

## FIRST DIVISION

[ G.R. No. 183700, October 13, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PABLITO ANDAYA Y REANO, ACCUSED-APPELLANT.**

### D E C I S I O N

**BERSAMIN, J.:**

The non-presentation of the confidential informant as a witness does not ordinarily weaken the State's case against the accused. However, if the arresting lawmen arrested the accused based on the pre-arranged signal from the confidential informant who acted as the poseur buyer, his non-presentation must be credibly explained and the transaction established by other ways in order to satisfy the quantum of proof beyond reasonable doubt because the arresting lawmen did not themselves participate in the buy-bust transaction with the accused.

#### **Antecedents**

On February 7, 2003, an information for violation of Section 5 of Republic Act No. 9165<sup>[1]</sup> (RA 9165) was filed charging Pablito Andaya y Reano (Andaya). The accusatory portion of the information reads:

That on or about December 16, 2002 at around 9:50 o'clock in the evening at Brgy. San Jose Sico, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, willfully, unlawfully and feloniously, sell, dispense or deliver, more or less 0.09 gram(s) of Methamphetamine Hydrochloride (shabu), a dangerous drug, which is a clear violation of the above-cited law.

CONTRARY TO LAW.<sup>[2]</sup>

Upon arraignment,<sup>[3]</sup> Andaya pleaded *not guilty* to the charge. Thereafter, trial on the merits ensued.

The CA summed up the versions of the parties, as follows:<sup>[4]</sup>

Five (5) witnesses were presented by the prosecution, namely: SPO4 Delfin Alea, SPO3 Nelio Lopez, SPO2 Danilo Mercado, SPO4 Protasio Marasigan and Jupri Delantar.

SPO2 Delfin Alea testified that at about 8:00 o'clock in the evening of

December 16, 2002, their asset who was conducting surveillance of Pablito Andaya in Barangay San Jose Sico, Batangas City, arrived at their station. Said asset reported that he had arranged to buy shabu from Pablito. A team composed of SPO1 Aguila, SPO1 Cabungcal, Eric de Chavez, PO1 Lindberg Yap, Edwalberto Villar and asset Bagsit was constituted to conduct a buy-bust. Two (2) pieces of P100.00 bills both duly marked "X" were recorded in the police blotter. Alea gave the marked bills to the asset. Upon reaching the designated place, the team members alighted from their vehicles and occupied different positions where they could see and observe the asset. The asset knocked on the door of Pablito's house. Pablito came out. Pablito and the asset talked briefly. The asset gave Pablito the marked money. The asset received something from appellant. The pre-arranged signal signifying consummation of the transaction was given. The team members approached Pablito and the asset, introduced themselves as police officers and arrested accused. He was brought to the police station. The arrival of the team was recorded in the police blotter. The merchandise handed by accused to the asset was sent to the Regional Crime Laboratory in Camp Vicente Lim, Canlubang, Laguna. The specimen was positive for methamphetamine Hydrochloride (shabu), a dangerous drug.

SPO2 Lopez received the person of the accused, the marked money and the item accused handed to the asset. Lopez prepared the request for laboratory examination. He also prepared the documents required for filing of the case with the Public Prosecutor.

SPO2 Danilo Mercado recorded the marked bills in the police blotter before the buy-bust. Upon the team's return, the marked money and the merchandise from accused were turned over to SPO2 Mercado. He prepared a complaint sheet. Thereafter, he turned over accused and the evidence to the Police Investigator.

SPO4 Protacio Marasigan received a written request for laboratory examination of the subject merchandise. He brought the request to the crime laboratory in Laguna.

Jupri Delantar, a Forensic Chemical Officer in Camp Vicente Lim, Laguna, conducted the examination. The merchandise tested positive for shabu.

Accused-appellant denied the charge. He stated that at about 9:15 in the evening of December 16, 2002 he was at home watching TV with his family when police officers arrived. When he opened the door, a police officer poked his gun at him. Somebody else held a long firearm. Pablito was handcuffed and brought outside. He refused to negotiate and asked for a warrant. The policemen searched the house, turned over the beddings and uncovered their furniture. No gun nor shabu was found. Pablito was brought to the police station and detained. After three (3) days he was released. He received a subpoena from the Public Prosecutor afterwards.

His wife Crisanta, corroborated appellants' testimony. She added having told her husband about the loss of their cellphone and the money in his

wallet. She was asked to produce P5,000.00 which she was unable to do. She was able to raise only P2,000.00.

### **Judgment of the RTC**

On February 21, 2006, the Regional Trial Court, Branch 4, in Batangas City (RTC) rendered its judgment convicting Andaya as charged, and meted him the penalty of life imprisonment,<sup>[5]</sup> viz:

In the case at bar, the buy-bust operation conducted on the night of December 16, 2002 is supported by the police blotter wherein not only was the departure and arrival of the operatives have been duly recorded but also the two (2) pieces of marked one hundred peso bills. The arrest of the accused was made after the police asset had given the pre-arranged signal outside his house. The marked money was recovered from the very hand of the accused while the deck of crystalline substances given to the asset upon the latter's handing over to the accused the marked money has been turned over to the police by the asset. The crystalline substance when examined at the police crime laboratory was found to contain methamphetamine hydrochloride a dangerous and prohibited drug and weighed 0.09 gram.

These foregoing facts have been clearly testified to by the Prosecution witnesses who are members of the Philippine Integrated National Police Force stationed at Batangas City. No ill-motive has been imputed to any of these police officers prior to and at the time the herein accused was arrested on the night of December 16, 2002.

The accused and his wife as a defense denied the sale of shabu that fateful night. There were allegations in their testimonies that the police demanded money from them. The wife of the accused even testified that she gave P1,500.00 to the police officer who then eventually released said accused. And early on, she even claimed money and a cellphone were missing after the accused was arrested in their house.

The testimonies of the accused and his wife are bereft of any corroborating evidence emanating from a disinterested source. It is no less than self-serving devoid of any credence considering the following circumstances:

1. Scrutinizing the entirety of the testimony of the accused and his wife Crisanta Andaya, there are material variances gleaned therefrom. The accused himself never testified that he was pushed to a chair and yet witness Crisanta Andaya said she saw her husband pushed to a chair. Also, the accused said there were two guns poked at him when he opened the door but his wife said only one was holding a gun while another had a long firearm on his shoulder.

2. The testimony of the accused was that only P500.00 was taken by the police before his release. But the wife said P1,500.00 was given to the police before the accused was released.
3. The accused and his wife never made any complaint to the proper authorities as regards the alleged loss of money and cellphone when the accused was arrested on December 16, 2002. Neither was there any complaint filed by them for the alleged P500.00 or P1,500.00 demanded from and given by them to the police.
4. The accused was a resident of Barangay San Jose Sico, Batangas City since the 1980's why was it that it was at Rosario, Batangas where the accused was arrested. The Defense gave no evidence to contest the presumption of guilt based on flight.
5. It is significant to note also that the accused never bothered to ask who was knocking at his door past 9:00 o'clock in the evening. While his family was already lying in bed to sleep he was still watching T.V. These actuations of the accused tend to support the fact that the police asset had made a deal with the accused for the sale of shabu and was expecting the asset to come that night.

In the light of all foregoing considerations, the Court is left with no alternative than to find the herein accused criminally liable for the offense charged in the information.

Wherefore, accused Pablito Andaya y Reano is found **GUILTY** beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165. He is therefore sentenced to undergo life imprisonment and to pay the costs of this action. The 0.09 gram of methamphetamine hydrochloride subject of this case is confiscated and directed to be proceeded against pursuant to law.

The accused may be credited with his preventive imprisonment if he is entitled to any.

SO ORDERED.<sup>[6]</sup>

### **Decision of the CA**

In his appeal, Andaya contended:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE ACCUSED-

## APPELLANT'S SEARCH AND ARREST AS ILLEGAL.

### II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[7]</sup>

On February 11, 2008, the CA promulgated its assailed decision affirming the conviction,<sup>[8]</sup> viz:

WHEREFORE, in view of the foregoing, the appeal is DISMISSED. The decision of Branch IV, RTC, Fourth Judicial Region, Batangas City, in Criminal Case No. 12771 is AFFIRMED in toto.

SO ORDERED.<sup>[9]</sup>

### Issues

Hence, Andaya appeals, insisting that the search of his house and his person and his arrest by the police officers violated his constitutional right against unreasonable searches and seizures; and that the Prosecution's non-presentation of the confidential informant was adverse to the Prosecution, indicating that his guilt was not proved beyond reasonable doubt.

### Ruling

The appeal is meritorious.

To secure the conviction of the accused who is charged with the illegal sale of dangerous drugs as defined and punished by Section 5, Article II of Republic Act No. 9165 (*Comprehensive Drugs Act of 2002*), the State must establish the concurrence of the following elements, namely: (a) that the transaction or sale took place between the accused and the poseur buyer; and (b) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.<sup>[10]</sup>

We reiterate that a buy-bust operation is a valid and legitimate form of entrapment of the drug pusher.<sup>[11]</sup> In such operation, the poseur buyer transacts with the suspect by purchasing a quantity of the dangerous drug and paying the price agreed upon, and in turn the drug pusher turns over or delivers the dangerous drug subject of their agreement in exchange for the price or other consideration. Once the transaction is consummated, the drug pusher is arrested, and can be held to account under the criminal law. The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested *in flagranti delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person.<sup>[12]</sup> The arresting police officer or private person is favored in such instance with the