

# FIRST DIVISION

[ G.R. No. 199813, June 26, 2019 ]

**PEOPLE OF THE PHILIPPINES,\* PLAINTIFF-APPELLEE, VS. ALLAN  
BERMEJO Y DE GUZMAN, ACCUSED-APPELLANT.**

## DECISION

**CARANDANG, J.:**

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision<sup>[1]</sup> dated February 8, 2011 and the Resolution<sup>[2]</sup> dated June 2, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03997, which affirmed the Decision dated May 18, 2009 of the Regional Trial Court (RTC) of Puerto Princesa City, Branch 48, finding petitioner Allan Bermejo y De Guzman guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) and imposing the penalty of life imprisonment and a fine of five hundred thousand pesos (P500,000.00).

### The Facts of the Case

The Information<sup>[3]</sup> charging petitioner Allan Bermejo y De Guzman (Bermejo) for violation of Section 5, Article II of RA 9165 reads as follows:

That on or about the 12<sup>th</sup> day of February, 2003, at more or less 11:30 o'clock in the evening, along Rizal Avenue, Dagornboy Village, Bgy. San Miguel, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously sell and trade two (2) heat sealed plastic sachet of Methamphetamine Hydrochloride commonly known as Shabu, a regulated drug, weighing more or less 0.2 grams, without being authorized by law to possess and sell the same.

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

Bermejo, duly assisted by counsel, entered a plea of "not guilty" during the arraignment.<sup>[5]</sup> Trial on the merits ensued. The prosecution presented the testimonies of PO3 Rosauro Ordonez Rodillo, PO2 Benjamin Eleazar Martinez, Police Senior Inspector Mary Jane Cordero, SPO3 Saul B. Eleazar, and Roger Abendanio. Bermejo was the lone witness for the defense.

### **Version of the prosecution**

Bermejo was arrested pursuant to a buy-bust operation conducted by the members of the Philippine National Police (PNP) stationed at Puerto Princesa City, under the Drug Enforcement Action Division (DEAD).

Prior to the buy-bust operation, members of the team conducted surveillance on the activities of Bermejo.<sup>[6]</sup> It was found out that Bermejo was indeed selling *shabu*.<sup>[7]</sup> Police Senior Inspector Jerome Enriquez (PSI Enriquez) immediately formed a buy-bust team and planned an entrapment operation against Bermejo. The buy-bust team was composed of PO3 Rosauro Ordonez Rodillo (PO3 Rodillo), PO2 Benjamin Eleazar Martinez (PO2 Martinez), SPO3 Saul B. Eleazar (SPO3 Eleazar), SPO2 Renato Badajos, and PSI Enriquez, the team leader. The civilian asset, Roger Abendanio, acted as the poseur-buyer. Four (4) pieces of P100.00 bills were marked by SPO3 Eleazar with "SBE" at the upper left hand portion thereof and were turned-over to PO3 Rodillo to be used as marked money by the civilian asset.

On February 12, 2003 at around 11:30 o'clock in the evening, the buy bust team proceeded to the Balik Harap Sing Along and Refreshment Parlor located along Rizal Avenue, Puerto Princesa City. They parked their tinted van in front of said establishment and let their civilian asset transact with Bermejo. The civilian asset then went out of the van and talked to Bermejo. The members of the buy-bust team were left inside the van where they can see in plain view the transaction between the civilian asset and Bermejo, which was more or less two (2) meters in distance.<sup>[8]</sup>

After a short while, the buy-bust team saw the civilian asset handing to Bermejo the four (4) marked P100.00 bills in exchange for two (2) sachets of white crystalline substance suspected to be "*shabu*." When the transaction was consummated, the civilian asset made the pre-arranged signal by removing the white towel from his head. PO3 Rodillo and PO2 Martinez immediately went out of the van and arrested Bermejo. The police officers informed Bermejo of his constitutional rights, then he was brought to the police station and turned over to the duty investigator.

While on their way to the police station, PO3 Rodillo handed over to SPO3 Eleazar the buy-bust money and the two (2) plastic sachets containing the suspected "*shabu*" which he marked with the initials "SBE-1" and "SBE-2" upon arrival at the police station. An *Inventory of Seized/Confiscated Items* (Exh. "B")<sup>[9]</sup> was prepared and signed by PO3 Rodillo, PO2 Martinez and representatives from the DOJ, media and a barangay kagawad. The specimen was later submitted for laboratory examination which yielded positive result for the presence of methamphetamine hydrochloride or "*shabu*", per Chemistry Report No. D-0031-03<sup>[10]</sup> prepared by Police Inspector Rhea Fe B. Dela Cruz, Forensic Chemist of the Regional Crime Laboratory of Calapan City.

### ***Version of petitioner***

Bermejo denied the charge. He testified<sup>[11]</sup> that on February 12, 2003, at around 10:30 p.m., he fetched his wife at the boarding house of her niece, on Abad Santos Extension. They boarded a tricycle but Bermejo alighted at the corner of Rengel Road and Rizal Avenue Extension to buy *chao-long* (rice noodles) while his wife proceeded to Kristine Bar to leave the keys of the boarding house with her niece. While Bermejo was on his way to the *chaolong* store, a van suddenly stopped beside him. Police officers alighted and he was apprehended. Bermejo was immediately brought to the police station. He further testified that he saw Roger Abendanio, the civilian asset, that night. Bermejo claimed that Roger was driving the van of the

police officers who arrested him. Bermejo personally knows Roger who was working as a helper in the truck where he would usually load dried fish bought from a certain Rio Tuba.

### **Ruling of the RTC**

In a Decision<sup>[12]</sup> dated May 18, 2009, the RTC convicted Bermejo for violation of Section 5, Article II of RA 9165 and sentenced him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00). The RTC ruled that the elements of illegal sale of drugs were proven by the prosecution. The integrity and evidentiary value of the two (2) plastic sachets of *shabu* were preserved, as testified by PO3 Rodillo. The dispositive portion of the May 18, 2009 Decision reads:

**WHEREFORE**, in view of the foregoing, the prosecution having satisfactorily proven the guilt of accused **ALLAN BERMEJO**, the Court hereby found him **GUILTY** beyond reasonable doubt for the crime of Violation of **Section 5, Article II of R.A. 9165** for illegal sale of dangerous drugs and to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (P500,000.00).

The confiscated two (2) heat-sealed plastic sachets containing methamphetamine hydrochloride is hereby ordered to be turned over to the local office of the Philippine Drug enforcement Agency (PDEA) for proper disposition.

**IT IS SO ORDERED.**<sup>[13]</sup>

Bermejo moved for reconsideration but it was denied by the RTC in the Order<sup>[14]</sup> dated June 10, 2009.

Bermejo filed an appeal before the CA.

### **Ruling of the CA**

On February 8, 2011, the CA issued a Decision affirming *in toto* the RTC Decision. The CA ruled that the testimonial as well as the physical evidence presented by the prosecution clearly established the elements of the offense charged. Bermejo, who claimed that he was illegally apprehended and that no illegal drug transaction actually took place, failed to present any witness who could corroborate his statement. Anent the contention of Bermejo that the police officers failed to comply with the provisions of paragraph 1, Section 21 of RA 9165, the CA declared that the prosecution's evidence had established the unbroken chain of custody of the seized drugs from the buy bust team, to the investigating officer and to the forensic chemist. SPO3 Eleazar marked the confiscated sachets of *shabu* with his initials "SBE-1" and "SBE-2" while on their way to the police station and were entered in the police blotter upon arrival thereat. The markings were done immediately prior to the turnover of the items to the investigation section of the PNP, which forwarded the items to the forensic chemist for examination. The CA further stated that the failure to inventory and photograph the confiscated drug will not render the seizure void as long as the integrity and evidentiary value of the drugs are properly preserved by the apprehending officers.

As to the assertion of Bermejo that it was an error on the part of the RTC to allow and admit the prosecution's formal offer of evidence despite the lapse of five (5) months from the time the prosecution was given ten (10) days to formally offer its evidence, the CA ruled that the prosecution orally offered its evidence the earliest possible time after the trial court gave ten (10) days to the prosecution to file its formal offer of evidence. Further, the CA stated that Bermejo failed to move for reconsideration after the trial court issued its Order<sup>[15]</sup> dated September 22, 2008 admitting the exhibits or even questioning the same through *certiorari*. Lastly, the CA declared that Bermejo was not denied his right to speedy trial. The delays in the trial of the case were all due to unavailability of the witnesses and continuances were granted to serve the ends of justice.

Bermejo moved for reconsideration but it was denied in the CA Resolution dated June 2, 2011.

Hence, this petition.

### **Issues**

-A-

THE HONORABLE COURT OF APPEALS ERRED IN ITS APPRECIATION OF THE INTEGRITY OF THE EVIDENCE DESPITE FAILURE OF THE GOVERNMENT TO PROVE THE CHAIN OF CUSTODY.

-B-

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THE CIVILIAN ASSET TO BE A CREDIBLE WITNESS DESPITE EVIDENCE TO THE CONTRARY.

-C-

THE HONORABLE COURT OF APPEALS ERRED IN ADMITTING THE EVIDENCE FORMALLY OFFERED MORE THAN FIVE (5) MONTHS AFTER THE DATE IT WAS ORDERED TO DO SO. COURT A QUO GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT IS GUILTY DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS.

-D-

THE HONORABLE COURT OF APPEALS FAILED TO APPRECIATE THAT THE DELAY IN THE PROSECUTION OF THE ACCUSED DENIED HIM HIS RIGHT TO SPEEDY TRIAL.

In the Resolution<sup>[16]</sup> dated October 5, 2011, this Court, without necessarily giving due course to the petition, required respondent to file Comment thereon, not a motion to dismiss, within the (10) days from notice.

Respondent filed its Comment<sup>[17]</sup> on January 31, 2012 asserting the same

arguments in its Brief<sup>[18]</sup> filed with the CA. Among others, respondent avers that the prosecution was able to establish the chain of custody of the subject illegal drug, thus maintaining the identity and integrity of the *corpus delicti*. From the time the subject *shabu* was confiscated from Bermejo's person to its presentation in the trial court, the prosecution preserved its identity. Despite failure to mark the *shabu* at the scene of the crime, both PO3 Rodillo, who made the arrest, and SPO3 Eleazar, who actually made the markings, and who both testified in this case, were present from the time the subject *shabu* was bought from Bermejo to the time it was brought to the police station for marking. Further, SPO3 Eleazar was present from the time of the arrest to the time the subject *shabu* was brought to the crime laboratory. Thus, the chain of custody was not broken. Also, the elements of the crime have been sufficiently established by the prosecution. Roger Abendanio, the poseur-buyer positively identified Bermejo as the person who sold to him the sachet of *shabu*. Respondent can no longer assail his credibility as a witness more so if the findings of fact of the trial judge who saw the witness testify are sustained by the CA.

Preliminarily, the Court notes that Bermejo filed a petition for review on *certiorari* under Rule 45 of the Rules of Court. As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court; except when the CA imposed the penalty of *reclusion perpetua*, life imprisonment or a lesser penalty in which case, the appeal shall be made by a mere notice of appeal filed before the CA. Bermejo clearly availed of a wrong mode of appeal by filing a petition for review on *certiorari* before the Court, despite having been sentenced by the CA of life imprisonment. Nonetheless, in the interest of substantial justice, the Court will treat his petition, filed within the 15-day period, as an ordinary appeal in order to resolve the substantive issue at hand with finality.<sup>[19]</sup>

Likewise, the Comment filed shall be treated as respondent's Supplemental Brief. In *Ramos, et al. v. People*,<sup>[20]</sup> the Court held that:

[I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

<sup>[21]</sup> (Citation omitted)

### **Ruling of the Court**

#### **The appeal is meritorious.**

After a judicious examination of the entire records of the case, the Court found material facts and circumstances that the trial court had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived at by the trial court. While the Court understands the importance of buy-bust operations as an effective method of apprehending drug pushers who are the scourge of society, We are likewise aware that buy bust operation is susceptible to abuse. It is for this reason that the Court must be extra vigilant in