

SPECIAL SECOND DIVISION

[CA-G.R. CR No. 34508, May 06, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JEROME ARCIBAL Y ALBITOS, ACCUSED-APPELLANT.**

D E C I S I O N

GAERLAN, S.H., J.:

Before this Court is an appeal from the 6 October 2011 Decision^[1] of Branch 13 of the Regional Trial Court of Lipa City for Criminal Case No. 0208-2008, wherein the accused-appellant was found guilty beyond reasonable doubt for Violation of Section 11, Article II of Republic Act No. 9165, also known as the Comprehensive Dangerous Drugs Act of 2002.

The accusatory portion of the Information^[2] charging Jerome Arcibal y Albitos reads:

“That on or about the 15th day of March, 2008 at about 4:45 o'clock in the afternoon at Villa Rosa Subdivision, Brgy. Antipolo del Norte, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there willfully, unlawfully and feloniously have in his custody, control and possession 0.04 gram of methamphetamine hydrochloride locally known as *shabu*, a dangerous drug.

Contrary to law.”

During the arraignment on 22 September 2008, accused-appellant, assisted by counsel *de parte*, entered a plea of **not guilty** to the charge.^[3] On 11 November 2008, the pre-trial was conducted and also terminated.^[4] Thereafter, trial begun on 12 January 2009.^[5] The prosecution offered the testimonies of PO3 Andrew Llanes^[6]; SPO1 Manolo Leyesa^[7]; and PO1 Danzon Librea^[8]. In its Formal Offer of Evidence^[9], the prosecution offered and submitted the following: 1) *Sinumpaang Salaysay* of SPO1 Manolo Leyesa^[10]; 2) Photocopy of the Order of Arrest^[11]; 3) Request for Laboratory Examination^[12]; 4) Chemistry Report No. BD-040-08^[13]; 5) Inventory of Confiscated/Seized Items; 6) *Shabu* contained in a small rectangular transparent plastic sachet with marking AML “P” JAA; and 7) Certified xerox copy of Police Blotter^[14].

On the other hand, the defense presented its lone witness herein accused-appellant Jerome Arcibal y Albitos. No other evidence of any kind was offered by the defense.

THE FACTS

The Version of the Prosecution^[15]

Around 4:45 in the afternoon of 15 March 2008, PO3 Andrew Llanes (PO3 Llanes), together with Police Inspector Joel Laraya (P/Insp. Laraya), SPO1 Manolo Leyesa (SPO1 Leyesa) and SPO1 Gerry Mendoza (SPO1 Mendoza), was conducting a routine patrol in Villarosa Subdivision, Lipa City when he saw herein accused-appellant with his live-in partner, Carissa Myka Viola walking at the corner of the same subdivision. Upon seeing herein accused-appellant, PO3 Llanes' attention was caught because he was previously informed by SPO2 Alex Yema (SPO2 Yema) that accused-appellant has a pending warrant of arrest for the crime of theft. PO3 Llanes knew accused-appellant because the latter's mother is a resident of Villarosa Subdivision and he had previously seen accused-appellant in the subdivision.

After recognizing accused-appellant, PO3 Llanes immediately alighted from a patrol car and approached him. P/Insp. Laraya and SPO1 Leyesa followed him. PO3 Llanes arrested accused-appellant and informed him of his constitutional rights. As part of the standard operating procedure for police officers, he also handcuffed and searched accused-appellant. As a result, PO3 Llanes recovered from accused-appellant's right pocket a small heat-sealed rectangular transparent plastic believed to contain "*shabu*".

The police officers brought accused-appellant to the police station on board the patrol vehicle and entered the incident in the blotter. Thereafter, the police officers proceeded to the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) Office for the preparation of the request for laboratory examination of the seized item and other necessary documents for the filing of the case. PO3 Llanes also marked the seized item with AML "P" JAA.

Thereafter, PO1 Danzon Librea delivered the seized plastic sachet to the Batangas Provincial Crime Laboratory for forensic examination which was received by SPO2 Lito Vargas. The specimen was turned over to Jupri Delantar for examination.

The qualitative examination conducted on the specimen showed that the seized item contains methamphetamine hydrochloride, commonly known as "*shabu*".

The Version of the Defense^[16]

On 15 March 2008 at around 4:00 o'clock in the afternoon, accused-appellant Jerome Arcibal was walking inside Villarosa Subdivision coming from a barbeque stand at the corner of Villarosa Street with his girlfriend Carissa Myka Viola. They were on their way home when a police patrol arrived and stopped in front of them. Suddenly, PO3 Llanes alighted from the patrol car, grabbed his arm and told him that he is being arrested.

Accused-appellant asked PO3 Llanes what his offense was and the latter told him that he has a warrant for his arrest. Accused-appellant asked that the warrant be shown to him, but instead, he was told to just come with them to the precinct. Thereafter, he was handcuffed and was forced to ride in the patrol car. He was seated at the rear part of the Revo together with PO3 Llanes. There were four (4) other police officers inside the patrol car. While they were traveling towards the headquarters, he was boxed by PO3 Llanes in his neck and was told to keep quiet as he was asking for what offense he was arrested. PO3 Llanes also pulled down his shorts and brief and tried to look for something. He was also bodily searched and his handkerchief and wallet were taken. He told them that he was not hiding anything.

Upon arrival at the headquarters, the police officers brought him to the office of SPO2 Yema who asked him if he knows Marco Paz, Gary Latag and a certain Omar. Accused-appellant told them that he knew these people.

Thereafter, he saw SPO2 Pera fixing a plastic sachet and typing something in the computer. After typing, he was asked to sign an inventory which he refused because the contents thereof are not true. Pera insisted for him to sign, but he still refused. He was asked if he has a counsel and he said that his counsel was Atty. Octavio Macatangay. Afterwhich, he was incarcerated.

On his first night in jail at around 11:00 o'clock in the evening, PO3 Llanes made him undergo unnecessary punishment. The next day, PO3 Llanes ordered the jail "mayor" to order the accused to do push-ups because he wanted to see the latter suffer and perspire. While he was doing push-ups, PO3 Llanes was watching him in front of the jail. He stayed there for at least five (5) minutes watching him do push-ups.

His family visited him while he was in jail. His sister engaged the services of Atty. Balderama who stood as his counsel. He told Atty. Balderama what was being done to him by PO3 Llanes. Thus, it was blotted in the same police precinct.

Prior to his arrest, the accused-appellant knows PO3 Llanes because he is his neighbor. Their house is just four (4) houses away from the PO3 Llanes' house and he sees him almost everyday.

In addition, he testified that they filed a case against PO3 Llanes before the Office of the Ombudsman for planting of evidence and for the unnecessary punishment he suffered in the hands of the police officer.

Likewise, accused-appellant denied the accusations against him. He alleged that the illegal drug was merely planted by PO3 Llanes. He is not aware of any reason why PO3 Llanes is very mad at him.

Thereafter, the assailed 16 February 2011 Judgment was rendered by the court *a quo* convicting herein accused-appellant of the crime charged. The dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Jerome Arcibal y Albitos GUILTY beyond reasonable doubt for Violation of Section 11, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and applying the Indeterminate Sentence Law, hereby sentences him to suffer the penalty of imprisonment of Twelve (12) years and One (1) day as minimum to Fourteen (14) years and One (1) day as maximum and to pay a fine of Three Hundred Thousand Pesos (Php 300,000.00) without subsidiary imprisonment in case of insolvency.

The period which the accused has undergone preventive imprisonment during the pendency of this case shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.

SO ORDERED."

Aggrieved by the decision of the court *a quo*, the accused-appellant is now before this Court interposing this appeal and assigning the following errors^[17]:

I.

THE COURT A *QUO* GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY.

II.

THE COURT A *QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESS.

III.

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

IV.

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.

THIS COURT'S RULING

Credibility of witnesses

The well-known rule, though subject to certain recognized exceptions, is that findings of facts and assessment of credibility of witnesses are matters best left to the trial court.^[18] The investigating judge is in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.^[19] Hence, "[u]nless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected."^[20]

In the present case, the trial court believed the prosecution witnesses. This Court concurs with the court *a quo* particularly in its finding that there is nothing on the record, after a review thereof, which indicates that the prosecution witnesses, particularly the police officers who arrested the accused-appellant harbored ill-motives against the latter. And it bears stressing at this juncture that in the absence of proof to the contrary, law enforcers are presumed to have regularly performed their duty.

Moreover, the defense averred that the alleged acts of PO3 Llanes manifest his desire to make accused-appellant suffer no matter what it takes, even to the point of inventing criminal offenses against the latter.^[21] This claim, however, is negated by accused-appellant's own statement that he is not aware of any reason why PO3 Llanes made him suffer unnecessary punishment.^[22]

Non-compliance Section 21 of Republic Act No. 9165 and its implementing rules and regulations.