

## SECOND DIVISION

[ G.R. No. 200951, September 05, 2012 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE ALMODIEL  
ALIAS "DO DONG ASTROBAL," APPELLANT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before the Court is an appeal assailing the Decision<sup>[1]</sup> of the Court of Appeals, Cagayan de Oro City, (CA) in CA-G.R. CR HC No. 00632-MIN. The CA affirmed the Decision<sup>[2]</sup> of the Regional Trial Court of Butuan City, Branch 4 (RTC), in Criminal Case No. 9840 convicting appellant Jose Almodiel *alias* "Dodong Astrobal" (accused) of violation of Section 5, Article II (Sale of Dangerous Drugs)<sup>[3]</sup> of Republic Act No. 9165 (RA 9165) or *The Comprehensive Dangerous Drugs Act of 2002*.

#### The Facts

The Information dated 16 May 2003 filed against the accused states:

#### AMENDED INFORMATION

The undersigned accuses JOSE ALMODIEL alias "DODONG" ASTROBAL of the crime of [v]iolation of Section 5, Article II of R. A. No. 9165, committed as follows:

That at or about 2:00 o'clock in the afternoon of March 20, 2003 at Purok 9, Brgy. 15, Langihan Road, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, trade, deliver two (2) sachets of methamphetamine hydrochloride, otherwise known as shabu weighing zero point one two zero five (0.1205) grams, a dangerous drug.

That the accused has already been convicted in Criminal Case No. 7338 for Violation of Section 16, Article III of R.A. 6425, as amended by R.A. 7659.

CONTRARY TO LAW. (Violation of Sec. 5, Art. II of R.A. 9165)<sup>[4]</sup>

Upon arraignment, the accused entered a plea of not guilty. During pre-trial, the defense admitted all the allegations in the Information except the specific place of

the alleged incident and the allegation of the sale of dangerous drugs. Thus, trial ensued.

### **Version of the Prosecution**

The prosecution presented three witnesses: (1) PO2 Saldino C. Virtudazo (PO2 Virtudazo), (2) PO3 Arnel P. Lumawag (PO3 Lumawag), and (3) PSInsp. Cramwell T. Banogon (PSInsp. Banogon).

At 7:30 a.m. of 20 March 2003, the Philippine Drug Enforcement Agency (PDEA) Regional Office XIII in Libertad, Butuan City, received a report from a confidential agent that a certain "Dodong" was dealing with *shabu*. Immediately after, Regional Director PSupt. Glenn Dichosa Dela Torre (PSupt. Dela Torre) conducted a briefing for a buy-bust operation and designated SPO4 Alberto Arnaldo (SPO4 Arnaldo) as teamleader, PO2 Virtudazo as poseur-buyer, and PO3 Lumawag as back-up operative.

At 1:30 p.m. of the same day, PO2 Virtudazo, PO3 Lumawag, and the confidential agent proceeded to Purok 9, Brgy. 15, Langihan Road, Butuan City to conduct the buy-bust operation. PO3 Lumawag hid and positioned himself eight meters away from PO2 Virtudazo and the confidential agent. When the accused arrived, the confidential agent introduced PO2 Virtudazo to the accused as customer of *shabu*. PO2 Virtudazo told the accused that he wanted to buy two sachets of *shabu* worth P400.00. The accused agreed, and then left. After thirty minutes, the accused returned bringing two sachets containing white crystalline substance, which he handed to PO2 Virtudazo. PO2 Virtudazo testified that based on experience, he knew that the substance in the two sachets was *shabu*. Thus, PO2 Virtudazo gave a pre-arranged signal to PO3 Lumawag to approach them.

PO2 Virtudazo and PO3 Lumawag introduced themselves as PDEA agents, and arrested the accused after informing him of his constitutional rights. They took him to the PDEA Regional Office, and seized from him other items – two aluminum foils and one lighter.<sup>[5]</sup> PO2 Virtudazo marked the two sachets with "APL-1" and "APL-2," the initials of PO3 Lumawag. Together with SPO3 Dindo Alota (SPO3 Alota) and PO3 Lumawag, PO2 Virtudazo brought the accused and the two sachets to the Regional Crime Laboratory Office for drug testing. In PSInsp. Banogon's Chemistry Report No. D-061-2003,<sup>[6]</sup> the substance contained in the two sachets was found positive of *shabu*.

The prosecution offered and submitted the following exhibits:

(1) Exhibit "A" and sub-markings – Certificate of Inventory or Confiscation Receipt dated 20 March 2003; (2) Exhibit "B" and sub-markings – written request for laboratory examination dated 20 March 2003; (3) Exhibit "C" and sub-markings – self-sealing pack containing the actual specimen of two sachets of *shabu*; and (4) Exhibit "D" and sub-markings – Chemistry Report No. D-061-2003 dated 21 March 2003.<sup>[7]</sup>

### **Version of the Defense**

On the other hand, the defense also presented three witnesses: (1) the accused

himself, (2) Felix Branzuela (Felix), and (3) Max Malubay (Max), the alleged confidential agent.

The accused denied the charges of the prosecution, and narrated that on the morning of 20 March 2003, he and his girlfriend stayed in Cadez Lodging House, located at Purok 9, Brgy. 15, Butuan City. At about 10 a.m., the accused's girlfriend left but promised to return later. While waiting, the accused and Felix played with the slot machine. Then, Max approached the accused and requested to buy *shabu* from him. The accused told Max that he was not selling *shabu*. Thus, Max left. However, Felix alleged that he saw Max talking to police officers. Felix informed the accused that Max is a police asset, but the accused ignored his remark and stated that he had nothing to fear.

Around 1:30 p.m. of the same day, the accused decided to go home aboard his motorcycle. While on his way, the accused was stopped by PO3 Lumawag, who pointed a gun at the accused and arrested him. The accused noticed PO3 Lumawag holding a sachet of *shabu* while searching the accused's body. The accused protested but PO3 Lumawag directed him to go to the PDEA office with another police officer. Upon arrival, the accused was instructed to remove his clothes. PO3 Lumawag took the accused's wallet and claimed to retrieve another sachet of *shabu* from it. PO3 Lumawag insisted that the accused owned the *shabu*, but the accused vehemently denied the same. After about thirty minutes, a representative from the media and City Prosecutor Felixberto Guiritan (Prosecutor Guiritan) arrived. They took pictures of the two sachets of *shabu* and signed the Certificate of Inventory.

### **The Decision of the Regional Trial Court**

In its Decision dated 17 June 2008, the RTC found the accused guilty beyond reasonable doubt of violation of RA 9165. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, accused is hereby found guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165 ([o]therwise [k]nown as the Dangerous Drugs Act of 2002) and is hereby accordingly sentenced to suffer the penalty of life imprisonment and a fine of [F]ive Hundred Thousand Pesos (P500,000.00) without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte and shall be credited in the service thereof with his preventive imprisonment pursuant to Article 29 of the Revised Penal Code, as amended.

The sachets of *shabu* are ordered confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.<sup>[8]</sup>

The RTC found that the elements of the crime of illegal sale of *shabu* were proven by the prosecution. On the other hand, the accused failed to present clear and

convincing evidence to prove his defense of frame-up and planting of evidence. Hence, the RTC held that the categorical and convincing testimonies of the prosecution witnesses, supported by physical evidence, overcome the unsubstantiated claim of ill-motive by the accused. In addition, the RTC ruled that the arrest was lawfully made.

On 4 July 2008, the accused filed a Motion for Reconsideration, which was denied by the RTC in its Resolution<sup>9</sup> dated 22 July 2008. The accused filed an appeal to the CA. The accused imputed the following errors on the RTC:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT WAS CAUGHT *IN FLAGRANTE DELICTO* SELLING THE SUBJECT DANGEROUS DRUGS.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ARREST AND THE SEARCH OF THE ACCUSED-APPELLANT WITHOUT A WARRANT WOULD FALL UNDER THE DOCTRINE OF WARRANTLESS SEARCH AS AN INCIDENT TO A LAWFUL ARREST.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE SUBJECT *SHABU* IS ADMISSIBLE IN EVIDENCE.

IV

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT WHEN THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED DRUGS WAS NOT ESTABLISHED IN CONFORMITY WITH THE ESTABLISHED RULES.

V

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT WHEN HIS GUILT IS NOT PROVEN BEYOND REASONABLE DOUBT.<sup>[10]</sup>

**The Decision of the Court of Appeals**

In its Decision dated 14 November 2011, the CA affirmed the RTC's Decision against the accused. The dispositive portion of the CA Decision reads:

WHEREFORE, the appeal is DISMISSED. The Decision dated June 17, 2008 finding Jose Almodiel alias Dodong Astrobal guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165 is AFFIRMED *in toto*.

SO ORDERED.<sup>[11]</sup>

The CA ruled that since a buy-bust operation was conducted, there was no necessity for a warrant of arrest pursuant to Rule 113, Section 5(a) of the Rules of Court. The CA found that the defense's version of the events was not credible considering that the accused did not object to his arrest or file any complaint against the police officers. On the chain of custody rule, the CA held that non-compliance with Section 21 of RA 9165 is not fatal as long as there is justifiable ground, and the integrity and evidentiary value of the seized drugs are preserved, as in this case.

Hence, this appeal.<sup>[12]</sup>

### **The Ruling of the Court**

The appeal lacks merit.

The elements necessary for a prosecution for violation of RA 9165 or sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.<sup>[13]</sup> What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.<sup>[14]</sup>

In the present case, all the elements of the crime have been sufficiently established. PO2 Virtudazo testified that a buy-bust operation took place, to wit:

PROSECUTOR GUIRITAN:

Q: On March 20, 2003 at about 2:00 o'clock in the afternoon, where were you at that time?

A: I was at Purok 9, Barangay 15, San Ignacio, Langihan Road, Butuan City.

Q: Why were you there in that place?

A: Because we were conducting an entrapment operation.

x x x x

Q: You already mentioned last time that you were already at the place at about 2:00 o'clock of March 20, 2003, and you were with your back-up Lumawag and your confidential agent. When you arrived at that place what happened actually?

A: At 2:00 o'clock the accused arrived in the place and he gave me the two (2) sachets of "shabu."

Q: How did the accused know that you will be the buyer?

A: I was introduced by our confidential agent to him.

Q: Now you said the accused handed to you "shabu", how many sachets, if you recall?

A: Two (2) sachets, Sir.

Q: When already in possession of those two (2) sachets of "shabu", what did you do?

A: I examined it if it is indeed "shabu."

Q: What was your findi[n]gs?

A: That it was real "shabu."