

## THIRD DIVISION

[ G.R. No. 221465, November 16, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODELIO LOPEZ Y CAPULI, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

This is an appeal filed by appellant Rodelio Lopez y Capuli from the 17 November 2014 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 05574 affirming the judgment<sup>[2]</sup> of conviction rendered by the Regional Trial Court (RTC) of Manila, Branch 13 for the crimes of illegal sale and illegal possession of *shabu*.

Appellant was charged in two separate Informations, which read:

Criminal Case No. 05238648

That on or about **August 4, 2005**, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, or give away to another any dangerous drug, did then and there, willfully, unlawfully and knowingly sell or offer for sale one (1) heat sealed transparent plastic sachet, containing ZERO POINT ZERO TWO (0.02) GRAM of white crystalline substance commonly known as "SHABU" containing methylamphetamine hydrochloride, which is a dangerous drug.<sup>[3]</sup>

Criminal Case No. 05238649

That on or about **August 4, 2005**, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control two (2) heat sealed transparent plastic sachets with marking "SAID 2" and "SAID 3" containing, to wit:

zero point zero six (0.06) gram

zero point zero five (0.05) gram

of white crystalline substance known as "*shabu*" containing methylamphetamine hydrochloride, a dangerous drug.<sup>[4]</sup>

The facts are as follow:

Acting on a tip from an informant that a certain Totoy was selling *shabu* on Tambunting Street in Manila, Police Senior Inspector Jay Baybayan (P/S Insp. Baybayan) of the Central Market Sta. Cruz Police Station formed a buy-bust team

composed of Police Officer (PO) 2 Gerard Garcia (PO2 Garcia) as the poseur-buyer and PO2 Leonardo Cipriano (PO2 Cipriano) and PO1 Napoleon Osias (PO1 Osias) as back-ups. PO2 Garcia produced two (2) P100.00 bills and put markings on the bill. At around 9:30 p.m., on 4 August 2005, the group, together with the informant, proceeded to the target area. The informant spotted Totoy and approached him. He introduced PO2 Garcia to Totoy as the buyer of P200.00 worth of *shabu*. PO2 Garcia handed the marked money to Totoy. In turn, Totoy took out one plastic sachet of *shabu* from his pocket and handed it over to PO2 Garcia. Thereafter, the latter introduced himself as a police officer and shouted the pre-arranged signal to his police back-ups. Totoy was arrested. PO2 Garcia frisked him and two more plastic sachets of *shabu* were seized from his right pocket. Totoy was then brought to the police station. Thereat, PO2 Garcia turned over the three (3) plastic sachets recovered from Totoy to PIS Insp. Baybayan, the investigator-in-charge. P/S Insp. Baybayan then marked the sachets in the police station. He later brought the sachets to the crime laboratory for examination. When asked to identify Totoy during trial, PO2 Garcia pointed to appellant.<sup>[5]</sup> The examination yielded a positive test result for methylamphetamine hydrochloride or *shabu*.<sup>[6]</sup>

For his defense, appellant testified that he was on Tambunting Street on 4 August 2005 to place a bet on horse racing when he noticed a group of armed men chasing a certain Roger Tisoy. When the group failed to apprehend Roger Tisoy, they arrested appellant instead and brought him to the police station. He first learned that he was being charged with illegal sale and possession of *shabu* during his arraignment. Appellant denied the charges against him.<sup>[7]</sup>

On 9 March 2012, the RTC found the appellant guilty of illegal sale and illegal possession of *shabu* penalized under Sections 5 and 11(3) respectively, of Republic Act (R.A.) No. 9165. The dispositive portion of the Decision reads:

In Criminal Case No. 05238648

WHEREFORE, in view of the foregoing, this Court finds the accused RODELIO LOPEZ y CAPULI @ TOTOY GUILTY beyond reasonable doubt as principal for violation of Section 5 of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for pushing shabu) as charged and he is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a Fine in the amount of P500,000.00.

In Criminal Case No. 05238649

WHEREFORE, in view of the foregoing, this Court finds the accused RODELIO LOPEZ y CAPULI @ TOTOY GUILTY beyond reasonable doubt as principal for violation of Section 11 (3) of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for possession of shabu) as charged and he is sentenced to suffer imprisonment in an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years and to pay a Fine in the amount of P350,000.00.

The shabu in this case are ordered transmitted to the PDEA thru DDB for disposal as per RA 9165.<sup>[8]</sup>

The trial court held that the prosecution had established all the required elements for illegal sale and possession of dangerous drugs through a legitimate buy-bust operation. The trial court noted that the police failed to comply with the directive of Section 21, Article 11 of R.A. No. 9165 but nonetheless convicted appellant because the defense did not raise said issue during trial.

On appeal, the Court of Appeals affirmed the RTC's findings that all elements of the crimes of illegal sale and illegal possession of dangerous drugs were proven by the prosecution. The Court of Appeals considered appellant's defense of denial as weak and which cannot prevail over the positive declaration of PO2 Garcia. Moreover, the Court of Appeals ruled that appellant failed to impute any ill-motive on the part of PO2 Garcia to falsely testify against him.

Unfazed, appellant filed a Notice of Appeal.<sup>[9]</sup>

In a Resolution<sup>[10]</sup> dated 20 April 2016, the Court required the parties to submit supplemental briefs if they so desired. Both parties manifested that they are no longer filing their Supplemental Briefs.<sup>[11]</sup>

In his Brief,<sup>[12]</sup> appellant alleges that the prosecution failed to account for the chain of custody of the evidence. Appellant points out that PO2 Garcia did not immediately put markings on the confiscated plastic sachets after his apprehension and the latter did not even know who made the markings at the police station. Appellant also zeroes in on the police officers' non-compliance with Section 21 of R.A. No. 9165, such as the absence of an inventory and photograph of the specimens.

We dismiss the appeal and affirm the appellant's conviction.

The essential elements in the successful prosecution of offenses involving the illegal sale of dangerous or prohibited drugs under Section 5, Article II of R.A. No. 9165 are: (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 payment therefor. Material in the successful prosecution is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.<sup>[13]</sup>

In the instant case, appellant was caught *in flagrante delicto* of selling *shabu*, a dangerous drug, to PO2 Garcia, the poseur-buyer. PO2 Garcia's testimony has established that a sale transaction took place between him and appellant. PO2 Garcia narrated that he and the informant approached appellant to buy P200.00 worth of *shabu* at Tambunting Street in Manila. PO2 Garcia first handed the marked P200.00 bill to appellant. Appellant, in turn, took out one plastic sachet of white crystalline substance from his right pocket and gave it to PO2 Garcia.

In the charge of illegal possession of a dangerous drug, the prosecution must prove the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.  
<sup>[14]</sup>

The presence of all the elements for violation of Section 11 of R.A. No. 9165 was likewise proven when upon appellant's arrest, PO2 Garcia frisked him and recovered