

## FIRST DIVISION

[ G.R. No. 208836, April 01, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NASROLLAH MACAUMBANG Y ALI AND JOSE SAGARBARIA Y  
MISA, ACCUSED-APPELLANTS.**

### DECISION

**GESMUNDO, J.:**

This is an appeal from the April 30, 2013 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05125 affirming the June 2, 2011 Decision<sup>[2]</sup> of the Regional Trial Court, Muntinlupa City, Branch 205 (RTC) in Criminal Case No. 03-979 finding accused-appellants Nasrollah Macaumbang y Ali and Jose Sagarbaria y Misa (*accused-appellants*) guilty beyond reasonable doubt of violating Section 5, Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. Accused-appellants were each sentenced to suffer the penalty of life imprisonment and payment of a fine of Five Hundred Thousand Pesos (P500,000.00).

### Antecedents

The information against accused-appellants partly reads:

That on or about the 26th day of November 2003, in the City of Muntinlupa, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, conspiring and confederating together and both of them mutually helping and aiding one another did[,] then and there wilfully, unlawfully and feloniously sell, trade, deliver and gave (sic) away to another, Methamphetamine Hydrochloride, a dangerous drug weighing 98.05 grams, contained in one (1) knot tied transparent plastic bag, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[3]</sup>

Both accused-appellants pleaded not guilty upon arraignment.<sup>[4]</sup> Trial ensued.

The prosecution presented PO3 Jonathan Cruz (*Cruz*), SPO1 Tomas Calicdan (*Calicdan*), and P/Insp. Sandra Decena-Go (*Decena-Go*).

Cruz testified that he was assigned to the Metro Manila Regional Office of the Philippine Drug Enforcement Agency (PDEA) at Camp Crame, Quezon City.<sup>[5]</sup> On November 25, 2003, a confidential informant appeared before team leader Police

Senior Inspector Manan Muarip (*Muarip*). Muarip told members of the team composed of Cruz, Calicdan, PO3 Rolando Tizon (*Tizon*), PO3 Rodolfo Laxamana, and PO3 Virgilio Lakduhan of the informant's tip about a certain "Boy" who allegedly sold Methylamphetamine Hydrochloride (*shabu*) at Montillano Street, Barangay Alabang, Muntinlupa City. At about noon of the same day, the team, along with the informant, boarded two (2) vehicles and proceeded to Montillano Street. The informant pointed out the house of "Boy." After assessing the location, the team returned to Camp Crame.<sup>[6]</sup>

The following day, November 26, 2003, at around 8:00 a.m., the commanding officer, assisted by Muarip, conducted a briefing on the buy-bust operation against "Boy." Cruz was designated as the poseur-buyer while Calicdan and Tizon were assigned as immediate back-up officers. The plan was for Cruz to buy one hundred (100) grams of shabu for P1,000.00 per gram. Cruz was given two (2) one hundred peso bills, to be used as buy-bust money, and placed on top of the boodle money to make it appear that there was P100,000.00 in cash in the envelope. Cruz placed his initials "JAC on the buy-bust money<sup>[7]</sup> which was then forwarded to the PNP Crime Laboratory for ultraviolet (UV) treatment.<sup>[8]</sup> During the same briefing, the team also agreed on a pre-arranged signal, that Cruz would give a "thumbs-up" sign once the sale was consummated. After the preparations, the team proceeded to Montillano Street. Cruz and the informant arrived at the house of "Boy" at around 10:30 a.m.<sup>[9]</sup> "Boy" went downstairs to meet them. Cruz later identified "Boy" as the same Sagarbaria.<sup>[10]</sup>

Sagarbaria told Cruz and the informant to come upstairs through the side of the house. Once they got to the second floor, Sagarbaria asked Cruz and the informant how much they wanted to buy. When Cruz said he would buy one hundred (100) grams, Sagarbaria replied that he would sell that amount for P1,000.00 per gram. Cruz negotiated to buy the said amount for P900.00 but Sagarbaria refused. Cruz and Sagarbaria eventually came to an agreement. Sagarbaria told Cruz and the informant to wait. Sagarbaria returned half an hour later and said that the order would arrive by noon. After thirty minutes, Macaumbang arrived and went directly to Sagarbaria. Accused-appellants then turned their backs on Cruz and the informant and conversed in secret for about two minutes. Sagarbaria then told Cruz that the order has arrived. At that point, Macaumbang took out from his pocket something wrapped in a white handkerchief which he handed to Cruz. Cruz then untied the handkerchief, which held a plastic bag containing a white crystalline substance. Sagarbaria then asked Cruz for the payment and the latter handed Sagarbaria a white window envelope containing the buy-bust money. Sagarbaria proceeded to count the money which enabled Cruz to execute the pre-arranged signal. Cruz then announced accused-appellants' arrest and introduced himself as a police officer.<sup>[11]</sup>

Back-up arrived. Calicdan retrieved the buy-bust money from Sagarbaria, while Cruz handcuffed Macaumbang. Cruz also gave Muarip the seized plastic bag containing white crystalline substance. The latter placed the seized item in a plastic bag on which was printed PDEA. Muarip had possession of the seized item from the place of arrest until its transfer to the Camp Crame office.<sup>[12]</sup> The team and accused-appellants arrived at the Camp Crame office at 2:30 p.m. Muarip placed the seized item on the table for photo-taking. Prior to the taking of photographs, Cruz wrote

his initials "JAC" on the item. A barangay official who was present when the item was photographed likewise signed the inventory receipt.<sup>[13]</sup> He also testified that the photographs were not developed as the film was exposed.<sup>[14]</sup>

After making the necessary markings, they prepared the request for laboratory examination, as well as requests for drug test, medical examination, and fluorescent powder testing for accused-appellants. Cruz delivered the item to the Crime Laboratory.<sup>[15]</sup> The examination yielded positive for the presence of methylamphetamine hydrochloride. Accused-appellants were also found positive for use of drugs. The dorsal side of Sagarbaria's hands were also found positive for the presence of ultraviolet powder.<sup>[16]</sup>

Calicdan testified that he was assigned to the Special Enforcement Group of PDEA in Camp Crame, Quezon City.<sup>[17]</sup> His statements substantially corroborated those of Cruz's insofar as the surveillance and buy-bust operation are concerned.<sup>[18]</sup> On the matter of the operation, he related that a man between 40 to 50 years old approached Cruz and the informant when they reached the barber shop on the ground floor of the house of "Boy."<sup>[19]</sup> The man talked to Cruz and the informant for about fifteen (15) minutes before they entered a house in an alley and went upstairs. Calicdan was at an eatery from where he could see Cruz through a window on the second floor of the house.<sup>[20]</sup> The man, who turned out to be "Boy," went out of the house and returned at around 11:45 a.m.<sup>[21]</sup> Sometime later, a young man between 18 to 25 years old and appeared to be carrying something in his hands, went upstairs. After thirty (30) minutes, Cruz gave the thumbs-up signal.<sup>[22]</sup> Calicdan then entered the house where he saw "Boy" holding the white window envelope containing the buy-bust money. He also saw that Cruz was holding a plastic sachet wrapped in a white handkerchief which Cruz said was the item he was able to buy.<sup>[23]</sup> Calicdan also saw two (2) persons peeping at the door of the other room, about four (4) meters away.<sup>[24]</sup> The team introduced themselves as PDEA members and informed accused-appellants of their violation and of their constitutional rights. Calicdan took the white window envelope from Sagarbaria, who asked the arresting team whether they could just fix or negotiate his violation ("*areglohin*").<sup>[25]</sup> Muarip went upstairs and the seized item was placed in an evidence bag. Cruz held on to the evidence bag and the buy-bust money was with Calicdan until they got back to their office in Camp Crame.<sup>[26]</sup>

Upon arriving at the office, the evidence was placed on a table and an inventory was conducted.<sup>[27]</sup> The markings of the items were likewise done in the office.<sup>[28]</sup> The Certificate of Inventory was signed by Muarip and Kagawad Rodel Frayna in front of both accused-appellants.<sup>[29]</sup> The team also prepared the following requests: laboratory examination of the seized item, fluorescent powder testing on accused-appellants and the buy-bust money, physical and medical examination, and drug test. Calicdan accompanied Cruz when the latter delivered the item to the crime laboratory. After the examination, the item was found to be positive for methylamphetamine hydrochloride.<sup>[30]</sup>

Meanwhile, the defense presented both accused-appellants and Elizabeth Sagarbaria as witnesses.

Macaumbang testified that he came from Marawi City and worked as a mobile phone technician.<sup>[31]</sup> At around noon on November 26, 2003, he was inside a barber shop for a haircut when he saw a commotion happening outside. As people scampered, he tripped and bumped into two (2) armed men near the door. The men, who introduced themselves as police officers, held his right shoulder and asked him where he was going. Macaumbang resisted and asked what his fault was and why he was being arrested. The men then dragged him towards a stairway, hurting and suffocating him.<sup>[32]</sup> They brought him upstairs, where one of the men kicked the door open and pushed him inside. Also, another man was inside the room. Macaumbang only knew of the identity of the man, who turned out to be "Boy," when they were already in jail. Both he and "Boy" were told to lie face down and then were handcuffed.<sup>[33]</sup> They then boarded two vehicles and proceeded to Camp Crame. Once at Camp Crame, the two police officers talked to him and brought him to a rest room, where they asked him whether he had "*pang-areglo*." The policemen told him that if he had the money, he would be set free. He said he had only P1,600.00 in his pocket, but the police officers asked whether he had anymore. Calicdan took his wallet, while he explained that it was all he had earned as a technician for four days. His money was not returned.<sup>[34]</sup>

The policemen also asked him whether he knew "Boy," to which he said no. They all returned to the room where Macaumbang cried and begged to be let go; but he was told "*diyan ka na, tumigil ka na*."<sup>[35]</sup> He was handcuffed and they made their way to the laboratory. On their way, a police officer rubbed a P100 bill on his hand.<sup>[36]</sup> He denied bringing shabu wrapped in a handkerchief and delivering it to Sagarbaria.<sup>[37]</sup>

On his part, Sagarbaria testified that on November 26, 2003, he was on the second floor of his house getting a manicure.<sup>[38]</sup> At that time, police officers arrived, which caused a commotion on the ground floor.<sup>[39]</sup> He saw a policeman pulling a man upstairs from the barber shop. The police officers kicked the door of the room open, and looked for a certain person. Sagarbaria said he did not know the person they were looking for. They then told the person they dragged upstairs to lie on the floor while they searched the room. Sagarbaria then heard someone say "*Wala dito, wala naman tayong makukuha, ibaba na yan*." He and the other man were brought down. They boarded a white car because they could not be accommodated in the two other vehicles that were already full of other handcuffed persons.<sup>[40]</sup> When they reached Camp Crame, the police officers asked him the name of the other man arrested with him; he said he did not know.<sup>[41]</sup> The police officers told him to tell his wife to come to Camp Crame. His wife and their son came the same night. His wife told him that the police officers were demanding P200,000.00 for his release; but she said she had only P50,000.00. The police officers asked her to come back the following day with the full amount.<sup>[42]</sup>

On the same day, at around 4:00 p.m. to 5:00 p.m., accused-appellants were brought to a barangay hall near Camp Crame. The police officers were not able to find the barangay chairman so they called the person sweeping the floor.<sup>[43]</sup> Sagarbaria was forced to hold the white window envelope, which he refused to do, but the police officers brushed his closed fist against the envelope.<sup>[44]</sup> They were then brought back to Camp Crame to a place which looked like a hospital, and

where their urine and his hand were examined. The chemist did not find ultraviolet powder. They found cuticle remover substance instead, because his hand was having a manicure when he was arrested. They were also asked whether they were mauled or why they had a contusion. He said no, although Macaumbang had a cut on his lip. They stayed overnight at Camp Crame.<sup>[45]</sup>

The following day, at around 1:00 p.m., they were brought to the office of the City Prosecutor of Muntinlupa, before whom Sagarbaria signed his counter-affidavit.<sup>[46]</sup> He was unable to read the document because he was asked to sign it just as they were about to enter the prosecutor's office. When he read his counter-affidavit, he noticed that there were inaccuracies on the document. He asked his lawyer why the things he wrote were not included. His lawyer said he would take care of the matter.<sup>[47]</sup> His wife, daughter, and barber Jimuel Ole, submitted affidavits during the preliminary investigation.<sup>[48]</sup>

The final defense witness was Elizabeth Sagarbaria, wife of accused-appellant. She stated that she was tending to the barber shop at 11:00 a.m. then she brought a manicurist to her husband on the second floor for a manicure.<sup>[49]</sup> As she was putting her grandchild to sleep, a man with a gun and some civilian-clad companions, entered their house. She asked them what they were looking for but they did not answer. She then saw her husband go downstairs. She was going to follow but a man prevented her from doing so. Nothing was found in the room.<sup>[50]</sup>

On presentation of rebuttal evidence, Calicdan denied pulling Macaumbang up to the second floor, and that it was Cruz, the informant, and Sagarbaria who first went up to the second floor. He saw Macaumbang get to the second floor sometime after Sagarbaria came back. At the time of arrest, Macaumbang was already at the second floor.<sup>[51]</sup> He also denied demanding money from Sagarbaria's wife. On the contrary, Sagarbaria asked them if they could just settle the case with an "*areglo*" offered to Calicdan, Cruz, and Tizon<sup>[52]</sup> while still at the place of the incident.<sup>[53]</sup> He likewise denied that accused-appellants were brought out of Camp Crame to a nearby barangay hall for picture-taking.<sup>[54]</sup> Finally, he explained that they were not able to do an inventory at the place of arrest because the informant told them that Sagarbaria had a police coddler.<sup>[55]</sup>

Further, P/Insp. Decena-Go stated that she examined accused-appellants for the presence of UV powder on their hands.<sup>[56]</sup> She rebuffed Sagarbaria's statement that she had told him that the test for fluorescent powder on him yielded a negative result. She only gave results through a written report.<sup>[57]</sup> She clarified that she saw UV powder which can only be seen under UV light, while a cuticle remover does not emit light under a UV tester. She said Sagarbaria was positive for UV powder found on the dorsal portion of his hands.<sup>[58]</sup> There was no UV powder on Sagarbaria's palm, which could be caused by him not touching any object with ultraviolet powder or that the powder was washed away.<sup>[59]</sup>

### ***The RTC Ruling***

The trial court ruled that all the elements for the sale of dangerous drugs were present and that the prosecution proved the guilt of both accused-appellants beyond