



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 3, 2020 which reads as follows:

“G.R. No. 248930 (People of the Philippines, Plaintiff-Appellee, v. Charito Basilio y Rubiano, Accused-Appellant). – This appeal¹ seeks to reverse and set aside the Decision² dated 22 January 2019 promulgated by the Court of Appeals (CA) in CA-G.R. CR-HC No. 09917, which affirmed the Judgment³ dated 25 September 2017 of Branch 43, Regional Trial Court (RTC) of Virac, Catanduanes in Criminal Case No. 5013, finding accused-appellant Charito Basilio y Rubiano (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165.⁴

Antecedents

Accused-appellant was charged with violation of Section 5, Article II of RA 9165, in an Information, the accusatory portion of which reads:

That on or about 7: 40 o'clock of March 21, 2014 in the evening, particularly at the terrace on the second floor of Santos Boarding House located at Barangay Calatagan Proper, Municipality of Virac, province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without authority of the law, did then and there willfully, unlawfully and feloniously, sell to a poseur-buyer in the amount of One Thousand Pesos (P1,000.00) one (1) small heat sealed transparent plastic sachet containing white crystalline substance, which when subjected to laboratory examination tested positive for

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¹ *Rollo*, pp. 16-17; *see* Notice of Appeal dated 11 February 2019.

² *Id.* at 3-15; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Japar B. Dimaampao and Associate Justice Rafael Antonio M. Santos of the Special Fourth Division, Court of Appeals, Manila.

³ *CA rollo*, pp. 66-76; penned by Presiding Judge Lelu P. Contreras.

⁴ Comprehensive Dangerous Drugs Act of 2002.

the presence of *methamphetamine hydrochloride*, commonly known as “*SHABU*” with a gross weight of 0.056 gram; to the damage and prejudice of the public welfare.⁵

Upon arraignment, accused-appellant pleaded not guilty to the charge. After termination of pre-trial, trial on the merits ensued.⁶

Version of the Prosecution

In the morning of 21 March 2014, PO3 Dario Gregorio of the Virac Municipal Police Station summoned the informant Hyo Jin Jessie de Belen (de Belen) for an entrapment operation against accused-appellant, a suspected seller of *shabu*. De Belen and accused-appellant have previously used *shabu* and have engaged in illegal drug trade activities together. A team was thereafter formed to conduct a buy-bust operation against accused-appellant. De Belen was designated as the poseur-buyer and he arranged a drug deal with accused-appellant for the purchase of Php500.00 worth of *shabu*.⁷

At around 7 o'clock in the evening, accused-appellant sent a text message to de Belen telling him, “*magsabat ka na lang kung dai tuo.*” (“just come up when there's no one around.”) The team together with de Belen proceeded to the boarding house at Barangay Calatagan where accused-appellant was renting. De Belen and PO1 Mylene Oray (PO1 Oray), the arresting officer, went to accused-appellant's room and met her at the stairway. Accused-appellant handed de Belen the necklace he pawned, together with a sachet with suspected *shabu*. De Belen turned to PO1 Oray and asked “*padagdagan pa ta ning saro?*” (“Let's add one more?”). PO1 Oray turned to accused-appellant saying, “*Sige na padagdagi na.*” (“Okay, you add.”) De Belen handed the Php1,000.00 buy-bust money to accused-appellant who quickly turned away saying to them, “*Kung habo nyo di dai na, mag-hari ka na ta aram mo man sanang igwa dyan ning parak sa baba.*” (“If you don't want, then never mind, leave now since you know that there are police officers downstairs.”) At said juncture, PO1 Oray grabbed accused-appellant's forearm and introduced herself as a police officer. Accused-appellant resisted and tried to break free and was able to drag PO1 Oray inside her house where she beat, slapped and punched the latter. The other members of the team forcibly opened the door and thereafter subdued accused-appellant.⁸

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⁵ CA rollo, p. 66.

⁶ *Id.* at 67.

⁷ Rollo, p. 5.

⁸ *Id.* at 5-6.

The police officers brought accused-appellant to the terrace and they recovered the crumpled buy-bust money on the floor. Shortly, media representative Ramil Soliveres, DOJ representative Rudy Templonuevo, and *Punong Barangay* Reyes arrived. After PO1 Oray conducted a body search on accused-appellant, de Belen marked the plastic sachet with suspected *shabu*. PO3 Rolando Abichuela (PO3 Abichuela) then conducted inventory of the seized items and took photographs of the same in the presence of the three (3) witnesses and accused-appellant.⁹

The plastic sachet with suspected *shabu* was thereafter brought to the crime laboratory for examination, which confirmed that the same was positive for methamphetamine hydrochloride.¹⁰

Version of the Defense

Accused-appellant denied the charge and insisted that the sachet of *shabu* was planted on her by de Belen. She knew the latter, having frequented her house to deliver laundry soap. She claimed that on 21 March 2014, de Belen texted her about the necklace he pawned to her, likewise asking if he could get some “items,” referring to *shabu*. When she replied that she has no stock, de Belen asked her if she could find someone to provide the item worth Php500.00. She told de Belen to wait. In the afternoon of the same day, de Belen texted her telling that he would get the necklace. When de Belen and his companion arrived, she gave him the necklace and asked for the redemption money. The duo were however insistent to get additional items and as she could no longer provide any item, she took back the necklace and stood up. It was then that de Belen showed the “item” prompting his companion to arrest her.¹¹

Ruling of the RTC

On 25 September 2017, the RTC rendered its Judgment,¹² convicting accused-appellant of the offense charged, thus:

WHEREFORE, having proven the guilt of the accused beyond reasonable doubt, this Court, hereby, sentences CHARITO BASILIO y RUBIANO to suffer the penalty of life imprisonment and a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00).

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⁹ *Id.* at 6-7.

¹⁰ *Id.*

¹¹ *Id.* at 7-8.

¹² *CA rollo*, pp. 66-76.

The one (1) piece of heat-sealed plastic sachet containing *Methamphetamine Hydrochloride* is, hereby, confiscated in favor of the government and shall be turned over to the PDEA for proper disposition.

SO ORDERED.¹³

In convicting accused-appellant, the RTC found that accused-appellant was caught in *flagrante delicto* selling *shabu*.¹⁴ It gave credence to the testimonies of the prosecution witnesses over accused-appellant's denial. Further, it held that the integrity of the seized item was preserved as the prosecution was able to establish the chain of custody over the seized drug.¹⁵

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In its Decision dated 22 January 2019,¹⁶ the CA affirmed accused-appellant's conviction. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the Decision dated 25 September 2017 of the Regional Trial Court, Branch 43, Virac, Catanduanes is **AFFIRMED**.

SO ORDERED.¹⁷

The CA held that the prosecution has established all the elements of the illegal sale of *shabu*.¹⁸ Likewise, it held that the prosecution successfully proved with moral certainty an unbroken chain of custody over the subject *shabu* from the moment the poseur-buyer received the drugs from accused-appellant, up to the time it was brought to the crime laboratory, until the time the same was offered in evidence before the court; thus, the integrity of the illegal drug was preserved.¹⁹

Hence, this appeal.

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¹³ *Id.* at 76.

¹⁴ *Id.* at 75.

¹⁵ *Id.* at 75-76.

¹⁶ *Rollo*, pp. 3-15.

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 13.

Issue

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

Ruling of the Court

The appeal is dismissed.

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 delivery of the thing sold and its payment.²⁰ The delivery of the illicit drug to the poseur-buyer, and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.²¹ The offense of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.

Accused-appellant laments that there was no illegal sale of dangerous drugs as the identity of the prohibited drug was not established and there was no credible proof of delivery and payment.²² Accused-appellant likewise contends that there was a broken link in the chain of custody as the turnover of the illegal drug to the forensic chemist was made by de Belen, a private person and not by the investigating officer.²³

Contrary to accused-appellant's claim, We find that the prosecution established all the elements of illegal sale of *shabu*. De Belen and PO1 Oray positively identified accused-appellant as the seller of the sachet with *shabu* and the person who received Php1,000.00, in consideration thereof.²⁴ The sale was consummated after the exchange of the buy-bust money and *shabu* between de Belen and accused-appellant. Also, de Belen identified the plastic sachet of *shabu* and the marked money in court and this was corroborated by PO1 Oray.²⁵

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²⁰ *People v. Ygot*, G.R. No. 210715, 18 July 2016, 797 SCRA 87, 92, 790 Phil. 236-248 (2016) [per J. Perez].

²¹ *People v. Asignar*, G.R. No. 206593, 10 November 2015, 774 SCRA 345, 350, 772 Phil. 585-591 (2015) [per J. Perez].

²² CA *rollo*, p. 52.

²³ *Id.* at 58.

²⁴ *Rollo*, p. 9.

²⁵ *Id.*

Likewise, the courts *a quo* correctly found that there was compliance with the chain of custody requirements. De Belen marked the seized items at the place of seizure. At the same time, PO3 Abichuela conducted inventory and took photographs of the items in the presence of the accused-appellant and the following mandatory witnesses: the *punong barangay*, a representative from the media, and a representative from the DOJ. Later, PO3 Arbichuela together with de Belen brought the seized items to the crime laboratory. The seized items were duly received by the crime laboratory personnel PO1 Tanay, who turned over the same to the forensic chemist PCI Josephine Clemen. After examination by the forensic chemist, the seized item was found to be positive for *shabu*.²⁶

Factual findings of the trial court are not disturbed on appeal unless the court *a quo* is perceived to have overlooked, misunderstood or misinterpreted certain facts or circumstances of weight, which if properly considered, would have materially affected the outcome of the case.²⁷ The Court sees no reason to disturb the factual findings of the RTC, as affirmed by the CA.

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,²⁸ which accused-appellant failed to present in this case. Moreover, accused-appellant failed to adduce evidence that de Belen and the rest of the buy-bust team had any ill motive to falsely accuse her of a serious offense. Absent any proof of such motive, the presumption of regularity in the performance of official duty as well as the findings of the trial court on the credibility of witnesses shall prevail over accused-appellant's self-serving and uncorroborated defenses.²⁹

All the foregoing considered, the Court affirms the conviction of accused-appellant for the offense of illegal sale of *shabu*. The Court likewise affirms the penalties imposed by the CA for being in accordance with the law.

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision dated 22 January 2019 of the Court of Appeals in CA-G.R.

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²⁶ *Id.*

²⁷ *See People v. Concepcion*, G.R. No. 200922, 18 July 2012, 677 SCRA 319, 691 Phil. 542-552 (2012) [per J. Carpio].

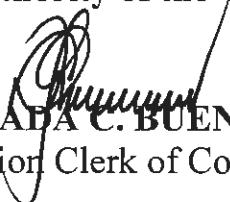
²⁸ *People v. Lazaro, Jr.*, G.R. No. 186418, 16 October 2009, 604 SCRA 250, 619 Phil. 235-262 (2009) [per J. Chico-Nazario].

²⁹ *See People v. Dumangay*, G.R. No. 173483, 23 September 2008, 566 SCRA 290, 587 Phil. 730-744 (2008) [per J. Quisumbing].

CR-HC No. 09917, finding accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 is **AFFIRMED.**

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *11/3/20*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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