

## SECOND DIVISION

[ G.R. No. 171088, October 02, 2009 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
LEONARD L. BERNARDINO ALIAS ONAT, ACCUSED-APPELLANT.**

### D E C I S I O N

**BRION, J.:**

This is an appeal from the decision of the Court of Appeals (CA)<sup>[1]</sup> finding Leonard L. Bernardino (*accused-appellant*) guilty beyond reasonable doubt of the illegal sale and illegal possession of *shabu*, penalized under Sections 15 and 16, Article III of Republic Act No. 6425 (*R.A. No. 6425*), as amended<sup>[2]</sup> (The Dangerous Drugs Act of 1972). The CA decision fully affirmed the judgments of conviction on the two charges rendered by the Regional Trial Court (RTC), Branch 56, Angeles City. <sup>[3]</sup>

In Criminal Case No. 96-530, the accused-appellant was accused of illegal possession of *shabu* under Section 16, Article III of R.A. No. 6425 under an Information that states:

That on or about the 29<sup>th</sup> day of September, 1996, 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 under his control SHABU (Methamphetamine Hydrochloride) weighing approximately 215 grams, which (sic) is a regulated drug, without any authority whatsoever.

ALL CONTRARY TO THE LAW.<sup>[4]</sup>

In Criminal Case No. 96-533, the accused-appellant, together with one Nestor C. Nemis, was charged with the illegal sale of *shabu*, penalized under Section 15, Article III of R.A. No. 6425, as follows:

That on or about the 29<sup>th</sup> day of September, 1996, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, did then and there willfully, unlawfully and feloniously sell and/or deliver one transparent plastic sachet of *SHABU* (methamphetamine Hydrochloride weighing approximately 5 grams to poseur-buyer without any authority whatsoever.

ALL CONTRARY TO THE LAW.

The accused-appellant alone stood trial as his co-accused Nestor C. Nemis, after entering a plea of not guilty, jumped bail. The accused-appellant pleaded not guilty

to both charges.<sup>[5]</sup> The two criminal cases were subsequently consolidated and jointly tried.

## **THE ANTECEDENTS**

At the trial, the prosecution and the defense presented conflicting versions of the antecedent events. The prosecution's evidence, documentary<sup>[6]</sup> and testimonial,<sup>[7]</sup> showed that the accused-appellant was arrested in a buy-bust operation by the police. The defense's evidence, through documentary evidence<sup>[8]</sup> and the testimonies of the accused-appellant and Salvador Bernardino (*Salvador*), showed that the accused-appellant was the victim of a police frame-up.

### **The Prosecution's Version**

SPO2 Daniel C. Cadiz<sup>[9]</sup> (*SPO2 Cadiz*), one of the prosecution witnesses, is an investigator and intelligence operative of the Regional Operations Group based at Camp Olivas, San Fernando, Pampanga (*Camp Olivas*). He testified that while he was at his office at around 3:00 p.m. of September 29, 1996, he received information from a female asset about a drug deal involving P3,000.00 worth of *shabu* (equivalent to five <sup>[5]</sup> grams)<sup>[10]</sup> that the asset arranged with a certain Onat.

SPO2 Cadiz immediately relayed the information to Chief Inspector Igmedio Cruz, Jr. who organized a buy-bust team. SPO2 Cadiz testified that the subject of the buy-bust operation would be a man riding a green Isuzu pick-up and that he (SPO2 Cadiz) was designated to act as the *poseur* buyer. After a briefing, he and the rest of the buy-bust team,<sup>[11]</sup> together with two (2) civilian assets, proceeded to Don Bonifacio St., Don Bonifacio Subdivision, Angeles City on board three vehicles. They arrived at the designated place at 5:30 p.m. and strategically positioned their vehicles in front of House No. 43-25 Don Bonifacio St., the place where the sale of *shabu* was to take place. SPO2 Cadiz was with the female asset inside a vehicle they parked by the roadside; SPO2 Cadiz was at the backseat of the vehicle while the civilian asset was at the driver's seat. At about 9:00 p.m., a green Isuzu pick-up showed up and stopped alongside and very near the vehicle of SPO2 Cadiz and the female asset. SPO2 Cadiz hid himself at the vehicle's backseat area from where he heard the conversation between the female asset and the man in the pick-up. When SPO2 Cadiz heard the female asset say "*Sige. Thank you*" - the pre-arranged signal to signify that an exchange of money and drugs had already taken place - he got off the vehicle and arrested the driver of the pick-up who was then holding the P3,000.00 marked money. The driver identified himself. At that point, the rest of the buy-bust team converged on the pick-up; he saw that the accused-appellant was accompanied in the pick-up by another man later identified as Nestor Nemis. Like the accused-appellant, Nestor Nemis himself was arrested by the other members of the buy-bust team. Both the accused-appellant and Nestor Nemis were subjected to a body search and the vehicle itself was searched.

In addition to the suspected *shabu* sold at the buy-bust and the P3,000.00 marked money recovered from the accused-appellant, SPO2 Cadiz' body search of the accused-appellant yielded the following items: (a) a white plastic bag containing other two plastic bag search containing a suspected methamphetamine hydrochloride known (*shabu*) weighing approximately 200 grams contained in a white big size plastic bag labeled Uniwide Sales; (b) three plastic bags each

containing a quantity of suspected *shabu* with an approximate weight of fifteen grams; and (c) money in the amount of P2,400.00.

The search of the glove compartment of the pick-up yielded a partly burned aluminum foil with residue, a small quantity of suspected *shabu*, and three improvised tooters.

The arresting team forthwith took the accused-appellant and Nestor Nemis to Camp Olivas while SPO2 Cadiz personally took the confiscated items to the Philippine National Police Crime Laboratory for examination.

SPO2 Cadiz identified in court the marked money (marked with the initials "D.G.") and the confiscated *shabu* through the markings which he made in red ink (his own initials "DCC") on the **Uniwide Sales plastic bag** (Exhibit "E" with submarkings).<sup>[12]</sup> Likewise, he identified the **tooter and aluminum foil** (Exhibit "F" with submarkings) as the items seized from the accused-appellant, which he marked in black ink with his initials, "DCC";<sup>[13]</sup> he marked the plastic bag containing the tooter and aluminum foil with his signature and name.<sup>[14]</sup> SPO2 Cadiz also testified that he marked the **three (3) small transparent plastic sachets** (Exhibits "G" to "G-3") and the **plastic bag (Exhibit "H") taken from the accused-appellant** with his name written in red ink and initials in black ink.<sup>[15]</sup> He testified that he made these markings immediately after the buy-bust operation when he arrived at the Regional Special Operation Office at around 9:30 p.m.<sup>[16]</sup> He personally took the confiscated items to the crime laboratory the next day at around 10:00 a.m. SPO2 Cadiz explained that they bring the evidence to the crime laboratory office as soon as possible. The administration office of the crime laboratory received the items he turned over.<sup>[17]</sup> The recipient recorded the turnover, duly affixing her signature and the time of receipt.<sup>[18]</sup> SPO2 Cadiz was then told to return that same day to receive the initial examination report.<sup>[19]</sup>

SPO4 Daniel M. Guillermo (*SPO4 Guillermo*)<sup>[20]</sup> is a member of the Regional Special Operation Group of Camp Olivas and heads the Pampanga Intelligence Team charged with the task of gathering information against criminal elements. He acted as team leader of the buy-bust operation conducted against the accused-appellant on September 29, 1996. SPO4 Guillermo testified that he was given P3,000.00 as buy-bust money by his superiors; he marked these with "x" and his initials, and thereafter gave the sum to SPO2 Cadiz, the designated *poseur* buyer.

He further testified that at around 5:30 p.m. of September 29, 1996, he and the buy-bust team were on board three (3) vehicles on Don Bonifacio St., Don Bonifacio Subdivision, Angeles City. In the course of their operation, they retrieved *shabu* weighing around 215 grams and other drug paraphernalia from the accused-appellant. He instructed SPO2 Cadiz to secure all the evidence consisting of the three (3) pieces of marked money, the *shabu*, the improvised tooter with partly burned aluminum foil with residue, and three (3) plastic bags. After the arrest, they took the accused-appellant and Nestor Nemis to Camp Olivas while the confiscated items were turned over to the forensic chemist for examination.

Daisy Babor<sup>[21]</sup> (*Babor*) is a forensic chemist at the PNP Crime Laboratory, Camp Olivas, San Fernando, Pampanga. On September 30, 1996, she received specimens

submitted by SPO2 Cadiz for examination. She testified that she received these specimens from the laboratory's receiving clerk, Sonia Samonte, who immediately endorsed these to her after receipt from SPO2 Cadiz.<sup>[22]</sup> The specimens submitted for examination were: (a) one (1) white big size plastic bag labeled Uniwide Sales containing two (2) medium size transparent plastic bag each with white crystalline substance having a total weight of 198.324 grams; (b) a medium size transparent plastic bag containing one (1) small size heat sealed transparent plastic bag with white crystalline substance weighing 1.669 grams; (c) one (1) medium size transparent plastic bag containing three (3) small size heat-sealed transparent plastic packs each with white crystalline substance having a total weight of 11.237 grams; and (d) one transparent plastic bag containing suspected drug abused paraphernalia seeds, one (1) small piece of partly burned aluminum foil, and three (3) improvised tooters each with suspected *shabu* residue.<sup>[23]</sup>

Babor further testified that she immediately conducted an examination of the submitted specimens; the tests she conducted yielded positive results for *shabu*.<sup>[24]</sup> The results of her examination are contained in the Initial Report dated September 30, 1996 (Exhibit "B") and Chemistry Report D-604-96 dated October 1, 1996 (Exhibit "C") which Babor herself prepared. After the tests, she kept the specimens in the laboratory's evidence room that only Babor and her chief had access to. She testified that she took out these specimens from the evidence room when she brought them to court for presentation on June 23, 1997.<sup>[25]</sup>

At her direct examination, Babor confirmed the specimens she examined and identified them as the same specimens SPO2 Cadiz turned over for examination.<sup>[26]</sup>

### The Version of the Defense

The accused-appellant<sup>[27]</sup> raised the **defenses of denial and frame-up**. He claimed that he and Nestor Nemis were used as sacrificial lambs in exchange for the freedom of one Aling Rosie who is reputed to be the queen of *shabu* in Angeles City, Pampanga.<sup>[28]</sup> He related that in the afternoon of September 29, 1996, he and Nestor Nemis were on their way to Angeles City, Pampanga on board an Isuzu pick-up owned by Salvador. The purpose of their trip was to pick up a split-type aircon unit that the accused-appellant bought from Aling Rosie. They arrived at Aling Rosie's house at around 7:30 p.m.; Aling Rosie was not there and they were told by the occupant of the house to wait. Aling Rosie arrived about an hour and a half later; she immediately told them that she had to change clothes before they could proceed to do business. While waiting for Aling Rosie, they heard a commotion and about seven persons, who turned out to be police officers, entered the house and asked them to lie face down on the floor. Thereafter, the accused-appellant saw Aling Rosie crying while talking to the police officers. They were arrested right then and there and were taken to Camp Olivas. During the ride, the accused-appellant heard the policeman driving their vehicle say - *[p]are ayos nahuli rin natin ang Reyna ng Angeles*. Upon their arrival at Camp Olivas, the accused-appellant learned that he had been pointed to as the party who brought the *shabu*. The accused-appellant claimed that he was maltreated and forced to admit to the crime.

Because of his arrest and maltreatment, the accused-appellant filed an administrative complaint before the Ombudsman against the police officers who

arrested him. The accused-appellant further claimed that unidentified persons approached him who offered to drop the criminal charges if he would drop his charges before the Ombudsman.

The defense also presented Salvador,<sup>[29]</sup> the accused-appellant's uncle and owner of the Isuzu pick-up the police confiscated when the accused-appellant was arrested. Salvador testified that the accused-appellant borrowed the pick-up to get an air conditioning unit.

On August 18, 1999, the RTC convicted the accused-appellant of the crimes charged; his co-accused Nestor C. Nemis was acquitted for lack of evidence. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

1. In Crim. Case No. 96-530, the Court finds the accused Leonardo L. Bernardino @ Onat guilty beyond reasonable doubt of the crime of Violation of Section 16, Article III of Republic Act 6425, as amended and said accused is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of P 20,000.00 and to pay the costs.

x x x

2. In Crim. Case No. 96-533, finding the accused Leonard L. Bernardino @ Onat guilty beyond reasonable doubt of the crime of Violation of Section 15, Article III of Republic Act 6425, as amended, said accused is hereby sentenced to suffer the penalty of Two (2) years, Four (4) months and one (1) day of *prision correccional*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum and to pay one-half (1/2) of the costs.

x x x

For lack of evidence to hold accused Nestor A. Nemis criminally liable for the crime charged, said accused is hereby acquitted with cost de oficio.

SO ORDERED.<sup>[30]</sup>

Pursuant to *People v. Mateo*,<sup>[31]</sup> we transferred the case, initially appealed to us, to the CA. On September 30, 2005, the CA affirmed the accused-appellant's conviction. The CA, however, modified the penalty in Criminal Case No. 96-530 and sentenced the accused-appellant to suffer the penalty of *reclusion perpetua* for illegal possession of *shabu* and to pay a corresponding fine of P1 Million. The CA affirmed the RTC's ruling in Criminal Case No. 96-533.<sup>[32]</sup>

### **THE ISSUE**

The sole issue raised in this appeal is one of credibility - whether the lower courts committed a reversible error in giving greater weight to the testimonies of the police