

THIRD DIVISION

[G.R. No. 228893, November 26, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOY MARCELO Y PAGUIO, ACCUSED-APPELLANT.

RESOLUTION

GESMUNDO, J.:

This is an appeal by certiorari from the Decision,^[1] dated February 10, 2016, of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 06409 which affirmed the Decision,^[2] dated June 26, 2013, of the Regional Trial Court (RTC) of Valenzuela City, Branch 269, finding Joy Marcelo y Paguio (*appellant*) guilty beyond reasonable doubt of illegal sale of methylamphetamine hydrochloride (*shabu*) in Criminal Case No. 985-V-11.

Antecedents

On November 10, 2011, appellant Joy P. Marcelo was charged in two (2) separate Informations for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 (*the Comprehensive Dangerous Drugs Act of 2002*).

In Criminal Case No. 985-V-11. appellant was charged with violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the Information reads:

That on or about November 8, 2011 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell to PO1 JUN R. ACOSTA, who posed as buyer of zero point zero three gram (0.03) and zero point zero two gram (0.02) of Methylamphetamine Hydrochloride (Shabu), knowing the same to be dangerous drugs.

CONTRARY TO LAW.^[3]

In Criminal Case No. 986-V-11. appellant was charged with violation of Section 11 of the same law. The accusatory portion reads:

That on or about November 8, 2011, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control five (5) pieces of heat-

sealed transparent plastic sachets each containing zero point zero five (0.05) gram, zero point zero seven (0.07) gram, zero point zero three (0.03) gram, zero point zero two (0.02) gram, and zero point zero two (0.02) gram (sic) found to be methylamphetamine hydrochloride (shabu), knowing the same to be dangerous drugs.

CONTRARY TO LAW.^[4]

Version of the Prosecution

Based on the testimonies of the police officers and the evidence presented in court, appellant was duly apprehended in a buy-bust operation conducted by the District Anti-Illegal Drugs Special Operation Task Group (*DAID-SOTG*) of the Philippine National Police (*PNP*)-*Northern* Police District, Caloocan City.

On November 8, 2011, at around 4:30 in the afternoon, the DAID-SOTG received information from their Regular Confidential Informant (*informant*) that a certain "Joy" (later on identified as appellant) was selling drugs at Arty Subdivision, Barangay Karuhatan, Valenzuela City. Immediately, Police Chief Inspector Romeo C. Ricalde, Jr. (*PCI Ricalde, Jr.*) designated Police Inspector Milan V. Naz (*P/Insp. Naz*) to head a team that would conduct a buy-bust operation against appellant. The team was composed of P/Insp. Naz, PO1 Jun R. Acosta (*PO1 Acosta*), PO1 Nestor D. Gonzales (*PO1 Gonzales*), PO3 Tapon,^[5] PO1 Mark Anthony Padua (*PO1 Padua*), PO3 Melgan Lorenzo (now *SPO1 Lorenzo*), PO3 Deothele Gatdula (now *SPO1 Gatdula*), and SPO1 Bravo.^[6] PO1 Acosta acted as the poseur-buyer and was given a marked P1,000.00 bill to be used in the operation. PO1 Nestor Gonzales (*PO1 Gonzales*) was designated as his back-up and arresting officer.

After coordinating with the Philippine Drug Enforcement Agency (*PDEA*), at around 5 o'clock in the afternoon, the team left their office onboard two private vehicles. They proceeded to Justicia St., Arty Subdivision, Valenzuela City; held a final briefing; and went around to familiarize themselves with the place. At 6:30 p.m., the team returned to the target area. PO1 Acosta, together with the informant, rode a tricycle, followed by PO1 Gonzales onboard another. The rest of the team stayed inside the two vehicles parked at a distance.

Upon reaching Justicia St., PO1 Acosta and the informant alighted from the tricycle. They saw a fair-skinned male wearing "*maong*" shorts and bare from the waist up, standing near his residence along Justicia St. He was carrying his child, about 3 or 4 years of age. The informant told PO1 Acosta that the man was the seller. Appellant briefly talked with the informant who introduced PO1 Acosta as a buyer, saying: "*Boss Joy, byahero.*" Appellant then asked PO1 Acosta how much he was buying, to which the latter replied, "*Isang libo.*" Appellant took the marked P1,000.00 bill from PO1 Acosta and pulled out from the back of the child's diaper several plastic sachets of suspected shabu. Appellant had PO1 Acosta select two sachets and said, "*Pare, hindi ka talo d'yan.*" PO1 Acosta got two of the plastic sachets, put them in his pocket, removed his cap (the pre-arranged signal), and gave the other police operatives a "miss-call" from his cellphone. About 30 to 40 meters away, PO1 Gonzales saw PO1 Acosta remove his cap. In turn, he gave the rest of the team a

"miss-call" to signify that the sale of illegal drugs had been consummated.

When PO1 Acosta saw PO1 Gonzales approaching, he held appellant by the waistband of his shorts and introduced himself as a police officer. Appellant resisted, shouted out loud, and struggled to free himself from PO1 Acosta's hold. The rest of the police operatives arrived as PO1 Gonzales was helping PO1 Acosta contain appellant, who was trying to pull away from their grasp. Isidro Marcelo (*Isidro*), appellant's father, also came shouting and pushing his way towards the police officers. Isidro's physical interference caused PO1 Padua and SPO1 Lorenzo to fall to the ground (*sumadsad*). SPO1 Gatlula took the child away from appellant and handed her to her mother, Rosaline N. Ugto (*Rosaline*), appellant's live-in partner. When the child was taken away from appellant, PO1 Gonzales handcuffed him but he continued to shout and to break free (*nagpupumiglas*). PO1 Acosta picked up the other plastic sachets which appellant dropped to the ground. He directed appellant to bring out the P1,000.00 marked money from his left pocket.

At around 6:45p.m., a commotion ensued because neighbors, relatives, and bystanders arrived at the area and tried to intervene in the arrest of appellant. Some of the police operatives had to bring out their service firearms to deter them. Moments later, policemen from Valenzuela arrived. The situation forced the apprehending officers PO1 Acosta and PO1 Gonzales to bring appellant, together with his relatives, to the Karuhatan barangay hall. They rode in the Valenzuela police patrol vehicle. The two plastic sachets bought from appellant and the other plastic sachets he dropped while being arrested, were in PO1 Acosta's possession.

Inside the barangay hall, the police operatives waited for the designated investigator, SPO1 Fidel B. Cabinta and the barangay officials for the conduct of the inventory at the barangay hall, as instructed by SPI Ricalde. After two to three hours of waiting for the summoned barangay officials, no one came. At around 8:50 in the evening, PO1 Acosta presented to SPO1 Cabinta the evidence he had confiscated from appellant. In the presence of SPO1 Cabinta, PO1 Acosta placed markings on the plastic sachets: "JRA-1-08-Nov 2011" to "JRA-7-08-Nov 2011" on the seven plastic sachets and "JRA" on the marked P1,000.00 bill. SPO1 Cabinta took photographs of the inventory conducted at the barangay hall. The marking of the seized items was done in the presence of appellant, his father, and live-in partner who refused to sign the inventory of confiscated/seized drugs form. Since no barangay official responded to their call or wanted to cooperate (*nagtuturuan*), PO1 Acosta just requested the barangay Executive Officer (*Ex-O*), Arsenio B. Cruz, Jr., to witness and sign the document.^[7]

After the inventory, PO1 Acosta turned over to SPO1 Cabinta the evidence already marked with his initials. SPO1 Cabinta placed these items in a brown envelope and kept them in his possession when they left the barangay hall. At the DAID-SOTG station, another inventory was done. Media representative Maeng Santos, a field reporter of CAMANAVA Press, witnessed the inventory and signed the second computer-generated inventory of confiscated/seized drugs. The second inventory was also witnessed by the appellant but, again, he refused to sign the inventory receipt.

SPO1 Cabinta prepared two letter-requests, one for the laboratory examination of the contents of the seven plastic sachets, and the other for a drug test on the appellant. Both letters were signed by PCI Ricalde. At 1:40 in the morning of

November 9, 2011, SPO1 Cabinta brought the letter-requests and the seven plastic sachets containing white crystalline substance to the PNP Crime Laboratory at Camp Crame, where it was received by PCI Sandra Decena-Go (*PCI Decena-Go*), the Forensic Chemical Officer. The plastic sachets were placed inside a brown envelope attached to the letter-request for laboratory analysis. In her Chemistry Report No. D-336-11, PCI Decena-Go stated that qualitative examination on the said specimens yielded positive for methylamphetamine hydrochloride or shabu, a dangerous drug.

[8]

Version of the Defense

The defense presented as its witnesses the appellant, his friend Marina Gilda Imperial (*Imperial*), Rosaline, cousin Kristofer Marcelo (*Marcelo*), long-time neighbor Jose Macario (*Macario*), and sister Camella Marcelo-Bucking (*Camella*). Their account of what transpired on November 8, 2011 follows:

At around 5:30 to 6:30 p.m. of November 8, 2011, appellant was in front of the Marcelo Compound along Justicia St., Karuhatan, Valenzuela City, carrying his one-year and four-month old child. Rosaline, his father, cousin Kristofer, and many other persons were also in the premises. While he was talking with Rosaline and the others, two private vehicles stopped in the middle of the street. Two male persons in civilian clothes alighted from one vehicle suddenly grabbed appellant, and forcibly pulled him towards their vehicle. He resisted and asked who they were and why they were taking him. The men, who turned out to be police operatives, continued to force him towards the vehicle while releasing his hold on the child he was carrying. Rosaline tried to get their child, but the police officers pushed her away, hitting her elbow. Appellant was struck on the arm by a gun of one of the apprehending officers, which caused him to lose hold of his child. The child fell on the cemented pavement and sustained a bump or swelling.

Using a borrowed cellphone, Kristofer was able to record part of the commotion while appellant was being arrested. Meanwhile, six other companions of the apprehending officers also alighted from their vehicles and assisted in forcibly taking appellant with them. One grabbed appellant's head and pulled his hair; others held both his arms, while another held him by his shorts as they dragged him to the vehicle. Appellant struggled to free himself, and asked why they were arresting him. He was told not to fight back as he would get hurt. When his father, live-in partner, and sister asked the police officers why they were taking appellant, one of the officers poked his firearm at them and told them not to interfere. When they resisted, they were pushed to the ground. Appellant managed to free himself from the police officers' hold and lay down under their car with his head close to the wheel.

Imperial also approached the police officers to ask why they were taking the appellant and whether they had an arrest warrant. She was told that she had no business intervening in the incident. While she was arguing with the police operatives, police officers from the Karuhatan police precinct arrived. The latter were able to convince appellant to discuss the matter at the precinct since they were already creating a disturbance and many persons had gathered around them. Thus, appellant, together with his live-in partner, sister, and cousin, were brought to the police precinct beside the Karuhatan barangay hall.

At the police precinct, the police officers refused Rosaline's request that appellant be frisked to make sure that no illegal drug was in his possession. Another policeman and one of the apprehending officers told appellant to settle the case in exchange for the amount of P100,000.00. Appellant replied that he had nothing to settle with them because he had not committed any violation. Instead, he asked them to enter the incident in the police blotter, which they refused. After the appellant, Rosaline, and their child were subjected to a medical examination, he was immediately brought back to the police precinct. He was again asked to produce money, but he still did not accede. He then overheard one of the police officers say that they were waiting for their companion to bring the evidence. After more than an hour, SPO1 Cabinta arrived. Appellant's family was asked to leave the room. SPO1 Cabinta told appellant, "*Ang tigas mo kasi,*" and then placed shabu on top of a table. Someone also addressed appellant, saying, "*Masyado ka kasing matigas kaya ito ang bagay sa iyo[.]*" Appellant challenged the police officers to subject the evidence to fingerprinting, but he was told to keep quiet. He was brought to the barangay hall for the drug inventory. When no barangay official came, the arresting officers asked the barangay personnel on duty to sign a document, but they refused. One of the police officers explained that one of them should sign the document to prove that they had gone first to the barangay. A barangay *tanod* or Ex-O signed the document/inventory.

Appellant, accompanied by his father and Rosaline, was brought to the police station in Langanay, Caloocan City. There, another inventory was conducted in the presence of a media representative. Photographs of the appellant were also taken before he was brought to the detention cell. He was surprised when police officers informed him that he was being charged with violation of Secs. 5 and 11, Art. II of R.A. No. 9165.

Ruling of the RTC

The RTC convicted appellant for illegal sale of dangerous drugs, but held that the prosecution failed to establish his guilt for illegal possession of shabu supposedly in the five plastic sachets that appellant dropped while being arrested. The court gave full credence to the testimony of PO1 Acosta that a sale transaction actually took place between him and appellant. The police officers also satisfactorily showed that the identity and integrity of the shabu seized from appellant was adequately preserved from the time these were sold by appellant to PO1 Acosta and turned over to the crime laboratory to be examined for the presence of a dangerous drug, until it was finally presented in court.

With respect to the five other plastic sachets also containing white crystalline substance picked up by PO1 Acosta after these were allegedly dropped to the ground by appellant, the RTC found it unbelievable that appellant could still hold on to these sachets while carrying his child even as he was being pulled and pushed while fiercely resisting the arresting officers. Moreover, PO1 Acosta's testimony in court was uncertain as to how he had obtained the sachets he purportedly picked up from the ground. While PO1 Acosta was sure of the two sachets of shabu sold to him by appellant and which he took out of his pocket, he testified that he was uncertain whether appellant held in his hand the other five sachets.