

## SECOND DIVISION

[ G.R. No. 233477, July 30, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. JOWIE ALLINGAG Y TORRES AND ELIZABETH ALLINGAG Y TORRES, ACCUSED-APPELLANTS.**

### D E C I S I O N

**PERALTA, J.:**

This is an appeal of the Court of Appeals' (CA) Decision<sup>[1]</sup> dated June 9, 2017 dismissing appellants' appeal and affirming the Decision<sup>[2]</sup> dated January 8, 2016 of the Regional Trial Court (RTC), Branch 70, Taguig City convicting appellants Jowie Allingag y Torres and Elizabeth Allingag y Torres of Violation of Sections 5 and 11, Article II, Republic Act (R.A.) No. 9165.

The facts follow.

A confidential informant arrived at the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG), Taguig City Police Station on December 8, 2011 and reported to Police Officer (PO) 3 Jowel Briones the illegal drug activities of a certain Jowie Allingag and Elizabeth Allingag. As a consequence, team leader Police Senior Inspector Jerry Amindalan made a plan and called the team that included SPO1 Sanchez, PO2 Antillion, and PO1 Balbin, among others, to conduct a briefing for a buy-bust operation. PO3 Briones was designated as poseur-buyer and PO1 Balbin was his immediate back-up. The team leader then instructed PO2 More to coordinate with the Philippine Drug Enforcement Agency (PDEA) and the Southern Police District. PO2 More also prepared the Coordination Form and Pre-Operation Report. PO3 Briones was then given two (2) Five Hundred Peso bills and investigator Bonifacio recorded the same in the police blotter.

The team then proceeded to F. Generao St., Calzada Tipas, Taguig to conduct the buy-bust operation. The team parked their vehicle near the target area and they proceeded on foot. When they reached the place, the confidential informant saw appellants Jowie and Elizabeth and informed the police officers that the latter two were the target persons. The confidential informant approached Jowie and Elizabeth and introduced PO3 Briones as the person who will buy *shabu* for his personal consumption. Jowie then told them that the *shabu* was worth One Thousand Two Hundred Pesos (P1,200.00) but because the confidential informant was his "suki," PO3 Briones was allowed to buy the *shabu* for One Thousand Pesos (P1,000.00). PO3 Briones then handed the marked money to Jowie and the latter passed the same money to Elizabeth. Elizabeth then told PO3 Briones that she has another sachet of *shabu* and asked him if he still wanted to buy another. PO3 Briones told Elizabeth that he only had One Thousand Pesos (P1,000.00).

Thereafter, PO3 Briones made the pre-arranged signal by removing his bull cap and PO1 Balbin rushed to arrest appellants Jowie and Elizabeth. PO1 Balbin handcuffed

the two and PO3 Briones recovered one (1) plastic sachet of dried marijuana from Jowie and one (1) plastic sachet of *shabu* and the buy-bust money from Elizabeth. Thereafter, PO3 Briones placed his markings "JVB" on the *shabu* subject of the sale and "JVB-2" on the marijuana confiscated from Jowie and "JVB-1" on the *shabu* confiscated from Elizabeth.

A certificate of inventory was then prepared and, thereafter, the team proceeded to the police station for proper turnover and documentation. At the police station, photographs of the arrested suspects, Spot Report, Request for Crime Laboratory of the specimens, Request for Drug Tests and the booking and information sheets were prepared. Thereafter, PO3 Briones and investigator PO3 Bonifacio brought the request and the confiscated items to the crime laboratory for examination.

Police Chief Inspector Jocelyn Belen Julian, Forensic Chemist of the PNP Crime Laboratory, Camp Crame conducted an examination on the confiscated items marked "JVB" and "JVB-1" which tested positive for the presence of methylamphetamine hydrochloride and "JVB-2" which tested positive for marijuana.

Thus, three (3) Informations were filed against the appellants for violation of Sections 5 and 11, Article II of R.A. No. 9165 that read as follows:

Crim. Case No. 17821-D  
(against appellants Jowie and Elizabeth)

That on or about the 8<sup>th</sup> day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, without being authorized by law, to sell or otherwise dispose any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur-buyer, zero point thirteen (0.13) gram of Methylamphetamine Hydrochloride, commonly known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[3]</sup>

Crim. Case No. 17822-D  
(against appellant Jowie)

That on or about the 8<sup>th</sup> day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession of zero point thirty-two (0.32) gram of dried Marijuana fruiting tops, a dangerous drug, in violation of the above-cited law.

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

Crim. Case No. 17823-D  
(against appellant Elizabeth)

That on or about the 8<sup>th</sup> day of December 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any

dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession, custody and control of zero point thirteen (0.13) gram of dried Methylamphetamine Hydrochloride, commonly known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[5]</sup>

Upon arraignment, appellants, with the assistance of counsel from the Public Attorney's Office (PAO), entered pleas of "not guilty" on all charges.

Both appellants denied the allegations and claimed that they were victims of frame-up by the police officers.

According to appellant Elizabeth, she was celebrating her birthday on December 8, 2011. Around 6 o'clock in the evening, appellant Elizabeth rented a *videoke* and when she returned, she saw several people outside her house and heard that police officers were inside. She immediately went near the house and asked three police officers what the problem was. The police officers asked what her relationship is with appellant Jowie and upon knowing that the latter is her brother, the police officers dragged her inside the house and handcuffed her. Surprised with what happened, and having noticed that the police officers were searching inside the house, she asked the police officers if the latter have a search warrant, but she did not receive any reply from them. Appellant Elizabeth also claims that the police officers did not find anything in the house and when the police officers were about to frisk her, she told them that she will take out her pockets, showing that the same were empty. One (1) of the police officers, however, presented a small plastic sachet containing white powder content and the police officers brought her and appellant Jowie to the municipal hall. Appellant Elizabeth asked the police officers what they have done wrong, but no one answered. Thereat, two (2) plastic sachets, two (2) Five Hundred Peso Bills, and another plastic sachet containing leaves were placed by the police officers on top of the table. She denied that the items were recovered from them.

Appellant Jowie also denied the charges against him and claims that on the date and time of the incident, he was inside his house watching television, when several men arrived and suddenly went inside his house and handcuffed him. He asked them what he did wrong, but they did not reply, instead they searched his house. While searching his house, appellant Elizabeth, his elder sister, arrived and asked for a warrant as they were searching the house. While addressing those questions, the men also handcuffed his sister. Then one of the men took out a plastic containing white powder and they forcibly brought them to the municipal hall. The police officers put on the table a Two Hundred Peso (P200.00) bill and two (2) plastic sachets containing white powder and one (1) plastic sachet containing dried leaves and they were then told that those items belong to them.

The RTC found appellants guilty beyond reasonable doubt of the offenses charged and sentenced them as follows:

WHEREFORE, premises considered, both accused JOWIE ALLINGAG y TORRES and ELIZABETH ALLINGAG y TORRES are hereby found GUILTY beyond reasonable doubt of selling without any authority 0.13 gram of Methylamphetamine Hydrochloride or "*shabu*," a dangerous drug, in violation of Sec. 5, Art. II of R. A. 9165 and are hereby both sentenced to

suffer the penalty of LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) for Criminal Case No. 17821-D.

Under Crim. Case No. 17822-D for possession of 0.32 gram of dried Marijuana fruiting tops a dangerous drug, accused JOWIE ALLINGAG y TORRES is hereby sentenced to suffer the penalty of IMPRISONMENT OF TWELVE (12) YEARS AND ONE DAY TO TWENTY (20) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).

Under Crim. Case No. 17823-D for possession of 0.13 gram of Methylamphetamine Hydrochloride or "*shabu*," a dangerous drug, accused ELIZABETH ALLINGAG y TORRES is hereby sentenced to suffer the penalty of IMPRISONMENT OF TWELVE (12) YEARS AND ONE [(1)] DAY TO TWENTY (20) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00).

Pursuant to Section 21 of Republic Act 9165, the Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA), or any of the PDEA authorized representative is hereby ordered to take charge and to have custody of the sachets of "*shabu*" and marijuana subject matters of these cases, within 72 hours from notice, for proper disposition.

Furnish the PDEA a copy of this Decision for its information and guidance.

SO ORDERED.<sup>[6]</sup>

According to the RTC, the police officers enjoy the presumption of regularity in the performance of their official functions and that the claim of appellants that they were the subject of a frame-up has no basis. It also ruled that the elements of the crimes charged are present and that the arresting officers complied with the provisions of Section 21 of R.A. No. 9165

The CA affirmed the decision of the RTC *in toto*, thus:

WHEREFORE, the instant appeal is hereby DENIED. The Decision dated January 8, 2016 of the Regional Trial Court of Taguig City, Branch 70, in Criminal Case Nos. 17821-23-D, finding Jowie Allingag y Torres and Elizabeth Allingag y Torres guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, is hereby AFFIRMED *in toto*.

SO ORDERED.<sup>[7]</sup>

The CA ruled that the prosecution was able to establish the key elements for illegal possession and sale of dangerous drugs and that the bare denials of the appellants cannot prevail over the positive testimonies of the police officers. It also held that non-compliance with Section 21 of R.A. No. 9165 does not automatically render void and invalid the seizure and custody over the seized item, as long as the integrity and the evidentiary value of the same were properly preserved by the apprehending officers.

Hence, the present appeal.

The issues presented in the appeal are the following:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE *CORPUS DELICTI* OF THE CRIME.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND RESONABLE DOUBT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN THEIR FAVOR.<sup>[8]</sup>

Appellants argue that the trial court's reliance on the presumption of regularity in the performance of duty by the police officers is misplaced since the buy-bust team failed to comply with Section 21 of R.A. No. 9165 as there was no representative from the Department of Justice (*DOJ*) when the inventory of the purportedly seized items was conducted. They also claim that the presence of the representative from the media during the inventory of the seized items is doubtful because the representative admitted that, upon arriving at the place of the incident, the inventory was already accomplished and that he merely signed the same because the police officers told him to do so. It is also pointed out that the testimonies of the *barangay kagawad* and the forensic chemist were not presented in court.

The appeal is meritorious.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>[9]</sup>

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."<sup>[10]</sup>

Also, under Section 11, Article II of R. A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted:

[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>[11]</sup>