

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BOBET T. AMAD, ACCUSED-APPELLANT.

CR-HC No. 03578, September 29, 2010

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Court of Appeals

This is an appeal[1] from the Decision[2] of the Regional Trial Court (RTC) of Angeles City, Br. 62, convicting the Accused-Appellant for violation of Sees. 5 and 11, Art. II of Republic Act (R.A.) No. 9165[3], in Crim. Case No. 03-003, sentencing him to suffer a penalty of life imprisonment and ordering him to pay a fine of Five Hundred Thousand Pesos (PhP500,000.00); and, in Crim. Case No. 03-004, sentencing him to suffer a penalty of life imprisonment and ordering him to pay a fine of Four Hundred Thousand Pesos (PhP400,000.00), respectively.

The Facts[4]

Accused-Appellant Bobet T. Amad was charged before the RTC for violation of Sees. 5 and 11, Art. II of R.A. No. 9165. The accusatory portion of the Information(s) are, as follows:

In Crim. Case No. 03-003

Violation of Sec. 5, Art. 11 of R.A. No. 9165:

That on or about the 27th day of December 2002, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and/or deliver to a poseur buyer one (1) small transparent plastic sachet containing more or less One (1) Gram of suspected SHABU which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.[5]

In Crim. Case No. 03-004

Violation of Sec. 11, Art. II of R.A. No. 9165: That on or about the 27[th] day of December 2002, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and custody and control the following:

Two (2) pieces of small size heat sealed transparent plastic sachets containing SHABU weighing more or less Five (5.0) Grams each:

and

Four (4) pieces of small size heat sealed transparent plastic sachets containing SHABU weighing more or less One (1.0) gram each[;]

Or a total of Fourteen (14.0) GRAMS OF SHABU (Methamphetamine Hydrochloride), which is a dangerous drug[,] without authority whatsoever.

CONTRARY TO LAW.[6]

When arraigned, the Accused-Appellant, assisted by his counsel, Atty. Felipe Abrajano, pleaded not guilty to

the charges[7]. After pre-trial, the trial on the merits ensued.

The Version of the Prosecution:

Presented as witnesses are members of the Philippine National Police (PNP), namely: Divina Mallari Dizon[8] (Dizon), Forensic Chemical Officer assigned at the PNP Crime Laboratory in Camp Olivas, San Fernando, Pampanga, and, PO2 Rommel M. Vital[9] (PO2 Vital) and PO2 Noelito C. Lagman[10] (PO2 Lagman), who are both assigned at the City Drug Enforcement Unit (CDEU), Angeles City Police Office, Camp Tomas Pepito, Sto. Domingo, Angeles City.

On December 27, 2002 an information was received from a civilian informant that a certain Bobet (later identified in open court as the Accused-Appellant) was selling shabu along R. D. Reyes Street, Lourdes Northwest, Angeles City. Immediately, a briefing for a buy-bust operation was conducted and let by CDEU Superintendent Fernando Maminta (Col. Maminta). The buy-bust team, composed of PO2 Vital, PO2 Lagman, Inspector Basa, and the informant, designated PO2 Vital as the poseur-buyer. Col. Maminta provided ten (10) One Hundred Peso(PhP100.00)-bills as marked money[11] and handed the same to PO2 Vital. The latter placed his initials "RM" on the lower right side corner of each bill. The team coordinated with the Philippine Drug Enforcement Agency (PDE A) before proceeding to the target area.[12]

At around 2:00 in the afternoon of the same day, the team proceeded to R. D. Reyes Street where the Accused-Appellant was sighted standing in front of a gate. PO2 Vital and the informant walked towards the Accused-Appellant while the rest of the team stayed about eighteen(18) to twenty(20) meters behind. The informant talked to the accused-Appellant and introduced PO2 Vital as a friend who wanted to "score". The Accused-Appellant asked the informant, "taga saan ba yan?", to which the latter replied, "dito lang"[13]

The Accused-Appellant, then, asked PO2 Vital how much he would buy. The latter answered that he wanted to buy worth One Thousand Pesos (PhP1,000.00) of shabu. The Accused-Appellant immediately got from his pocket a small transparent plastic sachet containing white substance suspected to be shabu. PO2 Vital handed over the marked money. In turn, the Accused-Appellant gave him the small transparent plastic sachet.

Thereafter, PO2 Vital introduced himself as a police officer and arrested the Accused-Appellant. A few seconds later, his other team members arrived. A procedural body search was conducted by PO2 Lagman resulting in the discovery of six(6) more pieces of transparent plastic sachets with suspected shabu, and the marked money. The police officers handcuffed the Accused-Appellant while PO2 Lagman affixed his initials "NCL" on the six(6) sachets that he recovered. Likewise, PO2 Vital placed his initials "RMV" on the plastic sachet that had been the subject of the sale.

The Accused-Appellant and the confiscated items were immediately brought to the police station. PO2 Lagman prepared a confiscation receipt[14] enumerating the seized items. A representative from the media, Raul Suscano, was present and he signed on the said receipt. Then, PO2 Vital and PO2 Lagman prepared a joint affidavit of apprehension[15] Also, an initial field test[16] was conducted and the same yielded positive results for Methamphetamine Hydrochloride. Subsequently, the seized plastic sachets were brought to the crime laboratory to determine the presence of shabu[17] The test, which yielded positive for the presence of Methamphetamine Hydrochloride, also known as shabu, was reduced in Chemistry Report No. D-0661-200218.

The Version of the Defense:

The Accused-Appellant[19] testified that, on December 27, 2002, at around 2:00 in the afternoon, he was asked by his wife to buy medicine for their sick child at Manson Drug Store. He boarded a tricycle and alighted in front of a restaurant. Thereafter, police officers came out of a vehicle and arrested him. He was arrested because a

certain Ogie Torres identified him as a "source" of shabu. He was brought to his house where police officers conducted a search thereof. When they found nothing, he was taken to the CDEU office together with Ogie Torres. There, he was bodily searched and they recovered from him Three Hundred Pesos(PhP300.00), the money intended for the medicine of his son.

Saramina P. Amad[20], the Accused-Appellant's wife, declared in court that on December 27, 2002, she was at home looking after her children while her husband went out to buy medicine for their sick child. She was surprised when her husband came home with police officers. The latter searched their house but found nothing. Thereafter, her husband was brought to the police station and was detained thereat.

On December 21, 2006, the RTC rendered judgment convicting the Accused-Appellant of illegal sale and possession of shabu. The decretal portion of the decision reads:

WHEREFORE, finding the accused, Bobet T. Amad, guilty beyond reasonable doubt of the two, (2) charges for violations[sic] of Sections 5 and 11 of R.A. 9165, in Crim. Cases[sic] No\$. 03-003 and 03-004, respectively, he is hereby sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00 in Crim. Case No. 03-003; and the penalty of life imprisonment and a fine of P400,000.00 in Crim. Case No. 03-004.

The subject drugs is[shabu] hereby confiscated in favor of the government Accordingly, the Branch Clerk of Court is hereby directed to immediately transmit the said drugs to the Philippine Drugs enforcement agency (PDEA) for more disposition according to law.

So ORDERED.[21]

The Issues:

The errors imputed against the RTC by the Accused-Appellant are:

I.

THE HONORABLE COURT COMMITTED GRAVE ERROR WHEN IT BELIEVED THE TESTIMONY OF THE ARRESTING OFFICER DESPITE CONVINCING PROOF THAT NO BUY-BUST ACTUALLY OCCURRED.

II.

THE HONORABLE TRIAL COURT COMMITTED GRAVE ERROR WHEN IT CONVICTED THE ACCUSED DESPITE LAPSES AND NON-OBSERVANCE OF THE GUIDELINES SET FORTH BY THE LAW AND ITS IMPLEMENTING RULES.

III.

THE HONORABLE TRIAL COURT COMMITTED GRAVE ERROR WHEN IT CONVICTED THE HEREIN ACCUSED DESPITE THE FACT THAT THE EVIDENCE PRESENTED WERE NOT SUFFICIENT TO SUPPORT THE CHARGES.[22]

This Court's Ruling:

Before Us, the Accused-Appellant argues that no legal buy-bust operation actually took place because of the following circumstances: 1) there was no entry in the police blotter or any document pertaining to the buy-bust

operation; 2) there was no coordination with the nearest police station before and after the alleged buy-bust; 3) the arresting officers are not operatives of any drug enforcement unit of the PNP; 4) the civilian informant did not testify; and, 5) there were other alleged "buyers" of shabu before the buy-bust operation but none of them were arrested. In addition, he asserts that the apprehending officers failed to comply with the statutory procedures before, during, and after a buy-bust operation. Finally, he claims that the trial court failed to prove his guilt beyond reasonable doubt relying merely on the testimony of the police officers who participated in the alleged buy-bust operation.[23]

For its part, the Office of the Solicitor General (OSG) contends that the prosecution has sufficiently proven the presence of all the elements of illegal sale and possession of dangerous drugs. Moreover, contrary to the claim of the Accused-Appellant, the prosecution adequately proved that a legal buy-bust operation was actually conducted. It insists that the integrity and evidentiary value of the seized items are intact. Lastly, it maintains that the testimonies of the police officers deserve full faith and credit in the absence of any improper motive to impute a serious charge against the Accused-Appellant[24].

The appeal is without merit.

At the outset, prosecutions involving the sale or prohibited drugs depend largely on the credibility of the police officers involved in the buy-bust operation. This Court generally relies upon the assessment of the trial court considering that we only have access to cold and impersonal records of the proceedings. As such, this court will not interfere with the trial court's assessment of the credibility of witness except when it appears on record that some fact or circumstance of weight and influence was overlooked or misinterpreted. This is because the trial court is in a better position to evaluate and observe the witnesses' demeanor and manner of testifying during the trial[25]. Thus the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded great respect, if not conclusive effect, by the appellate courts[26]. In the absence of any of the aforementioned exceptions, We see no reason to deviate from the findings of the RTC.

In criminal cases involving the illegal sale of shabu, jurisprudence only requires the following essential elements to be established by the prosecution, to wit: (1) the identity of the buyer and the seller, the object of the sale and the consideration thereof; and, (2) the delivery of the thing sold and payment therefor[27]. In other words, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummates the buy-bust transaction[28]. What is material, therefore, is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence[29]

In this case, it is evident from PO2 Vital's testimony that a sale of prohibited drug actually took place. After PO2 Vital gave the Accused-Appellant the One Thousand Peso (PhP1,000.00)-marked money, the latter gave the former a small heat-sealed plastic sachet containing white crystalline substances suspected to be shabu. Thereafter, PO2 Vital introduced himself as a police officer and arrested the Accused-Appellant. When the latter was searched, the marked money was found in his hand. Based on the laboratory examination results[30], the said drug was positive for Methamphetamine Hydrochloride, or shabu. Clearly, the Accused-Appellant was caught in a buy-bust operation freely and knowingly selling and delivering a prohibited drug.

Moreover, the other members of the buy-bust team actually saw that the illicit sale transaction actually took place when the poseur-buyer, PO2 Vital, handed over the marked money to the Accused-Appellant in exchange for the shabu which the latter gave to the former.[31] Coupled with this fact also is the presentation by the prosecution of the said shabu in open court. Without a doubt, the prosecution was able to establish moral certainty that the Accused-Appellant committed the crime of illegal sale of dangerous drugs.

Additionally, the prosecution also proved beyond reasonable doubt that the Accused-Appellant committed the crime of illegal possession of dangerous drugs. It was able to prove the following elements: 1) the accused is in possession of an object identified as a prohibited drug; 2) such possession is not authorized by law; and, 3) he freely and consciously possessed the said drug[32].

The records manifestly show that, after the buy-bust team arrested the Accused-Appellant, the procedural body search was conducted on his person. The search led to the discovery of six (6) small heat-sealed transparent plastic sachets with suspected shabu, which he freely possessed knowing the same to contain prohibited drugs. After the conduct of the laboratory examinations, the same yielded positive for Methamphetamine Hydrochloride, or shabu.[33] Furthermore, he failed to present any document authorizing him by law to possess the same. Thus, the prosecution was also able to establish all the elements of the crime of illegal possession of dangerous drugs.

The Accused-Appellant's allegation that the prosecution failed to preserve the integrity and prove the identity of the seized drugs, hold no water.

In all cases involving the handling and custody of dangerous drugs, the police officers are guided by Sec. 21 of the Implementing Rules and Regulations of R.A. No. 9165[34]. The language of the foregoing provision shows that the failure of the police officers to strictly comply with it is not fatal and does not render the evidence adduced against the Accused-Appellant void and inadmissible. What is important is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused [35].

At bench, there was compliance with the said provision and the integrity of the drugs confiscated from the Accused-Appellant remained intact. Contrary to the Accused-Appellant's claim, there is no showing of a broken chain in the custody of the seized items, later on determined to be shabu, from the moment of its seizure by the buy-bust team to the time it was brought to the forensic chemist at the crime laboratory for examination. It was duly established by documentary, testimonial, and object evidence, including the markings on the plastic sachets containing the shabu that the substance tested by the forensic chemist, whose laboratory tests were well-documented, was the same as that taken from the Accused-Appellant.

The records show that, after PO2 Vital bought a plastic sachet suspected of containing shabu, the Accused-Appellant was bodily searched and found to be in possession of six (6) more plastic sachets. Immediately thereafter, the confiscated drugs were marked with the initials "RMV" and "NCL," and inventoried in the presence of the Accused-Appellant and a media representative. Thereafter, the seized items were brought to the PNP Crime Laboratory with the letter requesting for confirmatory examination. Forensic Officer Dizon conducted the laboratory tests in the substances and found them positive for Methamphetamine Hydrochloride, a dangerous drug.

From the foregoing, the possibility that the evidence seized had been tempered is highly improbable. Further, We find no improper motive on the part of the police officers that would impel them to falsely implicate the Accused-Appellant in such a serious offense or to fabricate the facts of the case. The settled doctrine is that courts generally give full faith and credit to officers of the law, for they are presumed to have performed their duties in a regular manner. Accordingly, in entrapment cases, credence is given to the narration of an incident by prosecution witnesses who are officers of the law and presumed to have performed their duties in a regular manner in the absence of clear and convincing evidence to the contrary.[36]

The Accused-Appellant failed to present any evidence to the contrary. To reiterate, the Accused-Appellant has not proven that said police officers were moved by improper motives in the performance of their duties. Hence, the presumption that said police officers performed their official function in a regular manner stands and the

Accused-Appellant's mere denial and invocation of the chain of custody rule are not sufficient to warrant his acquittal.

Finally, the penalties imposed upon the Accused-Appellant are in order. The RTC acted in accordance with the mandate of the law (R.A. No. 9165). As to the penalty for illegal sale of prohibited drugs, R.A. No. 9165 provides, thus:

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. (Emphasis Ours)

In conformity with the foregoing, the Supreme Court held in *People v. Naquita*[37] that:

Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of P500,000.00 to P10,000,000.00. The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused. (Emphasis Ours)

Verily, an accused convicted for illegal sale of a dangerous drug may be punished for such a severe penalty regardless of the amount or purity of the drug involved. Thus, the RTC was correct in imposing the penalty of life imprisonment and the fine of Five Hundred Thousand Pesos (PhP500,000.00).

As to the penalty for illegal possession of prohibited drugs, the penalty prescribed under Sec. 11, par. 2(1), Art. II of R.A. No. 9165 is life imprisonment and a fine ranging from Four Hundred Thousand Pesos (PhP400,000.00) to Five Hundred Thousand Pesos (PhP500,000.00), if the quantity of Methamphetamine Hydrochloride or shabu found in the possession of the accused is ten (10) grams or more but less than fifty (50) grams. Based on the records, the Accused-Appellant was found guilty of possessing two (2) pieces of small transparent plastic sachets containing shabu and weighing five (5) grams each; and, four (4) pieces of small transparent plastic sachets containing shabu and weighing one (1) gram each, or a total of fourteen (14) grams of shabu. Thus, the RTC was correct in imposing a penalty of life imprisonment and a fine of Four Hundred Thousand Pesos (PhP400,000.00).

All told, the assailed judgment of the RTC must be upheld.

WHEREFORE, the appeal is DENIED. The assailed disposition of the RTC in Crim. Case Nos. 03-003 and 03-004 is AFFIRMED. No costs against the Accused-Appellant.

SO ORDERED.

Tolentino and Lazaro-Javier, JJ., concur.

[–] Per Office Order No. 266-10-ABR, dated September 15, 2010.

[1] See Notice of Appeal, filed on May 17, 2008, and the RTC Order, dated June 3, 2008, granting the same; Rollo, pp. 45 and 46, respectively.

[2] Dated December 21, 2006; Id., pp. 32-44.

[3] Otherwise known as "The Comprehensive Dangerous Drugs Act of 2002".

- [4] As culled from the records.
- [5] Filed on January 2, 2003; Records, p. 1.
- [6] Filed on January 2, 2003; Records, p. 7. Bracketed insertions Our.
- [7] See Order, dated January 14, 2003; Id., p. 28.
- [8] 37 yrs. old and a resident of Villa Julita, City of San Fernando; TSN, June 24, 2003, p. 2.
- [9] 30 yrs. old. married, and a resident of Mexico, Pampanga; TSN, February 4, 2003, p. 3.
- [10] A resident of Sta. Cruz, Porac, Pampanga; TSN, August 21, 2003, p. 2.
- [11] Exhs. "E", "F" to "N" and their sub-markings; Folder of Exhibits for the Prosecution, pp. 5-6.
- [12] TSN, August 21. 2003, p. 7.
- [13] TSN, February 4, 2003, p. 11.
- [14] See Inventory of Seized/Confiscated Evidence/s, Exh. "B"; Folder of Exhibits for the Prosecution, p. 2.
- [15] See Affidavit of Apprehension, Exh. "D"; Id p. 4.
- [16] See Certificate of Field Test conducted by SPO4 Ruben C. Mercado, Exh. "A"; Id., p. 1.
- [17] See Request for Laboratory Examination/ Analysis, Exh. "C"; Folder of Exhibits for the Prosecution, p. 3.
- [18] Exh. "X"; Id., p. 9.
- [19] 32 yrs. old, married, a sidewalk vendor, and residing at R. D. Reyes St., Lourdes Northwest, Angeles City; TSN, July 22, 2004, p. 3.
- [20] 29 yrs. old, married, a housewife, and residing at 2075 MacArthur St., Sta. Teresita, Angeles City; TSN, June 2, 2005, p. 3.
- [21] Supra, Note 2 at p. 44. Bracketed insertions Ours.
- [22] See Appellant's Brief, at p. 2; Rollo, p. 93.
- [23] See Appellant's Brief, at pp. 3-11; Id., pp. 94-102.
- [24] See Brief for the Appellee; Rollo, pp. 133-152.
- [25] See People v. Dilao, G. R. No. 170359, July 27, 2007; People v. Cabugatan, G. R. No. 172019, February 12, 2007.
- [26] See People v. Naelga, G.R. No. 171018, September 11, 2009.
- [27] See People v. Gonzales, G.R. No. 143805, April 11, 2002.
- [28] See People v. Gonzales, *ibid*.
- [29] See Cruz v. People, G.R. No. 164580, February 6, 2009.
- [30] Chemistry Report No. D-0661-2002, Exh. "X"; Folder of Exhibits for the Prosecution, p. 9.
- [31] Testimony of PO2 Lagman, TSN, August 21, 2003, pp. 9-10.
- [32] See People v. De Leon, G.R. No. 186471, January 25, 2010.

[33] Chemistry Report No. D-0661-2002, Exh. "X"; Folder of Exhibits for the Prosecution, p. 9.

[34] Section 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:

(a) The apprehending officer/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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance 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. *** (Emphasis and underscoring Ours)

[35] People v. Alberto, G.R. No. 179717, February 5, 2010. Emphasis Ours.

[36] People v. Bohol. G.R. No. 171729, July 28, 2008. Emphasis Ours.

[37] G.R. No. 180511, Jul 28, 2008.

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