

TWENTY-SECOND DIVISION

[CA-G.R. CR HC NO. 01194-MIN, February 24, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MICHAEL YABUT Y GABULE, ACCUSED-APPELLANT.**

D E C I S I O N

INTING, J.:

Under review in this APPEAL is the Judgment^[1] dated July 23, 2013 of the Regional Trial Court (RTC), Branch 25, Cagayan de Oro City in Criminal Case Nos. 2010-1246 and 2012-1247 finding accused-appellant, MICHAEL YABUT y GABULE, guilty beyond reasonable doubt for violation of Section 5 and Section 11 of Article II of R.A. 9165, respectively.

The facts of the case are as follows:

On December 14, 2010, at around 1:00 o'clock in the afternoon, a confidential informant (CI) arrived at the Philippine Drug Enforcement Agency (PDEA), Regional Office X to report that a certain "Butiti" was selling shabu at Barra, Macabalan, Cagayan de Oro City. After verifying the veracity of the report, the Regional Director authorized the creation of a team to conduct a buy-bust operation. Among the members of the buy-bust team were IO1 Odysseus Ceasar Justalero (Justalero), who was designated as poseur-buyer and IO1 Albert Orellan (Orellan), who was designated as the arresting officer. For the purpose of the buy-bust operation, the team prepared a Php 500.00 bill as buy-bust money and marked with Orellan's initials, "AEO". The team agreed that the pre-arranged signal would be Justalero's "missed call" to Orellan's mobile phone to indicate that the transaction with "Butiti" has been completed.

The buy-bust team proceeded to the house of "Butiti" at Barra, Macabalan at around 2:00 o'clock in the afternoon. Justalero and the CI were in the first vehicle; while Orellan and the rest of the team were in the second vehicle. The vehicles were parked around 20 meters from the house of "Butiti".

Upon reaching "Butiti"'s house, the CI called the former and had a short conversation with him. "Butiti" then invited the CI and Justalero inside the house. The CI introduced Justalero to "Butiti" as an interested buyer of shabu. After "Butiti" asked him how much shabu he wanted to buy, Justalero responded that he wanted P500.00 worth of shabu. Justalero then handed the marked money to "Butiti" who then pulled out a transparent plastic bag from his pocket, took out a smaller sachet from the plastic bag, and gave it to Justalero. After receiving the small sachet, Justalero made a "missed call" to Orellan's mobile phone. Orellan and the rest of the team rushed to the scene.

Orellan and his team introduced themselves to "Butiti" as members of the PDEA, apprised him of his constitutional rights, told him that he was being placed under arrest, and handcuffed him. The buy-bust team frisked "Butiti" and found on his person two (2) plastic bags - one containing two (2) sachets and the other containing eight (8) sachets, all containing white crystalline substance which they suspected to be shabu, an illegal drug. Orellan also recovered the marked money from "Butiti". Orellan then conducted an inventory of the items recovered, including the sachet that Justalero had purchased from "Butiti". Orellan also placed identifying marks on all items recovered. PO1 Carin took photographs of the crime scene and the items recovered. All the seized items were in the possession and custody of Orellan from the time he was in the house of "Butiti" to his arrival in their office until he turned them over to the crime laboratory. The buy-bust team booked "Butiti" and confirmed his identity as Michael Yabut y Gabule (accused-appellant).

A request for laboratory examination^[2] was then prepared on the sachets seized. The laboratory examination was conducted by Forensic Chemist Police Senior Inspector Charity Peralta Caceres. Her Chemistry Report No. D-264-2010^[3] revealed that the white crystalline substance seized proved positive for the presence of methamphetamine hydrochloride or shabu, a dangerous drug.

On the other hand, accused-appellant Michael Yabut y Gabule (Yabut) tells a different tale. He denied the accusation against him.

Yabut testified that on December 14, 2010, he was in his bedroom sleeping; that he was awakened by his mother as it was already 1:00 pm and he needed to cook for their store; that while he was cooking at the dirty kitchen, a man suddenly entered and poked a gun at him; that he even smiled at the man because he did not think that he would be arrested; that another man and woman entered the dirty kitchen; that the second man who was armed with an armalite ordered him to lie down on the ground; and that he was handcuffed after his wristwatch was removed.

Yabut further testified that some of the men who arrested him were wearing vests with PDEA markings while the others were wearing bonnets and caps; that one of the PDEA agents pulled out a cellophane and told him, "this is sachet of shabu, where is the four thousand marked money?"; that at the same time a man pulled the money from his pocket in the amount of P67.00; that in the process, he answered the men that he had no Four Thousand Pesos (P4,000.00); that the PDEA agent placed the cellophane on the table, pulled out from his wallet a P500.00 bill, and called the barangay officials.

Yabut furthermore testified that while waiting for the barangay officials, the men searched his bedroom and her mother's bedroom; that they found a piggybank, broke it, and took the coins; that they also took money they found inside the room; that later on, Barangay Kagawad Alcantara and Tanod Nacalaban arrived and took pictures; and that afterwards, the men took him to the PDEA office and the crime laboratory.

Yabut also presented the testimonies of Luzviminda Yabut and Lucia Borgoneous.

In two (2) separate Informations dated December 15, 2010, Yabut was charged for

Violation of Sections 5 and 11, Article II of Republic Act No. 9165, to wit:

INFORMATION^[4].

The undersigned Assistant City Prosecutor accuses MICHAEL YABUT y GABULE for Violation of Section 11, Article II of Republic Act No. 9165, committed as follows:

That on or about December 14, 2010, at more or less 2:30 o'clock in the Afternoon, at Barra, Macabalan, Cagayan de Oro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, willfully, unlawfully, criminally and knowingly have in his possession, custody and control Ten (10) small heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.26 grams; accused well-knowing that the substance recovered from his possession is a dangerous drug.

Contrary to law.

INFORMATION^[5].

The undersigned Assistant City Prosecutor accuses MICHAEL YABUT y GABULE for Violation of Section 5, Article II of Republic Act No. 9165, committed as follows:

That on or about December 14, 2010, at more or less 2:30 o'clock in the Afternoon, at Barra, Macabalan, Cagayan de Oro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there, willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a poseur buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride, locally known as Shabu, a dangerous drug, in consideration of Five Hundred Pesos (Php 500.00) with Serial No. YX749998, with markings "AEO" at the lower right portion of the bill, which was previously marked for the purpose of the buy-bust operation.

Contrary to law.

Upon arraignment, Yabut pleaded not guilty to the two charges.^[6] After the pre-trial, trial ensued.

On July 2, 2013, the court *a quo* rendered a Judgment finding Yabut guilty of violation of Sections 5 and 11, Article II of RA 9165. The dispositive portion of the Judgment provides:

WHEREFORE, premises considered, this Court finds that:

1. In Criminal Case No. 2010-1246, accused, MICHAEL YABUT y GABULE is GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the Fine of Five Hundred Thousand Pesos [P500,000.00], without subsidiary penalty in case of non-payment of fine.
2. In Criminal Case No. 2010-1247, accused, MICHAEL YABUT y GABULE is GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 11, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of imprisonment ranging from Twelve ^[12] years and one ^[1] day to Thirteen ^[13] years, and to pay the Fine of Three Hundred Thousand Pesos [P300,000.00], without subsidiary penalty in case of non-payment of fine.

Let the penalty imposed on the accused be a lesson and an example to all who have the criminal propensity, inclination and proclivity to commit the same forbidden act that crime does not pay, and that the pecuniary gain and benefit, as well as the perverse psychological well-being which one can derive from selling or manufacturing or trading drugs, or other illegal substance, or from using, or possessing, or committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted and penalized to the full extent of the law.

SO ORDERED.

Hence, accused-appellant Yabut's instant appeal raising the lone assignment of error^[7], viz.:

THE COURT A QUO GRAVELY ERRED IN CONVICTING accused-APPELLANT OF THE OFFENSES CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Our Ruling

Yabut argues that the prosecution failed to establish the chain of custody over the confiscated items. Yabut contends that the chain of custody over the confiscated items was broken from the time the arresting officers had custody of the subject drugs up until the time the crime laboratory took possession over them; and from the time the forensic chemist had custody over the subject drugs to the time she sent the subject drugs to the court.

We sustain Yabut's conviction.

Under Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, "Chain of Custody" means the duly recorded authorized movements and custody of