

## FIRST DIVISION

[ G.R. No 191726, February 06, 2013 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NOEL BARTOLOME Y BAJO, ACCUSED-APPELLANT.**

### D E C I S I O N

**BERSAMIN, J.:**

A buy-bust operation has been recognized in this jurisdiction as a legitimate form of entrapment of the culprit. It is distinct from instigation, in that the accused who is otherwise not predisposed to commit the crime is enticed or lured or talked into committing the crime. While entrapment is legal, instigation is not.

This final appeal is taken by the accused from the decision promulgated on January 29, 2010,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed his conviction for illegal sale of methamphetamine hydrochloride or *shabu* in violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) handed down by the Regional Trial Court, Branch 120, in Caloocan City (RTC) through its decision dated July 12, 2006.<sup>[2]</sup>

#### **Antecedents**

On August 13, 2003, the City Prosecutor's Office of Caloocan City charged the accused with illegally selling methamphetamine hydrochloride or *shabu* in violation of Section 5, Article II, of Republic Act No. 9165 through the information reading thus:

That on or about the 10<sup>th</sup> day of August 2003 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 Borban Paras, who posed as poseur buyer, one (1) heat sealed transparent plastic sachet containing 0.06 gram of Methylamphetamine Hydrochloride (*shabu*), knowing the same to be dangerous drug.

Contrary to Law.<sup>[3]</sup>

After the accused pleaded *not guilty*, trial ensued. The evidence for the State was as follows.

On August 10, 2003, at around 1:00 a.m., an informant went to the Anti-Illegal Drugs Special Operations Unit (ADSOU) in Caloocan City to report the illicit drug dealings of the accused on Reparo Street, Bagong Barrio, Caloocan City. Acting on

the report, Police Inspector Cesar Cruz of ADSOU immediately instructed some of his men to conduct a buy-bust operation against the accused. During the pre-operation briefing, the buy-bust team designated PO1 Borban Paras as the poseur-buyer. Paras was given a P100.00 bill that he marked with his initials BP. It was agreed that the informant would drop a cigarette butt in front of the suspect to identify him to Paras; and that Paras would scratch his head to signal to the buy-bust team that the transaction with the suspect had been consummated. The operation was coordinated with the Philippine Drug Enforcement Agency.

Upon arriving at the target area at around 2:00 a.m. of August 10, 2003, the team members positioned themselves in the vicinity of a store. The informant then approached a person who was standing in front of the store and dropped a cigarette butt in front of the person. Paras, then only two meters away from the informant, saw the dropping of the cigarette butt. Paras went towards the suspect and said to him: *Pre pa-iskor nga*. The suspect responded: *Pre, piso na lang tong hawak magkano ba kukunin mo?* Paras replied: *Ayos na yan, piso lang naman talaga ang kukunin ko*, after which he handed the marked P100.00 bill to the suspect, who in turn drew out a plastic sachet containing white substances from his pocket and gave the sachet to Paras. With that, Paras scratched his head to signal the consummation of the sale. As the other members of the team were approaching, Paras grabbed the suspect. PO3 Rodrigo Antonio, another member of the team, confiscated the marked P100.00 bill from the suspect, who was identified as Noel Bartolome y Bajo. Paras immediately marked the sachet at the crime scene with Bartolome's initials *NBB*.<sup>[4]</sup>

Insp. Cruz later requested in writing the PNP Crime Laboratory in Caloocan City to conduct a laboratory examination of the contents of the plastic sachet seized from Bartolome.<sup>[5]</sup> PO2 Rolando De Ocampo, another member of the buy-bust team, brought the request and the sachet and its contents to the laboratory. In due course, Forensic Chemical Officer Jesse Abadilla Dela Rosa of the PNP Crime Laboratory confirmed in Physical Science Report No. D-1038-03 that the plastic sachet contained 0.06 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[6]</sup>

On his part, the accused claimed that the arresting officers had framed him up because they wanted to extort a substantial amount from him in exchange for his release. The version of the accused tended to show the following.

On August 9, 2003, at about 12:00 in the afternoon, the accused went to his brother's house located on Zapote Street, Bagong Barrio, Caloocan City, to take a rest from his work as a construction worker. While he and his brother were watching the television show *Eat Bulaga* inside the house, two policemen suddenly entered the house. One of the policemen, whom the accused later identified as PO3 Antonio, frisked the accused but spared his brother because the latter was asthmatic. The policemen then brought the accused to the police station and detained him. At the police station, PO3 Antonio inquired from the accused if he was selling *shabu*, but the accused denied doing so. It was then that PO3 Antonio demanded P20,000.00 from the accused in exchange for his freedom. The accused refused to pay because he did not have the money.<sup>[7]</sup>

### **Ruling of the RTC**

As stated, the RTC convicted Bartolome of the crime charged,<sup>[8]</sup> to wit:

WHEREFORE, premises considered, the Court finds and so holds that accused NOEL BARTOLOME Y BAJO is GUILTY beyond reasonable doubt for violation of Section 5, Article II, Republic Act No. 9165 and imposes upon him the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00).

The one (1) piece of heat-sealed transparent plastic sachet containing 0.06 gram of Methylamphetamine Hydrochloride is hereby ordered confiscated in favor of the government to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.

### **Ruling of the CA**

On appeal, the accused assailed his conviction, stating:

#### **I**

ASSUMING THAT THE ACCUSED-APPELLANT PARTICIPATED IN THE SELLING OF ILLEGAL DRUGS, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF THE CRIME CHARGED SINCE HE WAS MERELY INSTIGATED BY THE POLICE INTO DOING IT.

#### **II**

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE POLICE'S FAILURE TO COMPLY WITH THE PROCEDURE IN THE CUSTODY OF SEIZED PROHIBITED AND REGULATED DRUGS PRESCRIBED UNDER THE IMPLEMENTING RULES AND REGULATION OF REPUBLIC ACT NO. 9165 WHICH CASTS SERIOUS DOUBT ON THE IDENTITY OF THE SEIZED DRUG CONSTITUTING THE CORPUS DELICTI OF THE OFFENSE.

The accused argued that the operation mounted against him was not an entrapment but an instigation, contending that without the proposal and instigation made by poseur buyer Paras no transaction would have transpired between them; that the police team did not show that its members had conducted any prior surveillance of him; and that the Prosecution should have presented the informant as a witness against him.

On January 29, 2010, the CA promulgated its assailed decision,<sup>[9]</sup> rejecting the assigned errors of the accused, and affirmed his conviction. It held that the operation against him was not an instigation but an entrapment, considering that the criminal intent to sell dangerous drugs had originated from him, as borne out by the *shabu* being inside his pocket prior to the transaction with Paras; that the accused did not show that Paras had any ill motive to falsely testify against him;

that the conduct of a prior surveillance and the presentation of the informant as a witness were not necessary to establish the validity of the entrapment; and that the non-compliance by the buy-bust team with the requirements under Section 21 of the Implementing Rules and Regulations for Republic Act No. 9165 (IRR) was not fatal because there was a justifiable ground for it, and because the apprehending team properly preserved the integrity and evidentiary value of the confiscated drugs.

Hence, the accused is now before the Court in a final bid for acquittal.

### **Ruling**

The appeal lacks merit.

To establish the crime of illegal sale of *shabu*, the Prosecution must prove beyond reasonable doubt (a) the identity of the buyer and the seller, the identity of the object and the consideration of the sale; and (b) the delivery of the thing sold and of the payment for the thing. The commission of the offense of illegal sale of dangerous drugs, like *shabu*, requires simply the consummation of the selling transaction, which happens at the moment the buyer receives the drug from the seller. In short, what is material is the proof showing that the transaction or sale actually took place, coupled with the presentation in court of the thing sold as evidence of the *corpus delicti*. If a police officer goes through the operation as a buyer, the crime is consummated when the police officer makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer.<sup>[10]</sup>

The concurrence of the foregoing elements was conclusively established herein.

To start with, Paras, as the poseur-buyer, testified that the accused sold to him *shabu* during the buy-bust operation, to wit:

Q – So when the informant proceeded to the place of Noel Bartolome, what did the informant do?

A – After he threw cigarette in front of Noel Bartolome, I approached him. x

x x x

Q – What happened next?

A – When I approached the accused, I told him. “Pre-paiskor nga” and he said

“Pre, piso na lang tong hawak ko  
Magkano ba ang kukunin mo” and he said  
“ayos nay an, piso lang naman talaga ang kukunin ko.”

Q – Who handed first you or the accused?

A – I was the one who handed the buy bust money.

Q – After giving him the P100.00 pesos to Noel Bartolome where did he place it?

A – Then after that he placed it on his front pocket and then after that he got one (1) plastic sachet from his left front pocket.

Q – And then after giving you the plastic sachet containing illegal drug, what did you do?

A – I scratched my head, sir.

Q – After scratching your head, what transpired if any?

A – When I saw my companions approaching me, I grabbed Noel Bartolome, sir.<sup>[11]</sup>

Secondly, the transmission of the plastic sachet and its contents from the time of their seizure until they were delivered to the PNP Crime Laboratory for chemical examination was properly documented, starting with the marking of the plastic sachet at the crime scene by Paras. This was followed by the preparation of the written request by Insp. Cruz at the ADSOU. PO2 De Ocampo then personally brought the plastic sachet and its contents, together with the written request, to the PNP Crime Laboratory, where the delivery of the request and of the sachet and its contents was recorded by SPO1 Bugabuga of that office. In Physical Sciences Report No. D-1038-03, Chemist Dela Rosa of the PNP Crime Laboratory ultimately certified that the contents of the plastic sachet were examined and found to be 0.06 grams of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[12]</sup>

And, thirdly, the Prosecution presented the *shabu*, the marked P100.00 bill, and Chemist Dela Rosa's Physical Sciences Report No. D-1038-03 at the trial.<sup>[13]</sup>

On the other hand, the accused's claim of being the victim of a vicious frame-up and extortion is unworthy of serious consideration. The fact that frame-up and extortion could be easily concocted renders such defenses hard to believe. Thus, although drug-related violators have commonly tendered such defenses to fend off or refute valid prosecutions of their drug-related violations, the Court has required that such defenses, to be credited at all, must be established with clear and convincing evidence.<sup>[14]</sup> But the accused did not adduce such evidence here, for all he put up were self-serving denials. Had the version of the Defense been what really transpired, there was no reason for the accused and his brother not to have formally charged the police officers with the severely penalized offense of planting of evidence under Section 29<sup>[15]</sup> of Republic Act No. 9165 and extortion. Thereby, the allegations of frame-up and extortion were rendered implausible.

Yet, the accused discredits the validity of his arrest by contending that the arrest resulted from an instigation, not from a legitimate entrapment. He insists that the evidence of the Prosecution did not show him to be then looking for buyers of *shabu* when Paras and the informant approached him; that it was Paras who proposed to