

## SECOND DIVISION

[ G.R. No. 185719, June 17, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCELINO COLLADO Y CUNANAN, MYRA COLLADO Y SENICA,  
MARK CIPRIANO Y ROCERO, SAMUEL SHERWIN LATARIO Y  
ENRIQUE, \* AND REYNALDO RANADA Y ALAS, \*\* ACCUSED-  
APPELLANTS.**

### DECISION

**DEL CASTILLO, J.:**

Mere allegations and self-serving statements will not overcome the presumption of regularity in the performance of official duties accorded to police officers. There must be a showing of clear and convincing evidence to successfully rebut this presumption.

On appeal is the February 28, 2008 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02626 which affirmed with modification the December 7, 2005 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Pasig City, Branch 154 in Criminal Case Nos. 13781-D, 13783-D and 13784-D. The RTC convicted the appellants and several other accused for violations of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and imposed upon them the penalty of imprisonment and payment of fine in each of their respective cases.

#### ***Factual Antecedents***

On October 14, 2004, appellants Marcelino Collado (Marcelino) and Myra Collado (Myra) were charged with the crimes of sale of dangerous drugs and maintenance of a den, dive or resort in violation of Sections 5 and 6 of Article II, RA 9165 docketed as Criminal Case Nos. 13781-D and 13782-D, respectively, viz:

#### **CRIMINAL CASE NO. 13781-D**

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Richard N. Noble, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

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

### **CRIMINAL CASE NO. 13782-D**

On or about or immediately prior to October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously maintain a den, dive or resort located at No. 32 R. Hernandez St., Brgy. San Joaquin, Pasig City, where x x x dangerous drugs are used or sold in any form, in violation of the said law.

Contrary to law.<sup>[4]</sup>

Marcelino was also charged with illegal possession of dangerous drugs under Section 11, Article II of the same law docketed as Criminal Case No. 13783-D, viz:

### **CRIMINAL CASE NO. 13783-D**

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing six centigrams (0.06 gram) of white crystalline substance, which was found to be positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[5]</sup>

On the other hand, appellants Mark Cipriano (Cipriano), Samuel Sherwin Latario (Latario), Reynaldo Ranada (Ranada), together with co-accused Melody Apelo (Apelo), Marwin Abache (Abache), Michael Angelo Sumulong (Sumulong), and Jay Madarang (Madarang), were charged with possession of drug paraphernalia in violation of Section 14, Article II of RA 9165, docketed as Criminal Case No. 13784-D, viz:

### **CRIMINAL CASE NO. 13784-D**

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, each being in the proximate company of two (2) persons and in conspiracy with one another, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously have in their possession and under their custody and control the following paraphernalias [sic], fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body, to wit:

a. one (1) strip aluminum foil containing traces of white crystalline substance marked as Exh-D;

- b. one (1) improvised glass tooter containing traces of white crystalline substance marked as Exh-D1;
- c. one (1) pack transparent plastic sachet marked as Exh-D2;
- d. two (2) plastic disposable lighters marked as Exhs. "G-H";
- e. one (1) tape-sealed transparent plastic sachet containing three (3) rolled aluminum foil marked as Exh. D5;
- f. five (5) unsealed transparent plastic sachets marked as Exh. D6;
- g. one (1) stainless scissor marked as Exh. D7;
- h. one (1) rectangular glass marked as Exh. D8; and
- i. one (1) roll of aluminum foil marked as Exh. D9.

[Specimens] marked as Exh-D and Exh-D1 were found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[6]</sup>

Upon arraignment on November 4, 2004, all the appellants and the other accused pleaded not guilty.<sup>[7]</sup> Pre-trial and joint trial on the merits subsequently ensued.

### ***Version of the Prosecution***

The prosecution presented as witnesses PO2 Richard Noble (PO2 Noble) and SPO2 Bernardo Cruz (SPO2 Cruz) who were involved in the buy-bust operation that led to the arrest of the appellants. Their testimonies are summarized as follows:

On October 9, 2004, PO2 Noble received information from a civilian asset that spouses Marcelino and Myra were engaged in selling *shabu* and that drug users, including out-of-school youth, were using their residence in 32 R. Hernandez St., San Joaquin, Pasig City, for their drug sessions.<sup>[8]</sup> After recording the report in the police blotter, PO2 Noble relayed the information to his superior, P/Insp. Earl B. Castillo (P/Insp. Castillo), who in turn ordered the conduct of a surveillance operation.<sup>[9]</sup> PO2 Noble, SPO2 Cruz and PO1 Anthony Bitbit, conducted a surveillance on the couple's residence. After confirming the reported activities, SPO2 Cruz looked for an asset who could introduce them to Marcelino and Myra in the ensuing buy-bust operation.<sup>[10]</sup>

A buy-bust operation team was thereafter formed. After coordinating with the Philippine Drug Enforcement Agency as evidenced by a Pre-Operation Report,<sup>[11]</sup> the team proceeded to Marcelino's and Myra's residence on board two private vehicles. Upon reaching the target area, the asset introduced PO2 Noble to Marcelino as a regular buyer of *shabu*.<sup>[12]</sup> When asked how much *shabu* he needed, PO2 Noble replied, "*dalawang piso*," which means P200.00 worth of drugs. But when PO2 Noble was handing over the marked money to Marcelino, the latter motioned that the same be given to his wife, Myra, who accepted the money. Marcelino then took from his pocket a small metal container from which he brought out a small plastic sachet containing white crystalline substance and gave the same to PO2 Noble. While PO2 Noble was inspecting its contents, he noticed smoke coming from a table inside the house of the couple around which were seven

persons.<sup>[13]</sup> When PO2 Noble gave the pre-arranged signal, the backup team rushed to the scene. Simultaneously, PO2 Noble introduced himself as a policeman and arrested Marcelino. He frisked him and was able to confiscate the metal container that contained another sachet of white crystalline substance. PO2 Noble wrote the markings "MCC-RNN October 9, 2004" on both the plastic sachets of white substance sold to him by Marcelino and the one found inside the metal container.

Meanwhile, SPO2 Cruz and another police officer went inside the house of Marcelino and Myra, where they found Apelo, Cipriano, Ranada, Abache, Sumulong, Madarang and Latario gathered around a table littered with various drug paraphernalia such as an improvised water pipe, strips of aluminum foil with traces of white substance, disposable lighters, and plastic sachets. A strip of aluminum foil used for smoking marijuana was recovered from Ranada. The buy-bust team arrested all these persons, advised them of their constitutional rights, and brought them to police headquarters for investigation and drug testing.

A chemistry report<sup>[14]</sup> on all the seized items yielded positive results for methylamphetamine hydrochloride. Another chemistry report<sup>[15]</sup> showed Marcelino, Apelo, Cipriano, and Ranada positive for drug use while Myra, Abache, Sumulong, Madarang, and Latario were found negative.

### ***Version of the Defense***

The defense presented the testimonies of Marcelino, Myra, and Ranada, who all essentially put up the defense of denial. The following is their version of the story.

Marcelino and Myra owned an electronics and appliance repair shop annexed to their house. In the evening of October 9, 2004, Marcelino was in the living room with his children and nieces fixing a VCD player. Apelo, their househelp, was in the kitchen preparing food while Ranada, their repairman, was outside the house fixing Sumulong's motorcycle. Cipriano and Madarang were also present at the shop, the former to redeem his car stereo and the latter to borrow a play station CD. Latario, a housemate of Marcelino and Myra, was also present at the time.

Marcelino suddenly heard someone say "*Walang tatakbo!*" Four armed men rushed inside the house and pointed their guns at him and said "*Wag ka nang pumalag.*" He was thereafter dragged outside where he saw the other accused already in handcuffs. Marcelino was later informed that they were being arrested for selling *shabu*. Marcelino protested and disclaimed any knowledge about drugs. When the officers frisked all the accused, Marcelino claimed that nothing illegal nor incriminating was recovered from them.

When Myra arrived at the scene, she was shocked to see her husband being arrested. The police officers then brought all the accused to the police station for further questioning.

At the police station, PO2 Noble asked Marcelino for P50,000.00 as settlement of their case. Marcelino, Apelo, Cipriano, and Ranada were also made to drink water that according to Marcelino tasted bitter.<sup>[16]</sup> They were then brought to Camp Crame for medical examination and drug tests. Those who drank the bitter water tested positive for drugs use while the others, who did not drink, tested negative.

Marcelino surmised that their arrest was due to a misunderstanding he had with a former police officer named Rey who bought a VCD player from his shop. He specifically instructed Rey not to let anyone repair the VCD player should it malfunction. However, when the VCD player malfunctioned, Rey had it repaired by somebody else, hence Marcelino refused to accept the VCD player and return Rey's money. This earned the ire of Rey who threatened him with the words "Humanda ka pagbalik ko."<sup>[17]</sup>

### ***Ruling of the Regional Trial Court***

In its Decision<sup>[18]</sup> dated December 7, 2005, the RTC disposed of the case as follows:

**WHEREFORE**, premises considered, judgment is hereby rendered as follows:

In Crim. Case No. 13781-D, finding the accused **MARCELINO COLLADO y Cunanan and MYRA COLLADO y Senica GUILTY** beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 (sale of dangerous drug) and they are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT**.

Additionally, the two accused are ordered to pay a fine of **ONE MILLION PESOS (P1,000,000.00) EACH**.

In Crim. Case No. 13782-D, judgment is rendered finding the accused **MARCELINO COLLADO y Cunanan and MYRA COLLADO y Senica NOT GUILTY** of the crime of violation of Section 6.

In Crim. Case No. 13783-D, finding the accused **MARCELINO COLLADO y Cunanan GUILTY** of the offense of violation of Section 11 of R.A. 9165 and he is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS**.

The accused Marcelino Collado is also ordered to pay a fine of **THREE HUNDRED THOUSAND PESOS (P300,000.00)**.

In Crim. Case No. 13784-D, judgment is hereby rendered finding the accused **MELODY APELO y Roman, MARK CIPRIANO y Rocero, MARWIN ABACHE y Aquilino, MICHAEL ANGELO SUMULONG y Belarmino, JAY MADARANG y Gomez, SAMUEL SHERWIN LATARIO y Enrique and REYNALDO RANADA y Alas GUILTY** of the offense of violation of Section 14 of R.A. 9165 and they are hereby sentenced to suffer the indeterminate penalty of **TWO (2) YEARS, EIGHT (8) MONTHS and ONE (1) DAY to FOUR (4) YEARS** imprisonment. Each of them is also ordered to pay a fine of **TEN THOUSAND PESOS (P10,000.00)**.

Let the shabu and paraphernalia alleged to be the subject[s] of the Information be turned over and delivered immediately to the Philippine