

## **THIRD DIVISION**

**[ G.R. No. 229515, November 27, 2019 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NIDA GUILLERMO Y DE LUNA AND DESIREE GUILLERMO Y SOLIS, ACCUSED-APPELLANTS.**

### **DECISION**

**CARANDANG, J.:**

For automatic review before Us is the Decision<sup>[1]</sup> dated November 10, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05786 affirming the Decision<sup>[2]</sup> dated September 5, 2012 of the Regional Trial Court of Caloocan City, Branch 120 (RTC) in Crim. Case No. C-84928, finding Nida Guillermo y De Luna (Nida) and Desiree Guillermo y Solis (Desiree) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs.

On March 29, 2017, We required the parties to file their respective supplemental briefs.<sup>[3]</sup> However, the parties filed a Manifestation<sup>[4]</sup> adopting their Appellant's<sup>[5]</sup> and Appellee's Briefs,<sup>[6]</sup> which sufficiently raised all their claims and arguments.

Nida and Desiree were charged in an Information<sup>[7]</sup> for violation of Section 5, in relation to Section 26, Article II of Republic Act No. (R.A.) 9165, which reads:

That on or about the 13<sup>th</sup> day of September, 2010 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without being authorized by law, did then and there willfully, unlawfully and feloniously by direct overt acts, sell and deliver to IO1 GRACE L. TACTAC (who posed as buyer) METHYLAMPHETAMINE HYDROCHLORIDE (Shabu), weighing 47.4739 grams, without the corresponding license or prescription therefore, and knowing the same to be such.

Contrary to Law.

During the arraignment, Nida and Desiree pleaded not guilty. As such, trial ensued.

### **Version of the Prosecution**

Intelligence Officer 1 Grace L. Tactac (IO1 Tactac) testified that on or about 9:00 a.m. of September 13, 2010, IO1 Tactac together with her colleagues namely, IO2 Lorenzo Advincula, Jr. (IO2 Advincula), IO1 Arnold Camayang, IO1 Gerald Gasun and IO1 Berlin Orlames<sup>[8]</sup> were called by their team leader, IA1 Joshua Arquero (IA1 Arquero). IA1 Arquero informed the team that a buy-bust operation will be conducted against a certain alias "Nida," alias "Jojo," and alias "Randy" based on

information given by a confidential informant regarding the drug activities of said individuals.

During the briefing, IA1 Arquero said that the subject of the sale was P350,000.00 worth of *shabu*. IO1 Tactac was designated as the *poseur*-buyer, while IO2 Advincula was the immediate back-up or the arresting officer. It was also agreed that the pre-arranged signal would be the loosening of IO1 Tactac's ponytail.<sup>[9]</sup> According to IO1 Tactac, she was ordered by IA1 Arquero to withdraw two pieces of genuine 500-peso bills from their logistics money. The two 500-peso bills, with serial numbers FD236082 and FD236083,<sup>[10]</sup> were marked by IO1 Tactac with "GLT" on the lower portion of the money. The two genuine bills were placed on the top and at the bottom of the boodle money made out of newspapers<sup>[11]</sup> and then placed inside an orange paper bag.<sup>[12]</sup>

IA1 Arquero ordered the confidential informant to call alias "Nida," later identified as herein accused Nida, to inquire about their meet-up place. Nida agreed to meet at Tropical Hut in Monumento. After the preparation of the documents relative to the buy-bust procedure, the team proceeded to the agreed meeting place.<sup>[13]</sup>

At around 11:00 a.m., the buy-bust team first coordinated with the Caloocan Police<sup>[14]</sup>, then proceeded to Tropical Hut. Upon arrival at Tropical Hut, the confidential informant called Nida to inform her that they were already at the meeting place. Meanwhile, the other members of the buy-bust team positioned themselves. After several minutes, Nida arrived. She asked IO1 Tactac if the money was ready. The latter answered in the affirmative. As testified by IO1 Tactac, Nida, however, had no opportunity to see the alleged buy-bust money nor count the same.<sup>[15]</sup>

Thereafter, Nida went home to get the items. After several minutes, Nida texted the confidential informant to transfer to the 7-11 convenience store near Tropical Hut. After IO1 Tactac informed IA1 Arquero of the change of venue, the former and the confidential informant proceeded to 7-11.<sup>[16]</sup> After about 20 minutes, Nida arrived with another female companion, later identified as herein accused Desiree, who was carrying a child and a blue paper bag.<sup>[17]</sup> Upon seeing IO1 Tactac and the confidential informant, Nida introduced Desiree as her niece. IO1 Tactac asked Nida if she already had the items. Nida then told Desiree to hand over the blue paper bag to IO1 Tactac, who examined the contents of the blue paper bag which contained a "White Horse" plastic. Inside the plastic is a DVD cover of "The Expendables." Inside the DVD cover were 11 plastic sachets containing white crystalline substance. Upon seeing the contents of the blue paper bag, IO1 Tactac handed the orange paper bag to Desiree. IO1 Tactac executed the pre-arranged signal of loosening her ponytail.

Upon seeing the signal, IO2 Advincula rushed to the scene. IO1 Tactac grabbed Desiree when she saw IO2 Advincula. IO1 Tactac introduced herself as a Philippine Drug Enforcement Agency (PDEA) agent. IO2 Advincula then arrived and arrested Nida. Thereafter, the rest of the buy-bust team arrived.<sup>[18]</sup> IO1 Tactac testified that she seized the alleged buy-bust money from Desiree. Since it is not practical to conduct the inventory and marking of the seized items at the place of arrest, IA1 Arquero instructed his team to return to the office at Barangay Pinyahan, Quezon City.<sup>[19]</sup> IO1 Tactac testified that during the transit from Monumento to Barangay

Pinyahan, Quezon City, she was in possession of the seized items.

Upon arrival at the PDEA office, IO1 Tactac marked the 11 plastic sachets containing white crystalline substance and made an inventory of the same, then showed the seized items and the inventory she made to IO1 Crisanto Lorilla (IO1 Lorilla), the investigator on the case.<sup>[20]</sup>

During the testimony of IO1 Tactac, she claimed that she marked the blue paper bag labelled "Blue Magic" as "EXH A GLT 09-13-10," the plastic bag labelled "White Horse" as "EXH A-1 GLT 09-13-10" and the DVD cover labelled "The Expendables" as "EXH A-2 GLT 09-13-10." The 11 plastic sachets containing white crystalline substance as "EXH B1 GLT 09-13-10" to "EXH B11 GLT 09-13-10." The inventory was signed by IO1 Tactac, IO2 Advincula, Barangay Kagawad Jonathan Burce, and media representative from TVS Ivy Rivera.<sup>[21]</sup> Photographs were also taken during the inventory.

IO1 Lorilla prepared the Request for Laboratory Examination<sup>[22]</sup> of the seized items and the Request for Drug Test<sup>[23]</sup> of both the accused. After examination, the seized items yielded positive for the presence of Methamphetamine Hydrochloride, or *shabu*, as evidenced by Chemistry Report No. PDEA-DD010-368.<sup>[24]</sup> However, the drug test on both the accused gave a negative result for the presence of Methamphetamine Hydrochloride, 3,4-Methamphetamine, MDMA, cocaine, and Tetrahydrocannabinol (THC) metabolites, as evidenced by Chemistry Report No. PDEA-DT010-272 to 273.<sup>[25]</sup>

IO2 Advincula corroborated the testimony of IO1 Tactac. IO2 Advincula added that because there were many people in the area, they just conducted the inventory and the taking of the photographs at the PDEA office.<sup>[26]</sup>

IO1 Lorilla testified that he was the investigator on the case. He claimed that when the buy-bust team reached their office, IO1 Tactac presented the seized items to him. After that, he called a barangay kagawad and a media representative to witness the inventory and the taking of the photographs.<sup>[27]</sup> In his cross-examination, when asked whether the inventory was witnessed by the accused or his counsel and a Department of Justice (DOJ) representative, IO1 Lorilla claimed that their presence were no longer necessary since he was satisfied that the inventory was witnessed by a barangay Kagawad and a media representative.<sup>[28]</sup>

Forensic Chemist Shaila Seville (FC Seville) testified with the parties making the following admissions:

1. that FC Seville is an expert witness and as such received the Request for Laboratory Examination dated September 13, 2010;
2. that attached to the request is a blue paper bag containing 11 pieces of small heat-sealed plastic sachets containing white crystalline substance; and
3. that she conducted the examination on the eleven (11) plastic sachets containing white crystalline substance and after examination, the same

yielded positive for the presence of Methamphetamine Hydrochloride, a dangerous drug, as evidenced by Chemistry Report No. PDEA-DD010-368.<sup>[29]</sup>

Thereafter, the prosecution rested its case.

### **Version of the Defense**

Accused Nida, a vendor living in Caloocan City, testified that on September 13, 2010, she and her son John Ryan, were on their way to Potrero Public School (Potrero) when they met her niece, Desiree, who was about to bring her child to the Fabella Hospital (Fabella). Thus, they boarded the jeepney together. In the jeepney were other passengers, including an old woman and a man. The man asked Nida where the banks are located and the latter replied that there were plenty of banks in the area of the Manila Central University.

When they reached their destination, Nida, John Ryan, Desiree and her child alighted from the jeepney. Nida instructed Desiree to wait for her ride going to Recto, since she and John Ryan will cross the street. While Nida's son was buying candies, two women suddenly grabbed her. When Nida asked why they were grabbing her, the two women told her not to make a scene and just go with them. Nida was then forcibly brought inside the vehicle. Inside the vehicle, Nida was accused of being the companion of the old lady and the man who were in the jeepney with her and Desiree. Nida was then frisked and was told that if she could find her alleged companions, they will release her.

Nida was brought to the PDEA office where she also saw Desiree. There, Nida was informed that they were selling *shabu* and was shown the plastic sachets containing the white crystalline substance on top of a table. She and Desiree were asked to stand beside the table and look at the evidence.<sup>[30]</sup> Their pictures were taken and the Barangay Kagawad said, "*picture taking lang to ha, wala kaming kinalaman diyan.*"<sup>[31]</sup>

When asked about the accusations of IO1 Tactac, Nida denied the same. She claimed that IO1 Tactac said that the items allegedly recovered from them will not be used against them and that IO1 Tactac will help them.<sup>[32]</sup> In fact, she heard IO1 Tactac saying "*dapat hinuli natin yung talagang totoong involved diyan at hindi ang dalawang iyan.*"<sup>[33]</sup>

Desiree testified, corroborating the testimony of Nida, that on September 13, 2010, she was on her way to Fabella with her child when she saw Nida and John Ryan who were on their way to Potrero. After they parted ways, two men suddenly grabbed her causing her child to fall. The two men released her to pick up her child. Thereafter, they boarded Desiree in their vehicle. When she asked why were they arresting her, the two men just told her to keep quiet and to just go along with them. Inside the vehicle, Desiree was frisked and when she asked what were they searching, they told her to just bring it out. Desiree was confused and does not have any idea as to what she should bring out. Eventually she was brought to the PDEA office and was surprised to see Nida there.<sup>[34]</sup>

At the PDEA office, Desiree was informed that she was in conspiracy with Nida in

selling illegal drugs. Thereafter, they showed her the plastic sachets on top of the table which the police said came from them. The PDEA officers made Desiree and Nida stand beside the table for the picture taking. Desiree then heard IO1 Tactac say that they should be released, since they were not the persons they were looking for. Further, she heard another male person say "*pakawalan na lang natin sila kasi hindi naman sila yung mga taong may hawak nito.*" Thus, Desiree anticipated that they will be released. However, they were later subjected to a drug test. Then, Desiree was ordered to call someone to fetch her child, otherwise, the latter will be brought to the Department of Social Welfare and Development. Desiree called her aunt to fetch her child.<sup>[35]</sup>

John Ryan, the 14-year old son of Nida, corroborated the testimony of Nida. Additionally, John Ryan testified that when he saw his mother being taken by two female persons, he was not able to approach his mother because of fear. He then decided to go home and informed her aunt Virginia Guillermo (Virginia) that his mother was taken.<sup>[36]</sup>

The last witness of the defense, Estrella Guillermo, is the mother of Desiree. She claimed that she ordered Desiree to go to Fabella to have her grandchild checked and to buy diapers for another grandchild, who was confined at Fabella. Around 7:00 p.m., she and her sister, Virginia, went to PDEA to fetch her grandchild.

Thereafter, the defense rested its case without offering any documentary evidence.

### **Regional Trial Court Ruling**

On September 5, 2012, the trial court rendered a Decision<sup>[37]</sup> finding Nida and Desiree guilty of illegal sale of dangerous drugs. The trial court found that the prosecution was able to establish the sale of *shabu* between IO1 Tactac and Nida and the eventual delivery of *shabu* by Desiree. The trial court further ruled that there is no evidence that would show that the PDEA operatives were impelled by improper motive, as such, the presumption of regularity in the performance of their official duties will be considered in their favor.

Insofar as the alleged conspiracy of Desiree, the trial court found that Desiree handed to IO1 Tactac the blue paper bag containing the eleven (11) plastic sachets of *shabu*. There is therefore a conscious criminal design between Nida and Desiree to commit the offense. Thus:

WHEREFORE, premises considered, this court finds both accused Nida Guillermo De Luna and Desiree Guillermo y Solis GUILTY beyond reasonable doubt for violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon them the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00).

The drugs subject matter of this case, with a total weight of 47.4739 grams is hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.