

FIRST DIVISION

[G.R. No. 185383, September 25, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GIOVANNI OCFEMIA Y CHAVEZ, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

For review is the Decision^[1] dated May 27, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02481, which affirmed the Decision^[2] dated August 31, 2006 of the Regional Trial Court (RTC), Branch 13, of the City of Ligao in Criminal Case No. 4594, finding accused-appellant Giovanni C. Ocfemia guilty beyond reasonable doubt of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

In the Information dated April 14, 2003, accused-appellant was charged before the RTC as follows:

That at or about eight thirty o'clock in the morning of February 21, 2003, at Barangay San Rafael, Municipality of Guinobatan, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, having in his possession, custody and control methamphetamine hydrochloride commonly known as "*shabu*," did then and there willfully, unlawfully and feloniously sell one piece of transparent plastic sachet weighing 0.0953 gram of *shabu*, a prohibited drug, to a poseur-buyer in consideration of the amount of Five Hundred Pesos (P500.00), without any authority or permit from the concerned government agency to possess and sell the same.^[3]

Accused-appellant pleaded not guilty when he was arraigned on May 29, 2003.^[4]

The prosecution presented the testimonies of Police Superintendent (P/SUPT) Lorlie Nilo Arroyo (Arroyo),^[5] Forensic Chemist of the Philippine National Police (PNP) Regional Crime Laboratory Office at Camp General Simeon Ola in Legaspi City; Police Officer (PO) 2 Martin Benedict Aldea (Aldea);^[6] and PO3 Emerito Zamora (Zamora).^[7] The prosecution also proffered documentary and object evidence consisting of the Request for Laboratory Examination^[8] of the "[o]ne (1) pc. transparent plastic sachet containing white crystalline substance, a suspected *shabu*," prepared by Police Senior Inspector (PS/INSP) Dennis Ariston Vargas (Vargas) of the Philippine Drug Enforcement Agency (PDEA), Albay Provincial Office; the Chemistry Report No. D-067-2003^[9] dated February 21, 2003 issued by P/SUPT Arroyo; three plastic sachets^[10] of varying sizes – inside the small plastic sachet was a smaller plastic sachet, and inside the smaller plastic sachet was the smallest

plastic sachet, containing white crystalline substance; and two pieces of P100.00 marked bills.^[11]

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

Based on a tip from a confidential informant, a team, headed by PS/INSP Vargas and composed of PO3 Zamora, PO2 Aldea, and other agents/officers from PDEA and the PNP Criminal Investigation and Detection Group (CIDG), conducted a buy-bust operation against accused-appellant in San Rafael, Guinobatan, Albay, on February 21, 2003. PO2 Aldea was designated to act as the poseur-buyer and was given five marked P100.00 bills to be used as buy-bust money.

Around 8:00 in the morning, the team, together with the informant, proceeded to accused-appellant's residence in San Rafael, Guinobatan, Albay. The team members strategically positioned themselves within the vicinity of accused-appellant's residence right before the informant and PO2 Aldea transacted with accused-appellant. The informant called out to accused-appellant who came out of his house. The informant then introduced PO2 Aldea to accused-appellant as a buyer of *shabu*. PO2 Aldea handed the five marked P100.00 bills to accused-appellant. Accused-appellant went inside his house and came back a few minutes later to hand a heat-sealed small plastic sachet of *shabu* to PO2 Aldea. After examining the purchased item, PO2 Aldea took off his cap from his head, the pre-arranged signal for the rest of the team that the transaction had been consummated. PO3 Zamora and the other team members rushed to the scene, apprised accused-appellant of his constitutional rights, and apprehended accused-appellant. Incidental to accused-appellant's lawful arrest, PO3 Zamora bodily frisked accused-appellant and was able to retrieve only two of the five marked P100.00 bills from accused-appellant's possession. Thereafter, accused-appellant was brought to the police station.

At the police station, PO2 Aldea marked with his initials the sachet of *shabu* sold to him by accused-appellant. PO2 Aldea then submitted the said sachet of *shabu* to their crime laboratory, together with PS/INSP Vargas's letter-request for chemical analysis of the same. P/SUPT Arroyo conducted the chemical examination of the submitted specimen which tested positive for methamphetamine hydrochloride.

The defense presented the testimonies of accused-appellant^[12] and his spouse, Daisy Ocfemia (Daisy),^[13] and the transcript of the preliminary examination conducted by Judge Antonio C. Bagagñan (Bagagñan) of the Municipal Trial Court (MTC) of Guinobatan, Albay, on February 21, 2003.^[14]

Daisy testified that her husband, accused-appellant, was engaged in the business of buying and selling of fighting cocks. Accused-appellant would usually leave their house at 6:00 in the morning and return at around 10:00 in the morning. Accused-appellant would leave again at around 3:00 in the afternoon and come home at around 9:00 or 10:00 in the evening. At around 7:00 to 8:00 in the morning of February 21, 2003, accused-appellant returned home, after accompanying their daughter to school, with two companions aboard a tricycle. Accused-appellant's companions introduced themselves as Captain Vargas and PO3 Zamora and they informed Daisy that accused-appellant would go along with them to Camp General Simeon Ola because a certain Cardona wanted to talk with accused-appellant. After

that, Captain Vargas and PO3 Zamora left with accused-appellant. The following day, Daisy found out that accused-appellant was already locked up in prison allegedly for the illegal sale of *shabu*.

When accused-appellant took the witness stand, he denied the charge against him and claimed that he was framed-up by the police.

Accused-appellant averred that he was an "asset" of the police, having once joined the police in an entrapment operation in Legaspi City. On February 21, 2003, he joined the police in another buy-bust operation. At around 7:00 in the morning of the said date, PS/INSP Vargas, Senior Police Officer (SPO) 4 Fernando Cardona, and PO3 Zamora dropped by accused-appellant's house to ask accused-appellant to accompany them to Iriga City. Accused-appellant assented to the police officers' request and on their way to Iriga City, the police officers briefed accused-appellant about the operation. The police officers told accused-appellant that the suspect was a certain Danny Contreras (Contreras) and that accused-appellant would act as the poseur-buyer.

Accused-appellant went on to narrate that upon meeting Contreras at the latter's residence at around noontime, he handed P1,000.00 to Contreras. Contreras, in turn, instructed accused-appellant to wait in front of the Park View Hotel, which was about 10 meters from where PS/INSP Vargas, SPO4 Cardona, and PO3 Zamora positioned themselves. Moments later, Contreras met accused-appellant in front of the said hotel and handed to accused-appellant the *shabu*. At this point, the police officers arrested Contreras and brought him to Camp General Simeon Ola. Accused-appellant then turned over the *shabu* to SPO4 Cardona.

Accused-appellant related further that at Camp General Simeon Ola, urine samples were taken from him and Contreras. Thereafter, accused-appellant was escorted by PO3 Zamora to the PDEA to talk to PO2 Aldea. PO2 Aldea disclosed to accused-appellant that accused-appellant would be charged with illegal sale of *shabu*; that PO2 Aldea would claim to be the poseur-buyer at the purported buy-bust operation against accused-appellant; and that PO2 Aldea would testify against accused-appellant. When accused-appellant protested, PO2 Aldea simply replied that it was an order from the latter's superior which could not be refused. Subsequently, accused-appellant was brought to Judge Bagagñan's office in Guinobatan, Albay.

According to accused-appellant, Judge Bagagñan conversed first with PS/INSP Vargas, SPO4 Cardona, and PO3 Zamora. When Judge Bagagñan talked to accused-appellant, the Judge said that he had already signed a document and there was nothing more he could do. Thereafter, accused-appellant was requested to immediately leave Judge Bagagñan's office, giving him no opportunity to ask what document the Judge had signed. SPO4 Cardona approached accused-appellant, asking the latter to please understand ("*Pare, pasensiya na.*") for he "did not want this to happen [,] it was them[,]"^[15] referring to the other police officers.

The prosecution presented Judge Bagagñan, already retired by that time, as rebuttal witness. Judge Bagagñan confirmed on the witness stand that in the evening of February 21, 2003, he conducted the preliminary investigation in accused-appellant's case and that based on the evidence presented before him, he found probable cause to indict accused-appellant. Judge Bagagñan also recalled that after the preliminary investigation, accused-appellant confided that he was a police asset

and that he was just being framed-up. Judge Bagagñan, however, brushed aside accused-appellant's claim believing that the same was already a matter of defense best threshed out during the trial.

On October 13, 2005, the RTC, then presided by Acting Presiding Judge William B. Volante (Volante), considered the case submitted for decision.^[16]

In the meantime, the Court *en banc* approved on June 8, 2004 Administrative Matter (A.M.) No. 04-5-19-SC, entitled "Resolution Providing Guidelines in the Inventory and Adjudication of Cases Assigned to Judges who are Promoted or Transferred to Other Branches in the Same Court Level of the Judicial Hierarchy," which was reiterated and disseminated by the Office of the Court Administrator (OCA) to all trial judges for their proper observance through OCA Circular No. 90-2004. Pertinent provisions of the Resolution read:

3. A judge transferred, detailed or assigned to another branch shall be considered as Assisting Judge of the branch to which he was previously assigned. However, except as hereinbelow provided, the records of cases formerly assigned to him/her shall remain in his/her former branch.
4. The judge who takes over the branch vacated by a transferred/detailed/assigned judge shall, upon assumption of duty and within one (1) week, conduct an inventory of all pending cases in the branch. The inventory shall state the docket number, title and status of each case. The inventory shall be submitted to the Office of the Court Administrator within five (5) working days from completion thereof.
5. **Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is that he/she desires that the case be decided by the transferred judge.**
6. The manifestation of the plaintiff that the case should be decided by the transferred judge shall be forwarded to the Office of the Court Administrator which, upon receipt thereof, shall issue the proper directive. A directive requiring the transferred judge to decide the case immediately shall state any of these conditions:
 - a) If the new station of the transferred judge is within the province

of the judicial region of his/her former station, the case shall be decided in such station by the transferred judge who shall adjust his/her calendar to enable him/her to dispose the undecided case at his/her own expense without sacrificing efficiency in the performance of his/her duties in his/her new station.

b) If the new station of the transferred judge is outside of the province in the judicial region of his/her former station, the records of the undecided case shall be delivered either by personal service or by registered mail, to the transferred judge and at his/her own expense.

In either case, the Office of the Court Administrator shall furnish the parties to the case with a copy of such directive and the transferred judge shall return to his former branch the records of the case with the decision that the new judge shall promulgate in his stead.

7. Should a motion for reconsideration of the decision or for new trial be filed by any party, the transferred judge shall resolve the same. However, if a motion for new trial is granted by the transferred judge, the new judge shall preside over the same, resolve the motion, and see to its final disposition. (Emphasis supplied.)

In an Order dated June 6, 2006, the RTC notified the parties that Acting Presiding Judge Volante had already been replaced by Presiding Judge Angeles S. Vasquez (Vasquez) and directed the parties to manifest within five days from notice whether they want the case to still be decided by Judge Volante, otherwise, it would already be decided by Judge Vasquez.^[17] While the prosecution did not submit such a manifestation, accused-appellant filed his Manifestation^[18] on July 13, 2006 informing the RTC that he wished for Judge Volante to decide the case.

On August 31, 2006, the RTC promulgated its Decision, penned by Judge Vasquez, convicting and sentencing accused-appellant of the crime charged, to wit:

WHEREFORE, the Court having been convinced of the guilt of the accused, Giovanni Ocfemia, beyond reasonable doubt hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** and a fine of Five Hundred Thousand Pesos (P500,000.00) with subsidiary imprisonment in case of insolvency.

The accused is likewise ordered to suffer the accessory penalties as provided for by law. The prohibited drug known as *Shabu* is ordered confiscated in favor of the government and the same is ordered destroyed by the PDEA in accordance with the existing regulation.^[19]

Accused-appellant appealed to the Court of Appeals, arguing that:

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The Honorable Judge who penned the assailed Decision did not observe the guidelines laid down in A.M. No. 04-5-19-SC contained in OCA Circular No. 90-2004, hence, he has of doubtful authority to render and