

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO CALLIET A.K.A. “TATA”, ACCUSED-APPELLANT.

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HERNANDO, J:

Before Us is an appeal from the Joint Judgment[1] dated November 28, 2012 rendered by the Regional Trial Court (RTC), Branch 30 of Dumaguete City in Criminal Case No. 19888, for Violation of Section 11, Art. II of Republic Act (R.A.) No. 9165, and Crim. Case No. 19889, for Violation of Section 5, Art. II of R.A. No. 9165 finding accused-appellant Reynaldo B. Calliet a.k.a. “Tata” guilty beyond reasonable doubt of the said crimes, the decretal portion of which reads:

WHEREFORE, in light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 19889, the accused Reynaldo B. Calliet a.k.a. “Tata” is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.07 gram of shabu in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings “RBC-BB-1” 03/04/10 containing 0.07 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 19888, the accused Reynaldo P. Calliet a.k.a. “Tata” is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.06 gram of shabu in violation of Section 11, Art. II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term of fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (Php400,000.00).

The one (1) heat-sealed transparent plastic sachet with markings “RBC-P-1” 03/04/10 containing 0.06 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Reynaldo P. Calliet a.k.a. “Tata” shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[2]

The Antecedents

In two separate Informations dated March 5, 2010, Third Assistant City Prosecutor Rodolfo S. Tropezado of Dumaguete City charged accused-appellant Reynaldo B. Calliet a.k.a. “Tata” with selling and possessing illegal drugs in violation of the Dangerous Drugs Act as follows:

In Criminal Case No. 2010-19889[3]

That on or about the 4th day of March 2010, in the City of Dumaguete, Philippines, and within the jurisdiction

of this Honorable Court, the said accused not being then authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to poseur buyer one (1) heat-sealed transparent plastic sachet containing 0.07 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called shabu, a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. 9165.[4]

In Criminal Case No. 2010-19888[5]

That on or about the 4th day of March 2010, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess one (1) heat-sealed transparent plastic sachet containing 0.06 gram of Methamphetamine Hydrochloride, commonly called “shabu”, a dangerous drug.

Contrary to Sec. 11, Art. II of R.A. 9165.[6]

At his arraignment on March 1, 2010, accused Reynaldo Calliet[7] pleaded not guilty to the two indictments.[8] On March 3, 2011, the parties agreed to adopt the Minutes of the Preliminary Conference[9] dated October 14, 2010 as its pre-trial.[10] Trial thereafter ensued by the reception of the evidence for the prosecution. The defense did not present any countervailing evidence.

Version of the Prosecution

The prosecution’s version, as spelled out in the Brief of the Office of the Solicitor General, shows that on March 4, 2010, at around two o’clock in the afternoon, then Special Agent (SA) Dungog of the National Bureau of Investigation (NBI) Dumaguete District Office received credible information that a certain person by the name of “Tata” was engaged in the sale of illegal drugs at the back of Barko Barko, a pension house located at Barangay Looc, Dumaguete City. SA Dungog then assembled the members of Task Force 24, a composite team of NBI, Philippine Drug Enforcement Agency (PDEA) and Philippine National Police (PNP) operatives organized to enforce laws against illegal drugs in Region 7 that includes Negros Oriental. PO2 Ayunting, together with the confidential agent, was tasked to act as the poseur buyer while IO1 Coliflores was assigned as back-up.

At around four o’clock that same afternoon, the team proceeded to Barangay Looc. PO2 Ayunting and the confidential informant went to the house of appellant while IO1 Coliflores stood nearby. The confidential agent introduced PO2 Ayunting to “Tata” who received the marked bills. Appellant then brought out two (2) plastic sachets containing white crystalline substance and gave one sachet to PO2 Ayunting. After a visual inspection of the contents of the sachet, PO2 Ayunting gave a pre-arranged signal and caused the arrest of “Tata” with the assistance of IO1 Coliflores and the rest of the team. The other sachet was recovered by IO1 Coliflores from the ground. Also recovered from appellant were the two (2) marked one hundred peso bills. The sachet handed by appellant to PO2 Ayunting during the buy-bust was marked by IO1 Coliflores as “RBC-BB-2” 03/04/10 while the other sachet recovered was marked as “RBC-P-1” 03/04/10.

The two (2) sachets were inventoried by IO1 Coliflores and PO2 Ayunting in the presence of Anthony Clilius Benlot of the Department of Justice (DOJ) and Barangay Captain Charlton del Mar who also signed the certificate of inventory. The incident was then recorded in the PDEA blotter. SA Dungog, meanwhile, prepared a letter requesting the PNP Crime Laboratory in Dumaguete City to conduct an examination on the seized items.

Laboratory examinations conducted by PCI Llena on the contents of the sachets yielded positive for methamphetamine hydrochloride. Tests on the urine sample of appellant, likewise, tested positive for methamphetamine.

Aside from the testimony of the witnesses, the prosecution formally offered the following: the two (2) sachets of

shabu, the marked 100 bills, Joint Affidavit of Arrest executed IO1 Coliflores and PO2 Ayunting, Certificate of Inventory, photos taken during the inventory, copy of the PDEA blotter, letter-request for laboratory examination, Chemistry Report No. D-032-10, Chemistry Report No. CDT-019-10 and receipt of the specimen by the trial court.[11]

The Ruling of the Regional Trial Court

On November 28, 2012, the RTC convicted accused-appellant as charged in the two indictments for possessing and selling shabu.[12] The court gave credence to the testimony of the prosecution witnesses as to how the accused-appellant committed the crimes. It also ruled that the prosecution was able to establish all the elements of the two crimes that warranted the conviction of the accused-appellant as explained in its judgment, thus:

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In these cases, the prosecution established beyond reasonable doubt all the essential elements of illegal sale and possession of shabu. The accused Calliet was positively identified by PO2 Ayunting, the poseur-buyer, as the person who sold the shabu presented in court. PO2 Ayunting testified that he received the shabu from the accused Calliet during a legitimate buy-bust operation. PO2 Ayunting also testified that he saw the accused throw another sachet containing shabu which was later recovered by IO[2] Coliflores, who had rushed to the scene of buy-bust operation. The marked money used in the buy-bust operation was recovered by IO2 Coliflores upon the conduct of a body search on the accused as an incident to a lawful arrest for illegal sale [of] dangerous drug. The marked money was also duly presented in court. The shabu seized from the accused was positively and categorically identified in open court also. It was also shown that the accused sold and possessed the shabu without authority, license or prescription.

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As to the issue of disposition and preservation of the subject drugs in these cases, the Court finds that there was compliance with the law and the integrity of the drugs was properly preserved. At the crime scene, PO2 Ayunting pre-marked the sachet of shabu that he bought from the accused with his initials. IO[2] Coliflores also pre-marked the one (1) sachet of shabu that he recovered earlier thrown by the accused with his initials after which he turned them over to PO2 Ayunting. PO2 Ayunting kept custody of these items when they were brought to the PDEA Office. At the PDEA Office, after knowing the complete name of the accused, PO2 Ayunting finally marked the one (1) sachet of shabu sold by the accused to him with the initials "RBC-BB-1" 03/04/10 as well as the one (1) sachet of shabu recovered by IO2 Coliflores and turned over to him with the initials "RBC-P1" 03/04/10. It was IO2 Coliflores who conducted an inventory of these items in the presence of the accused and the witnesses required by law at the PDEA office. Photographs of the seized and confiscated items with the accused and of the witnesses were taken. After the inventory, IO2 Coliflores took custody of the illegal drugs and submitted these to the Negros Oriental Provincial Crime Laboratory. PCI Llena, the forensic chemist of the crime laboratory found that the white crystalline substance inside all the seized and confiscated sachets were positive for methamphetamine hydrochloride (shabu), a dangerous drug. There can be no doubt that the drugs bought and seized from the accused were the same ones examined in the crime laboratory. Plainly, the prosecution has established the crucial link in the chain of custody of the sold and seized sachets of shabu, from the time they were first bought and seized from the accused, until they were brought for examination. This court thus finds the integrity and evidentiary value of the drugs coming from the accused to have not been compromised.

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Assignment of Errors

Aggrieved by the judgment of conviction, accused-appellant interposed this appeal on the ground that the trial

court erred in convicting him of possessing and selling shabu by citing in his Brief the lone assigned error that:

The trial court erred in convicting accused-appellant of the crime charged despite the fact that the prosecution failed to prove his guilt beyond reasonable doubt.[13]

The Solicitor General recommended that the trial court's judgment of conviction for possessing and selling shabu against appellant be affirmed.[14]

THE RULING OF THE COURT

Appellant seeks his acquittal on the grounds that: (1) he did not engage in selling shabu, as can be shown from alleged loopholes in the testimony of the police officers narrating the buy-bust operation conducted against him; (2) failure of PO2 Ayunting to narrate that he (PO2 Ayunting) haggled for the price of the shabu despite the fact that IO1 Coliflores narrated that he heard PO2 Ayunting negotiating with appellant to lower its price; and (3) the integrity of the chain of custody of the drugs allegedly taken from the appellant is in question.

The testimony of prosecution witnesses

Appellant insists that the buy-bust operation did not actually transpire because PO2 Ayunting failed on his own to narrate that he paid for the shabu as he was prompted and queried by the public prosecutor as to this aspect. Moreover, he questions the failure of the same witness to state that he haggled for the price of the drugs prior to payment.

We find these errors to be too trivial as not to affect in any manner the credibility of the prosecution witnesses.

The purpose of examining a witness in open court are: for the side of the party offering such witness - to establish by evidence the claims they have against the other party; for the opposing party - to destroy the credibility of the witness relative to the purpose of the testimony offered by the offeror. Here, the prosecution had the burden to prove its allegation that the police operatives caught the appellant in possession and was engaged in the illegal sale of dangerous drugs as alleged in the Information. On the other hand, the defense is given the opportunity to cross-examine the prosecution witnesses, the primary purpose of which is to destroy their credibility.

After carefully examining the testimony of prosecution witnesses, this Court is convinced that the prosecution was able to establish beyond reasonable doubt all the elements of the crimes charged against the appellant. It was able to prove that based on an information given to their office, a composite team from the NBI, PDEA and PNP was formed by SA Dungog to conduct a buy-bust operation against the appellant on March 4, 2010 at around two o'clock in the afternoon; that as buy-bust money, two 100-peso bills were pre-marked and placed in the blotter; PO2 Ayunting, with their informant, went to the house of the appellant in an area called "Barko Barko", Looc, Dumaguete City to buy the drugs while the other team members were strategically arranged in the area of operation; thereat, "Tata" came out of his house and after being informed by the confidential agent that Ayunting wants to buy shabu, the former took out two (2) plastic sachets from his pants pocket and gave one sachet to PO2 Ayunting; after PO2 Ayunting saw that it was really shabu, he gave the pre-arranged signal to Coliflores after giving the payment to appellant; he then introduced himself to appellant, informed the latter as to his offense and his Constitutional rights and at the same time held him when he (appellant) made an attempt to run away; appellant, while in the act of running away, threw the other sachet of shabu to the ground; Coliflores approached, picked up the sachet of shabu thrown by appellant and informed him (appellant) that he was also being arrested for possessing dangerous drugs, and proceeded to inform him also of his Constitutional rights; the two 100-peso bills were then recovered from appellant by Ayunting; the sachets of shabu were pre-marked separately by Ayunting and Coliflores in the area of apprehension; at the PDEA office, Ayunting turned over the shabu and the buy-bust money to Coliflores and the latter made an inventory and marked the sachets of shabu; photographs were

also taken; the specimen was then brought by Coliflores to the PNP Crime Laboratory for forensic examination which yielded positive results for methamphetamine hydrochloride,[15] a dangerous drug.

As correctly ruled by the court a quo, if there were inconsistencies in the testimony of prosecution witnesses, they did not relate to the elements of the offense but instead focused on minor and insignificant matters, such as the matter of the haggling of the price of the shabu. Moreover, the defense could very well have cross-examined the witnesses in such manner as to elicit or reveal any falsity in their testimonies. However, the cross-examination questions were merely token, which tended merely to clarify how the buy-bust operation was conducted by the police operatives, and did not in any manner impeach the testimony of the prosecution witnesses.

Integrity of the chain of custody

Appellant also raised the integrity of the chain of custody of the sachets of shabu taken from him. However, while there was no stringent application of Sec. 21 of R.A. No. 9165 by the law enforcers, the integrity of the chain of custody of the specimen cannot be questioned for it was duly established with certainty that Ayunting, who bought a sachet of shabu from appellant, marked said sachet with his initials in situs and recovered the two 100-peso bills while Coliflores, who recovered a sachet of shabu thrown by appellant to the ground, also marked said sachet with his own initials. The specimen coming from Ayunting was given to Coliflores at the PDEA office; Coliflores held the sachet which he recovered; at the PDEA office both sachets were marked by Coliflores with the initials of appellant and after the request for laboratory examination was made, Coliflores brought the specimen to the PNP Crime Laboratory for chemical analysis. Stress is made that the buy-bust operation was made around four o'clock in the afternoon while the specimen was brought to the crime laboratory and was received thereat at around 5:20 in the afternoon. The close time interval would eliminate suspicion that said evidence would have been co-mingled or switched with the other evidence, if there was any, under the custody of the police at that time.

Records also disclosed that it was the examining chemist, PCI Josephine S. Llana, who brought the specimen to Court. The prosecution and the defense even stipulated on the testimony of the chemist which included the fact that prior to the delivery of the specimen to court, the same was kept in a vault where she can solely access it.[16]

Verily, there is nothing in the evidence of the prosecution that would remotely suggest that appellant is not liable for the crimes charged against him or that the pieces of evidence presented in court were not the very evidence recovered from him. The prosecution was able to establish all the elements for the crime of selling and possessing shabu, the illegal acts with which they prosecuted the appellant. We thus see no iota of reason to overturn the findings of guilt made by the court a quo.

WHEREFORE, premises considered, this appeal is DENIED. The Joint Judgment[17] dated November 28, 2012 rendered by the Regional Trial Court (RTC), Branch 30 of Dumaguete City in Criminal Cases Nos. 19888, for Violation of Section 11, Art. II of Republic Act (R.A.) No. 9165, and 19889, for Violation of Section 5, Art. II of R.A. No. 9165 finding accused-appellant Reynaldo B. Calliet a.k.a. "Tata" guilty beyond reasonable doubt of the said crimes is AFFIRMED. No costs.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Penned by Judge Rafael Cresencio C. Tan, Jr.

[2] RTC records, pp. 147-158; Rollo, pp. 48-59.

- [3] The RTC indicated the case number as Criminal Case No. 19889 in its records.
- [4] RTC records, p. 3.
- [5] The RTC indicated the case number as Criminal Case No. 19888 in its records.
- [6] RTC records, p. 27.
- [7] Accused is also referred to as Reynaldo Callet elsewhere in the records.
- [8] Order dated March 19, 2010; RTC records, pp. 24; 55.
- [9] Minutes of the Preliminary Conference; RTC records, pp. 59-63.
- [10] See Order dated March 3, 2011; RTC records, p. 83 and Joint Pre-trial Order of the same date; RTC records, pp. 86-91.
- [11] Brief for the Appellee; Rollo, pp. 70-84.
- [12] RTC Decision, *supra*.
- [13] Assignment of Error, Brief for the Accused-Appellant; Rollo, pp. 31-47.
- [14] Brief for Appellee, *supra*.
- [15] TSN, September 17, 2012, pp. 3-14; TSN, October 8, 2012, 7-19.
- [16] Order dated September 10, 2012; RTC records, pp. 97-98.
- [17] Penned by Judge Rafael Cresencio C. Tan, Jr.

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