

## THIRD DIVISION

[ G.R. No. 237209, April 10, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
MOHAMAD DAMPAK Y DISALO @ "LANDO" AND JAMIL DAMPAK Y  
MIMBALAWAG @ "JAMIL," ACCUSED. CATHERINE ROMOROSA Y  
OSTOY @ "LYN," ACCUSED-APPELLANT.**

### DECISION

**PERALTA, J.:**

At bench is an appeal<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated September 25, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08319, affirming the conviction of herein appellant Catherine O. Romorosa for illegal sale of dangerous drugs, punished under Section 5<sup>[3]</sup>, Article II of Republic Act (R.A.) No. 9165.

The antecedents.

On February 20, 2010, the appellant, along with a certain Mohamad D. Dampak (*Mohamad*) and one Jamil M. Dampak (*Jamil*), were arrested in Muntinlupa City during a buy-bust operation conducted by agents of the National Bureau of Investigation (*NBI*). The arrests led to the filing of five (5) criminal cases before the Regional Trial Court (*RTC*) of Muntinlupa City, to wit:

1. Criminal Case No. 10-111 - which charged Mohamad with possession of 1.0937 grams of methamphetamine hydrochloride, commonly known as *shabu*, in violation of Section 11, Article II of R.A. No. 9165;
2. Criminal Case No. 10-112 - which charged Jamil with possession of 1.1095 grams of *shabu* in violation of Section 11, Article II of R.A. No. 9165;
3. Criminal Case No. 10-113 - which charged Jamil with the sale of 1.0646 and 0.9822 grams of *shabu* in violation of Section 5, Article II of R.A. No. 9165;
4. Criminal Case No. 10-114 - which charged Mohamad with the sale of 1.0646 and 0.9822 grams of *shabu* in violation of Section 5, Article II of R.A. No. 9165;
5. Criminal Case No. 10-115 - which charged the appellant with the sale of 1.0646 and 0.9822 grams of *shabu* in violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the Information filed against appellant reads:

That on or about February 20, 2010, in Muntinlupa City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, [Romorosa] without having been authorized by law, did then and there, knowingly, willfully, unlawfully, and feloniously sell, trade, deliver, give

away to another and distribute 1.0646 grams and 0.9822 gram quantity of white crystalline substance of Methylamphetamine Hydrochloride, a dangerous drug.

The above cases were consolidated before Branch 203 of the Muntinlupa City RTC.<sup>[4]</sup>

During arraignment, the appellant, Mohamad and Jamil all pleaded not guilty to the respective charges against them. Pre-trial followed and was terminated on May 26, 2011. Trial thereafter ensued.

The prosecution presented the testimonies of Special Investigator Rolan Fernandez (*SI Fernandez*) and Senior Forensic Chemist Edwin C. Purificando (*SFC Purificando*) of the NBI. SI Fernandez was the poseur-buyer in the buy-bust operation that resulted in the arrest of the appellant, Mohamad and Jamil. SFC Purificando, on the other hand, was the chemist who tested the sachets of white crystalline substance confiscated during such operation and who confirmed them positive for *shabu*.

Taken together, the testimonies of SI Fernandez and SFC Purificando tell the following story:

1. On February 2, 2010, SI Fernandez received information from a confidential informant (CI) that a certain "Omar Macabuat" (*Omar*) is engaged in illegal drug operations. Acting on such information, SI Fernandez requested Atty. Ruel Lasala (*Atty. Lasala*) — the NBI Deputy Director for Intelligence Services and Anti-Illegal Drugs Task Force Commander — for an authority to investigate. Atty. Lasala granted such request.<sup>[5]</sup>
2. On February 19, 2010, the same CI returned to the NBI Office and told SI Fernandez that he (the CI) was able to arrange a *shabu* deal worth P12,000.00 with Omar that is due for delivery in Alabang, Muntinlupa City.<sup>[6]</sup> The NBI decided to form a team of operatives,<sup>[7]</sup> headed by SI Fernandez, to conduct a buy-bust operation.
3. Prior to the buy-bust operation, SI Fernandez marked two P100 and six P50 bills by writing "RSF" on the said bills. He also photocopied the bills and had them dusted by the NBI Forensic Chemist Division.<sup>[8]</sup> SI Fernandez then prepared the following documents:<sup>[9]</sup>
  - a. Authority to Operate,
  - b. Pre-operation Report,
  - c. Coordination Form with the Philippine Drug Enforcement Agency (*PDEA*), and
  - d. Coordination Letter for the Philippine National Police (*PNP*) Director, Southern Police District.
4. The buy-bust team, along with the CI, arrived in Alabang, Muntinlupa City at around 4:30 p.m. of February 20, 2010. After some time, the CI received a cellphone call from Omar who told him to go to a house with a wooden fence in Grabador St., Purok 7-C. The CI relayed this information to the buy bust team. Once the team was able to locate the house described by Omar, SI Fernandez and the CI approached the same. The other operatives, on the other hand,

positioned themselves within the house's vicinity.<sup>[10]</sup>

5. Inside the house, SI Fernandez and the CI were met by a woman who introduced herself as "Lyn." Also inside such house were two (2) male individuals. After some conversation, Lyn handed two (2) transparent plastic sachets containing white crystalline substance to SI Fernandez. SI Fernandez, in turn, and in the presence of the two male individuals, gave Lyn the marked money. At this point, SI Fernandez did the pre-arranged signal of ringing the phone of his commander, Supervising Agent Gregorio S. Zuniga. In seconds, the other members of the buy-bust team rushed inside the house and declared a buy-bust operation.<sup>[11]</sup>
6. The buy bust team arrested Lyn, who was later identified as the appellant. The team, likewise, arrested and effected body searches on the two male individuals who were inside the house with the appellant. The two male individuals were identified as Mohamad and Jamil, and they were found to be each in possession of one (1) transparent plastic sachet containing white crystalline substance.<sup>[12]</sup>
7. All arrestees were informed of their constitutional rights and then brought to the NBI office in Manila. In transit, SI Fernandez took custody of the two plastic sachets seized from the appellant,<sup>[13]</sup> while those from Mohamad and Jamil were returned to their respective pockets to avoid confusion.<sup>[14]</sup>
8. Upon arrival at the NBI Office, SI Fernandez marked the two sachets purchased from the appellant with "COR-1a CID-NBI 2-20-2010" and "COR-1b CID-NBI 2-20-2010." The sachet taken from Mohamad was marked "MDD CID-NBI 2-20-2010," while that seized from Jamil with "JMD CID-NBI 2-20-2010."<sup>[15]</sup> SI Fernandez explained that since a crowd started to gather in the scene of the buy-bust operation, the buy-bust team promptly left lest they be exposed to danger. Consequently, the markings, inventory and taking of the pictures were done at the NBI Office.<sup>[16]</sup>
9. Thereafter, SI Fernandez forwarded the marked sachets to SI Regalario who prepared an inventory of the seized items. At the same time, photographs of the appellant, Mohamad and Jamil with the respective sachets retrieved from each were also taken. Present during the execution of the inventory and taking of photographs were the appellant, Mohamad, Jamil, SI Fernandez and a media representative. SI Fernandez clarified that, prior to the inventory and photograph-taking of the seized items, the NBI also contacted barangay officials as well as the Department of Justice (DOJ) for them to send representatives to witness such inventory and photograph taking.<sup>[17]</sup> However, none came.<sup>[18]</sup> Hence, in view of the time limit for inquest proceedings, he and SI Regalario were constrained to commence with the inventory and picture-taking without the presence of an elected official or a representative from the DOJ.
10. The confiscated plastic sachets were then submitted by SI Regalario to SFC Purificando for laboratory examination. The examination revealed the contents of the plastic sachets to be positive for *shabu*, a dangerous drug. Meanwhile,

the appellant also underwent ultra-violet light examination, and yellow fluorescent smudges had been found in both of her hands.

11. SFC Purificando then took custody of the confiscated plastic sachets and kept them in his steel cabinet, until the time he was summoned to produce the same in court.

After the prosecution filed its Formal Offer of Evidence and rested its case, Mohamad and Jamil filed, without leave of court, a Demurrer to the prosecution's evidence.<sup>[19]</sup>

On September 1, 2014, the RTC issued an Order granting Mohamad and Jamil's demurrer with respect to Criminal Case Nos. 10-113 and 10-114 for illegal sale of *shabu*, but denying the same with respect to Criminal Case Nos. 10-111 and 10-112 for illegal possession of *shabu*.<sup>[20]</sup> Since they filed their demurrer without leave of court, however, Mohamad and Jamil were deemed to have waived their right to present their evidence in Criminal Case Nos. 10-111 and 10-112.<sup>[21]</sup> Consequently, trial continued only as regards Criminal Case No. 10-115 — the case for illegal sale of *shabu* against the appellant.

The appellant testified on her behalf. In substance, the appellant denied being caught, *in flagrante*, of selling *shabu* and claimed that she was merely a victim of a police frame-up. She professed the following version of events:<sup>[22]</sup>

1. On the date and time of the supposed buy-bust, she was in Alabang to visit a friend. On her way to such friend, however, she noticed a commotion in an alley prompting her to stand by a nearby store.
2. An unknown man then approached her. The former mentioned to her the name of three Muslim men and asked her if she knew any of them. She replied in the negative.
3. The unknown man then dragged her into a parked white car, which is boarded by four other men. She was brought to the NBI office where she was detained inside a room.
4. The next day, or on February 21, 2010, she woke up seeing two men — which turned out to be Mohamad and Jamil — inside the room with her. An NBI agent, later identified to be SI Fernandez, came inside the room and showed to her a plastic sachet with white crystalline substance. SI Fernandez then instructed her to point at the sachet and the former took pictures of her.
5. On February 22, 2010, a certain "Atty. Rosemarie" informed her that she is being criminally charged unless she pays SI Fernandez the sum of P500,000.00.

On March 14, 2016, the RTC rendered a Joint Decision<sup>[23]</sup> in Criminal Case Nos. 10-111, 10-112 and 10-115. Therein, the trial court found both Mohamad and Jamil guilty of illegal possession of *shabu*, and also found the appellant guilty of illegal sale of *shabu*. In arriving at such findings, the RTC gave full faith and credence to the version of the prosecution as established by the testimonies of SI Fernandez and SFC Purificando. The dispositive portion of the RTC Decision accordingly reads:

WHEREFORE, premises considered, the Court finds:

(a) accused Catherine Romorosa y Ostoy @ "Lyn" GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 in Criminal Case No. 10-115, and hereby sentences her to life imprisonment and a fine of P500,000.00; and

(b) accused Mohamad Dampak y Disalo @ Lando and Jamil Dampak y Mimbawag @ "Jamil" GUILTY beyond reasonable doubt of Section 11, Article II of R.A. No. 9165 in Criminal Cases Nos. 10-111 and 10-112, and hereby sentences them to imprisonment of Twelve (12) years and one (1) day to fourteen (14) years and a fine of P300,000.00 each.

x x x x

SO ORDERED.<sup>[24]</sup>

The appellant appealed her conviction to the CA. On September 25, 2017, the CA rendered a Decision affirming the conviction of the appellant *in toto*. Hence, this appeal.

In this appeal, the appellant claims that the RTC and the CA erred in giving full faith and credence to the version of the prosecution. She particularly questions the credibility of SI Fernandez, whom she says gave an inconsistent account as to how the alleged deal for the purchase of *shabu* was actually brokered. The appellant points out that in SI Fernandez's testimony, he mentioned that it was the CI who was able to "*transact a drug deal*" worth P12,000.00 with Omar.<sup>[25]</sup> However, in the Joint Affidavit of Arrest<sup>[26]</sup> co-signed by SI Fernandez after the alleged buy-bust operation, it was categorically stated that it was SI Fernandez himself who was able to "*close a deal*" for the purchase of *shabu* worth P12,000.00.<sup>[27]</sup>

The appellant believes that the above inconsistency is detrimental to the credibility of the prosecution story that the NBI really undertook a genuine buy-bust operation; it proving that SI Fernandez cannot be relied upon as a credible witness. Consequently, she urges the Court to take a second look at her version of events and to consider the same to be the truth of what happened in this case.

At any rate, the appellant argues that her acquittal may still be justified in light of the prosecution's failure to prove the *corpus delicti* of the offense charged against her. The appellant claims that the identity of the *shabu* that was presented by the prosecution in that regard is suspect for the same was never forwarded to the evidence custodian of the NBI. She highlights the fact that such *shabu*, prior to its presentation in court, was only kept by SFC Purificando in his steel cabinet.

The appellant argues that the failure of SFC Purificando to turn-over the *shabu* he examined to the evidence custodian is a violation of the "*standard procedure*" of the NBI and, as such, renders doubtful the very integrity of the *shabu* presented by the prosecution in court.<sup>[28]</sup>

### OUR RULING

We dismiss the appeal.

***The RTC and the CA did***