

## FIRST DIVISION

[ G.R. No. 243589, September 09, 2019 ]

### PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. ANDIDATO MAMARINTA AND JACK BATUAN ACCUSED- APPELLANTS.

#### DECISION

##### CARANDANG, J.:

Before Us is an ordinary appeal<sup>[1]</sup> filed by accused-appellants Andidato P. Mamarinta (Mamarinta) and Jack A. Batuan (Batuan; collectively, accused-appellants) assailing the Decision<sup>[2]</sup> dated July 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08215, which affirmed the Judgment<sup>[3]</sup> dated November 23, 2015 of the Regional Trial Court of Pasig City, Branch 164 (RTC), the dispositive portion of which reads:

##### WHEREFORE:

1. In ***Criminal Case No. 20483-D***, the Court finds the accused (*sic*) Andidato P. Mamarinta *alias* "Dato" and Jack A. Batuan *alias* "Malupiton", **GUILTY** beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby imposes upon them the penalty of **life imprisonment and a fine of five hundred thousand pesos (P500,000.00), with all the accessory penalties under the law.**
2. In ***Criminal Case No. 20484***, the Court finds accused Andidato P. Mamarinta *alias* "Data" **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment **from twelve (12) years and one (1) day, as minimum, to sixteen (16) years as maximum, and a fine of three hundred thousand pesos (P300,000.00), with all the accessory penalties under the law.**
3. In ***Criminal Case No. 20485***, the Court finds accused Jack A. Batuan *alias* "Malupiton" **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment **from twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of three hundred thousand pesos (P300,000.00), with all the accessory penalties under the law.**

The five (5) transparent plastic sachets of *shabu* (Exhibits "W" to "Z" and "AA") subject matter of these cases are hereby ordered confiscated in favor of the government and turned over to the PDEA for destruction in accordance with law.

**SO ORDERED.**<sup>[4]</sup> (Emphasis in the original)

### **The Antecedents**

Accused-appellants were charged with violation of Sections 5<sup>[5]</sup> and 11,<sup>[6]</sup> Article II of Republic Act No. (R.A.) 9165, also known as the Comprehensive Dangerous Drugs Act of 2002, in three separate Informations which provide:

*Accused: Andidato P. Mamarinta alias "Dato" and Jack A. Batuan alias "Malupiton"*

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Rodrigo J. Nidoy, Jr., a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.10 gram of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[7]</sup>

*Accused: Andidato P. Mamarinta alias "Dato"*

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control three (3) heat-sealed transparent plastic sachets each containing the following:

1. B (2RJN/DATO 07/19/2015 – 0.12 gram
2. C (3RJN/DATO 07/19/2015 – 0.12 gram
3. D (4RJN/DATO 07/19/2015 – 0.11 gram

of white crystalline substance, which were found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[8]</sup>

*Accused: Jack A. Batuan alis "Malupiton"*

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing 0.10 gram of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous

drug, in violation of the said law.

Contrary to law.<sup>[9]</sup>

The witnesses for the prosecution testified that on July 18, 2015, the operatives of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Pasig City Police Station and its Chief Police Inspector Renato B. Castillo (PCI Castillo), were at their office when a confidential informant arrived and told them that *alias* Gerald was the most notorious pusher of illegal drugs at Villa Evangelista St., Bolante 2, Barangay Palatiw, Pasig City. Based on this information, PCI Castillo formed an entrapment team to conduct a buy-bust operation. PO1 Rodrigo J. Nidoy, Jr. (PO1 Nidoy, Jr.) was assigned as poseur-buyer and PO1 Jonathan B. Bueno (PO1 Bueno) was as signed as back-up. PO1 Nidoy, Jr. received two P100.00 bills as buy-bust money, which he marked with his initials "RJN." The SAID-SOTG buy-bust team submitted a Coordination Sheet and Pre-Operation Form to the Eastern Police District Anti-Illegal Drugs Special Operation Task Group and the Philippine Drug Enforcement Agency.<sup>[10]</sup>

Around 2:20 am of July 19, 2015, the buy-bust team and the confidential informant proceeded to Villa Evangelista St. While walking along said street, the confidential informant pointed to PO1 Nidoy, Jr., Gerald's house. PO1 Bueno was discreetly following them. They saw accused-appellants standing in front of the house. The confidential informant whispered to PO1 Nidoy, Jr. that these were Gerald's cohorts.  
<sup>[11]</sup>

The confidential informant and PO1 Nidoy, Jr. approached accused-appellants and looked for Gerald because they wanted to buy shabu. After informing them that Gerald just left,<sup>[12]</sup> Mamarinta asked them how much they wanted to buy. PO1 Nidoy, Jr. replied "*dos lang*" and brought out the buy-bust money which Batuan received. Mamarinta then brought out four transparent plastic sachets containing white crystalline substance, which appears to be shabu, and placed it on his palm. Mamarinta gave one sachet to PO1 Nidoy, Jr.<sup>[13]</sup>

PO1 Nidoy, Jr. then executed the pre-arranged signal by scratching his head. PO1 Bueno then closed in on the crime scene. PO1 Nidoy, Jr. introduced himself as a police officer, arrested Mamarinta, and confiscated from him the three other sachets. As for PO1 Bueno, he likewise introduced himself as a police officer, arrested Batuan, and ordered him to bring out the contents of his pocket. Batuan brought out from his pocket the buy-bust money and a heat-sealed transparent plastic sachet containing white crystalline substance. PO1 Bueno confiscated the items.<sup>[14]</sup>

While they were still in the place of arrest, PO1 Nidoy, Jr. marked the sachets he received and confiscated from Mamarinta in front of the latter. PO1 Bueno likewise marked the sachet he confiscated from Batuan. They summoned representatives from the media and *barangay* elected officials. However, it was only *Barangay Kagawad* Chester Guevarra (*Brgy. Kgwd.* Guevarra) who arrived. PO1 Nidoy, Jr. and PO1 Bueno presented accused-appellants and the evidence against them to *Brgy. Kgwd.* Guevarra, and explained the circumstances of their arrest. PO1 Nidoy, Jr. and PO1 Bueno prepared the inventory of the seized evidence in front of accused-appellants and *Brgy. Kgwd.* Guevarra, which they all signed. Photographs

were also taken during the conduct of the inventory.<sup>[15]</sup>

Accused-appellants were brought to the Pasig City Police Headquarters where PO1 Bueno and PO1 Nidoy, Jr. exhibited the confiscated items to police investigator PO1 Lodjie N. Coz (PO1 Coz).<sup>[16]</sup> PO1 Coz prepared the chain of custody form and the request for laboratory examination. PO1 Nidoy, Jr. and PO1 Bueno proceeded to the Eastern Police District-Crime Laboratory where they handed the request for laboratory examination and the confiscated sachets to forensic chemist police senior inspector Anghelisa S. Vicente (PSI Vicente). PSI Vicente examined the contents of the sachets and found that all tested positive for the presence of methamphetamine hydrochloride.<sup>[17]</sup>

Accused-appellants pleaded not guilty.<sup>[18]</sup> Mamarinta claimed that he was inside his house in Villa Evangelista St. and was putting his child to sleep when armed men barged in and asked him if he was Gerald. Despite answering in the negative, his hands were tied with a plastic rope and he was brought to the police station via a tricycle. It was only at the police station that he met Batuan. When he was subjected to an inquest, he finally discovered what was being charged against him.<sup>[19]</sup>

Batuan testified that he was at a store along Villa Evangelista St. when armed men asked him if he was Gerald and arrested him. Accused-appellants both claimed that the police demanded P100,000.00 in exchange for their liberty.<sup>[20]</sup>

### **Ruling of the RTC**

In its Judgment<sup>[21]</sup> dated November 23, 2015, the RTC found accused-appellants guilty beyond reasonable doubt of the crimes charged against them and imposed the following penalties: 1) for violation of Section 5, accused-appellants were sentenced with life imprisonment and a fine of P500,000.00, with all the accessory penalties under the law; and 2) for violation of Section 11, accused-appellants were sentenced with an indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to sixteen (16) years as maximum, and to pay a fine of P300,000.00, with all the accessory penalties under the law.<sup>[22]</sup>

The RTC found the testimonies of PO1 Nidoy, Jr. and PO1 Bueno to be more credible than that of accused-appellants.<sup>[23]</sup> Further, the RTC held that all the confiscated items were properly identified and formally offered in evidence by the prosecution. With respect to the chain of custody, the RTC ruled that it was unbroken since the marking of the sachets, the preparation of the inventory of the seized evidence, and the taking of photographs were all done in the presence of accused-appellants and while they were still in the place of the arrest. *Brgy. Kgwd. Guevarra* was also present during the inventory of the seized evidence. The sachets were then turned over to PSI Vicente who examined its contents and found it positive for methamphetamine hydrochloride.<sup>[24]</sup> Accused-appellants appealed to the CA.

### **Ruling of the CA**

On July 26, 2018, the CA rendered its Decision<sup>[25]</sup> affirming the conviction of accused-appellants. The CA agreed with the RTC that the chain of custody

requirement was substantially complied with. *First*, the absence of a representative from the media was duly explained by PO1 Nidoy, Jr. and PO1 Bueno, who testified that they made extra efforts to contact a media representative, but no one came because the operation was carried out during an unholy hour, *i.e.*, 2:20 a.m. *Second*, the CA held that the presence of a representative from the National Prosecution Service (NPS) during the inventory-taking does not apply because the guidelines became the implementing rules and regulations (IRR) of R.A. 10640,<sup>[26]</sup> amending R.A. 9165, took effect on July 30, 2015, after the operation was conducted.<sup>[27]</sup> *Third*, The CA ruled that the non-presentation of PSI Vicente is not a sufficient ground to find a break in the chain of custody since her testimony was dispensed with because accused-appellants' counsel and the prosecution had agreed to a stipulation of facts, among which is that she received the specimens and can identify her report on it.<sup>[28]</sup> In addition, PSI Vicente is a public officer whose reports carry the presumption of regularity. *Fourth*, the prosecution's failure to establish that the confiscated items were placed in a sealed container or evidence bag is a negligible omission, considering that PO1 Nidoy, Jr. and PO1 Bueno were the only ones who had its custody from the time they confiscated the items until they turned it over to PSI Vicente.<sup>[29]</sup>

Accused-appellants thus filed a Notice of Appeal<sup>[30]</sup> dated August 16, 2018. Both parties manifested that they were adopting their Brief before the CA as their Supplemental Brief.<sup>[31]</sup>

### **Issue**

Whether the CA erred in affirming the conviction of accused-appellants for violation of Sections 5 and 11, Article II of R.A. 9165.

### **Ruling of the Court**

The appeal is meritorious.

Since the five sachets of shabu under Exhibits W, X, Y, Z, and AA<sup>[32]</sup> are the *corpus delicti* of the crimes penalized under Sections 5 and 11, Article II of R.A. 9165, the identity and integrity of the dangerous drugs must be established with moral certainty to prove the guilt of the accused beyond reasonable doubt. Thus, the rule laid down in Section 21, Article II of R.A. 9165, as amended by R.A. 10640, must be strictly observed.<sup>[33]</sup>

Contrary to the ruling of the CA, R.A. 10640 applies in this case since the law became effective on July 23, 2014<sup>[34]</sup> and the operation took place on July 19, 2015. The amended provision of Section 21, Article II of R.A. 9165 reads as follows:

*Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – x x x*

(1) The apprehending team having initial custody and control of the