

## SECOND DIVISION

[ G.R. No. 194382, June 10, 2013 ]

**PEOPLE PHILIPPINES, OF THE PLAINTIFF-APPELLEE, VS.  
GLORIA CALUMBRES Y AUDITOR, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

This is an appeal from the 25 August 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00242-MIN entitled *People of the Philippines v. Gloria Calumbres y Auditor*, affirming the 16 May 2005 Judgment in Criminal Case No. 2004-293 of the Regional Trial Court (RTC), Branch 25, Cagayan de Oro City. The RTC found accused guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, in an Information which alleged-

That on April 6, 2004 at about 5:30 o'clock in the afternoon at Sto. Niño. Barangay 31, Cagayan de Oro City. Philippines, and within the jurisdiction of the Honorable Court. the above-named accused without being authorized by law, did then and there wilfully, unlawfully and criminally sell, trade, dispense, deliver, distribute, and give away to another (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride locally known as shabu weighing 0.09 gram[,] accused knowing the same to be a dangerous drug, in consideration of the amount of One Hundred Pesos ( Php 100.00) in different denominations one of which is a Twenty Peso bill with serial Number EZ203528. <sup>[1]</sup>

As summarized in the appealed Court of Appeals decision, the facts are as follows:

On 6 April 2004, at around 5:30 p.m., SPO1 Reynaldo Dela Victoria (SPO1 Dela Victoria), the prosecution's lone witness, was in his office at the Special Operation Unit of the City Drug Enforcement Unit at the Cogon Public Market in Cagayan de Oro City when an informant reported to him that someone was selling *shabu* at Sto. Niño, Brgy. 31.

SPO1 Dela Victoria then hired a *faux*-buyer, giving the latter five twenty-peso bills marked money, and, riding a *trisikad*, the duo proceeded to the area that the informant described. SPO1 Dela Victoria claimed to have positioned himself at a strategic place where he could see the transaction. He saw his *poseur*-buyer handing something to Gloria Calumbres (Calumbres) after receiving something from the latter; the *poseur*-buyer's pre-arranged signal followed, prompting him to immediately approach Calumbres. He ordered her not to move, "*police mi, ayaw lihod*," shocking the accused into disbelief. He took the money from Calumbres and retrieved the suspected *shabu* from the *faux*-buyer who was standing two meters away.

SPO1 Dela Victoria brought Calumbres to his office at the Cogon Market for booking. He claimed he recorded the incident in the police blotter, prepared a request for laboratory analysis of the confiscated item and allegedly took a photograph, which, according to his testimony, was not developed, however, due to budget constraints.

[2]

A laboratory report on the confiscated item showed the white substance to be *shabu*.

Calumbres maintained her innocence and presented this defense:

Calumbres was at the ACCP Used Clothing Enterprise (*ukay-ukay*) when she snatched a wallet of a man, a customer of the store. She was caught, however, when the man's wife saw what she did. She was brought to the police station at Precinct 2 in the Cogon Market where Police Inspector Celso Montel interrogated her.

Minutes later, SPO1 Dela Victoria arrived. He investigated her and told her he was the one in charge in the security of the area where she snatched the wallet. He promised her release if she would give him three cell-phone units. At that time, however, she had none. She just arrived from Iligan City and the man from whom she snatched the wallet was supposedly her first victim.

Calumbres' defense was corroborated by Relian Abarrientos (Abarrientos), a store employee who witnessed the whole incident. Abarrientos testified that in April 2004, a woman tried to snatch a wallet from a man inside the store. The man's wife caught her and the snatcher was detained at the Cogon Police Station. Abarrientos claimed that this was the only incident that happened in the store.

The RTC convicted Calumbres as charged and sentenced her to life imprisonment, thus:

WHEREFORE, in the light of the foregoing consideration, this Court hereby finds the accused Gloria Calumbres y Auditor GUILTY beyond reasonable doubt of the crime charged in the information and sentences the accused GLORIA CALUMBRES y AUDITOR to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php 500,000.00). [3]

Finding no reversible error in the RTC ruling, the Court of Appeals affirmed the trial court's decision; hence, this appeal on the following grounds: *first*, the prosecution failed to prove the accused's guilt beyond reasonable doubt; *second*, the police failed to follow the chain of custody rule as required under Section 21(1), Article II of Republic Act No. 9167.

### **RULING OF THE COURT**

We resolve to **ACQUIT** Calumbres on the following grounds:

While it is hornbook doctrine that the evaluation of the trial court on the credibility of the witness and the testimony is entitled to great weight and is generally not

disturbed upon appeal, such rule does not apply when the trial court overlooked, misapprehended, or misapplied facts of weight or substance that would point to a different conclusion. In the instant case, these circumstances are present, that, when properly appreciated, would warrant the acquittal of the accused.

*First*, that Calumbres was arrested and brought to Precinct 2 at the Cogon Police Station, after she was caught snatching a man's wallet, was duly recorded in its police blotter.<sup>[4]</sup> The police blotter shows that she was arrested due to pickpocketing, a fact which was also corroborated by the testimony in open court of the store-employee who witnessed the whole incident.

The circumstance of Calumbres' arrest and the charge as reflected in the police blotter at Precinct 2 which was for pickpocketing, when compared to the succeeding charge for the sale of illegal drugs which was blotted at the Special Operation Unit of the City Drug Enforcement Unit casts serious doubt as to her culpability to the crime of illegal sale of *shabu*. The same crimes were committed and blotted on the same day, separated only by hours. There was no record that while in custody in the police station that she was released. Rather, the succeeding records reveal that she was already being charged for illegal sale of *shabu*, this time at the Special Operation Unit of the City Drug Enforcement Unit, which happens to be also located in Cogon Market.

*Second*, SPO1 Dela Victoria's credibility must be thoroughly looked into, being the lone arresting officer who allegedly took custody of the confiscated *shabu* and the five twenty-peso bills supposedly used by his *poseur*-buyer to buy the *shabu* from Calumbres. It did not escape us that while there were five 20-peso bills used, only one of them was presented in court. SPO1 Dela Victoria also claimed to have taken a photograph of the confiscated items but he failed to present it in court on the lame excuse that there was no money to have the picture developed; and, alone, he inventoried these items without the participation of the accused and in the absence of the authorities, in blatant disregard of Section 21, Article II of Republic Act No. 9165.

The details of SPO1 Dela Victoria's testimony reveal lapses too, which, if connected, cast reasonable doubt on the guilt of Calumbres. His informant never identified Calumbres as the drug pusher; what his informant told him was that drug sale was ongoing at Sto. Nino, Brgy. 31, prompting him to hire a *faux*-buyer.<sup>[5]</sup> At that time, the information was still unverified and the seller of *shabu* unidentified. Without the informant's details of who the pusher was, it was incomprehensible how a *poseur*-buyer, randomly and instantly hired, would have been able to identify Calumbres as the pusher.

*Third*, a reading of the RTC decision on this matter reveals that the conviction was arrived at upon reliance on the presumption of regularity in the performance of SPO1 Dela Victoria's official duty.

It is noteworthy however, that presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence.<sup>[6]</sup> Nothing less than evidence of guilt beyond reasonable doubt can erase the postulate of innocence. And this burden is met not by placing in distrust the innocence of the accused but by obliterating all doubts as to his culpability.<sup>[7]</sup>