



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

G.R. No. 206054

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

MINNIE TUMULAK y CUENCA,
Appellant.

Promulgated:

25 JUL 2016

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DECISION

BRION, J.:

We resolve the appeal of accused-appellant Minnie Tumulak y Cuenca @ Mitch (*Mitch*) assailing the July 30, 2012 decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03960. The CA decision affirmed the January 29, 2009 decision² of the Regional Trial Court (RTC), Branch 16, Manila, convicting Mitch for the crime of illegal sale of dangerous drugs, defined and punished under Section 5 of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE CASE

In an information dated August 14, 2002, Mitch was formally charged of illegal sale of dangerous drugs. The information reads:

That on or about July 31, 2002, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there

¹ Rollo, pp. 2-22; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justice Normandie B. Pizarro and Associate Justice Manuel M. Barrios.

² CA rollo, pp. 24-31; by Presiding Judge Carmelita S. Manahan.

willfully and unlawfully sell or offer for sale to one SI Arthur R. Oliveros, a poseur-buyer, thirty (30) yellow tablets with "TP" engraved on each tablet and contained in three (3) heat-sealed transparent plastic sachets with each sachet containing ten (10) tablets and each weighing TWO POINT FOUR NINE ZERO SEVEN (2.4907) GRAMS, TWO POINT FOUR NINE FOUR TWO (2.4942), and TWO POINT FOUR FIVE NINE NINE (2.4599) GRAMS or a total of SEVEN POINT FOUR THOUSAND FOUR HUNDRED FORTY-EIGHT (7.4448) grams of ecstasy containing methylenedioxymethamphetamine, which is a dangerous drug.

Contrary to law.

In her arraignment on September 9, 2002, Mitch pleaded not guilty to the charge.

The evidence of the prosecution shows – on July 31, 2002, a buy-bust operation was organized at the Narcotics Division of the National Bureau of Investigation (*NBI*) pursuant to a tip given by a confidential informant, who was able to set up a sale for thirty (30) ecstasy tablets. Special Investigator Arthur R. Oliveros (*SI Oliveros*) was designated as the poseur-buyer. After the meeting, the buy-bust team proceeded to Starbucks Coffee at Remedios Circle, Manila, where they would locate the confidential informant.

SI Oliveros was the only one among the team who went inside Starbucks Coffee to meet with the confidential informant. Upon arriving at the designated place, he saw the confidential informant sitting beside Mitch and another female companion. When SI Oliveros approached their table, he was asked if he had brought the ₱60,000.00 to buy ecstasy. He showed Mitch and the confidential informant the pre-marked ₱500-bill and the boodle money he pulled out from his pocket. Following this, Mitch made a call and then instructed SI Oliveros to proceed to Café Adriatico. All four (4) of them left Starbucks Coffee together and walked to Café Adriatico.

SI Oliveros, the confidential informant, Mitch, and the other female companion sat at a table inside Café Adriatico. Thereafter, Mitch pulled out one (1) ecstasy tablet and gave it to SI Oliveros so he could examine it. SI Oliveros held the tablet and observed that the tablet was yellow in color with the mark "TP" on it.

When SI Oliveros asked about the other twenty-nine (29) ecstasy tablets, Mitch demanded that he give her the ₱60,000.00 first so she could count it inside the restroom. SI Oliveros complied and handed her a white envelope containing two (2) pre-marked ₱500-bills and the boodle money. Then Mitch excused herself to go to the restroom.

SI Oliveros followed Mitch on her way to the restroom, together with his back-up, Special Investigator Ronald C. Abulencia (*SI Abulencia*). Before Mitch could enter the restroom, SI Oliveros and SI Abulencia introduced themselves as NBI agents and arrested her. SI Oliveros inspected her bag and found all thirty (30) pieces of ecstasy tablets equally distributed

inside three (3) separate transparent plastic sachets. SI Abulencia also recovered the two (2) pre-marked ₱ 500-bills from her.

After they had made the arrest, the buy-bust team brought Mitch to their office along with the confiscated items.

Mitch, on the other hand, narrated a different version of what happened – before she got arrested on July 31, 2002, she was allegedly working at Infinity KTV Club and Restaurant when she received a call from her friend named Sarah. When she picked up the phone, Sarah was already crying and asked Mitch to meet her at Café Adriatico saying she would just explain everything when they met. Hesitant at first, Mitch eventually gave in and left to meet Sarah.

Upon arriving at Café Adriatico, Mitch saw Sarah seated beside two (2) male companions. Mitch then sat down at their table and noticed that Sarah's eyes were red. Mitch asked what was going on but Sarah just kept saying “sorry, sorry, Mitch.” Feeling uneasy and nervous as to why Sarah was apologizing, Mitch went to the restroom.

Before reaching the restroom on the second floor of the restaurant, Mitch heard one of Sarah's companions call her. When she turned around, the man showed Mitch his NBI ID and said “*sumama ka nalang samin.*” Thereafter, Mitch was dragged out of Café Adriatico and brought to the NBI office.

The RTC found Mitch guilty beyond reasonable doubt of the crime of illegal sale of dangerous drugs. It held that the prosecution was able to prove that (1) the arrest resulted from a valid buy-bust operation where SI Oliveros allegedly purchased thirty (30) ecstasy tablets from Mitch; and (2) the confiscated drugs identified in court were the same items found in Mitch's possession.

The RTC did not give much credibility to Mitch's defense of denial and frame-up. Apart from her solitary testimony, Mitch did not adduce any credible evidence that the trial court could rely on to consider her defense. The trial court gave more credence to the testimonies of the NBI agents because there was no plausible evidence presented to suggest any improper motive in arresting Mitch. It also held that Mitch's denial cannot prevail over the positive testimonies and the physical evidence against her.

Accordingly, the RTC sentenced Mitch to suffer the penalty of life imprisonment and to pay a fine of ₱1,000,000.00.

On appeal, the CA essentially affirmed the RTC's ruling and held that the prosecution was able to prove that the sale transaction had taken place and the existence of the confiscated drugs. In this case, Mitch handed to SI Oliveros one (1) ecstasy tablet for examination and demanded that the ₱60,000.00 be given to her before she would give him the remaining twenty-

nine (29) ecstasy tablets. The appellate court said that her act was already tantamount to delivery and consummation of the sale of dangerous drugs; and that Mitch's failure to hand over the remaining twenty-nine (29) ecstasy tablets is immaterial.

Further, the CA ruled that noncompliance with Section 21 of R.A. No. 9165 will not render the confiscated drugs inadmissible because the integrity and evidentiary value of the seized items were preserved from the moment they were seized up to the time they were presented in court.

OUR RULING

We find merit in **MODIFYING** the CA's decision and **CONVICTING** Mitch of the offense – attempted sale of dangerous drugs.

The illegal sale of dangerous drugs is not consummated when the seller fails to deliver the illegal drug to the buyer.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.³ To prove that a sale transaction had taken place, the following elements must be proved: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the **delivery of the thing sold** and the payment.⁴

The commission of the offense of illegal sale of prohibited drugs requires merely the consummation of the selling transaction *which happens the moment the buyer receives the drug from the seller*.⁵ So long as the police officer went through the motion as a buyer and his offer was accepted by the seller and *the drug was delivered to the police officer*, the crime was **consummated by the delivery of the goods**.⁶ In other words, what is important is that the poseur-buyer received the drug from the accused.⁷

In the present case, Mitch did not deliver to SI Oliveros all thirty (30) ecstasy tablets; instead they were merely confiscated when she was arrested before she could go to the restroom of Café Adriatico. This fact was shown when SI Oliveros testified:

³ *People v. Dela Cruz*, G.R. No. 205821, October 1, 2014, 737 SCRA 486, 494, citing *People v. Morales*, G.R. No. 172873, March 19, 2010, 616 SCRA 223, 235.

⁴ *People v. Montevirgen*, G.R. No. 189840, December 11, 2013, 712 SCRA 459, 467, citing *People v. Dilao*, 555 Phil. 394, 409 (2007). See also *People v. Esguerra*, G.R. No. 97959, April 7, 1993, 221 SCRA 261, 265.

⁵ *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 563.

⁶ *People v. Lakibul*, G.R. No. 94337, January 27, 1993, 217 SCRA 575, 580-581, citing *People v. De la Cruz*, G.R. No. 87607, October 31, 1990, 191 SCRA 160.

⁷ See *People v. Ponferada*, G.R. No. 101004, March 17, 1993, 220 SCRA 46.

- Q. And once inside the Café Adriatico what happened next?
A. Once inside the Café Adriatico, the accused, Minnie Tumalak showed [a] sample tablet of ecstasy, sir, and gave it to me for examination.
- Q. When you said sample table[t], how many tablets?
A. One (1) piece, sir.
- Q. [Were] you be able to hold that tablet?
A. Yes, sir.
- Q. Did you examine it?
A. I just looked [at] the tablet, sir.
- Q. What happened after you looked at the tablet?
A. I just looked at the tablet with markings TP and I told her about the 29 other tablets, sir.
- Q. What was the reply of the seller?
A. She first demanded that I give to her the Sixty Thousand Pesos (P60,000.00) so that she may count the money before giving the remaining 29 pieces of ecstasy, sir.
- Q. What did you do after she demanded you the P60,000.00?
A. I gave the two (2) pieces of marked money with the boodle money placed inside the white envelope to the accused and she immediately excused herself to go to the comfort room to count the money, sir.
- Q. What did you do after the seller went to the comfort room?
A. After the seller went upstairs, because the comfort room was situated upstairs, on the second floor, I immediately followed her together with [SI Abulencia], sir.
- Q. And what happened after you followed her to the second floor?
A. Before the accused could enter the comfort room, we immediately identified ourselves as NBI Operatives and announced the apprehension and immediately placed the accused under arrest after recovering the other 29 pieces of alleged ecstasy tablets inside her bag, sir.⁸

On cross-examination, SI Oliveros clarified that all thirty (30) ecstasy tablets were in fact not delivered to him:

- Q. Is it not that your agreement was for you to purchase or to score, that's the term, of thirty (30) tablets?
A. Yes sir. The transaction was to deliver thirty (30) tablets.
- Q. Initially, you were shown [with] that one (1) tablet, am I right?
A. Yes sir.
- Q. Where is that one (1) tablet which is shown to you as sample of the whole of the tablets?
A. Sir, it was taken from one of the sachets placed inside her bag.
- Q. **Where is that tablet?**
A. **It was placed again inside one of the sachets, sir.**

⁸ TSN, November 13, 2002, pp. 12-13.

- Q. Do you have any marking on that one (1) tablet being shown to you?
- A. I have no marking except that it has [with] the marking “TP” on said tablet, sir.
- Q. “TP” on said tablet? What I mean Mr. Witness is do you have any marking on that one (1) tablet allegedly shown to you for purposes of identification?
- A. None, sir.
- Q. So you cannot identify that one (1) tablet as shown to you because you have no marking?
- A. No sir, because they have the same size and marking.
- Q. You did not separate that one (1) tablet from the other twenty-nine (29) tablets for purposes of putting a mark on it, am I right?
- A. No sir.
- Q. Right now, if you are shown with that one (1) tablet you can never tell us whether or not that one tablet is the one being showed to you?
- A. No sir.⁹

From the foregoing testimony, it can be seen that the element of delivery of the dangerous drug is missing because Mitch never handed SI Oliveros, the poseur-buyer, all thirty (30) ecstasy tablets, the object of the illegal sale.

The offense of attempted sale is necessarily included in the crime of illegal sale of dangerous drugs.

Under the rule on variance,¹⁰ while Mitch cannot be convicted of the offense of illegal sale of dangerous drugs because the sale was never consummated, she may be convicted for the attempt to sell as it is necessarily included in the illegal sale of dangerous drugs.¹¹

A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance.¹²

In the present case, Mitch intended to sell ecstasy and commenced by overt acts the commission of the intended crime by showing the substance to SI Oliveros. To our mind, showing a sample is an overt act of selling dangerous drugs since it reveals the intention of the offender to sell it to the poseur-buyer. Also, in requiring SI Oliveros to show the ₱60,000.00 before she delivers the ecstasy tablets, Mitch’s intent to sell was established.

⁹ TSN, December 18, 2002, pp. 17-19.

¹⁰ RULES OF COURT, Rule 120, Sections 4 & 5.

¹¹ See *People v. Adam*, G.R. No. 143842, October 13, 2003, 459 SCRA 676, 684.

¹² REVISED PENAL CODE, Article 6.

More importantly, the only reason why the sale was aborted is because the police officers identified themselves as such and placed Mitch under arrest – a cause that is other than her own spontaneous desistance.

All told, all elements for the offense of attempted sale of dangerous drugs was established in this case.

The preservation of the identity and evidentiary value of the confiscated drugs is necessary to convict the accused of the crime of illegal possession of dangerous drugs.

We demand that proof beyond reasonable doubt is observed in establishing the *corpus delicti* – the body of the crime whose core is the confiscated illicit drug.¹³ In meeting this quantum of proof, the chain of custody requirement under Section 21 of R.A. No. 9165 ensures that doubts concerning the identity of the drug are removed.

As a rule, strict compliance with the prescribed procedure under Section 21 is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

Mitch contends that the prosecution failed to establish the integrity and identity of the seized drugs because the buy-bust team failed to comply with Section 21. She claims that there was no physical inventory of the confiscated items, as well as any marking and photographing in the presence of selected public officials.

Admittedly, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items.¹⁴

By not complying strictly with the prescribed procedure, the exception found in the Implementing Rules and Regulations of R.A. 9165 operates.¹⁵ This saving clause, however, applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving – **with moral certainty** – that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.

¹³ *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 248.

¹⁴ *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443, 451-452.

¹⁵ “ x x x Provided, further, that noncompliance with these requirements under justifiable grounds, as long as the integrity and 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 x x x.”

In the present case, SI Oliveros marked the three (3) sachets containing the ecstasy tablets with “MCT-1,” “MCT-2” and “MCT-3,” which were then turned over to the NBI Forensic Chemistry Division for examination.

In a Certificate dated August 1, 2002, the forensic analyst certified that SI Oliveros submitted to her office for laboratory examination thirty (30) yellow tablets with “TP” engraved on each tablet, and contained in three (3) heat-sealed transparent plastic sachets marked “MCT-1,” “MCT-2” and “MCT-3,” with each sachet containing ten (10) tablets. After examination, the specimens tested positive for the presence of methylenedioxymethamphetamine, commonly known as ecstasy.

The failure to immediately mark the confiscated items at the place of arrest does not render them inadmissible nor impair the integrity of the seized drugs. In fact, marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.¹⁶

Moreover, the failure to conduct a physical inventory and to photograph the items seized from the accused will not render his arrest illegal or the items confiscated from him inadmissible in evidence as long as the integrity and evidentiary value of the said items have been preserved.¹⁷

To our mind, the identity and evidentiary value of the confiscated drug in this case were preserved because SI Oliveros marked the seized items at the nearest police station, thereby ensuring that – even though they were turned over from one hand to another – the drugs presented and identified in court were the same items confiscated from Mitch. The marking at the NBI office was excused considering that the place of arrest was relatively near the office, and that it was impractical to mark the confiscated items inside a restaurant with a lot of people.

WHEREFORE, the July 30, 2012 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03960 is hereby **MODIFIED**: Minnie Tumalak y Cuenca @ Mitch is found guilty beyond reasonable doubt of attempted sale of 7.4448 grams of methylenedioxymethamphetamine (MDMA) or ecstasy, punished under Section 26, in relation to Section 5, of R.A. No. 9165, and sentenced to suffer the penalty of life imprisonment. She is likewise ordered to pay a fine of ₱500,000.00.

SO ORDERED.


ARTURO D. BRION
Associate Justice

¹⁶ *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 836, citing *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 317.

¹⁷ *People v. Salvador*, G.R. No. 190621, February 10, 2014, 715 SCRA 617, 621, citing *People v. De Jesus*, G.R. No. 198794, February 6, 2013, 690 SCRA 180, 199.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice
Chairperson



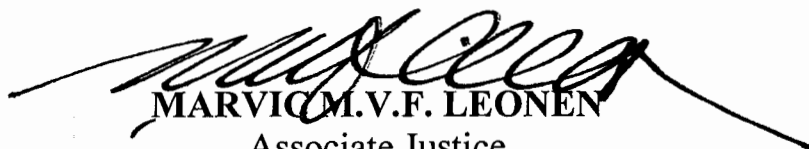
MARIANO C. DEL CASTILLO

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice

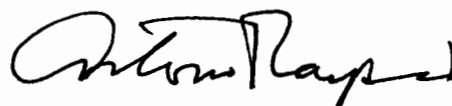


MARVIC M.V.F. LEONEN

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.



ANTONIO T. CARPIO

Associate Justice
Chairperson

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.



MARIA LOURDES P. A. SERENO

Chief Justice