

# FIRST DIVISION

[ G.R. No. 242132, September 25, 2019 ]

**NOR JELAMIN MUSA,\* IVAN USOP BITO,\*\* AND MONSOUR  
ABDULRAKMAN ABDILLA,\*\*\* PETITIONERS, VS. PEOPLE THE OF  
PHILIPPINES, RESPONDENT.**

## DECISION

**PERLAS-BERNABE,\*\*\*\*\* J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated January 30, 2018 and the Resolution<sup>[3]</sup> dated August 23, 2018 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01553-MIN which affirmed the Judgment<sup>[4]</sup> dated June 22, 2016 of the Regional Trial Court of Lupon, Davao Oriental, Branch 32 (RTC) in Crim. Case No. 1694-14 finding petitioners Nor Jelamin Musa (Musa), Ivan Usop Bito (Bito), and Monsour Abdulrakman Abdilla (Abdilla; collectively, petitioners) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165,<sup>[5]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and sentencing them to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 each.

### The Facts

Petitioners were charged with violation of Section 5, Article II of RA 9165 in an Amended Information<sup>[6]</sup> which reads:

That on or about July 22, 2014 in the Municipality of Governor Generoso, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, mutually conspiring and confederating with each other, without authority of law, did then and there willfully, unlawfully and feloniously **transport** from Pagalungan, Maguindanao to Barangay Tibanban, Governor Generoso, Davao Oriental Methamphetamine Hydrochloride also locally known as "Shabu" with an estimated weight of 18.4349 grams, a dangerous drug, without proper license or permit from the authorities, to the damage and prejudice of the state.

CONTRARY TO LAW.<sup>[7]</sup> (Emphasis supplied)

When arraigned, petitioners entered a plea of *not guilty* to the offense charged.<sup>[8]</sup>

The prosecution alleged that on July 22, 2014, Police Chief Inspector Aldrin Quinto Juaneza (PCI Juaneza) of the Governor Generoso Municipal Police Station in Davao

Oriental received confidential information from Police Superintendent Intelligence Officer Ruben Ramos (PSI Ramos) of the Davao Oriental Provincial Office about a purported plan to transport illegal drugs to Governor Generoso, Davao Oriental. Specifically, a white multi-cab vehicle with plate number NBD-279 with marking "Jarus Jeth" on its body was expected to transport illegal drugs from Pagalungan, Maguindanao to Governor Generoso. Armed with said information, PCI Juaneza and PSI Ramos arranged the conduct of a checkpoint to intercept the vehicle.<sup>[9]</sup>

At around 11:00 o'clock in the morning of July 22, 2014, a team composed of eight (8) police officers, including PCI Juaneza, SPO2<sup>[10]</sup> Joselito Alvarez (SPO2 Alvarez), PO3 Teodoro Blaya (PO3 Blaya), and PO3 Alvin Molejon (PO3 Molejon) established a checkpoint at Purok 1, Barangay Tibanban, Governor Generoso, Davao Oriental. The team members strategically positioned themselves near and around the area.<sup>[11]</sup>

From a distance of about ten (10) meters, the police officers saw the subject multi-cab heading towards the checkpoint, prompting the police officers to prepare to flag down the vehicle. However, even before reaching the vicinity of the checkpoint, the multi-cab stopped and abruptly changed direction, prompting the police officers to pursue the evading vehicle aboard a *bongo* or pick-up type vehicle.<sup>[12]</sup>

After a brief chase, the police officers stopped and came upon the multi-cab, which had halted. PO3 Blaya testified that he saw all three petitioners alight from the multi-cab and walk towards a nearby hut twenty (20) meters away from the vehicle. Thereat, the police officers caught up with the petitioners, introduced themselves, and warned them not to escape. Then, SPO2 Alvarez noticed that Abdilla was clutching his left hand. Upon SPO2 Alvarez's order, Abdilla handed over one (1) transparent heat-sealed plastic sachet containing white crystalline substance, which was later on identified as "shabu." Meanwhile, Musa and Bito were also frisked by the rest of the team, although nothing was found in their possession.<sup>[13]</sup>

Upon receipt of the plastic sachet containing the white substance, SPO2 Alvarez handed the same to PO3 Molejon. At the police station, SPO2 Alvarez and PO3 Blaya both placed their markings<sup>[14]</sup> on the seized drugs. Thereafter, PCI Juaneza prepared the Receipt/Inventory of Property/ies Seized,<sup>[15]</sup> which was witnessed and signed by Vice Mayor Katrina Orendia (Vice Mayor Orendia), Kagawad Ermian Limbadan (Kagawad Limbadan) of Brgy. Tibanban, Governor Generoso, and Peter Z. Macado (Macado), a media personality from Mati City. Photographs<sup>[16]</sup> of the confiscated drugs were also taken in the presence of petitioners.<sup>[17]</sup>

Meanwhile, PO3 Molejon had custody of the seized substance. The following day or on July 23, 2014, he prepared the Request for Laboratory Examination,<sup>[18]</sup> which was duly received by one PO2 Billano.<sup>[19]</sup> Upon qualitative examination, the drug specimen tested positive<sup>[20]</sup> for Methamphetamine Hydrochloride or "shabu," a dangerous drug.

In defense, Abdilla claimed that at around 4:00 o'clock in the morning of July 22, 2014, he went to Tibanban, Governor Generoso to observe the fish there. When he arrived at around 8:00 o'clock in the morning, he found no fish. Thus, he went to the waiting shed near the sea and sent a message to his in-law, asking her to have

a vehicle brought over to Tibanban. Later on, a multi-cab arrived with Bito behind the wheel accompanied by Musa. The three of them waited for thirty (30) minutes at the waiting shed. Thereafter, three (3) persons, who introduced themselves as police officers, approached them. Poking their guns at the petitioners, the police officers required them to drop to the ground, where they were frisked and tied with a rope. Nothing was taken from them. Subsequently, they were brought to the police station.<sup>[21]</sup>

For his part, Musa asserted that on the date in question, he drove a multi-cab together with Bito to meet Abdilla and catch some fish. They arrived at around 11:30 in the morning at Sigaboy and met Adbilla in a hut. Five (5) minutes later, six (6) policemen arrived and pointed their guns at them, demanding that they bring out the drugs they were selling. Abdilla denied having drugs in their possession. Thereafter, they were brought to the police station. Musa averred that there was no police checkpoint at that time nor were they flagged down by the police. He denied that they turned right in an intersection going to Tibanban and that he saw any road on the right going in the said direction.<sup>[22]</sup>

### **The RTC Ruling**

After trial on the merits, the RTC, in a Judgment<sup>[23]</sup> dated June 22, 2016, found petitioners guilty beyond reasonable doubt of the offense charged and sentenced them each to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.<sup>[24]</sup> The RTC found that the purpose of petitioners was to transport "shabu," considering that: (a) the multi-cab bearing plate number NDB-279 with marking "Jarus Jeth," which was the subject of the confidential information received by the police officers, suspiciously changed its course to avoid the checkpoint set up by the police officers; (b) after giving chase, the police officers caught up with the multi-cab which was already at a full stop, and they saw the petitioners alighting therefrom; and (c) they were able to recover a plastic sachet containing "shabu" from the possession of Adbilla. As petitioners' arrest was the result of a hot pursuit operation, it was immaterial that they were apprehended near a hut and not inside the vehicle.<sup>[25]</sup> Further, the integrity and probative value of the confiscated substance were properly preserved since the chain of custody was observed in this case.<sup>[26]</sup>

Aggrieved, petitioners appealed <sup>[27]</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>[28]</sup> dated January 30, 2018, the CA affirmed petitioners' conviction, sustaining the RTC's position that the warrantless search and arrest of petitioners in this case was valid, as the search of a moving vehicle is an exception to the rule that no search or seizure shall be made except by virtue of a valid warrant.<sup>[29]</sup> Moreover, it found that the prosecution was able to establish that the act of *transporting* the prohibited drugs had been committed, as can be gleaned from the testimonies of the police officers.<sup>[30]</sup> Likewise, it held that the chain of custody of the seized substance had been observed, from the time it was confiscated, to the time it was turned over to the investigating officer until it was brought to the forensic chemist for laboratory examination.<sup>[31]</sup> Finally, it ruled that conspiracy

attended the commission of the offense, as the acts of petitioners demonstrated a coordinated plan to transport the illegal drugs.<sup>[32]</sup>

Petitioners' motion for reconsideration<sup>[33]</sup> was denied in a Resolution<sup>[34]</sup> dated August 23, 2018; hence, this petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA erred in upholding the judgment of conviction of petitioners for the offense charged.

### **The Court's Ruling**

The petition is meritorious.

At the outset, well-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court, as in this case.<sup>[35]</sup>

#### **"Transport" as used under the Dangerous Drugs Act**

"Transport" as used under the Dangerous Drugs Act means "to carry or convey from one place to another." The essential element of the charge is the *movement* of the dangerous drug from one place to another.<sup>[36]</sup>

There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.<sup>[37]</sup>

#### **The prosecution failed to prove the fact of "transport" of illegal drugs**

In this case, it is the prosecution's theory that petitioners *transported* 18.4349 grams of methamphetamine hydrochloride or *shabu* on July 22, 2014 from Pagalungan, Maguindanao to Governor Generoso, Davao Oriental using a white multi-cab vehicle with plate number NBD-279 with the marking "Jarus Jeth" on its body. However, the totality of the evidence offered by the prosecution to prove its theory falls short as to justify the affirmance of petitioners' conviction.

*First*, while it may be true that, per the confidential information relayed by PSI Ramos to PCI Juaneza, a white multi-cab vehicle bearing plate number NBD-279 and the name "Jarus Jeth" on its body traversed the highway and approached the police checkpoint at Purok 1, Barangay Tibanban, Governor Generoso, Davao Oriental, none of the prosecution witnesses was able to identify any of the passengers of the said vehicle. In fact, the first time the police officers were able to see the petitioners was after they had given chase and found the multi-cab vehicle parked close to a nearby hut, inside which petitioners were standing. During his direct examination,

SPO2 Alvarez testified:

Atty. Pudpud – What did you do when they change[d] the route?

SPO2 Alvarez – The team leader advised our troops to chase the vehicle.

Q – What happened when you chased the multicab?

A – When we chased them we were able to catch them and stop them on (sic) the small shanty nipa hut with light materials.

Q – What did they do when you were able to catch up with them?

A – They are all there standing at the hut.

Q – They are already alighted from the multicab?

A – Yes, sir.

x x x x

Q – When they approached the checkpoint and avoided the checkpoint, did you notice the other 2 passengers?

A – No, your honor, because their multicab has covered (sic) on the back.

Q – You were not able to determine how many are on board?

A – Yes, sir.

Q – How about the driver of this multicab, were you able to see?

A – No, sir.

Q – So, you were only able to see them on the hut?

A – Yes, sir.

x x x x<sup>[38]</sup>

SPO2 Alvarez affirmed this in his cross-examination, to wit:

Atty. Etulle – Now, when you arrived at the hut you saw the multicab park 20 meters away from the hut, am I correct?

A – Yes, sir.

Q – Was the engine still running or the engine was already stopped?