

## FIRST DIVISION

[ G.R. No. 227707, October 08, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JEROME PASCUA Y AGOTO A.K.A. "OGIE," ACCUSED-APPELLANT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

This is an appeal filed by appellant Jerome Pascua y Agoto a.k.a. "Ogie" from the October 9, 2015 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CRHC No. 05998, affirming the December 4, 2012 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Laoag City, Branch 13, in Criminal Case No. 14722, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

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

Appellant was charged with violations of Sections 5 and 12, Article II of RA 9165, while his co-accused, Manilyn Pompay Remedios (Manilyn), was charged with violation of Section 12 of Article II of the same law. Pertinent portions of the aid Informations are quoted below:

#### Criminal Case No. 14722: Violation of Section 5, Article II of RA 9165

That on or about the 31<sup>st</sup> day of March 2011, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being a person authorized [to] sell, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, feloniously and knowingly sell 0.0154 grams of met[h]amphetamine hydrochloride, a dangerous drug placed inside one (1) heat sealed transparent plastic sachet.

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

#### Criminal Case No. 14723: Violation of Section 12, Article II of RA 9165

That on or about the 31<sup>st</sup> day of March 2011, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully and feloniously have in their possession, control and custody the following dangerous drugs [paraphernalia] to wit: one (1) piece glass tooter; one (1) piece black lighter; three (3) pieces foil; two (2) pieces wooden clip; one (1) piece paper scoop; and one (1) piece brown box, without any license or authority to possess the same, in violation of the aforesaid law.

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

When arraigned, appellant entered a plea of not guilty to both crimes of illegal possession of drug paraphernalia under Section 12, Article II of RA 9165 and illegal selling of *shabu* under Section 5, Article II of the same law.<sup>[5]</sup> Manilyn, on the other hand, entered a plea of not guilty to the crime of illegal possession of drug paraphernalia.<sup>[6]</sup>

During the trial, the prosecution and the defense stipulated on the proffered testimonies of the receiving officer of the Ilocos Norte Provincial Crime Laboratory Office, SPO2 Teodoro Flojo (SPO2 Flojo), and the forensic chemist of the said crime laboratory, Police Inspector Roanalaine Baligod (PI Baligod). Forensic chemist PI Baligod was called to the stand to explain why she failed to indicate the "TCF" markings placed by SPO2 Flojo on the plastic sachet of *shabu* and glass tooter submitted as specimen.<sup>[7]</sup>

Thereafter, the prosecution presented on the witness stand PO2 Jefferson Sulmerin (PO2 Sulmerin), the poseur-buyer, and PO2 Cristopher<sup>[8]</sup> Pola (PO2 Pola), one of the arresting officers.<sup>[9]</sup>

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

Based on their testimonies, the version of the prosecution is, as follows:

At around 2:00 p.m. of March 31, 2011, the Office of the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) received an information or "tip" from a female informant regarding the rampant selling of *shabu* by appellant. Thereafter, PO2 Pola, PO2 Joey Aninag (PO2 Aninag) and PO2 Sulmerin coordinated with the resident agents of the Regional Anti-Illegal Drugs Special Operations Task Group (RAIDSOTG), PO2 Jovani Butay (PO2 Butay) and PO2 Dennis Ramos (PO2 Ramos), as well as with the members of the Philippine National Police (PNP) Laoag City led by SPO4 Rovimmanuel Balolong (SPO4 Balolong) to conduct a buy-bust operation in the residence of appellant at Brgy. 40, Nalbo, Laoag City.<sup>[10]</sup>

At around 4:00 p.m., PO2 Sulmerin, the poseur-buyer, and the confidential informant went to the house of appellant.<sup>[11]</sup> PO2 Pola and PO2 Aninag, the designated arresting officers, stayed close behind while the rest of the team stayed inside their vehicles to wait for the pre-arranged signal, which was a "missed call" on the cellphone of PO2 Pola from PO2 Sulmerin.<sup>[12]</sup> When PO2 Sulmerin and the confidential informant reached the house of appellant, the confidential informant knocked on the door.<sup>[13]</sup> Appellant opened the door and asked the confidential informant who she was with, referring to PO2 Sulmerin.<sup>[14]</sup> She said that PO2 Sulmerin was her companion who wanted to buy "stuff."<sup>[15]</sup> Appellant then invited them inside the living room of the house.<sup>[16]</sup> PO2 Sulmerin then told appellant his desire to buy *shabu* worth P1,000.00 and gave appellant the marked money.<sup>[17]</sup> Appellant placed the marked money inside his front pocket and went inside one of the rooms.<sup>[18]</sup> When he came back, he handed PO2 Sulmerin one heat-sealed plastic sachet containing white crystalline substance.<sup>[19]</sup> PO2 Sulmerin then called

PO2 Pola's cellphone.<sup>[20]</sup> PO2 Pola and PO2 Aninag immediately rushed into the house and announced their authority as police officers.<sup>[21]</sup> Appellant was handcuffed, apprised of his constitutional rights, and frisked.<sup>[22]</sup> Recovered from him was the marked P1,000.00 bill.<sup>[23]</sup> He was then asked to sit in the living room while the team searched the room from where he got the *shabu*.<sup>[24]</sup> Inside the room, they found Manilyn sitting on the bed.<sup>[25]</sup> Likewise recovered from the room was a brown box which contained a glass tooter, a lighter, three pieces foil, two wooden clips, and a paper scoop.<sup>[26]</sup> PO2 Sulmerin asked Manilyn to join appellant in the living room.<sup>[27]</sup> PO2 Sulmerin then placed the seized items together with the marked money and the plastic sachet of *shabu* on the table in the living room for marking and inventory in the presence of appellant, Manilyn, media person Juvelyn Curameng (Curameng) of the DZEA media station, and Chief Tanod Atanacio Bugaoisan (Chief Tanod Bugaoisan).<sup>[28]</sup> PO2 Sulmerin marked the items with his initials "JS" and the initial of appellant "JP" while PO2 Pola took pictures.<sup>[29]</sup>

After the inventory, PO2 Sulmerin placed the seized items inside a resealable bag.<sup>[30]</sup> Appellant and Manilyn were then brought to Camp Juan.<sup>[31]</sup> PO2 Elison Pasamonte (PO2 Pasamonte) prepared the booking sheets for both suspects while PO2 Pola prepared two sketches<sup>[32]</sup> of the vicinity and floor plan of the house.<sup>[33]</sup> PO2 Sulmerin prepared the request for laboratory examination and delivered the seized items to the crime laboratory.<sup>[34]</sup> SPO2 Flojo received the items, which he marked with his initials "TCF," and indorsed the same to forensic chemist PI Baligod.<sup>[35]</sup>

Upon receipt of the seized items, forensic chemist PI Baligod conducted an initial test and a confirmatory test on the white crystalline substance contained in the plastic sachet and on the residue inside the glass tooter, which both tested positive for the presence of methamphetamine hydrochloride or commonly known as *shabu*.<sup>[36]</sup> She then prepared the Initial Laboratory Report<sup>[37]</sup> and the Confirmatory Chemistry Report.<sup>[38]</sup> After placing her initials "RBB" on the plastic sachet of *shabu* and the glass tooter, she kept the items and the reports in her evidence locker.<sup>[39]</sup> On April 7, 2011, she turned over the said items to the court through Clerk of Court Atty. Bernadette Espejo.<sup>[40]</sup>

### ***Version of Appellant***

Appellant and Manilyn denied the accusations against them.

Appellant testified that, around 1:00 p.m., he went out to buy a fluorescent lamp; that when he came back at around 2:00p.m., he saw his friend Ronald Ramos (Ronald) standing by the door of their house waiting for a friend; that after replacing the fluorescent lamp, appellant again went out to buy shampoo; that when he came back, Ronald was still at the door; that appellant went inside their house to get a towel and then went to the back of the house to take a bath; that while he was pumping water, he saw Ronald running towards the back of their house where there was an egress; that he heard someone shouting; that he looked inside their house and saw a woman he did not know; that he also saw the police officers, who were in civilian clothes, rummaging through their kitchen; that they asked him whose house

it was; that when he answered that it was their house, they immediately handcuffed and pulled him inside the house; that they frisked him and took his money in the amount of P870.00; that he was boxed by one of the police officers; that he was allowed to sit at the living room; that he saw a glass tube being placed on the table in the living room; that he and Manilyn were boarded in a van and brought to Camp Juan; that when they were already at the camp, the police officers boxed him on the stomach and asked him where he placed the *shabu* and from whom was he getting the *shabu*; and that he denied any knowledge of what they were asking him.<sup>[41]</sup>

Manilyn, for her part, testified that she was the girlfriend of appellant; that on March 31, 2011, she visited appellant; that at around 2:00 p.m., after eating, she went inside the room of appellant; that she heard somebody shout "police" in front of the house; that she did not go out to check as she was then texting her sister; that she noticed that somebody was trying to open the door of the room; that when it was opened, she saw a man wearing civilian clothes; that he pointed a gun at her and asked her where the rest of the *shabu* were hidden; that she told the man that she did not know what he was talking about; that she was told to get out of the room; that she saw appellant handcuffed in the living room; that she saw some items were being placed on the table in the living room; and that she and appellant were later taken to the camp.<sup>[42]</sup>

To corroborate the testimonies of appellant and Manilyn, the defense also presented the testimonies of Rogelio Pascua (Rogelio), the brother of appellant, and Reynald Burmudez (Reynald), the cousin and neighbor of appellant.

Rogelio testified that on March 31, 2011 at around 2:30 p.m., he went out of their house to take a snack; that when he returned to their house after 10 minutes, he saw his brother surrounded by three police officers at the back of their house; that when he went inside their house, he saw things being placed on the table in their living room; that he saw appellant and Manilyn, who were seated beside each other, being photographed; and that he saw the lady from DZEA and the Tanod, who were signing something.<sup>[43]</sup>

Reynald, on the other hand, testified that on March 31, 2011 at around 2:30 p.m., he went out of their house which was adjacent to the house of appellant; that he saw that the door of the house of appellant was open; that when he looked inside, he saw Ronald watching television; that while he and his cousin, Jonifer Loa-ang, were talking, they saw a lady going towards the house of appellant; that they saw her talking to Ronald in front of the house; that a closed van then arrived from which about five men alighted; that SPO4 Balolong pointed a gun at him and asked him where appellant was; that he replied that he did not know; that SPO4 Balolong went to the back of the house; that he also went to the back of the house and saw a man searching the drawer of a plastic cabinet; and that SPO4 Balolong again asked him if the man sitting inside the living room of the house was appellant.<sup>[44]</sup>

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

On December 4, 2012, the RTC rendered a Decision finding appellant guilty of the crime of illegal sale of *shabu*. The RTC upheld the validity of the buy-bust operation and gave more credence to the testimonies of the prosecution's witnesses than to the denial of appellant as it found no ill motive on the part of the police officers to

falsely accuse appellant.<sup>[45]</sup> As to the testimonies of Rogelio and Reynald, the RTC found that these did not help the defense of denial of appellant as Rogelio apparently only witnessed what happened after the arrest, while the testimony of Reynald did not negate the fact that a buy-bust operation was conducted on the said date.<sup>[46]</sup> The RTC also found that the chain of custody of the seized items was established by the prosecution.<sup>[47]</sup>

However, as to the charge of illegal possession of drug paraphernalia, the RTC resolved to acquit appellant and Manilyn due to inadmissibility of evidence. The RTC explained, that since appellant was already handcuffed, the possibility him getting a weapon or any contraband in the room was remote. Thus, the search of the room incidental to the arrest was not valid.<sup>[48]</sup> As to Manilyn, the RTC found that there was no ample evidence to show that she was the live-in partner of appellant or that she was in control and dominion of the room from which the seized paraphernalia were found.<sup>[49]</sup>

Thus, the dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered finding [appellant] GUILTY beyond reasonable doubt as charged in Criminal Case No. 14722 of illegal sale of shabu as punished under Section 5, Article II of [RA] No. 9165 and is therefore sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a [fine] of P2,000,000.00.

Said [appellant] and Manilyn Pompa are however ACQUITTED as charged in Criminal Case No. 14723 for illegal possession of drug paraphernalia for inadmissibility of evidence.

The shabu and the drug paraphernalia subject hereof are confiscated, the same to be disposed as the law prescribes.

SO ORDERED.<sup>[50]</sup>

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

Appellant appealed to the CA.

On October 9, 2015, the CA rendered a Decision affirming the RTC Decision. The CA ruled that there was a valid buy-bust operation based on the evidence presented.<sup>[51]</sup> Although there was no prior surveillance, the CA explained that it was not a prerequisite for a valid buy-bust operation.<sup>[52]</sup> The CA also found that the Chain of Custody Rule was complied with and that the failure of forensic chemist PI Baligod to indicate the actual markings on her reports was adequately explained.<sup>[53]</sup> The CA further said that the non-presentation of the confidential informant was not fatal to the case.<sup>[54]</sup> What is important was that the elements of the crime of illegal sale of *shabu* were duly established by the evidence presented by the prosecution.<sup>[55]</sup>

Hence, appellant filed the instant appeal, raising the same arguments he had in the CA.