

## THIRD DIVISION

[ G.R. No. 209212, February 10, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
ROMEL SAPITULA Y PACULAN, ACCUSED-APPELLANT.**

### RESOLUTION

**PEREZ, J.:**

Before us for review is the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA G.R. CR.-H.C. No. 05186 dated 19 February 2013 which dismissed the appeal of accused-appellant Romel Sapitula y Paculan and affirmed with modification the Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Agoo, La Union, Branch 31, in Criminal Case No. A-6013 finding accused-appellant guilty beyond reasonable doubt of attempted sale of a dangerous drug in violation of Section 5 in relation to Section 26 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the Information reads as follows:

That on or about the 16<sup>th</sup> day of June 2011, in the Municipality of Sto. Tomas, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without authority of law, did then and there, wilfully, unlawfully and knowingly, for and in consideration of the amount of Three Hundred (Php300.00) Pesos, sell, convey, deliver and give away to a PO3 Ardic Oayo Palabay one (1) heat sealed plastic sachet containing *shabu* with a weight of zero point zero nine hundred forty six (0.0946) gram, a dangerous and prohibited drug.

Contrary to the provision of Section 5, Art. 2 of R.A. 9165.<sup>[3]</sup>

At his arraignment, accused-appellant pleaded not guilty. Trial ensued.

The prosecution presented as witnesses Police Senior Inspector Diosdado Gagaoín (PSI Gagaoín), Police Officer 3 Ardie Palabay (PO3 Palabay), Police Inspector Maria Theresa Amor Manuel (PI Manuel), PO3 Emmanuel Pimentel, Jr., and PSI Bedalyn Antonio (PSI Antonio), whose testimonies sought to establish the following facts:

Acting on a tip from a confidential informant that accused-appellant sells *shabu*, PSI Gagaoín instructed PO3 Palabay to conduct a surveillance and casing operation on him. Upon verification of accused-appellant's involvement in illegal drug activities, PO3 Palabay and his drug asset made a test-buy operation on 14 June 2011, which yielded a purchase of Three Hundred Peso (P300.00) worth of *shabu* from accused-appellant. Thereafter, PSI Gagaoín headed and organized a buy-bust team composed of PO3 Palabay as *poseur*-buyer, PO3 Arnel Gravidez as one of the

arresting officers and SPO3 Armando Eisma and PO2 Roger Malag as perimeter security. Six (6) pieces of P50.00 bills were prepared as marked money on which PO3 Palabay placed a marking of "A."<sup>[4]</sup>

At four o'clock in the afternoon of 16 June 2011, the buy-bust team proceeded to Barangay Ambitacay. PO3 Palabay had already been in communication via short message system (SMS) with accused-appellant regarding the amount of *shabu* to be purchased. It had also been agreed via SMS that they would meet at Ambitacay crossing at six o'clock in the evening.<sup>[5]</sup>

At the crossing, at half past five o'clock in the afternoon when PO3 Palabay noticed accused-appellant coming his way, he disembarked from the tricycle in which he had been waiting. He approached accused-appellant who immediately handed to him a heat-sealed plastic sachet containing a white crystalline substance; and PO3 Palabay, in exchange, gave accused-appellant the marked money. Accused-appellant then counted the money while PO3 Palabay placed the sachet in his pocket and removed his cap to signal the arrest to the other police officers. Accused-appellant attempted to flee but was subsequently overcome and handcuffed by the other officers. PO3 Palabay informed accused-appellant of his constitutional rights; took a photograph of the latter as well as the area and the plastic sachet which he marked "AJP-1-11." He also made an inventory of the marked money and the seized plastic sachet in the presence of the Barangay Captain and another witness.<sup>[6]</sup>

Accused-appellant was thereafter brought to the police station. There, PO3 Palabay executed an affidavit of arrest, an affidavit of *poseur-buyer* and a request for laboratory examination. Then, he brought accused-appellant and the seized items to the crime laboratory, received by PSI Antonio.<sup>[7]</sup> Chemistry Report No. D-030-2011 signed by PI Manuel as Forensic Chemist found the seized plastic sachet positive for the presence of Methamphetamine hydrochloride or *shabu*.<sup>[8]</sup>

Accused-appellant, as the lone witness for the defense, testified that on 16 June 2011, on his way home with his wife and child after a day of ferrying passengers in his tricycle, a male person and his companion flagged him down. The man asked accused-appellant to get down from his tricycle and thereafter, drew out a gun and introduced himself as a policeman. Accused-appellant tried to run away from him but two (2) other persons blocked his way and handcuffed him. These two forced him to hold something and when accused-appellant refused, they rubbed it onto his hands. Thereafter, a patrol car arrived and he was brought to the police station.<sup>[9]</sup>

On 5 August 2011, the RTC rendered judgment finding accused-appellant guilty of attempted sale of a dangerous drug. The dispositive portion of the RTC Decision reads:

The accused is found to have attempted to sell .0946 gram of methamphetamine hydrochloride beyond reasonable doubt. The court only found that he attempted to sell.

However, there is a catch provided in Section 26 of R.A. 9165 which prescribes the same penalty as that provided in Section 5 in case of unlawful acts that are enumerated in the aforesaid Section 26, thus the penalty for attempt or conspiracy to commit violations thereof as

provided in Section 26 is the same as that provided in Section 5. HOC QUIDEM PER QUAM DURUM EST, SED ITA LEX ESCRIPTA EST or DURA LEX SED LEX is invoked.

Hence, accused Romel Sapitula is sentenced to life imprisonment and is ordered to pay a fine of Five Hundred Thousand Pesos (Php500.000.00), for attempting to sell less than one gram of methamphetamine hydrochloride "shabu."

The penalty is harsh but that is the law on the matter. Less than one gram of "shabu" and wham! One has to spend one's life in prison.

But that is the reality. Not an illusion.

So it is best to avoid drugs everytime.

The drug subject of this case is confiscated in favor of the government.

[10]

Accused-appellant filed a Notice of Appeal on 10 August 2011.<sup>[11]</sup> On 19 February 2013, the CA rendered the assailed judgment affirming with modification the trial court's decision. The CA found accused-appellant guilty of the crime charged, or violation of Section 5, Article II of R.A. 9165. The CA ruled that the sale of a dangerous drug was consummated as there had been an exchange of money and the sachet of *shabu* between PO3 Palabay and accused-appellant.

Accused-appellant appealed his conviction before this Court. In a Resolution<sup>[12]</sup> dated 04 December 2013, accused-appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties manifested that they will no longer file supplemental briefs as their arguments in their respective briefs are already sufficient.<sup>[13]</sup>

Upon review of the records, the Court affirms the conviction of accused-appellant.

The Court agrees with the CA finding that, contrary to the accused-appellant's assertion, the trial court sufficiently stated the factual and legal bases for its disposition of the case. In convicting accused-appellant, the trial court explained that it gave credence to the testimonies of the police officers pursuant to the presumption of regularity in the performance of their official duties and absent any showing of ill-motive to plant evidence against accused-appellant.<sup>[14]</sup> The trial court also stated that it found accused-appellant's testimony partly incredulous.<sup>[15]</sup>

The Court, however, upholds the CA's ruling that the crime of sale of a dangerous drug, in this case *shabu*, was consummated; different from the trial court's ruling that the crime had been committed only at its attempted stage. In so holding, the trial court stated that "[w]hen he realized the trap he was about: to backout in the sale. Nevertheless, the penalty is the same."<sup>[16]</sup> This Court disagrees.

In every prosecution for illegal sale of *shabu*, the following elements must be sufficiently proved: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment

therefor.<sup>[17]</sup>

The Court finds that all elements for illegal sale were duly established with accused-appellant having been caught *in flagrante delicto* selling *shabu* through a buy-bust operation conducted by the buy-bust team of PO3 Palabay.

PO3 Palabay, who acted as the *poseur* buyer, testified that accused-appellant handed to him the plastic sachet containing the prohibited drug in exchange for Three Hundred Pesos (P300.00), thus:

Q: And at about what time was that when you waited at that waiting shed?

A: Around 5:30 in the afternoon, sir.

Q: And what happened after that?

A: While waiting I noticed the suspect approaching, sir.

Q: So from where did he come home (sic)?

A: From the road leading to barangay Pongpong, sir.

Q: And when you saw him approaching what did you do if any?

A: I immediately disembark from the tricycle, sir.

x x x x

Q: When you alighted from the tricycle where did you go?

A: I immediately approached him also, sir.

Q: And what happened when you approached him, what did you tell him or what happened?

A: He immediately handed to me the heat sealed plastic sachet containing white crystalline substance and then afterwards I in hand also the marked money, sir.

Q: He did not ask how much are you buying?

A: He asked already through text, sir.

Q: And where did you put the sachet that was handed to you'?

A: I put in my pocket, sir.

Q: You mentioned you handed the money to the subject, what did the subject do if any?

A: After he received the money, he counted the money, sir.

Q: And while he was counting the money what did you do next?

A: After counting the money, I frisked him, I said stop and I showed my badge as an identification that I am a police but then he tried to run towards east direction, sir.

Q: By the way was there any a pre-arranged signal made by you with your Chief of Police?

A: Yes, sir.

Q: What is your pre-arranged signal?

A: When I removed my bull cup, sir.

Q: What does that indicate?

A: As a sign that the arrest shall be made by the arresting officers, sir.<sup>[18]</sup>

This testimony was corroborated by PSI Gagaoin who was strategically posted within the perimeter of the target area.<sup>[19]</sup> The result of the laboratory examination confirmed the presence of *methamphetamine hydrochloride* or *shabu* on the white crystalline substance inside the plastic sachet received from the accused-appellant. The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.<sup>[20]</sup>