

## FIRST DIVISION

[ G.R. No. 200165, January 30, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
REYNALDO NACUA, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Before Us for review is the Decision<sup>[1]</sup> dated July 28, 2011 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00896, which affirmed with modification the Decision<sup>[2]</sup> dated March 17, 2008 of the Regional Trial Court (RTC), Branch 58 of Cebu City in Criminal Case No. CBU-77272, finding accused-appellant Reynaldo Nacua guilty beyond reasonable doubt of violating Article 2, Section 5 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

The antecedent facts, as culled from the records, are as follows:

On September 16, 2005, Police Officer (PO) 3 Cirilo R. Luague (Luague) and PO1 Julius B. Aniñon (Anifion) of the Philippine National Police (PNP) in Cebu City executed and filed before the Office of the City Prosecutor of Cebu a Joint Affidavit<sup>[3]</sup> charging accused-appellant and his common-law wife, Teresita Villanueva-Nacua (Teresita), of selling and delivering methamphetamine hydrochloride, also known as *shabu*, at their residence at 0475 Dela Rama Compound, D. Jakosalem Street, Sitio Taup, Barangay Cogon Ramos, Cebu City.

According to their Joint Affidavit, PO3 Luague and PO1 Aniñon were instructed to conduct a surveillance of the house of accused-appellant and Teresita (Nacua couple) based on information from a "police asset" that the said couple was illegally trading *shabu*. The surveillance commenced on August 26, 2005. PO3 Luague and PO1 Aniñon, with the help of their informant, executed a "test-buy" operation on September 2, 2005, during which, PO3 Luague and PO1 Aniñon bought and received from the Nacua couple a sachet of suspected *shabu*. The police officers immediately submitted the sachet and its contents for forensic examination at the PNP Regional Crime Laboratory Office (RCLO), Camp Sotero Cabahug, Gorordo Avenue, Cebu City.<sup>[4]</sup> Per the PNP-RCLO Chemistry Report No. D-1306-2005<sup>[5]</sup> dated September 2, 2005, the specimen submitted by PO3 Luague and PO1 Aniñon, weighing 0.02 grams, tested positive for methamphetamine hydrochloride.

On the strength of the Joint-Affidavit of PO3 Luague and PO1 Aniñon and PNP-RCLO Chemistry Report No. D-1306-2005 dated September 2, 2005, Police Inspector (P/Insp.) Renero L. Agustin, Sr. (Agustin) applied for a court warrant to search the residence of the Nacua couple for more evidence. RTC-Branch 7 of Cebu City granted P/Insp. Agustin's application and issued Search Warrant No. 1535-09-1605-7 on September 16, 2005, authorizing the search of the residence of the Nacua

couple at "Rm. No. 2, 2<sup>nd</sup> Flr., 0475 Dela Rama Cmpd., D. Jakosalem St., Sitio Taup, Brgy. Cogon, Ramos, Cebu City" and seizure of "[u]ndetermined quantity of methamphetamine hydrochloride, a dangerous drug, locally known as Shabu."<sup>[6]</sup>

On September 21, 2005, PO3 Luague and PO1 Aniñon, together with Senior Police Officer (SPO) 1 Elmo Y. Rosales (Rosales) and PO1 Julius S. Regis (Regis), implemented the search warrant at the house of the Nacua couple. Also present at the house during the search were Barangay Councilor Omar D. Durano, Sr. and Barangay Tanod Carlito Murillo. In the course thereof, the police officers found and seized the following items at the house of the Nacua couple:

- a. One pc weighing scale
- b. One plastic pack containing fourteen pcs plastic packs
- c. Six pcs drug/clip separators
- d. Six pcs plastic packs with left-over of white substance, now submitted to the PNP crime laboratory for examination
- e. One pc small rolled tin foil
- f. Two pcs safety pins
- g. Twelve pcs small plastic packs
- h. One pc gillete razor blade
- i. One pc glass tube tooter
- j. One pc small lamp
- k. Two pcs medical scissors
- l. One pc nail pusher
- m. One pc big rolled tin foil
- n. One pc memo pad
- o. One pc medical forcip
- p. p. One white floor tile
- q. Two pcs lighters (disposable) color red and white color
- r. Two pcs lighters (disposable) white and silver
- s. Seven pcs small packs with white substance believed to be *shabu* now submitted to the PNP Crime laboratory for examination
- t. One pc five hundred peso paper bill
- u. Three pcs one hundred peso paper bill<sup>[7]</sup>

Consequently, the police officers immediately arrested the Nacua couple.

The PNP-RCLO, after forensic examination of the specimens submitted to it, particularly, the seven heat-sealed plastic packs containing white crystalline substance with a total weight of 0.17 grams and six plastic packs containing traces of white crystalline substance, issued Chemistry Report No. D-1415-2005 dated September 21, 2005 reporting that all the specimens tested positive for methamphetamine hydrochloride.<sup>[8]</sup>

SPO1 Rosales, PO3 Luague, PO1 Aniñon, and PO1 Regis executed a Joint Affidavit<sup>[9]</sup> on September 22, 2005 recounting how they implemented the search warrant and arrested the Nacua couple the day before, on September 21, 2005.

Teresita was able to post bail for her release on October 6, 2005,<sup>[10]</sup> but accused-

appellant remained in police custody.

On November 8, 2005, Teresita executed a Counter-Affidavit with Motion to Dismiss<sup>[11]</sup> arguing that if it were true that the police officers, during their surveillance, already saw her and accused-appellant selling plastic packs of white crystalline substance, then said police officers could have arrested her and accused-appellant right there and then for committing a crime in *flagrante delicto*; that the allegations of a test-buy conducted on September 2, 2005 were a fabrication and should not be given weight without the affidavit of the informer/poseur-buyer and the marked money; that she was wrongly described as having shoulder-length hair when she actually had longer hair and referred to as "Cita" instead of her real nickname "Tessie" in the Joint Affidavit dated September 16, 2005 of PO3 Luague and PO1 Aniñon; and that her residence and accused-appellant was located at 70-E Mango Avenue, Cebu City, not Dela Rama Compound, D. Jakosalem Street, Sitio Taup, Barangay Cogon Ramos, Cebu City. In the end, Teresita asserted that the complaint against them failed to establish the elements of the charge of sale of prohibited drugs, to wit: (1) the identity of the buyer and seller, the object, and consideration; and (2) the delivery of the thing sold and payment for the same.

The Office of the City Prosecutor of Cebu City, after its preliminary investigation, issued a Resolution<sup>[12]</sup> dated November 8, 2005 finding probable cause to indict the Nacua couple for violation of Article 2, Section 5 of Republic Act No. 9165. The said Office reasoned that the purpose of a "test-buy operation" is different from a "buy-bust operation;" and that "[t]he former is conducted for the purpose of applying for a search warrant, and the latter is conducted when it is difficult to locate the residence of the accused or when [his] identity or name cannot be determined with absolute certainty."

The Information against the Nacua couple, filed before RTC-Branch 58 of Cebu City on November 8, 2005, reads:

That on or about the 2<sup>nd</sup> day of September 2005, at about 4:35 o'clock P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, 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 packet of white crystalline substance, weighing 0.02 gram, locally known as *shabu*, containing methylamphetamine hydrochloride, a dangerous drug.<sup>[13]</sup>

On July 25, 2006, the RTC issued Warrants of Arrest for Teresita and accused-appellant, and an Order for the detention of accused-appellant at the Bagong Buhay Rehabilitation Center (BBRC) of Cebu City during the pendency of the case.<sup>[14]</sup>

The Warrant of Arrest for Teresita was returned unserved and she was considered to be at-large. Nonetheless, the case proceeded against accused-appellant.

Accused-appellant was arraigned and pleaded not guilty on September 4, 2006.<sup>[15]</sup> After the pre-trial conference conducted on September 22, 2006,<sup>[16]</sup> trial proper

ensued.

The prosecution called to witness stand PO1 Aniñon,<sup>[17]</sup> PO3 Luague,<sup>[18]</sup> and SPO1 Rosales;<sup>[19]</sup> but dispensed with the testimony of Jude Daniel Mendoza, a forensic officer, since the parties already stipulated as to the subject of his testimony.<sup>[20]</sup> The documentary and physical evidence for the prosecution, all admitted by the RTC in its Order<sup>[21]</sup> dated December 18, 2007, consisted of (1) the Letter-Request dated September 2, 2005 for forensic examination of the white crystalline substance contained in a small heat-sealed plastic pack marked "RN;"<sup>[22]</sup> (2) the PNP-RCLO Chemistry Report No. D-1306-2005 dated September 2, 2005;<sup>[23]</sup> (3) the Blotter Report dated September 2, 2005;<sup>[24]</sup> (4) the sachet of *shabu*;<sup>[25]</sup> and (5) the Search Warrant No. 1535-09-1605-7 dated September 16, 2005.<sup>[26]</sup>

The evidence for the prosecution presented the following version of events:

The chief of office of the concerned police officers received information from a "confidential agent" or informant that the Nacua couple was engaged in the illegal drug trade. This information was relayed to SPO1 Rosales who, in turn, instructed his team members, namely, PO3 Luague and PO1 Aniñon, to conduct a surveillance of the house of the Nacua couple. PO3 Luague and PO1 Aniñon specifically conducted surveillance on August 26, 28, and 30, 2005, observing that youngsters frequent the residence of the Nacua couple.

On September 2, 2005, SPO1 Rosales, PO3 Luague, and PO1 Aniñon conceptualized a "test-buy" operation in furtherance of their investigation and for the purpose of procuring a search warrant from a court. Two P100.00 bills were used as "test-buy" money. Together with their informant, PO3 Luague and PO1 Aniñon entered the house of the Nacua couple. After PO1 Aniñon gave the money to accused-appellant, the latter asked Teresita to bring out the *shabu*. Accused-appellant then handed the sachet of suspected *shabu* to PO1 Aniñon. Without arresting the Nacua couple, PO3 Luague, PO1 Aniñon, and the informant left the house of the said couple. The police officers proceeded to their police station, where SPO1 Rosales marked the sachet of suspected *shabu* received from the Nacua couple with the initials "RN" representing the name of accused-appellant and prepared a letter-request for the forensic examination of the same. SPO1 Rosales then designated PO1 Aniñon to turn over the specimen to the PNP-RCLO in Cebu City. On the same day, it was confirmed that the crystalline substance contained in the heat-sealed sachet bought from the Nacua couple was indeed *shabu*.

On the basis of the foregoing test-buy, Search Warrant No. 1535-09-1605-7 was issued by the RTC on September 16, 2005, which was implemented on September 21, 2005, during the course of which, accused-appellant and Teresita were arrested. The test-buy money was no longer recovered.

Accused-appellant<sup>[27]</sup> offered his lone testimony, generally belying the charge against him. Accused-appellant claimed that he was a Jai-alai coordinator before his arrest and denied selling *shabu* at his residence on September 2, 2005. He also insisted that for the past 20 years, he had been residing at the house of Teresita's parents at 70-E Mango Avenue, Cebu City.

On March 19, 2008, the RTC promulgated its Decision finding accused-appellant guilty beyond reasonable doubt of the crime charged. The RTC decreed thus:

Accordingly, this court finds accused, Reynaldo Nacua, also known as Roque Reynaldo Nacua, **GUILTY** beyond reasonable doubt of the crime charged and hereby sentences him to suffer Life Imprisonment.

Issue an alias warrant of arrest against Teresita V. Nacua, who was never arraigned as she had remained at large.

The pack of *shabu*, Exh. "C," is confiscated in favor of the state for proper disposition.<sup>[28]</sup>

On the same day, accused-appellant filed his Notice of Appeal.<sup>[29]</sup> On April 24, 2008, the RTC issued an Order committing the person of accused-appellant to the Bureau of Corrections.<sup>[30]</sup>

Accused-appellant, represented by the Public Attorney's Office, filed his Brief<sup>[31]</sup> before the Court of Appeals, ascribing the following errors on the part of the RTC:

## I

THE COURT A QUO ERRED IN APPRECIATING THE SUSPECTED SHABU AGAINST ACCUSED-APPELLANT DESPITE NAGGING DOUBTS ON ITS IDENTITY FOR FAILURE ON THE PART OF THE ARRESTING OFFICER TO FOLLOW THE STATUTORY REQUIREMENTS UNDER SECTION 21 OF RA 9165.

## II

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED- APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

## III

THE COURT A QUO ALSO ERRED IN FINDING THE ACCUSED- APPELLANT GUILTY OF THE CRIME CHARGED BY RELYING ON THE WEAKNESS OF THE DEFENSE RATHER THAN ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE.<sup>[32]</sup>

Plaintiff-appellee, represented by the Office of the Solicitor General, filed its Brief,<sup>[33]</sup> countering that:

## I

ACCUSED-APPELLANT'S GUILT WAS PROVEN BEYOND REASONABLE