

## FIRST DIVISION

[ G.R. No. 188132, February 29, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROSEMARIE MAGUNDAYAO Y ALEJANDRO ALIAS "ROSE,"  
ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

For review of the Court is the Decision<sup>[1]</sup> of the Court of Appeals dated December 19, 2008 in CA-G.R. CR. No. 02899, which affirmed the Joint Decision<sup>[2]</sup> dated June 27, 2007 of the Regional Trial Court (RTC) of Pasig City, Branch 267, in Criminal Case Nos. 14061-D and 14062-D. In the said cases, accused-appellant Rosemarie Magundayao y Alejandro alias Rose was found guilty of the crimes of illegal sale and possession of methamphetamine hydrochloride, more popularly known as *shabu*, under Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On April 18, 2005, two separate informations were filed against the accused-appellant for violations of the provisions of Republic Act No. 9165.

In Criminal Case No. 14061-D, the accused-appellant allegedly violated the first paragraph of Section 5,<sup>[3]</sup> Article II of Republic Act No. 9165 in the following manner:

That on or about the 14<sup>th</sup> day of April, 2005, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur-buyer PO1 Rey B. Memoracion 0.08 gram of white crystalline substance contained in one (1) heat-sealed transparent sachet, which substance was found positive to the test for "Methylamphetamine hydrochloride", a dangerous drug, in violation of the above-cited law.<sup>[4]</sup>

The accusatory portion of the second information pertaining to Criminal Case No. 14062-D for violation of Section 11,<sup>[5]</sup> Article II of the same law, states:

That on or about the 14<sup>th</sup> day of April, 2005, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess or otherwise use any dangerous drug, did then and there willfully, unlawfully

and knowingly have in her possession, custody and control 0.10 gram of white crystalline substance contained in one (1) heat-sealed transparent sachet, which substance was found positive to the test for "Methylamphetamine hydrochloride" or commonly known as "shabu", a dangerous drug, in violation of the above-cited law.<sup>[6]</sup>

Upon her arraignment on May 23, 2005, the accused-appellant entered pleas of "not guilty" to each of the charges. <sup>[7]</sup>

Thereafter, joint trial of the cases ensued.<sup>[8]</sup>

The prosecution called to the witnesses stand: (1) Police Officer III (PO3) Danilo B. Arago and (2) Police Officer II (PO2) Rey B. Memoracion, both members of the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) of the Taguig City Police Station. On the other hand, the defense presented the lone testimony of accused-appellant Rosemarie Magundayao y Alejandro.

PO3 Danilo B. Arago testified that on April 14, 2005, at around 5:30 p.m., he was at the office of the SAID-SOTF when a reliable informant (*pinagkakatiwalaang impormante*) came in and gave information about a certain alias Rose who was peddling illegal drugs, particularly shabu, along M. L. Quezon Street, at the corner of Paso Street, Bagumbayan,<sup>[9]</sup> Taguig City.<sup>[10]</sup> PO3 Arago said that the information was relayed to the leader of his team, Police Chief Inspector (P/Chief Insp.) Romeo Paat, who conducted a briefing with the informant. The members of the team present were P/Chief Insp. Paat, PO3 Antonio Reyes, PO2 Memoracion<sup>[11]</sup> and PO3 Arago himself. A buy-bust operation was planned whereby PO2 Memoracion was designated as the poseur-buyer and he was to act as the back-up. He saw P/Chief Insp. Paat give the buy-bust money to PO2 Memoracion, consisting of two pieces of P100 bills, and the latter signed the initials "RBM" on the upper right hand of the bills. The team also faxed a pre-coordination report to the Philippine Drug Enforcement Agency (PDEA).<sup>[12]</sup>

PO3 Arago related that the team then proceeded to the subject area and arrived there at 8:30 p.m. They parked their vehicle along M. L. Quezon Street, around a hundred meters from Paso Street. PO2 Memoracion and the informant alighted and walked to Paso Street. The pre-arranged signal was for PO2 Memoracion to remove his bull cap. When he saw PO2 Memoracion talking to the accused-appellant, PO3 Arago went out of the car and walked towards them. He situated himself at about 15 meters away from PO2 Memoracion and the accused-appellant. He saw them talking and, after a while, PO2 Memoracion handed something to the accused-appellant, who in turn took something from her short pants and handed it to PO2 Memoracion. The latter then removed his bull cap.<sup>[13]</sup>

PO3 Arago stated that he thereafter ran to the place where PO2 Memoracion was standing. The latter already effected the arrest of the accused-appellant and ordered her to empty the contents of her right front pocket. They saw another plastic sachet, which they believed contained shabu, and the buy-bust money. PO2 Memoracion told him to place the accused-appellant in handcuffs and the former marked the evidence obtained. PO3 Arago said that he was able to see the object of the buy-bust in the custody of PO2 Memoracion, which was a small plastic sachet

containing white crystalline substance suspected as *shabu*. He was beside PO2 Memoracion while the latter was marking the evidence. The marking "RAM-1" was placed at the plastic sachet subject of the buy-bust and the marking "RAM-2" was placed at the other plastic sachet that was also confiscated from the accused-appellant. PO3 Arago stated that he saw PO2 Memoracion take custody of the two plastic sachets and brought the same to the police station. They then turned over the plastic sachets to the crime laboratory. After the accused-appellant was arrested, she was brought to the police station.<sup>[14]</sup>

PO2 Memoracion provided a similar picture of the events that allegedly transpired in the afternoon of April 14, 2005. He testified that, at that time, an informant indeed came to their office and told them about a female individual who was selling illegal drugs at Bagumbayan corner Paso Street, Taguig City. The informant talked to P/Chief Insp. Paat and the latter set up a plan to conduct a buy-bust operation. PO2 Memoracion was designated as the poseur-buyer. He was tasked to give the marked money, consisting of two pieces of P100 bills, to the drug peddler. He stated that he was the one who placed the markings on the money, writing thereon his initials "RBM" at the upper right portion of the serial number. The team submitted a pre-operation report to the PDEA and the latter gave a certification of coordination. The plan was for the informant to assist him in buying the illegal drugs from the drug peddler. Should the sale be consummated, they will immediately arrest the said person. The pre-arranged signal for the arrest was the act of him removing his cap.<sup>[15]</sup>

PO2 Memoracion narrated that, after the preparations were completed, the team headed to Bagumbayan corner Paso Street, Taguig City. When they got there, he and the informant took a walk, with the other members of the team following them. When the informant saw the accused-appellant, they talked and PO2 Memoracion was introduced as a friend of the informant who wanted to buy *shabu*. They were then facing each other about a foot away. The accused-appellant asked PO2 Memoracion how much he was going to buy and he answered that he would buy only P200 worth of *shabu*. He handed to her the P200 marked money and she accepted the same. She then pulled out from her pocket one transparent plastic sachet containing white crystalline powder and gave it to him. After he received the plastic sachet, he made the pre-arranged signal of removing his bull cap.<sup>[16]</sup>

PO2 Memoracion said that he afterwards saw PO3 Arago, followed by PO3 Reyes, coming towards his location. He forthwith informed the accused-appellant that he was a police officer and showed her his ID. He told her not to run and that he was arresting her for selling illegal drugs. When he requested her to bring out the contents of her pocket, she brought out another plastic sachet with suspected *shabu* and the buy-bust money, which he both confiscated. He then put markings on the two plastic sachets. He put therein the initials of the accused, "RAM." The *shabu* subject of the sale was marked as "RAM-1" and the other sachet was marked as "RAM-2." He also appraised the accused-appellant of her constitutional rights. At the scene of the crime, he prepared an inventory of the items seized, which he and the accused-appellant signed. The accused-appellant was taken to the police station, along with the plastic sachets and the marked money. Thereafter, the accused-appellant and the seized items were turned over to the investigator, SPO2 Armando Cay. The police subsequently prepared a request for laboratory examination. PO2 Memoracion then delivered the request and the suspected drug

specimen to the crime laboratory. The specimen yielded a positive result for *methylamphetamine hydrochloride*.<sup>[17]</sup> Chemistry Report No. D-234-05 stated thus:

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weight:

A – (RAM-1) = 0.08 gram

B – (RAM-2) = 0.10 gram

x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a dangerous drug. x x x.

CONCLUSION:

Specimen A and B contain Methylamphetamine Hydrochloride, a dangerous drug.<sup>[18]</sup>

The prosecution thereafter adduced the following documentary evidence: (1) *Pinagsamang Salaysay ng Pag-aresto at Paghaharap ng Reklamo o Demanda* (Exhibit A);<sup>[19]</sup> (2) Request for Laboratory Examination of the specimen suspected to be *shabu* (Exhibit B);<sup>[20]</sup> (3) Initial Laboratory Report, stating that the specimen submitted for examination tested positive for *methylamphetamine hydrochloride* (Exhibit C);<sup>[21]</sup> (4) Request for Physical Examination of the accused-appellant;<sup>[22]</sup> (5) Request for Drug Test of the accused-appellant;<sup>[23]</sup> (6) Physical Examination Report;<sup>[24]</sup> (7) Certificate of Inventory (Exhibit G);<sup>[25]</sup> (8) Booking and Information Sheet;<sup>[26]</sup> (9) Pre-Operation Report/Coordination Sheet (Exhibit I);<sup>[27]</sup> (10) Certificate of Coordination (Exhibit J);<sup>[28]</sup> (11) Photocopy of the buy-bust money (Exhibit K);<sup>[29]</sup> and (12) Chemistry Report No. D-234-05, stating that the specimen submitted for examination yielded a positive result for *methylamphetamine hydrochloride* (Exhibit L).<sup>[30]</sup>

The testimony of Police Inspector Alejandro de Guzman, the forensic chemist who examined the specimen seized from the accused-appellant, was dispensed with by the parties. The counsel for the accused-appellant agreed to stipulate that De Guzman indeed examined the specimen upon the request of the police and, after

the requisite examination, found it positive to the test of *methamphetamine hydrochloride*, a dangerous drug. The findings were reflected in Chemistry Report No. D-234-05, which was prepared under oath by De Guzman and approved by his immediate supervisor Police Chief Inspector Grace M. Eustaquio. The defense counsel also stipulated that if De Guzman were to be presented as a witness, the latter would testify to the fact that he turned over to the counsel for the prosecution the drug specimen and he could identify the same if shown to him. On the other hand, the prosecution stipulated that the forensic chemist had no personal knowledge from whom the specimen was taken and under what circumstances the specimen was taken.<sup>[31]</sup>

Expectedly, the defense presented an entirely different version of the facts. The accused-appellant claimed that she was framed by the police.

The accused-appellant testified that on April 14, 2005, she was at her house at 188 Pazzo Street, Bagong Bayan, Taguig, Metro Manila. At around 6:00 p.m., she was resting when the door of their house was suddenly opened by five unidentified male persons. They did not introduce themselves to her. They told her that they were looking for a certain alias Luga but she told the men that she did not know this person. They then ransacked her house for about ten to fifteen minutes. The men were not able to find any illegal items at her house and they afterwards brought the accused-appellant to the Tuktukan jail. There, the men allegedly asked money from her before they could allow her to go home. She stated that it was PO2 Memoracion who tried to extort money from her. Since she did not owe them any debt, she refused to give them any money. Afterwards, she was subjected to inquest proceedings. When she was brought to the Tuktukan jail, she was not shown the evidence that were supposedly taken from her. The accused-appellant further alleged that, on the afternoon of April 14, 2005, she did not even go out of her house.<sup>[32]</sup>

The defense formally rested its case without the presentation of any documentary evidence for the accused-appellant.<sup>[33]</sup>

On June 27, 2007, the RTC rendered a Joint Decision, finding the accused-appellant guilty of the offenses charged. The pertinent portions of the judgment states:

The substance of the prosecution's evidence is to the effect that accused Rosemarie Magundayao y Alejandro alias Rose was arrested by the police because of the existence of *shabu* [s]he sold to PO2 Rey B. Memoracion as well as the recovery of the buy-bust money from [her] possession, and the presence of another plastic sachet containing *shabu* that was also recovered from her person.

To emphasize, the prosecution witnesses in the person of PO2 Rey B. Memoracion and PO3 Danilo B. Arago positively identified accused Rosemarie Magundayao y Alejandro alias Rose as the person they apprehended on April 14, 2005 at Pazzo Street corner M.L. Quezon Avenue, Bagumbayan, Taguig, Metro Manila. That they arrested accused Rosemarie A. Magundayao because their team was able to procure *shabu* from her during the buy-bust operation they purposely conducted against