

FIRST DIVISION

[G.R. No. 197250, July 17, 2013]

**PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS.
REYNALDO "ANDY" SOMOZA Y HANDAYA, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Accused-appellant Reynaldo "Andy" Somoza appeals from the Decision^[1] dated June 22, 2010 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00741 denying his appeal from the Joint Judgment^[2] dated May 30, 2007 of the Regional Trial Court (RTC) of Dumaguete City, Branch 30 in Criminal Case Nos. 17700 and 17701, which found him guilty of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Informations filed against accused-appellant in the trial court read:

I. Criminal Case No. 17700

That on or about the 21st day of July, 2005, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously sell and deliver to the NBI poseur buyer [one] (1) heat sealed transparent plastic [sachet] containing a total of 0.50 gram of white crystalline substance, of Methamphetamine Hydroc[h]loride, commonly called shabu, a dangerous drug.

Contrary to Sec[.] 5, Art. II of R.A[.] 9165.^[3]

II. Criminal Case No. 17701

That on or about the 21st day of July, 2005, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess and keep six (6) pieces of heat sealed transparent plastic sachets containing a total of 0.69 gram of white crystalline substance, of Methamphetamine Hydroc[h]loride, commonly called shabu, a dangerous drug.

Contrary to Sec[.] 11, Art. II of R.A[.] 9165.^[4]

Accused-appellant pleaded not guilty to both charges when arraigned.^[5] After pre-

trial was conducted, trial ensued.

The prosecution established that, sometime during the first week of July 2005, the National Bureau of Investigation (NBI) received confidential information that accused-appellant is engaged in the repacking and selling of *methamphetamine hydrochloride*, commonly known as *shabu*, and conducting his business in his residence at Barangay Looc, Dumaguete City.^[6] The NBI coordinated with the Philippine National Police (PNP) in Dumaguete City and discreet inquiries and surveillance were made to verify the information.^[7]

Police Officer (PO) 1 Marcelina Bautista and PO1 Raymunda Moreno of the PNP Dumaguete City were tasked to do the surveillance.^[8] In the course of the surveillance, PO1 Bautista was able to gain the trust of accused-appellant to the point of pretending to agree to be his girlfriend.^[9] This led to a positive test buy of P600.00 worth of *shabu* from accused-appellant by PO1 Bautista and PO1 Moreno on July 20, 2005.^[10] With this development, in the morning of July 21, 2005, NBI Agent Chester Aldwin Celon applied for a warrant to search accused-appellant's residence for dangerous drugs. After the executive judge of the RTC of Dumaguete City granted the application and issued a warrant, the joint operatives of the NBI, the Philippine Drug Enforcement Agency (PDEA), and the PNP Dumaguete City had a briefing at the NBI office in Dumaguete City at around 2:00 in the afternoon of that same day to plan the manner of service of the warrant.^[11]

To facilitate the execution of the plan, PO1 Bautista sent accused-appellant a text message asking where he was. Accused-appellant replied that he was not at his house and instructed PO1 Bautista to proceed to Oracion Drive in Barangay Looc where he would wait for her by the roadside. With this development, the team adjusted their plan and decided to conduct a buy-bust operation before serving the warrant. PO1 Bautista and PO1 Moreno were designated as poseur-buyers with the rest of the members serving as backup.^[12] The team was to be accompanied by Rogelio Talavera, *Kagawad* of Barangay Looc, and media representative Reysan Elloren.^[13]

PO1 Bautista was given P1,000.00 in marked money consisting of a P500.00 bill and five pieces of P100.00 bills, all of which were photocopied before the operation. PO1 Bautista then sent accused-appellant another text message telling him that she would buy *shabu* from him at their meeting place.^[14]

Thereafter, PO1 Bautista proceeded to Oracion Drive with PO1 Moreno. Accused-appellant met them and brought them to his friend's house near SIOM warehouse. Inside the house of accused-appellant's friend, PO1 Bautista bought P1,000.00 worth of *shabu* from accused-appellant. She gave him the marked money and he handed her two sachets of powdered white crystalline substance. At this point, PO1 Moreno excused herself and went out of the house to give the pre-arranged signal to the backup team.^[15]

Meanwhile, accused-appellant suggested to PO1 Bautista that they use the contents of one of the sachets that she bought to help them get aroused. PO1 Bautista, not wanting to spoil the operation, acceded. Accused-appellant opened one of the sachets and used its contents by sniffing some of the powdered substance. He then

asked PO1 Bautista to take her turn. To divert his attention and while the time away as she awaited the arrival of the backup, she told him that she wanted to have intercourse first before using drugs. Accused-appellant kissed PO1 Bautista and, while he was kissing her, the backup team came rushing in. However, someone from inside the adjacent house shouted to alert accused-appellant that he was going to be arrested. Accused-appellant scampered away and tried to scale a concrete fence but the law enforcers caught up with him. Before being captured, however, he threw away on the other side of the fence some of the marked bills and a metallic tube containing a tooter.^[16] A coin purse with six sachets containing powdered crystalline substance was found in his pocket when he was searched. Only P800.00 worth of marked money, consisting of the P500.00 bill and three pieces of P100.00 bills, was recovered.^[17]

NBI Agent Celon marked the items recovered from the scene immediately after accused-appellant's apprehension. The remaining sachet bought by PO1 Bautista was marked as "BB-RS-01,"^[18] the six sachets found in the coin purse as "POS-RS-01"^[19] to "POS-RS-06" and the metallic tube as "POS-RS-21 July 05." The marking was witnessed by *Kagawad* Talavera and media representative Elloren.^[20]

Accused-appellant was thereafter informed that the law enforcers have a warrant to search his house. He was brought to his house and his place was searched in the presence of *Kagawad* Talavera and media representative Elloren. However, the search yielded nothing but plastic sachets, lighter and foils.^[21]

NBI Agent Celon proceeded to conduct an inventory of the items seized during the buy-bust operation. He prepared two receipts -- one for the sachet bought by PO1 Bautista from accused-appellant and the recovered marked bills worth P800.00, and another receipt for the six sachets and the metallic tooter. The inventory receipts were signed by *Kagawad* Talavera, media representative Elloren, Senior Police Officer (SPO) 1 Manuel Sanchez of PDEA, and Dumaguete City Assistant Prosecutor Nilo Sarsaba.^[22]

Accused-appellant was subsequently brought to the NBI office for booking and documentation. He was photographed with the seized items in front of him and the incident was entered in the PDEA blotter.^[23]

In the morning of the following day, July 22, 2005, NBI Agent Celon made a return of the search warrant with prayer to retain custody of the seized items.^[24] The court approved the request and NBI Agent Celon received the items. He proceeded to bring them to the PNP Crime Laboratory in Dumaguete City for chemical examination. Police Senior Inspector (P/S Insp.) Maria Ana Dagasdas, forensic chemical officer, received the items and examined them.^[25] She then prepared Chemistry Report No. D-133-2005 and a sworn Certification to the effect that the sachet marked as "BB-RS-01" contained 0.5 gram of *methamphetamine hydrochloride* and the six sachets marked as "POS-RS-01" to "POS-RS-06" contained an aggregate of 0.69 gram of the same prohibited substance.^[26]

For his part, accused-appellant's defense was denial. He disclaimed possessing or selling *shabu* on the day he was arrested. According to him, on the said date, his friend Victor Asunio invited him to the latter's birthday party at Oracion Drive.

When he arrived at the venue at around 2:00 in the afternoon, only Asunio and two ladies were there. The ladies turned out to be PO1 Bautista and PO1 Moreno. Asunio told him to wait for awhile as Asunio was still doing something. Asunio went out and, moments after, shouted a warning that accused-appellant would be arrested. Accused-appellant immediately went out of Asunio's house and ran away but several persons suddenly appeared, blocked his path and arrested him. He was handcuffed and bodily searched but the police officers found nothing. He was then shown a copy of a search warrant and told that it was for him. He was thereafter boarded in a police car and brought to his house. A search was made in his place but nothing illegal was found there. He was subsequently brought to the NBI office where he was photographed and documented.^[27]

In its Joint Judgment dated May 30, 2007, the trial court disregarded the accused-appellant's defense for its inherent weakness and gave full faith and credence to the testimony of the law enforcers. It found no improper motive or ill will on the part of said law enforcers to testify against him. Their testimonies, credible and consistent, corroborated by the statements of *Kagawad* Talavera and media representative Elloren and backed by object and documentary evidence sufficiently established the guilt of accused-appellant. The dispositive portion of the Joint Judgment reads:

WHEREFORE, in the light of all the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 17700, the accused Reynaldo "Andy" Somoza y Handaya is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.50 gram of shabu in violation of Section 5, Article II, of RA No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet which contained the 0.50 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 17701, the accused Reynaldo "Andy" Somoza y Handaya is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.69 gram of shabu in violation of Section 11, Article II of RA No. 9165 and is hereby sentenced to suffer an indeterminate penalty of [imprisonment for] twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The six (6) heat-sealed transparent plastic sachets which contained the 0.69 gram of shabu are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.^[28]

Accused-appellant appealed his case to the Court of Appeals. He presented a lone assignment of error: the trial court erred in convicting him of the crimes charged because his guilt was not proven beyond reasonable doubt. He cited three things in support of his appeal. First, there was failure to present the full amount of the marked money used in the buy-bust operation as only P800.00 was presented. There was also no pre-operation report which would have stated the details of the buy-bust operation, including the serial numbers of the marked money. Second, it was not sufficiently established that the packs of *shabu* actually came from accused-appellant, as both PO1 Bautista and NBI Agent Celon claimed to have personally recovered the six sachets of *shabu*. Also, the chemical officer who identified the drug specimen mentioned the total weight of *shabu* as 0.44 gram only, not 0.69 gram as stated in the Information in Criminal Case No. 17701. Third, the regularity of the inventory-taking done at his house is questionable and affected the chain of custody of the *shabu*. The irregularity became more glaring considering the fact that no illegal drug was found in his house.^[29]

In its Decision dated June 22, 2010, the Court of Appeals found nothing irregular in the buy-bust operation. The non-presentation of the entire amount of P1,000.00 marked money did not diminish the integrity of the buy-bust process, especially considering the circumstance that accused-appellant threw the money while trying to evade arrest. Moreover, the successful prosecution of illegal sale of dangerous drugs does not hinge on the presentation of all the marked money used in the buy-bust operation, pursuant to *Cruz v. People*^[30] which ruled that neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.

The Court of Appeals held that the buy-bust was not affected by the absence of a pre-operation report. Under the obtaining facts, no pre-operation report was prepared as the buy-bust operation was urgently conceived. Notwithstanding the swiftness of the execution of the strategy, the law enforcers described their operation in detail during trial.^[31]

The Court of Appeals further ruled that the statements of PO1 Bautista and NBI Agent Celon were not contradictory. Only PO1 Bautista made the claim of personally recovering the six sachets of *shabu* from accused-appellant. NBI Agent Celon, on the other hand, simply stated that the metallic tube and the six sachets of *shabu* were the items recovered by the law enforcers from accused-appellant. Furthermore, the issue on who recovered the packets of *shabu* from accused-appellant is immaterial to the charges leveled against him.^[32]

There was also no disparity in connection with the weight of the *shabu*. The forensic chemical officer, P/S Insp. Dagasdas, never mentioned 0.44 gram. Instead, her sworn Certification and the accompanying Chemistry Report both indicated that her examination of the specimens submitted by NBI Agent Celon showed that the substance contained in the six sachets subject of Criminal Case No. 17701 was *shabu* with an aggregate weight of 0.69 gram.^[33]

The appellate court also rejected accused-appellant's assertion of a defect in the chain of custody of the drugs taken from him. The failure to make an immediate inventory at the scene of the buy-bust operation was not fatal to the prosecution's