

## FIRST DIVISION

[ G.R. No. 225219, June 11, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICO DE ASIS Y BALQUIN, ACCUSED-APPELLANT.**

### RESOLUTION

**DEL CASTILLO, J.:**

On appeal is the April 21, 2016 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-GR. CR-HC No. 01293-MIN. The CA affirmed with modification the April 15, 2014 Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Cagayan de Oro City (CDO), Branch 25, which found Rico de Asis y Balquin (appellant) guilty of illegal sale and illegal possession of dangerous drugs in violation of Sections 5 and 11 respectively of Article II, Republic Act (RA) No. 9165.<sup>[3]</sup>

#### ***Factual Antecedents***

Appellant was charged in three separate Informations for illegal (a) sale, and (b) possession of dangerous drugs as well as (c) possession of drug paraphernalia, reading as follows:

[Criminal Case No. 2011-497]

That on June 1, 2011, at around 1:30 o'clock in the afternoon, more or less, at Barangay 35, Limketkai, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, deliver, or give away to another, any dangerous drugs, did then and there willfully, unlawfully, and criminally sell to IO1 Rubitania Gacus, a member of PDEA-10, who acted as a poseur-buyer and who at that time was accompanied by a confidential informant, one (1) heat-scaled transparent plastic sachet containing white crystalline substance of methamphetamine hydrochloride, locally known as shabu, a dangerous drug, weighing .05 [gram], in consideration of Php 500.00, which after a confirmatory test conducted by the PNP Crime Laboratory, was found positive of the presence of methamphetamine hydrochloride, accused knowing the same to be a dangerous drug.

Contrary to and in violation of Section 5, Article II, of R.A. 9165.<sup>[4]</sup>

[Criminal Case No. 2011-498]

That on June 1, 2011, at around 1:30 o'clock in the afternoon, more or less, at Barangay 35, Limketkai, Cagayan de Oro City, Philippines, and

within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drug, did then and there willfully, unlawfully, criminally and knowingly have in his possession, custody and control four (4) heat-sealed transparent plastic sachets containing white crystalline substance of methamphetamine hydrochloride, locally known as shabu, a dangerous drug, weighing .03 [gram], .04 [gram], .02 [gram] and .05 (gram), respectively, accused well-knowingly that what was recovered from his possession and/or control is a dangerous drug; that after a screening and confirmatory tests conducted by the Philippine National Police (PNP) Regional Crime Laboratory, Office-10, Camp Evangelista, Patag, Cagayan de Oro City, of the recovered items from accused's possession and control, the same were found positive of the presence of Methamphetamine Hydrochloride (shabu), a dangerous drug.

Contrary to and in violation of Section 11, Article 2, of R.A. 9165.<sup>[5]</sup>

[Criminal Case No. 2011-499]

That on June 1, 2011, at around 1:30 o'clock in the afternoon, more or less, at Barangay 35, Limketkai, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, criminally and knowingly have in his possession, custody and control three (3) pieces improvised aluminum foil strips used as gutter with methamphetamine hydrochloride residues, one (1) piece transparent plastic sachet with suspected shabu residu[e] and three (3) disposable lighters with improvised needles, which instruments or apparatus are drug paraphernalia intended for smoking, consuming, administering, ingesting or introducing dangerous drug methamphetamine hydrochloride or locally known as shabu, into the body.

Contrary to and in violation of Section 12, Article 2, of RA. 9165.<sup>[6]</sup>

When arraigned, appellant pleaded "Not Guilty"<sup>[7]</sup> to these charges against him.

Trial on the merits thereafter ensued.

### ***Version of the Prosecution***

At about 10:00 a.m. on June 1, 2011, the PDEA<sup>[8]</sup> Regional Director of CDO briefed his team for a buy-bust operation based on the information given by a civilian informant. The team discussed the description of the subject – a person named Rico de Asis, a.k.a *Ikong*, from *Barangay 35, Limketkai Drive*.<sup>[9]</sup> The team designated Agents Rubietania Gacus<sup>[10]</sup> (Gacus) and Elvis M. Taghoy (Taghoy) as poseur-buyer, and arresting and back-up officer, respectively. It also prepared a camera, pens, a pental pen for marking, evidence bag, inventory sheets, and P500.00 marked money for the buy-bust.<sup>[11]</sup>

At about 1:15 p.m. of the same day, Agent Gacus and the informant alighted from a public utility vehicle and proceeded to the house of appellant located at *Barangay* 35, Limketkai Drive, CDO. The rest of the buy-bust team stayed at a distance of about 200 meters therefrom. Meanwhile, upon entering said house, the informant introduced Agent Gacus to appellant as a drug user who would buy P500.00 worth of *shabu* from him. Upon appellant's demand, Agent Gacus handed him the marked money. In turn, appellant pulled out from his shorts a blue-colored case containing sachets of suspected *shabu*. Appellant gave one sachet to Agent Gacus.<sup>[12]</sup>

Agent Gacus examined the sachet, put it into her pocket, and asked permission to leave saying that she did not want to be seen in the area. And while on her way out, she "missed call" Agent Taghoy. Seconds thereafter, she met the buy-bust team and they altogether entered the house of appellant.<sup>[13]</sup>

The buy-bust team then introduced themselves, as PDEA agents, to appellant. Agent Taghoy informed him of his rights and violations, and frisked him. In turn, Agent Gacus told Agent Taghoy that sachets of *shabu* were inside the pocket of appellant's shorts. Upon his search, Agent Taghoy recovered from appellant the marked money and four (4) sachets of suspected *shabu*.<sup>[14]</sup>

While still inside appellant's house, Agent Taghoy marked the item that Agent Gacus bought from appellant with "BB EMT" for "Elvis M. Taghoy," and the date, "06/01/11." He also marked the four sachets he recovered from appellant's pocket with "EMT-1 ," "EMT-2," "EMT-3," and "EMT-4" with the date "06/01/11" indicated in each of them.<sup>[15]</sup> Agent Taghoy likewise made an inventory of the foregoing items, and the drug paraphernalia found on a table inside appellant's house. The conduct of the inventory was witnessed by a *barangay kagawad* and a representative from the media. Meanwhile, Agent Gacus took photographs of these items.<sup>[16]</sup>

After preparing a request for examination of the seized items at their office, Agent Taghoy, along with Agent Gacus, Agent Vincent Cecil Orcales and appellant, brought the subject items to the PNP<sup>[17]</sup> Crime Laboratory. According to Agent Taghoy, he remained in custody of these items from their confiscation until they were brought to the PDEA office and thereafter, to the Crime Laboratory.<sup>[18]</sup>

During the trial, the prosecution dispensed with the testimony of PCI<sup>[19]</sup> Joseph T. Esber (PCI Esber) since the counsel for appellant already admitted that PCI Esber was an expert witness; that he received on June 1, 2011, letter-requests for the examination of the specimens and drug paraphernalia attached to the same; and that he conducted an examination thereof.<sup>[20]</sup> Particularly, Chemistry Report No. D-184-2011 indicated that the specimens with the following markings and corresponding weight all tested positive for the presence of methamphetamine hydrochloride or *shabu*:

BB EMT 06/01/11	0.05 gram
EMT-1 06/01/11	0.03 gram
EMT-2 06/01/11	0.04 gram
EMT-3 06/01/11	0.02 gram
EMT-4 06/01/11	0.05 gram

### **Version of the Defense**

In the afternoon of June 1, 2011, appellant was at home attending to his three children – his eldest was 15 while his youngest was just seven months old. Suddenly, his second child, who at that time was taking a bath, told him that they ran out of shampoo. Thus, he asked his eldest son to buy one. While his eldest son was away, a man wearing a PDEA vest barged into their house, and pointed a gun at appellant. Other PDEA agents followed and handcuffed him. When his eldest son returned, appellant told him to get his siblings, and ordered them to get out of the house.<sup>[21]</sup>

Thereafter, the PDEA agents covered appellant's head with a towel. They hit him while continually asking him about *shabu* to which he denied knowledge of. When the towel was later removed, appellant noticed that there were already *shabu*, money, and papers on the table.<sup>[22]</sup> Later, a *kagawad* arrived at his house to see the items on the table. ATV reporter also arrived. Appellant told the *kagawad* that he had no participation in any activity related to those items. The PDEA agents then brought appellant to their office, where he was detained until such time he was brought to the city jail.<sup>[23]</sup>

### **Ruling of the Regional Trial Court**

On April 15, 2014, the RTC found appellant guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs, ruling in this wise:

WHEREFORE, premises considered, this Court hereby finds the accused:

1. In Criminal Case No. 2011-497, GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 5, Article II of RA. 9165, and hereby imposes the penalty of LIFE IMPRISONMENT and Fine in the amount of P500,000.00 without subsidiary imprisonment in case of non-payment of Fine;
2. In Criminal Case No. 2011-498, GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 11, Article II of R.A. 9165, and hereby imposes a penalty of TWELVE YEARS AND ONE DAY to THIRTEEN [13] YEARS and Fine in the amount of P300,000.00 without subsidiary imprisonment in case of non-payment of Fine.
3. In Criminal Case No. 2011-499, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, he is hereby acquitted of the offense charged.

x x x x

SO ORDERED.<sup>[24]</sup>

According to the RTC, the prosecution established these elements for illegal sale of dangerous drug: (a) the identity of the seller (appellant) and the buyer (Agent Gacus); (b) the object (*shabu*); and, (c) the consideration for the sale (P500.00). It also held that the straightforward testimonies of prosecution witnesses deserved due weight noting that these witnesses were not shown to have any ill motive in testifying against appellant.

The RTC also convicted appellant of illegal possession of prohibited drugs, which were recovered from him immediately after the buy-bust, but acquitted him of illegal possession of drug paraphernalia for lack of showing that he possessed or used the same.

Finally, the RTC ruled that there was due compliance to the chain of custody requirement ratiocinating as follows:

x x x Taghoy showed that he was able to observe the formalities required under Section 21 of R.A. 9165. He conducted the Inventory at the scene of the crime, and the inventory was witnessed by a barangay official and a media representative. Pictures were taken at the crime scene, and thereafter, he took custody of the seized evidence from the crime scene to their office, where they prepared certain documents, then to the crime laboratory. x x x He also delivered the evidence for laboratory examination within 24 hours from the arrest, as required by the law.

Moreover, Gacus and Taghoy were able to observe the chain of custody of [the] evidence by accounting their possession of the same. The buy-bust sachet was duly identified, and the other sachets seized subsequent to the buy-bust transaction were also duly identified and accounted for. In other words, the prosecution witnesses were able to preserve the integrity and probative value of the seized evidence by accounting for each and every link in the chain.<sup>[25]</sup>

### ***Ruling of the Court of Appeals***

The CA affirmed the RTC Decision with modification in that appellant was sentenced to an indeterminate penalty of twelve (12) years and one (1) day, as minimum term, to fourteen (14) years and eight (8) months, as maximum term, and to pay a fine of P300,000.00 for illegal possession of dangerous drugs.

Hence, this appeal

### **Issue**

Whether appellant is guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs.