

## SECOND DIVISION

[ G.R. No. 185386, November 21, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BERNABE ANESLAG Y ANDRADE, MENDA \* ANESLAG Y NECOLAY  
(ACQUITTED), MAE ELARMO Y NECOLAY (ACQUITTED), AND  
JOCELYN CONCEPCION Y LAO, \*\* ACCUSED, BERNABE ANESLAG Y  
ANDRADE AND JOCELYN CONCEPCION Y LAO, ACCUSED-  
APPELLANTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

In the prosecution of the crime of illegal sale of dangerous drugs, the prosecution must prove that the chain of custody rule was complied with.

This is an appeal from the August 27, 2008 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00172, which affirmed the May 7, 2005 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Iligan City, Branch 6 in Criminal Case No. 06-10093 finding appellants Bernabe Aneslag and Jocelyn Concepcion guilty of violating Republic Act (R.A.) No. 9165 (or the "Comprehensive Dangerous Drugs Act of 2002").

#### ***Factual Antecedents***

On April 2, 2003, an Information<sup>[3]</sup> for illegal sale of methamphetamine hydrochloride (or *shabu*) was filed against Menda Aneslag (Menda), Mae Elarmo (Mae), appellant Bernabe Aneslag (Bernabe) and appellant Jocelyn Concepcion (Jocelyn) with the RTC of Iligan City, viz:

That on or about March 30, 2003, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, without any authority of law, did then and there willfully, unlawfully and feloniously sell and deliver six (6) plastic sachets containing approximately 240 grams of Methamphetamine Hydrochloride, a dangerous drug commonly known as *Shabu*.

Contrary to and in violation of Sec. 5 in relation with Sec. 26 of Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.<sup>[4]</sup>

The case was raffled to Branch 6 and docketed as Criminal Case No. 06-10093. On

May 22, 2003, the accused were arraigned and all of them pleaded not guilty.<sup>[5]</sup> Thereafter, trial ensued.

### ***Version of the Prosecution***

The prosecution presented the testimonies of SPO2 George Salo (SPO2 Salo), SPO2 Edgardo Englatierra (SPO2 Englatierra) and P/Sr. Insp. Aileen Bernido (P/Sr. Insp. Bernido). The evidence for the prosecution, as summarized in the trial court's May 7, 2005 Decision, tends to establish the following:

In 2003, P/Supt. Rolando Abutay was the Regional Director of the PDEA based in Cagayan de Oro City. SPO2 Edgardo Englatierra was and still is the Team Leader of the PDEA in Iligan City. His members include SPO2 George Salo and SPO2 Diosdado Cabahug.

Three days prior to March 30, 2003, Supt. Abutay called by phone Officer Englatierra that there was an expected arrival of *shabu* in Iligan City and to watch Room 65 of the Patria Pension at Laya St., Iligan City.

In the early morning of March 30, 2003, Supt. Abutay arrived in Iligan City with his civilian asset (CA). He conducted a briefing at the PDEA office in Tipanoy, Iligan City. Present were Officers Englatierra, Salo, Cabahug and the CA. He informed [them] that there was going to be a "meet" at Room 65 of Patria Pension. He designated Officer George Salo and his CA to act as poseur buyers. He instructed Officer Salo and his C[A] to check-in at Room 65 of Patria Pension. He assigned himself and Officers Englatierra and Cabahug as the back-up team. He gave to Officer Salo two 500-peso bills to be used as part of the buy-bust money. They caused the two x x x 500-peso bills to be [photocopied] and authenticated at the Office of the City Prosecutor of Iligan City, Exh. A. Then they prepared a boodle money consisting of one genuine 500-peso bill on top, fake money at the middle and one genuine 500-peso bill at the bottom. After that Officer Salo and the CA went to the Patria Pension with the boodle money. They checked in at Rm 65 at about 11:00 a.m. The back-up team stayed at the office.

At about 4:30 p.m., Supt. Abutay and Officers Englatierra and Cabahug left the PDEA office. They went directly to the Patria Pension and checked in at Rm 64 across the corridor from Rm 65. A little later, the CA entered Rm 64 and handed to them the key to Rm 65.

At about 7:00 p.m., Officer Salo and the CA were inside Rm 65. The CA received a call on his cellphone. After the call, the CA told Officer Salo that someone will check if they had the money. Several minutes later, they heard a knock at the door. They saw a woman they did not know but later learned that she was Mae Elarmo. They invited her inside. Upon entering the room, she asked if they had the money. Officer Salo showed to her the boodle money. She simply looked at the bundle and made a call with her cellphone. Sometime later, they heard another knock at the door. The CA opened the door and a man and a woman entered the room. The man asked where is the money. Officer Salo

showed to him the bundle of money. He looked at the bundle and introduced himself as Bernabe Aneslag. The female companion did not say anything. They learned later that she was Minda Aneslag. After Bernabe Aneslag looked at the bundle of money, he made a call on his cellphone. A minute or two later, there was knock at the door. The CA opened the door. A woman, who was holding a Ferragamo bag colored red, Exh. F, entered the room. They learned later that her name is Jocelyn Concepcion y Lao. Bernabe told her to give the bag to Officer Salo. She handed it to Officer Salo, who received it. He opened the zipper and looked inside. He found two big packs and four smaller packs of *shabu*. Then Bernabe Aneslag asked for the money. Officer Salo handed to him the bundle of money. After Bernabe Aneslag received the money, the CA pressed his cellphone to give the signal to Supt. Abutay that the transaction was completed.

When Supt. Abutay received the signal, he said let's go. They went out of Rm 64, opened the door to Rm 65 with the key and rushed in. They found inside the room Bernabe Aneslag, Minda Aneslag, Jocelyn Concepcion and Mae Elarmo. They introduced themselves as police officers, arrested them and informed them of their rights. Officer Englatierra took possession of the boodle money from Bernabe Aneslag while Officer Salo took possession of the red bag and the *shabu*. They brought them to Pol[i]ce Precinct No. 01 for recording purposes and then took them to the PDEA office in Tipanoy, Iligan City. At the office, Officer Salo marked the two big bags as "GRS-1" and "GRS-2". He also marked the four smaller packs as "GS-1, GS-2, GS-3 and GS-4" respectively. GRS or GS represent[s] his initials. Thereafter, a Request for Laboratory Examination was prepared, Exh. B. The following day, Officer Salo delivered the request and the six packs of *shabu* to the PNP Provincial Crime Laboratory at Tipanoy, Iligan City. The specimens were originally examined by P/Insp. Mary Leocy Jabonillo-Mag-abo, Forensic Chemical Officer of the said laboratory. After her examination, she delivered the specimens to the Office of the City Prosecutor. However, when this case was called for hearing on July 18, 2003, the court was informed that Insp. Mag-abo was not available because she was sent to the Philippine Public Safety College, Makati City to undergo training in Public Safety Advance Course for a period of four (4) months. To avoid further delay, the court issued an order directing the PDEA, Iligan City, to arrange for another laboratory examination of the specimens at the PNP Regional Crime Laboratory, Cagayan de Oro City, Exh. C. On July 21, 2003, Officer Salo retrieved the specimens from the Office of the City Prosecutor, Iligan City and signed a receipt therefor, Exh. B-2. On July 23, 2003, SPO2 Diosdado Cabahug of the PDEA, Iligan City handcarried the specimens, the Request for Laboratory Examination, Exh. B, the receipt signed by Officer Salo, Exh. B-2 and the Order of this court, Exh. C, to the PNP Regional Crime Laboratory, Camp Evangelista, Cagayan de Oro City. PO3 Paltinga, receiving clerk of the Regional Crime Laboratory, [received] the specimens and the documents, Exh. C-1. Officer Paltinga turned over the specimen and documents to P/Sr. Insp. Aileen Undag Bernido, Forensic Chemical Officer. Insp. Bernido immediately performed the required laboratory examination of the specimens in three steps, namely: the physical test, color or screening test and the confirmatory

test.

The first step, which is the physical test consists of the ocular inspection and weighing. When she received the specimens, they were inside a closed brown letter envelope, Exh. E-6. She wrote on the surface of the envelope the markings "D-419-03 AUB" representing the dangerous drugs number she assigned to it and her initials. Then she opened the envelope and found inside it two (2) big packs and four (4) smaller packs containing white crystalline substance. She found the packs were marked "GRS-1" and "GRS-2" for the two big packs and "GS-1", "GS-2", "GS-3" and "GS-4" respectively for the four small packs. Both ends of each pack were tape-sealed. She opened the packs and weighed the contents of each pack individually. The packs weighed as follows: GRS-1 = 96.4 grams, GRS-2 = 97.2 grams, GS-1, GS-2, GS-3 and GS-4 weighed 4.1 grams (sic) each. The total weight was 210 grams. After weighing each pack, she removed a representative sample and proceeded to the color test and confirmatory test. Thus, she followed the following procedure: First, she marked [the] surface of the pack already marked GRS-1 with the dangerous drugs number and her initials "D-419-03 AUB". Then she opened it and weighed the contents. After that, she removed a representative sample. She returned the remaining contents into the original pack and resealed it with a masking tape. She wrote on the masking tape her identification mark "D-419-03 A1 AUB". Then she proceeded to the color test by applying on the representative sample a Simons reagent. The results gave a blue color indicating the presence of methamphetamine hydrochloride or *shabu*. She continued with the confirmatory test using a Thin Layer Chromatography. The results confirmed the findings of the color or screening test. She followed exactly the same procedure for the succeeding packs. Each pack was accordingly given her own identification markings, as follows: GRS-2 was marked "D-419-03 A2 AUB", GS-1 was marked "D-419-03 A3 AUB", GS-2 was marked "D-419-03 A4 AUB", GS-3 was marked "D-419-03 A5 AUB" and GS-4 was marked "D-419-03 A6 AUB". Each of the packs gave positive result for the presence of *shabu*. She prepared Chemistry Report No. D-419-03 (re-exam), Exh. "D" which embodies her findings and conclusion that "Specimens A1 to A6 contain Methamphetamine Hydrochloride, a dangerous drug".<sup>[6]</sup>

### **Version of the Defense**

The defense presented the testimonies of Mae, appellant Bernabe and appellant Jocelyn. The evidence for the defense, as summarized in the trial court's May 7, 2005 Decision, tends to establish the following:

Mae Elarmo is 20 years old, single, jobless and a resident of Alubijid, Misamis Oriental. She is a niece of co-accused Menda Aneslag. Accused Bernabe Aneslag is the husband of Menda. She calls him Uncle Boy. In March 2003, she resided with the spouses Aneslag at P-02 Buruun, Iligan City.

At about 7 to 7:30 p.m., March 30, 2003, Mae, Bernabe, Menda and Joy Lao aka Jocelyn Concepcion were having dinner at an ala carte restaurant somewhere in Iligan City. She could not pinpoint the exact location. They were having the (sic) dinner on the invitation of Joy Lao. During the dinner, her Uncle Boy instructed her to go to room 65 of Patria Pension and find out if a woman named Loren and a male companion were there. He gave her the fare. She rode on a PU car and went to Patria Pension. On arrival, she went directly to Rm 65. She knocked at the door and it was opened by the woman, named Loren. She asked me who are you. Mae replied Uncle Boy sent her. Loren invited her in and asked where was Uncle Boy. She replied she left him behind. Loren asked "Do you have the thing now?" Mae replied "What thing". Loren said "You do not know" and Mae replied "No". Loren had a male companion, who was about 30 years old, short, of white complexion, with a short haircut and of medium build. Loren was tall, white and also about 30 years old. About thirty minutes later, Bernabe Aneslag, Menda Aneslag and Joy Lao arrived at Rm 65. When they were already inside the room, the door was suddenly kicked open. Col. Abutay and companions entered. They pointed guns to them as Col. Abutay declared "Do not move, this is a buy-bust operation". They handcuffed Mae, Bernabe, Menda and Joy and frisked them. They confiscated from Mae her wallet with P800.00, from Bernabe his watch and wallet, from Menda her cellphone, necklace and wallet and from Joy her money. At this time, Loren and her male companion already left. Then Col. Abutay called on his cellphone saying "Come here now". A few minutes later, Officers Englatierra and Cabahug entered the room. They were taken downstairs and Mae saw George Salo for the first time at the front desk. They were taken on board a jeep driven by Officer Cabahug to the Police Precinct 01. After that, they were brought to the PDEA office in Cagayan de Oro City. The next day, they were taken back to Iligan City.

She denied that Officer George Salo was in Rm 65 with Loren. She denied the testimony of Officer Salo that the boodle money was shown to her. She also denied that her Uncle Boy counted the money. Finally, she declared that the owner of the *shabu* was Joy Lao.

Bernabe Aneslag is 52 years old, married and a resident of P-02 Buruun, Iligan City. Menda Aneslag is his wife. Mae Elarmo is the niece of Menda. He is the caretaker of the Videogram business of Jocelyn Concepcion Lao.

At about 6:00 p.m., March 30, 2003, Bernabe, Menda, and Mae were at Cocogroove, Iligan City. They walked towards the jeepney terminal for Buruun at Roxas Avenue in front of Jollibee in order to take a passenger jeepney for home. They walked along Quezon Avenue until they reached Roxas Avenue, then turned right along Roxas until they reached the terminal. They were about to board a passenger jeepney when Mae told Bernabe that Joy was there. Joy was at the opposite side of Roxas Avenue near the Dr. Uy Hospital. Bernabe told Mae to call Joy. Mae crossed the street and approached Joy. Then Joy and Mae crossed back and approached Bernabe and Menda. Joy invited them to dinner. They accepted. They walked to the JoArt Restaurant. They did not ride on a