

SECOND DIVISION

[G.R. No. 191193, November 14, 2012]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GODOFREDO MARIANO Y FELICIANO AND ALLAN DORINGO Y
GUNAN, ACCUSED-APPELLANTS.**

D E C I S I O N

PEREZ, J.:

Assailed in this appeal is the Decision^[1] of the Court of Appeals dated 9 November 2009 in CA-G.R. CR-H.C. No. 03343 affirming the 5 March 2008 Decision^[2] of the Regional Trial Court of Sorsogon City, Branch 65, finding appellants Godofredo Mariano y Feliciano (Godofredo) guilty of the crimes of illegal sale of *shabu* and illegal possession of drug paraphernalia, and Allan Doringo y Gunan^[3] (Allan) guilty of the illegal sale of *shabu*.

On the one hand, Godofredo was charged with the offenses of violation of Sections 5 and 12, Article II of Republic Act No. 9165 in two (2) separate Informations, which read:

Criminal Case No. 04-706

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously sell, deliver, dispose, distribute and/or give away for value two (2) transparent plastic sachets containing methamphetamine hydrochloride locally known as "Shabu", a prohibited drugs (sic), containing 0.5680 gram to a poseur-buyer in exchange of One Thousand Peso Bill.^[4]

Criminal Case No. 04-707

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, have in his possession, custody and control one (1) aluminum foil, one (1) aluminum tooter and one (1) lighter which are used and intended to be used for smoking, consuming, administering, injecting,

ingesting, or introducing any dangerous drug into the body, without any authority of law.^[5]

Allan, on the other hand, was charged with violation of Section 5, Article II of Republic Act No. 9165. The accusatory portion of the Information reads:

That on or about the 17th day of October, 2004, at around 10:45 o'clock in the morning, at Zone 2, Municipality of Bulan, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously, sell, deliver, dispose, distribute and/or give away for value two (2) transparent plastic sachets containing methamphetamine hydrochloride locally known as "Shabu", a prohibited drugs (sic), containing 0.1996 gram to a poseur-buyer in exchange of Six Hundred Peso Bill.^[6]

The facts, according to the evidence for the prosecution, follow.

Acting on an informant's tip, a buy-bust team was formed composed of SPO1 Reginal Goñez (SPO1 Goñez), the team leader, with PO1 David Olleres, Jr. (PO1 Olleres) as the *poseur*-buyer, and police back-ups, PO3 Virgilio Razo (PO3 Razo), and a certain PO1 Pabrigas, and an unidentified member of the Philippine Drug Enforcement Agency (PDEA).^[7] SPO1 Goñez produced the marked money consisting of one (1) One Thousand Peso bill and six (6) One Hundred Peso bills. PO1 Olleres placed his initials on the marked bills.^[8] On 17 October 2004, the team conducted a buy-bust operation in the house of a certain Gerry Angustia located at Pier Uno, Zone 2, Bulan, Sorsogon. PO1 Olleres, PO3 Razo and the asset proceeded to the target house and they witnessed an ongoing pot session. They looked for "Galog" and they were introduced to Godofredo. They asked Godofredo if they can "score." Godofredo immediately left the house and went to a street at the back of the house. He returned carrying two (2) sachets of *shabu*, which he handed to PO1 Olleres. In exchange, PO1 Olleres paid him the One Thousand Peso marked bill. Allan also offered PO3 Razo two (2) more sachets of *shabu*. The latter asked for the Six Hundred Peso marked bills from PO1 Olleres and handed them to Allan as payment for the *shabu*. After these exchanges, they requested appellants for an actual test of *shabu*. Godofredo provided them with a tooter and aluminum foil. While they were testing said *shabu*, they declared an arrest.^[9] PO1 Olleres and PO3 Razo identified the appellants in open court.^[10]

An Affidavit of Arrest was prepared and signed by PO1 Olleres and PO3 Razo.^[11] PO1 Olleres also prepared a receipt of the property seized containing his and appellants' signatures.^[12] The buy-bust team marked the plastic sachets containing *shabu* at the crime scene and PO1 Olleres brought the seized items to the Philippine National Police (PNP) Crime Laboratory.^[13] They also took photographs of the items confiscated and of appellants.

In Chemistry Report No. D-174-04 dated 18 October 2004, Police Inspector Josephine Macura Clemen, a forensic chemist, found that the specimen submitted to

her was *Methamphetamine Hydrochloride*, otherwise known as *shabu*.^[14]

A different version of the incident was presented by the defense. Allan claimed that on 17 October 2004 at around 10:45 a.m., he was near the fence of Jessie Angustia's house waiting for a pumpboat coming from Masbate. He heard someone from inside the house saying "*tadihan ta ini*" or "let's taste it." Allan thought that there was food being cooked so he went inside the house. He then saw *shabu* scattered on the table while a certain Ludy Gubat (Ludy) was holding an aluminum foil. He also saw Godofredo and PO1 Ollares. Allan tried to leave but Ludy poked a knife on the left side of his stomach and held him in the collar. Ludy apparently threatened to stab Allan if the latter did not go with him. Allan was brought by police officers to the 509th Mobile Group where he was forced to sign a document without reading its contents. He was eventually transferred to the PNP Station of Bulan, Sorsogon.^[15]

Godofredo admitted that he was a drug user and that he went to the house of Jessie Angustia to "score" *shabu*. Thereat, he saw Ludy and PO1 Ollares sniffing *shabu*. When Allan arrived, Ludy cursed him and held him on his shoulders. Ludy pulled out a knife and poked it at Allan. Thereafter, PO1 Ollares arrested Godofredo. He was boarded in a tricycle and brought to Camp Crame.^[16]

On 5 March 2008, the RTC rendered judgment finding appellants guilty. The dispositive portion reads:

WHEREFORE, premises considered, accused Godofredo Mariano y Feliciano and Allan Doringo y Guban, having been found GUILTY beyond reasonable doubt of Violation of Sections 5 and 12, Article II of RA 9165 (Comprehensive Dangerous Drugs Act of 2002), respectively, are hereby sentenced as follows:

a) In Criminal Case No. 04-706 (Violation of Section 5, Article II, RA 9165) accused Godofredo Mariano y Feliciano is sentenced to suffer the indivisible penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00);

b) In Criminal Case No. 04-707 (Violation of Section 12, Article II, RA 9165) accused Godofredo Mariano y Feliciano is sentenced to suffer the indeterminate penalty of Six (6) months and one (1) day to four years and a fine of Ten Thousand Pesos (Php10,000.00);

c) In Criminal Case No. 04-708 (Violation of Section 5, Article II, RA 9165) accused Allan Doringo y Guban is sentenced to suffer the indivisible penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00).

The dangerous drugs as well as the drug paraphernalia subject matter of the three (3) instant cases are hereby ordered confiscated and forfeited in favor of the government (Sec. 20, RA 9165) to be disposed in accordance with the provisions of Section 21 of the same Act.^[17]

The trial court held that the prosecution was able to establish that the buy-bust operation was successfully conducted when appellants were caught in *flagrante delicto* selling drugs, resulting in their apprehension. The trial court dismissed the defense of *alibi* and denial over the positive testimonies of prosecution witnesses.

On appeal, the Court of Appeals on 9 November 2009 issued the challenged Decision denying the appeal and affirming appellants' conviction.

Failing to secure a favorable decision, appellants filed a notice of appeal before this Court.^[18]

On 22 March 2010, the Court required the parties to simultaneously file their supplemental briefs.^[19] In two separate manifestations, both parties expressed their intention not to file any supplemental brief since all the issues and arguments have already been raised in their respective Briefs.^[20]

Appellants maintain that the trial court erred in admitting the seized dangerous drugs and drug paraphernalia as evidences against them. They assail the validity of their warrantless arrest by stating that the arresting officers should have secured a warrant because they were already in possession of pertinent information, such as the identity of their target, upon which an application for a warrant could be based. Thus, the alleged *shabu* obtained by virtue of an invalid warrantless arrest is inadmissible. In addition, appellants question the validity of the inventory receipt in that the signing was done without the assistance of counsel.

In its appellee's brief, the Office of the Solicitor General (OSG) supports the convictions of the appellants. It justifies the legality of the warrantless arrest of appellants as they were caught in *flagrante delicto*. Moreover, the OSG avers that appellants are estopped from questioning the legality of their arrest having raised them only on appeal.

We deny the appeal.

Appellants were charged and convicted of the crime of illegal sale of dangerous drugs.

Under Section 5, Article II of Republic Act No. 9165, the elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.^[21]

All these elements were duly established by the prosecution. Appellants were caught in *flagrante delicto* selling *shabu* during a buy-bust operation conducted by the buy-bust team. The *poseur*-buyer, PO1 Olleres, positively testified that the sale took place and that appellants sold the *shabu*, thus:

A: At about 10:30 in the morning of that day our team leader

instructed me to be with them in conducting a buy bust operation.

Q: And who was with you at that time?

A: PO3 Razo and an asset.

Q: Where is the venue of the buy bust operation?

A: In the house of a certain Gerry Angustia (sic).

Q: At what time did you proceed to said place more or less?

A: About 10:00 o'clock in the morning, Ma'am, we proceeded to the house of Gerry Angustia (sic). As per information of our asset, Galog was already on that house.

Q: Who is that Galog that you are referring to?

A: Godofredo Mariano.

Q: When you reached the place of Gerry Angustia (sic), what happened?

A: When we arrived at the scene there was an ongoing pot session but we did not disturb them because the subject of our operation for the day is Godofredo Mariano and when we arrived we asked who is Galog and he was introduced to us and so we asked him if we can buy some items from him.

Q: The place where you proceeded to, Mr. Witness, is it a house?

A: It is just a small house and to our knowledge it was being occupied by Gerry Angustia (sic).

Q: Mr. Witness, what happened when you were there and being introduced to Galog?

A: We talked with him and asked him if we can score and Godofredo Mariano left the house and went to a street at the back of the house and when he came back he has already with him two (2) sachets of *shabu*.

Q: Now, what happened when he returned with two (2) sachets of *shabu*?

A: Upon arrival of Godofredo Mariano with those two (2) sachets of *shabu*, we paid him one thousand (Php1,000.00) pesos and right then and there Allan Doringo approached us and offered to us to buy also two (2) sachets of *shabu*.

Q: Did you likewise buy the *shabu* offered by Allan Doringo?

A: Yes, Ma'am, Police Officer Razo gave Allan Doringo six hundred (Php600.00) pesos.

Q: Afterwards, what happened?

A: And right after the exchanged of items we requested the two (2) of them to have the actual test of *shabu* and while they were testing the *shabu* we declared arrest.

Q: What do you mean when you say they were actually testing the *shabu*?

A: They tested the *shabu* by providing us the totter and aluminum foil and while we were testing the said *shabu* we declared arrest.

Q: Is accused Godofredo Mariano present today in court?

A: Yes, Ma'am.

Q: Please identify him to us?

A: (Witness pointed to a man in a blue strife sweet shirt (sic) who identified himself as Godofredo Mariano.)

Q: What about accused Allan Doringo (sic), is he present today in court?