

## THIRD DIVISION

[ G.R. No. 207635, February 18, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE DELA PEÑA<sup>[1]</sup> AND DENNIS DELIMA, ACCUSED-APPELLANTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before this Court is an appeal from the April 16, 2013 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 01200 affirming the judgment<sup>[3]</sup> of the Regional Trial Court (RTC) of Cebu City, Branch 8, in Criminal Case Nos. CBU-83576, CBU-83577, and CBU-83578, finding accused-appellants Dante Dela Peña (Dela Peña) and Dennis Delima (Delima) guilty beyond reasonable doubt of violation of Republic Act No. 9165 (R.A. 9165), the Comprehensive Dangerous Drugs Acts of 2002.

The antecedents follow:

The three separate Informations filed on June 23, 2008 by the City Prosecutor's Office of Cebu City indicted Dela Peña and Delima for the following crimes, to wit:

In Criminal Case No. **CBU-83576**, the Information charged Dela Peña with violation of Section 5, Article II, R.A. 9165 for illegal sale of *shabu*, thus:

That on or about the 19<sup>th</sup> day of June, 2008, at around 11:45 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, [Dela Peña], with deliberate intent, and without authority of law, did then and there sell, deliver or give away to [a] poseur buyer one (1) heat[-]sealed transparent plastic sachet of white crystalline substance weighing 0.02 gram, locally known as *shabu*, containing methamphetamine hydrochloride, a dangerous drug.

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

In Criminal Case No. **CBU-83577**, the Information charged Dela Peña with violation of Section 11, Article II of R.A. 9165 for illegal possession of *shabu*, viz.:

That on or about the 19<sup>th</sup> day of June, 2008, at about 11:45 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, [Dela Peña], with deliberate intent, did then and there have in his possession and control four (4) heat[-]sealed transparent plastic sachet[s] of white crystalline substance weighing 0.02 gram [each] or a total of 0.08 gram, locally known as *shabu*, containing

methamphetamine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.<sup>[5]</sup>

The Information in Criminal Case No. **CBU-83578** charged Delima with illegal possession of *shabu*. The accusatory portion alleged:

That on or about the 19<sup>th</sup> day of June, 2008, at about 11:45 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, [Delima] with deliberate intent, did then and there have in his possession and control one (1) heat[-]sealed transparent plastic sachet of white crystalline substance weighing 0.02 gram, locally known as *shabu*, containing methamphetamine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.<sup>[6]</sup>

Dela Peña and Delima separately entered pleas of "*Not Guilty*" upon arraignment.<sup>[7]</sup> Joint trial of the three cases was conducted by the RTC.

The prosecution presented the following witnesses: (1) Intelligence Officer 1 Ferdenand<sup>[8]</sup> Kintanar (IO1 Kintanar); and (2) Intelligence Officer 1 Baby Rallos (IO1 Rallos), both operatives of the Philippine Drug Enforcement Agency, Region VII (PDEA-7). Their testimonies were summarized by the appellate court, thus:

When [IO1 Kintanar] x x x received a report from their confidential informant that [Dela Peña] was selling *shabu* in Barangay Sawang Calero, Cebu City, he immediately instructed OJT Steven Balles to conduct a surveillance, which confirmed the report. Then in the evening of June 19, 2008, a team of PDEA officers was formed to conduct a buy-bust operation [against Dela Peña]. The team was composed of ten PDEA members including IO2 David Mark Maramba as team leader, [IO1 Kintanar] and [IO1 Rallos]. IO1 Kintanar, who was tasked [to act] as poseur-buyer, was given three pieces of one hundred peso (Php100.00) bills as buy-bust money bearing serial numbers PQ242526, YF280219 and TV375522 which were all pre-marked with [IO1] Kintanar's initials "FK" at the lower right front portion of the bills. IO1 Kintanar then prepared an Authority to Operate [for the conduct of the] operation.

Thereafter, the buy-bust team, accompanied by their confidential informant, proceeded to Barangay Sawang Calero. Upon their arrival there, the team searched for [Dela Peña] in the area. When they finally found him standing along the road with [Delima], IO1 Kintanar and the confidential informant approached him while the rest of the members strategically positioned themselves where, from their vantage point, they could clearly see the transaction.

The informant and IO1 Kintanar informed [Dela Peña] of their intention to buy *shabu*. IO1 Kintanar handed the marked money to Dela Pe[ñ]a, who, in turn, handed a small sachet of suspected *shabu*. Delima, who was beside [Dela Peña], also showed a sachet of suspected *shabu* to IO1 Kintanar but the latter ignored him. Immediately, IO1 Kintanar executed the pre-arranged signal by scratching his head, indicating that the sale was consummated.

The rest of the team members immediately approached the group and arrested [Dela Peña and Delima]. IO1 Kintanar seized from Dela Pe[ñ]a the buy-bust money and four (4) sachets of suspected *shabu*. On the other hand, [IO1 Rallos, who] arrested Delima x x x recovered from [the latter] a small sachet of *shabu* which he turned over to IO1 Kintanar. The buy-bust team apprised the duo of their constitutional rights and thereafter brought them, together with the confiscated items, to the PDEA-7 office where the said items were marked by IO1 Kintanar. The plastic sachet of *shabu* which was the subject of the sale, was marked "DSDP-BB 6/19/08" whereas the four sachets recovered from Dela Pe[ñ]a were marked as "DSDP-01 6/19/08" to "DSDP-04 6/19/08", respectively. The one small sachet seized from Delima was likewise marked as "DCD-01 6/19/08". The confiscated items were photographed, recorded in the blotter and listed in a Certificate of Inventory in the presence of [Dela Peña and Delima] and was duly witnessed and signed by Barangay Captain Jerome B. Lim of Barangay Sta. Cruz and media representative Chito O. Aragon.

x x x At 1:50 in the afternoon of the following day, IO1 Kintanar delivered the laboratory request and the confiscated plastic sachets of suspected *shabu* to the crime laboratory which was received by PO3 El Abesia. On the same day, Forensic Chemist Rendielyn L. Sahagun issued Chemistry Report No. D-663-2008 stating that the subject six plastic sachets with a total weight of 0.12 gram of white crystalline substance marked as "DSDP-BB 6/19/08", "DSDP-01 6/19/08", "DSDP-02 6/19/08", "DSDP-03 6/19/08", "DSDP-04 6/19/08" and "DCD-01 6/19/08", respectively, tested positive for *Methamphetamine Hydrochloride* or *shabu*.<sup>[9]</sup>

The presentation as witness of Rendielyn L. Sahagun (FC Sahagun), the Forensic Chemist of the Philippine National Police (PNP) Regional Crime Laboratory Office 7, Cebu City, was dispensed with after the parties stipulated during the pre-trial conference that: (1) she is qualified to conduct an examination on the specimen submitted to determine the presence of dangerous drugs; (2) the items described in the Letter Request for laboratory examination (Exhibit "B") are the very same specimen listed in Chemistry Report No. D-663-2008 (Exhibit "C"); and (3) the contents of the plastic sachets with the markings "DSDP-BB 6/19/08", "DSDP-01 6/19/08", "DSDP-02 6/19/08", "DSDP-03 6/19/08", "DSDP-04 6/19/08", and "DCD-01 6/19/08" were confirmed to be positive for after a chemical examination. Likewise, the defense waived its objection to the admissibility of Chemistry Report No. D-663-2008, and the seized sachets of *shabu*.<sup>[10]</sup>

Both appellants interposed the defense of denial.

Dela Peña asserted that he merely took shelter in a nearby store because of the heavy rain that morning of June 19, 2008. Meanwhile, a group of persons arrived and inquired from Dela Peña the whereabouts of the person they were chasing. They thereafter frisked, mauled, and brought him to the PDEA-7 office.<sup>[11]</sup>

For his part, Delima testified that he was driving a "*sidecar*"<sup>[12]</sup> at 11:45 p.m. of June 19, 2008 when two strangers approached and frisked him. Although no illegal item was confiscated from him, the said persons, who turned out to be PDEA operatives, arrested him. He met Dela Peña for the first time at the PDEA-7 office.<sup>[13]</sup>

Giving credence to the version of the prosecution witnesses who have no ill-motive to testify against Dela Peña and Delima,<sup>[14]</sup> and finding that the prosecution established the elements of the crimes charged,<sup>[15]</sup> the RTC found Dela Peña and Delima guilty beyond reasonable doubt of the crimes charged. The *fallo* of the Decision dated March 30, 2010 reads:

WHEREFORE, finding them guilty beyond reasonable doubt of the offenses of which they are being respectively indicted, a judgment is hereby rendered:

- 1) Sentencing [Dela Peña] to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE in the amount of P500,000.00 in Criminal Case No. CBU-83576 for violation of Section 5, Article II of [R.A. 9165];
- 2) Sentencing [Dela Peña] to suffer the penalty of IMPRISONMENT for a period of TWELVE (12) YEARS AND ONE DAY TO FIFTEEN (15) YEARS and to pay a FINE in the amount of P300,000.00 in Criminal Case No. 83577 for violation of Section 11, Article II of [R.A. 9165]; and
- 3) Sentencing [Delima] to suffer the penalty of IMPRISONMENT for a period of TWELVE (12) YEARS AND ONE DAY TO FIFTEEN (15) YEARS and to pay a FINE in the amount of P300,000.00 in Criminal Case No. 83578 for violation of Section 11, Article II of [R.A. 9165].

The subject sachets of *shabu* marked "DSDP-BB" 6/19/08 (Exhibit "A"), "DSDP-01" 6/19/08 to "DSDP-04" 6/19/08 (Exhibits "B" to "B-3"); and "DCD-01" 6/19/08 (Exhibit "A" Delima) are declared forfeited in favor of the Government, to be disposed of pursuant to the provisions of R.A. 9165 and related rules and regulations.

SO ORDERED.<sup>[16]</sup>

Dela Peña and Delima sought to reverse their conviction before the CA. They maintained that the RTC erred as follows:

x x x IN CONVICTING [DELA PEÑA] OF THE CRIME CHARGED DESPITE THE FACT THAT THE ELEMENTS x x x FOR SALE OF ILLEGAL DRUGS WERE NOT ESTABLISHED

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x x x IN CONVICTING [DELA PEÑA AND DELIMA] DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE CORPUS DELICTI<sup>[17]</sup>

The CA affirmed the RTC Decision. However, the CA modified the penalties in Criminal Case Nos. CBU-83577 and CBU-83578 by lowering the maximum periods of the imposed penalties from fifteen (15) years to fourteen (14) years and eight (8) months, to wit:

**WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The Decision dated March 30, 2010 of the [RTC] in Criminal Case Nos. CBU-83576 to 83578 finding [Dela Peña] guilty of violating Sections 5 and 11, and [Delima] of violating Section 11, Article II of [R.A.] 9165 otherwise known as [the] Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED** with the following **MODIFICATIONS**:

1) In Criminal Case No. 83577, [Dela Peña] is sentenced to suffer the indeterminate penalty of IMPRISONMENT for a period of TWELVE (12) YEARS AND ONE DAY TO FOURTEEN (14) YEARS and EIGHT (8) MONTHS and to pay a FINE in the amount of P300,000.00 for violation of Section 11, Article II of [R.A. 9165]; and

2) In Criminal Case No. 83578, [Delima] is sentenced to suffer the indeterminate penalty of IMPRISONMENT for a period of TWELVE (12) YEARS AND ONE DAY TO FOURTEEN (14) YEARS and EIGHT (8) MONTHS and to pay a FINE in the amount of P300,000.00 for violation of Section 11, Article II of [R.A. 9165].

No pronouncement as to costs.

SO ORDERED.<sup>[18]</sup>

Insisting on their innocence, Dela Peña and Delima interposed the present appeal. In separate manifestations,<sup>[19]</sup> the parties stated that they will no longer file supplemental briefs.

The issue to be resolved is whether Dela Peña and Delima's guilt for the crimes charged was established by the prosecution beyond reasonable doubt.