

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO PEÑA Y SARMIENTO, APPELLANT.

G.R. No. 175320. April 21, 2009

Ponente: CORONA, J.

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CORONA, J.:

On August 28, 2003, appellant Ernesto Peña y Sarmiento was charged with violation of Sections 5 and 11 of RA[1] 9165[2] in the Regional Trial Court (RTC) of Makati City, Branch 64[3] under the following Informations:

Criminal Case No. 03-3299

That on or about the 27[th] day of August 2003 in the City of Makati, Philippines, a place under the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute [0.04] gram of metamphetamine hydrochloride (commonly known as shabu), a dangerous drug in consideration of P200, Philippine Currency.

CONTRARY TO LAW.

Criminal Case No. 03-3300

That on or about the 27[th] day of August 2003 in the City of Makati, Philippines, a place under the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control [0.3] gram of metamphetamine hydrochloride known as shabu, a dangerous drug.

CONTRARY TO LAW.

Upon arraignment, appellant pleaded not guilty.

During trial, the prosecution presented Rogelio Patacsil, Rommel Villarente and PO1 Herbert Ibias, members of the Makati Anti-Drug Abuse Council (MADAC) Cluster 6, who conducted the buy-bust operation resulting in appellant's arrest.

An informant reported to the MADAC Cluster 6 head and Barangay Rizal barangay chairperson Ric Mandayu that a certain "Gabby" was selling shabu at E. Aguinaldo St. Pursuant to this tip, the MADAC surveyed the area and eventually identified Gabby to be appellant. Thus, Patacsil, Villarente and Ibias conducted a buy-bust operation on August 27, 2003.

Patacsil (acting as poseur-buyer) and the informant approached the appellant somewhere in E. Aguinaldo St. The latter introduced the former as one in need of shabu. Appellant then asked Patacsil how much he wanted to buy. Patacsil answered "dalawang piso" and gave appellant two marked P100 bills. Appellant then handed him a sachet containing a white crystalline substance.

Thereafter, Patacsil signaled Villarente and PO1 Ibias that the transaction had been consummated. Thus, they

approached Patacsil and appellant. PO1 Ibias apprehended appellant and informed him of his rights. Thereafter, he asked appellant to empty his pocket and consequently recovered a sachet containing a crystalline substance and the marked P100 bills.

Appellant was thereafter brought to the MADAC office in Barangay Rizal. PO1 Ibias then turned over the sachets and marked bills to the investigator. Subsequently, the Philippine National Police crime laboratory confirmed that the crystalline substance from the sachets was indeed metamphetamine hydrochloride (or shabu).

For his defense, appellant insisted that he was merely framed up. While he and his family were having lunch on August 27, 2003, Patacsil (accompanied by an unidentified person) barged into his home and "invited" him to the barangay hall. Approximately 100 meters from his house, Patacsil asked him to identify the persons whom he knew sold shabu. Because he was unable to point to anyone, he was the one arrested.

In a decision dated January 26, 2005, the RTC held that the prosecution proved appellant violated Sections 5 and 11 of RA 9165 beyond reasonable doubt.[4] The MADAC operatives established the identities of the poseur buyer and appellant and that an illegal drug was sold by appellant to the poseur buyer for a certain consideration. Moreover, they were able to show that appellant was not authorized to possess the illegal drug. Thus:

WHEREFORE, in view of the foregoing, judgment is rendered against [appellant] ERNESTO PEÑA y SARMIENTO alias "GABBY" as follows:

- Finding him, GUILTY beyond reasonable doubt of the crime of violation of Section 5 of RA 9165 (Criminal Case No. 03-3299) and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000;

- Finding him, GUILTY beyond reasonable doubt of the crime of violation of Section 11 of RA 9165 (Criminal Case No. 03-3300) and considering that miniscule quantity of shabu involved which is 0.03 grams sentencing him to suffer the penalty of twelve years and 1 day and a fine of P300,000.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the one plastic sachet of shabu (0.04) gram subject matter of Criminal Case No. 03-3299 and the one plastic sachet (0.03) gram subject of Criminal Case No. 03-3300 for said agency's appropriate disposition.

SO ORDERED.

The Court of Appeals (CA), on intermediate appellate review,[5] affirmed the RTC decision in toto.[6]

We affirm the findings of the RTC and the CA but modify the penalty in Criminal Case No. 03-3300.

There is no reason to disturb the factual findings of the RTC as affirmed by the CA. The prosecution established beyond doubt that appellant sold shabu to the poseur buyer for a consideration and that he had another sachet of the said substance in his possession.

Nonetheless, we modify the penalty in Criminal Case No. 03-3300 (for violation of Section 11 of RA 9165) since the courts a quo failed to apply the Indeterminate Sentence Law and imposed a straight penalty of 12 years and 1 day on appellant. The said provision provides that:

Section 11. Possession of Dangerous Drugs.

x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000) to Four hundred thousand pesos (P400,000), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, metamphetamine hydrochloride or "shabu" or other dangerous drugs such as, but not limited to MDMA or "ecstasy," PMA, TMA, LSD, GHB and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possesses is far behind therapeutic requirements; or less than three hundred (300) grams of marijuana. (emphasis supplied)

Appellant should suffer imprisonment for a minimum of 12 years and 1 day to a maximum of 20 years.

WHEREFORE, the July 25, 2006 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00710 is hereby MODIFIED. Appellant Ernesto Peña y Sarmiento is sentenced to suffer the penalty of life imprisonment and pay a fine of P500,000 in Criminal Case No. 03-3299. He is sentenced to suffer imprisonment for a minimum of 12 years and 1 day to a maximum of 20 years and to pay a fine of P300,000 in Criminal Case No. 03-3300.

SO ORDERED.

Puno, C.J., Carpio, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Republic Act.

[2] The Comprehensive Dangerous Drugs Act of 2002.

[3] Docketed as Criminal Case Nos. 03-3299 and 03-3300, respectively.

[4] Penned by Judge Delia H. Panganiban. CA rollo, pp. 18-29.

[5] Docketed as CA-G.R. CR-H.C. No. 00710.

[6] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin of the Eight Division of the Court of Appeals. Dated July 25, 2006. Rollo, pp. 2-35.

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