custody from the time the sachets of illicit drugs were seized until they were forwarded to the laboratory for examination and presented in court as evidence.

After the seizure of the illicit drugs, IO Ampongan and IO1 Detera marked the same at the place of seizure, in the presence of the accused-appellant and two (2) *barangay* officials. Thereafter, they proceeded to the police station where the inventory and taking of photographs of the seized items were done in the presence of accused-appellant, together with the following mandatory witnesses: the *barangay kagawad* with the *barangay* chairman, a representative from the media, and a representative from the DOJ. IO Ampongan and IO1 Detera then brought the seized items to the crime laboratory, duly received by the duty receiving clerk PO2 Lomatao who turned over the items to forensic chemist Police Senior Inspector Wilfredo Pabustan, Jr. (PSI Pabustan, Jr.). After examination, PSI Pabustan, Jr., found the seized items positive for *shabu* and marijuana and turned over the same to the evidence custodian, PO3 Maribel Bagato for safekeeping.³¹ PSI Pabustan, Jr., later retrieved the same before presenting it in court.³² During the presentation of the illicit drugs in court, they were identified by IO Ampongan³³ and IO1 Detera³⁴ as the same ones seized from accused-appellant.

Accused-appellant's assertion that the seized items are inadmissible in evidence for having been confiscated during an illegal search lacks merit.³⁵ As aptly held by the CA, objection to the admissibility of evidence cannot be raised for the first time on appeal.³⁶ The same notwithstanding, the Court finds the consequent warrantless search and seizure in this case to be valid considering the lawful warrantless arrest of accused-appellant, who was caught *in flagrante delicto* selling *shabu* to IO Ampongan. Consequently, the items seized from him were admissible in evidence.

Also, accused-appellant's defenses of denial and frame-up 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,³⁷ which accused-appellant failed to present in this case. Hence, credence should be given to the direct account of the law enforcement officers who are presumed to have performed their duties in a regular manner.³⁸

³¹ *Rollo*, pp. 5-6.

³² TSN, 09 August 2012, p.14.

³³ TSN, 30 August 2012, p. 14.

³⁴ TSN, 14 March 2013, p. 16.

³⁵ CA *rollo*, p. 39.

³⁶ *Rollo*, p. 13.

³⁷ *People v. Lazaro, Jr.*; 619 Phil. 235-262 (2009); G.R. No. 186418, 16 October 2009, 604 SCRA 250.

³⁸ *People v. Cabiles*, 810 Phil. 969-978 (2017); G.R. No. 220758, 07 June 2017, 827 SCRA 89.

All the foregoing considered, the Court affirms the conviction of accused-appellant for the offenses of illegal sale of *shabu* and illegal possession of marijuana.

We find, however, the need to modify the penalty imposed for illegal possession of marijuana. Section 11, paragraph 2, Article II of RA 9165, provides that the imposable penalty for illegal possession of any dangerous drug, like marijuana, with a quantity of five grams or more but less than 10 grams, is imprisonment of twenty (20) years and one (1) day, to life imprisonment and a fine ranging from ₱400,000.00 to ₱500,000.00.

In this case, the prosecution established beyond reasonable doubt that accused-appellant possessed a total of 6.265 grams of marijuana without any legal authority. Thus, accused-appellant must be meted the penalty of imprisonment of twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, and a fine of ₱400,000.00.³⁹

WHEREFORE, the appeal is hereby **DISMISSED**. Accordingly, the Decision dated 30 June 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08304, finding accused-appellant Wilmore Talaue y Lotivio guilty beyond reasonable doubt of the offenses of illegal sale and illegal possession of dangerous drugs, is **AFFIRMED with MODIFICATION**, that for the crime of illegal possession of marijuana, in violation of Section 11, paragraph 2, Article II of RA 9165, docketed as Criminal Case No. 12155, accused-appellant is hereby sentenced to suffer the penalty of imprisonment of twenty (20) years and one (1) day, as minimum, to thirty (30) years, as maximum, and payment of fine of ₱400,000.00.

SO ORDERED." (Carandang, J., *on special leave.*)

Very truly yours,

Misael DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

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³⁹ *People v. Obias, Jr.*, G.R. No. 222187, 25 March 2019.

Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
1104 Diliman, Quezon City

COURT OF APPEALS
CA G.R. CR HC No. 08304
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 5, 4500 Legazpi City
(Criminal Case Nos. 12154-55)

The Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Wilmore L. Talaue
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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