

## FIRST DIVISION

[ G.R. No. 205202, June 09, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NENITA GAMATA Y VALDEZ, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**REYES, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated May 11, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04839 which affirmed the Decision<sup>[2]</sup> dated September 15, 2010 of the Regional Trial Court (RTC) of Makati City, Branch 64 in Criminal Case Nos. 06-1344 to 1345 finding Nenita Gamata y Valdez (accused-appellant) guilty in Criminal Case No. 06-1344 for violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The Information in Criminal Case No. 06-1344 to which the accused-appellant pleaded "Not Guilty" contained the following accusations:

That on or about the 25<sup>TH</sup> day of July 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver to another, zero point zero three [0.03] gram of Methylamphetamine Hydrochloride which is a dangerous drug, in exchange of Php.500.00 pesos.<sup>[3]</sup> [sic]

Meanwhile, the information in Criminal Case No. 06-1345 indicted the accused-appellant for illegal possession of 0.14 gram of methylamphetamine hydrochloride, an act punishable under Section 11, Article II of R.A. No. 9165.<sup>[4]</sup> Considering, however, that the accused-appellant was acquitted by the RTC of such criminal charge, the present discussion shall concern only Criminal Case No. 06-1344.

During trial, the prosecution presented the testimonies of Police Officer 2 Renie Aseboque (PO2 Aseboque), Noel Pulido (Pulido) and Juan Siborboro, Jr., both operatives of the Makati Anti-Drug Abuse Council (MADAC), and Police Inspector May Andrea Bonifacio (P/Insp. Bonifacio), Forensic Chemist of the Philippine National Police (PNP) Crime Laboratory. Their declarations depicted the following events:

On July 25, 2006, an information was received by Senior Inspector Joefel Felongco Siason (S/Insp. Siason) of the Station Anti-Illegal Drugs Special Operations Task Force (SAIDSOTF), Makati City, from a confidential asset of the MADAC that rampant

illegal drug peddling in Laperal Compound, *Barangay* Guadalupe Viejo, Makati City was being carried out by the accused-appellant, Jun Gamata (Jun), Toto Madera and Totoy Pajayjay. Apparently, their names are also included in the watch list of the MADAC.

Forthwith, a team composed of SAIDSOTF police officers and MADAC operatives was formed to conduct a buy-bust operation against the said subjects. During the briefing, PO2 Aseboque was designated as the poseur-buyer while the rest of the team members were assigned to be his back-up. The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA) under Pre-Coordination Sheet Control Number MMRO-072506-0212 duly acknowledged to have been received by PO1 Nemencio V. Domingo of the PDEA.<sup>[5]</sup> One piece of a P500.00 bill was also marked for use in the operation.<sup>[6]</sup>

At around 4:30 p.m., the team, together with the confidential informant, proceeded to the subject area. The team members positioned themselves in spots where they can monitor the possible transaction. Meanwhile, PO2 Aseboque and the informant walked towards Laperal Compound and thereupon noticed a woman clad in white t-shirt and *maong* pants. The informant identified her to PO2 Aseboque as the accused-appellant.

The two of them then approached the accused-appellant whom PO2 Aseboque queried as to the whereabouts of Jun. In response, the accused-appellant said that Jun was not around and that "*kami nandito lang, bakit kukuha ba kayo?*" PO2 Aseboque comprehended her response as the street language used in the dealing of dangerous drugs and that she actually meant that she was selling *shabu* if they wanted to buy one. PO2 Aseboque repeated his query to which the accused-appellant replied, "*Wag niyo ng hintayin si Jun, ako meron.*" PO2 Aseboque took her response as a confirmation that she was indeed selling *shabu*. He then asked her if she had P500.00 worth of *shabu*. The accused-appellant took out one plastic sachet from her right pocket and handed it over to PO2 Aseboque who in turn examined its contents and thereafter handed the buy-bust money to the accused-appellant. As she was placing the money inside her pocket, PO2 Aseboque made the pre-arranged signal to his buy-bust team mates by lighting a cigarette.

Upon seeing MADAC operative Pulido rushing towards the scene, PO2 Aseboque held the accused-appellant and introduced himself as a police officer. He directed her to empty the contents of her pockets but she refused. This prompted PO2 Aseboque to order Pulido to dig into the accused-appellant's pockets. Pulido complied and discovered three more pieces of transparent plastic sachet containing white crystalline substance suspected as *shabu* along with the buy-bust money and P120.00 of the accused-appellant's personal money.

The accused-appellant was then informed of her constitutional rights while the sachet she sold to PO2 Aseboque was immediately marked by the latter with his initials "REA" while those recovered by Pulido were marked with "REA-1", "REA-2", and "REA-3". At the crime scene, PO2 Aseboque also prepared an Acknowledgment Receipt<sup>[7]</sup> which he and the arresting team signed.

The accused-appellant and the seized evidence were subsequently brought to the Makati SAIDSOTF office where they were turned over to PO2 Rafael Castillo (PO2

Castillo) for investigation, interrogation and proper disposition. At the same office, PO2 Aseboque executed an Affidavit of Arrest<sup>[8]</sup> and a Supplemental Affidavit.

Along with a Request for Laboratory Examination<sup>[9]</sup> prepared by S/Insp. Siason, Pulido brought the seized specimens to the PNP Crime Laboratory. The same were received by a certain Relos, officer of the day, in the presence of Crime Laboratory Forensic Chemist P/Insp. Bonifacio.

P/Insp. Bonifacio conducted the necessary tests on the subject specimens and the results thereof yielded positive results for methylamphetamine hydrochloride or *shabu*. Thereafter, she tagged each item with tape markings and reduced her findings in Physical Science Report Number D-506-06S.<sup>[10]</sup> She then turned over the specimens to the evidence custodian from whom she later on retrieved them upon the instructions of the prosecutor after the filing of criminal informations against the accused-appellant.<sup>[11]</sup>

The defense refuted all of the above occurrences and claimed, through the testimony of the accused-appellant, that at around 3:00 p.m. of July 25, 2006, she had just finished taking a bath when she heard someone banging the door of her house in Laperal Compound. When she opened the door, five armed men in civilian clothing greeted her and asked for Jun, her brother-in-law. When she answered them that she did not know Jun's whereabouts, they began searching her house. Since Jun actually resides at about five houses away from hers, the armed men were unable to locate him at the accused-appellant's house. They then handcuffed the accused-appellant and loaded her in a van where she saw her neighbor, Alaw, and a certain Jonalyn Silvano. The three of them were brought to the SAIDSOTF office where the accused-appellant was shown items that will be used as evidence against her.<sup>[12]</sup>

In a Decision<sup>[13]</sup> dated September 15, 2010, the RTC sustained the prosecution's version and held that the pieces of evidence submitted established the presence of the elements of illegal sale of dangerous drugs, viz: (1) the identity of the buyer and the seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. Both elements were found present in the poseur-buyer's positive identification of the accused-appellant as the person from whom he was able to purchase P500.00 worth of *shabu*.

The accused-appellant's denial and *alibi* were rejected for being unsubstantiated. Her imputations of frame-up to the police officers were likewise found uncorroborated by convincing proof and thus overthrown by the presumption of regularity attached to the performance of the police officers' official duties.

The RTC disposed thus:

**WHEREFORE, in view of the foregoing, [judgment] is hereby rendered as follows:**

- 1. Finding the accused NENITA GAMATA y VALDEZ, GUILTY in Criminal Case No. 06-1344 of the charge for violation of Section 5, Article II of RA 9165 and sentencing her to life**

**imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00);**

2. ACQUITTING the accused NENITA GAMATA y VALDEZ in Criminal Case No. 06-1345 of the charge for violation of Section 11, Article II of RA 9165.

SO ORDERED.<sup>[14]</sup> (Emphasis ours)

On appeal, the accused-appellant argued for her acquittal on the ground that the identity of the drugs seized from her was not proved beyond reasonable doubt because the prosecution failed to supply all the links in the chain of their custody. She further pointed out the inconsistent testimonial and documentary evidence on the markings placed on the seized items. The accused-appellant also questioned the failure of the police officers to comply with the procedure laid down in Section 21, Article II of R.A. No. 9165 particularly, the preparation of the inventory and taking of photographs of the seized items.<sup>[15]</sup>

In a Decision<sup>[16]</sup> dated May 11, 2012, the CA denied the appeal and concurred with the findings and conclusions of the RTC that the identities of the buyer and seller as well as the consummation of the sale of illegal drugs was proved beyond reasonable doubt by the prosecution through the straightforward testimony of the poseur-buyer himself, PO2 Aseboque, as believably corroborated by two other members of the buy-bust team and by extensive documentary evidence. The CA rejected the accused-appellant's arguments and held that the same were disproved by the evidence on record, thus:

Accused-appellant contends that while [PO2] Aseboque maintains that he had custody of the items seized from her, Pulido testified that he was the one who held the items recovered from accused-appellant. A careful perusal of the transcript of stenographic notes, however, reveals that there was actually no inconsistency as what Pulido testified to as the items that was with him were the ones he recovered from the pocket of the accused-appellant and not the one that was subject of the sale. x x x

x x x x

x x x [W]hen Pulido testified as to the seized items, he was referring to those sachets that he was able to fish out of the pocket of accused-appellant and he held on to the same as [PO2] Aseboque had his hands full trying to restrain accused-appellant. x x x Pulido corroborated [PO2] Aseboque's statement that it was the latter who prepared the inventory of the items seized from the accused-appellant. x x x

x x x x

It is noted that the four sachets were already marked with the initial of the apprehending officer at the scene of the crime. The act was attested to by the rest of the arresting team and the markings were reflected in the acknowledgement report. Even if [PO2] Castillo failed to note in his

spot report that the items were marked with the initial of [PO2] Aseboque, it could not be discounted that the items were the ones seized from the person of accused-appellant because if the same were different, the items that were turned over to the forensic chemist P/Insp. Bonifacio would not have borne the initial of [PO2] Aseboque considering that from the hands of [PO2] Castillo, the seized items were personally handed by him to Relos, who in turn gave the same to P/Insp. Bonifacio who was, likewise, present when [PO2] Castillo handed the items to Relos. Moreover, [P/Insp.] Bonifacio explained that there is actually no difference between the marking "REA" and "R.E.A." x x x

x x x x

In addition, an examination of the letter request (Request for Laboratory Examination) shows that while the signatory mentioned that the item subject of the sale was marked as "REA", when he attached the sachet to the request, the signatory made a handwritten reference to the attached specimen as "R.E.A." To Our mind, the presence or absence of the punctuation marks is of no moment as the request was precisely clear that the items to be examined were the ones attached to the request itself.<sup>[17]</sup> (Citation omitted)

The CA also dismissed the accused-appellant's contentions that the statutory procedure for the inventory and photograph of the seized items was not observed. The CA held that the absence of a media representative or an elected public official during the inventory was not material to overturn a conviction as it did not pertain to the elements of the crime charged. The CA further stressed that non-compliance with the inventory and photograph requirements will not render void and invalid the seizure and custody over the items.

Accordingly, the decision disposed as follows:

WHEREFORE, premises considered, the instant appeal is DENIED and the appealed Decision dated September 15, 2010 rendered by the Regional Trial Court, Branch 64, Makati City, in Criminal Case No. 06-1344 for Violation of Article II, Section 5 of Republic Act No. 9165 is hereby AFFIRMED.

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

The accused-appellant is now before the Court pleading for her acquittal based on the same arguments raised in her Appellant's Brief before the CA.<sup>[19]</sup>

### **Ruling of the Court**

The Court denies the appeal.

The arguments proffered in support of the accused-appellant's plea for acquittal has already been exhaustively traversed by the CA and based on evidence on record,