

## THIRD DIVISION

[ G.R. No. 202129, July 23, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. EVELYN  
PATRICIO Y CASTILLO, ALIAS "NINGNAY" ACCUSED-  
APPELLANT.**

### D E C I S I O N

**MARTIRES, J.:**

This appeal seeks a reversal of the 16 March 2011 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00647, which affirmed the 30 November 2006 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 15, Roxas City (RTC), in Criminal Case Nos. C-130-04 and C-131-04 finding accused-appellant Evelyn Patricio y Castillo (*Evelyn*) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

### FACTS

Evelyn was charged in two separate informations, to wit:

#### **Criminal Case No. C-130-04**

That on or about the 23rd day of April 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and feloniously sell distribute and deliver to a police "poseur-buyer", two (2) "boltos" or two (2) pieces big transparent heat-sealed plastic sachets containing suspected Methamphetamine Hydrochloride or "shabu" weighing 8.68 grams, a dangerous drug without the authority to sell and distribute the same.

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

#### **Criminal Case No. C-131-04**

That on or about the 23rd day of April 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and feloniously have in her possession and control 4.37 grams of methamphetamine hydrochloride (shabu), a dangerous drug, without being authorize (sic) by law to possess the same.

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

Evelyn pleaded not guilty to both charges. Thereafter, trial ensued.

### ***Evidence for the Prosecution***

The evidence for the prosecution tended to establish that in the afternoon of 23 April 2004, Police Officer 1 Rez G. Bernardez (*PO1 Bernardez*), then assigned at the Capiz Police Provincial Office, Roxas City, was at the vicinity of Capiz Emmanuel Hospital pursuant to a mission order for a buy-bust operation issued by Police Senior Inspector Leo Batiles (*P/SInsp. Batiles*). He was to act as poseur-buyer. PO1 Bernardez transacted with Evelyn through his cellular phone. They agreed to meet at 3:00 p.m. at the second floor corridor of the Capiz Emmanuel Hospital, the place chosen by Evelyn herself.

With the other members of the police team, PO1 Bernardez proceeded to the agreed place. There, PO1 Bernardez handed Evelyn a pouch containing money amounting to P20,000.00. In turn, Evelyn gave him a brown, mailing-size envelope folded and tied with a rubber band supposedly containing *shabu*. Immediately after the exchange, PO1 Bernardez introduced himself as a police officer and placed Evelyn under arrest. Evelyn resisted and fought back, hitting PO1 Bernardez in the nose and threw the money back at him. PO1 Jesus Galleron, who was then about two to three meters away from them, arrested Evelyn and informed her of her constitutional rights. Thereafter, Evelyn was led to the parking area at the side of the hospital where the rest of the apprehending team converged. The brown mailing envelope was opened in front of her, revealing two (2) large transparent plastic sachets of supposed *shabu*, weighing 4.37 and 4.31 grams, respectively.

Afterwards, Evelyn was brought to the Roxas City Police Station where she was bodily searched by two policewomen: PO1 Moonyen de Joseph and PO1 Maria Sheila Albances. They found another big plastic sachet of suspected *shabu*, weighing 4.37 grams, inside the secret pocket of her pants.

The seized items were turned over to the PNP Crime Laboratory of Iloilo City. After laboratory examination, the specimens were found positive for methamphetamine hydrochloride or *shabu*.

### ***Evidence for the Defense***

Evelyn testified that in the morning of 22 April 2004, she was in her house at Capricho II, Roxas City, preparing the clothes that she would wear for her nephew's wedding that afternoon. According to her, she only came to Roxas City to attend the wedding. In the morning of 23 April 2004, she and her driver, Louie Llena, went to Dao to look at a truck that his brother-in law was interested in buying. From Dao, they returned to Roxas City at past 1:00 p.m. They proceeded to Gaisano Mall before going back to Capricho.

While resting at home, Evelyn was distracted by a text message on her cellphone from one Ronnie Detoga (*Ronnie*) asking her to go to Capiz Emmanuel Hospital where he would pay the P30,000.00 loan Ronnie allegedly borrowed two months prior, and which was used as bail bond for his wife Swannie Dela Cruz.

At about three o'clock in the afternoon, Evelyn proceeded to the second floor corridor of Capiz Emmanuel Hospital where Ronnie was waiting. Upon reaching the place, Ronnie handed her a pouch or "poyo" made of cloth as big as her palm. Trusting Ronnie, she did not open the pouch anymore and simply placed it inside her handbag. She then went out of the hospital through the door leading to the parking lot. To her great surprise, she saw a man standing about three arm-lengths away

with a gun pointed at her. Stunned, she asked if it was a holdup. The man approached her, held her by the hand, and said, "Do not run! I will shoot you!" Thereafter, a second man arrived and took away her bag. The second man opened her bag, took the pouch that Ronnie had given and exclaimed, "This is our pouch!" Later on, several policemen, media men, and the barangay captain arrived and poured out the contents of her bag, but no illegal drugs were found. She was then made to board a multicab and was brought to the Roxas City Police Station.

Upon arriving at the Roxas City Police Station, she was ordered to enter a room where two policewomen were waiting. The policewomen made her strip naked and searched her body, and even made her bend over so they could probe her private part. Finding nothing from their search and probing, the two policewomen went out of the room. Later on, the policewomen returned with the barangay captain, and they presented to the latter a plastic sachet of suspected *shabu* allegedly retrieved from Evelyn. She denied ownership thereof.

Swannie Dela Cruz testified that on 23 April 2004, she was at the house of one Nimfa Martirez (*Nimfa*) with her live-in partner, Ronnie. At that time, Ronnie was waiting for P/SInsp. Batiles as they had something to talk about. P/SInsp. Batiles arrived at Nimfa's house and told them that they would set up Evelyn, alias "Ningnay," because the police had been looking for her for a long time. P/SInsp. Batiles gave Ronnie money and *shabu* to be used in setting her up. The *shabu* was placed in a brown envelope and the money in a red pouch with floral design.

Later in the afternoon, Swannie heard over the radio that Evelyn was apprehended. She immediately went to Capiz Emmanuel Hospital to see Ronnie, but the latter was no longer there. That same evening, she and Nimfa went to the house of a certain Gaga Cordovero, an alleged member of the Provincial Anti-Illegal Drugs Special Operations Task Force (*PAIDSOTF*) to inquire as to the whereabouts of Ronnie. P/SInsp. Batiles, who was present, told her not to worry because Ronnie was safe in their camp at Loctugan, Roxas City. P/SInsp. Batiles then brought her to that camp. There, a certain Col. Bautista talked to her and asked her how much she needed for her bail bond, to which she responded P30,000.00. Col. Bautista offered to give her the money as reward for helping in the arrest of Evelyn. As ordered by Col. Bautista, a police officer and a companion of P/SInsp. Batiles by the name of Bebot Escoltero delivered the money to them.

Jose Francisco, Jr. (*Francisco*) testified that he was a security guard assigned at Capiz Emmanuel Hospital; that during his tour of duty on 23 April 2004, from seven o'clock in the morning to three o'clock in the afternoon, his attention was never called regarding any buy-bust operation conducted by the police at the hospital; and that it was the practice of security guards to conduct a roving inspection of the premises. Eduardo Almario, another security guard, corroborated Francisco's testimony and attested that during his roving inspection, he did not notice any unusual incident like a buy-bust operation taking place inside the hospital's premises.

### ***The RTC Ruling***

The RTC found Evelyn guilty of the crimes charged. In so ruling, it held that Evelyn's account of her transaction with Ronnie at Capiz Emmanuel Hospital was unbelievable. According to the trial court, it was illogical and contrary to the natural course of human behavior for Evelyn not to open the pouch handed her and to count

the money inside. It noted that it was the first time Evelyn met Ronnie. As such, it was absurd to claim that she had full trust in his person. Moreover, Ronnie was not even presented to corroborate Evelyn's testimony. Additionally, the RTC stated that for evidence to be believed, it must not only proceed from the mouth of a credible witness, but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.

Likewise, the trial court was unconvinced that Evelyn was framed up. It ruled that an illegal sale of dangerous drugs had indeed taken place; and that the *corpus delicti* was positively identified during its presentation in court. In the RTC's analysis, several points militated against Evelyn's theory that evidence was merely planted on her person. For one, it found unbelievable that no one saw the grouping of several policemen, barangay, and media personnel at the hospital's parking lot where Evelyn was allegedly restrained by PO1 Bernardez for about thirty minutes. This, despite the fact that the defense had already made of record that security guards were posted at every entrance including the gate leading out of the parking area. Also, the RTC brushed aside the contention that Evelyn would not have sold drugs in a public place, in broad daylight, and to a virtual stranger. Citing jurisprudence, it declared that familiarity between the buyer and the seller is of no moment, for what matters is the fact of agreement, as well as the act constituting sale and delivery of prohibited drugs. The decretal portion reads:

**"WHEREFORE**, premises considered, this Court finds –

(1) In Criminal Case No. C-130-04, accused EVELYN PATRICIO Y CASTILLO alias "NINGNAY," GUILTY beyond reasonable doubt of VIOLATION OF SECTION 5, ARTICLE II of R.A. 9165, otherwise known as the COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, and hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and a fine of P500,000.00

(2) In Criminal Case No. C-131-04, accused EVELYN PATRICIO Y CASTILLO alias "NINGNAY" GUILTY beyond reasonable doubt of the crime of VIOLATION of SECTION 11, ARTICLE II of R.A. 9165, otherwise known as the COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, and hereby sentences her to suffer an indeterminate penalty of imprisonment of SIX (6) YEARS and ONE (1) DAY of Prison Mayor as Minimum to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal as Maximum and to pay a fine of P200,000.00.

In the service of her sentence in Crim. Case No. 131-04, accused Evelyn Patricio y Castillo alias "Ningnay," shall be credited with the full time during which she has undergone preventive imprisonment provided she agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

**SO ORDERED.**<sup>[5]</sup>

Dissatisfied, Evelyn sought recourse before the CA.

### ***The CA Ruling***

The assailed CA decision affirmed the RTC's ruling, but with modification as to the penalty imposed in Criminal Case No. C-131-04.

The appellate court began its disquisition by noting that Evelyn was a well-known drug pusher operating in Roxas City. It found that the buy-bust operation was spearheaded by the combined efforts of the PAIDSOTF and PDEA – agencies tasked to track down suspected members of syndicated drug groups; and that the buy-bust operation was conducted in order to verify reports received against Evelyn. According to the CA, there was no reason for these government agencies to accuse Evelyn of something she was not guilty of; and, besides, she failed to cite any motive for the arresting officers to frame her up. It also opined that testimonies of police officers who conduct buy-bust operations are generally accorded full faith and credit as they are presumed to have performed their duty in a regular manner.

In the same vein, the CA did not lend credence to Swannie Dela Cruz' testimony for it being self-serving and uncorroborated, taking into account the fact that such testimony was elicited from a person also accused of a crime involving violation of the Comprehensive Dangerous Drugs Act.

The CA was convinced that the elements of illegal sale and possession of dangerous drugs were established with moral certainty. It sustained the RTC's finding that Evelyn was caught *in flagrante delicto* delivering *shabu* to PO1 Bernardez. Meanwhile, the seized contraband was marked and identified through Chemistry Report No. D-96-04. Accordingly, the CA held that the dangerous drugs recovered from Evelyn were admissible as evidence. The dispositive portion states:

**WHEREFORE**, the Decision dated November 30, 2006 of the Regional Trial Court, 6th Judicial Region, Branch 15, Roxas City is **AFFIRMED** with MODIFICATION in that in Crim. Case No. C-131-04, appellant is sentenced to an indeterminate prison term of twelve (12) years and one (1) day to twenty (20) years with a fine of Three Hundred Thousand Pesos (P300,000.00).

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

Undaunted, Evelyn calls upon the Court to review her case.

In a Resolution,<sup>[7]</sup> dated 30 July 2012, the Court required the parties to submit their respective supplemental briefs simultaneously, if they so desire. In a manifestation,<sup>[8]</sup> Evelyn stated that she was adopting her appellant's brief filed before the CA. In like manner, the Office of the Solicitor General manifested that it was adopting its brief filed before the CA and would already dispense with the filing of a supplemental brief.

## **ISSUE**

WHETHER EVELYN'S GUILT FOR THE CRIMES CHARGED WAS PROVEN BEYOND REASONABLE DOUBT.

## **THE COURT'S RULING**

An appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.<sup>[9]</sup> Impelled by this duty, we took a second hard look at the records. After a painstaking review of the evidence and testimonies presented, the Court finds that there is palpable noncompliance with the requirements of Section 21, Article II of R.A. No. 9165.