

## FIRST DIVISION

[ G.R. No. 182525, March 02, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BERTHA PRESAS Y TOLENTINO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

Subject of this appeal is the Decision<sup>[1]</sup> of the Court of Appeals in CA G.R. CR-H.C. No. 02361 dated 22 October 2007, affirming the Judgment<sup>[2]</sup> dated 9 May 2006 of the Regional Trial Court (RTC), Branch 64 of Makati City, finding appellant Bertha Presas y Tolentino guilty of illegal sale of *shabu*.

Two separate Informations were filed before the RTC. In Criminal Case No. 03-2795, appellant was accused of illegal sale of *shabu* which reads:

That on or about the 30<sup>th</sup> day of July 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell[,] distribute and transport, weighing zero point zero six (0.06) gram of Methamphetamine Hydrochloride (*Shabu*), which is a dangerous drug, in violation of the above-cited law.<sup>[3]</sup>

In Criminal Case No. 03-2796, appellant was charged with illegal possession of *shabu* allegedly committed as follows:

That on or about the 30<sup>th</sup> day of July 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control weighing zero point zero seven (0.07) gram of Methamphetamine Hydrochloride (*Shabu*), which is a dangerous drug, in violation of the above-cited law.<sup>[4]</sup>

On arraignment, appellant pleaded not guilty to both charges. In a joint pre-trial conference conducted on 9 September 2003, the following facts were stipulated:

1. That these cases were investigated by PO1 Alex Inopia;

2. That after the investigation of PO1 Alex Inopia, he prepared the Final Investigation Report;
3. That the PNP Anti Illegal Drug Special Operation Sub-Task Force through P/Supt. Jose Ramon Salido made a Request for Laboratory Examination addressed to the PNP Crime Laboratory Office, Camp Crame, Quezon City;
4. That the specimen submitted for examination were duly received by the PNP Crime Laboratory Office, Camp Crame, Quezon City as evidenced by the stamp mark at the lower left portion of the Request for Laboratory Examination;
5. That the PNP Crime Laboratory Office through Police Inspector Abraham Verde Tecson conducted an examination on the specimen submitted;
6. That per examination, the specimen submitted for examination gave positive result for the test of Methylamphetamine Hydrochloride;
7. That after examination of the specimen submitted, the PNP Crime Laboratory Office through the Forensic Chemist prepared the Initial Laboratory Report; and
8. The qualification of the Forensic Chemist.

x x x x

With the stipulation entered into by the prosecution and the defense, the testimony of the Forensic Chemist, P/Insp. Abraham Verde Tecson, is dispensed with.<sup>[5]</sup>

A joint trial of the two (2) cases thereafter ensued.

The following facts were related by prosecution witnesses who comprised mainly of members of the buy-bust team.

Based on an informant's tip, *Barangay* Captain Doromal of *Barangay* Pitogo called up the Makati City Police Station Anti-Illegal Drug Special Operation - Sub Task Force, to disclose the illegal sale of drugs of an *alias* Beng, who was later identified as appellant in *Barangay* Pinagkaisahan, Makati City. A buy-bust operation was conducted. Makati Anti Drug Abuse Council (MADAC) operative Gerardo Fariñas (Fariñas) acted as the *poseur*-buyer and was backed up by PO2 Rodrigo Igno (PO2 Igno), as the team leader, PO2 Herbert Ibias, and PO2 Tolentino, among others. Two (2) One Hundred Pesos bills were prepared. PO2 Igno placed the markings "C4" above the serial numbers of the bills.<sup>[6]</sup> Upon reaching Danlig Street in Makati City at around 9:00 p.m., Fariñas and the informant waited at a nearby store for appellant. When the informant called on appellant, the latter came out of her house, which was situated at the corner of Danlig and Tolentino Streets. The informant introduced Fariñas to appellant as the buyer of *shabu*. Appellant even asked informant if it was "okay" to transact with Fariñas, to which the informant answered "*okay yan mare, kaibigan ko yan.*" Fariñas gave Two Hundred Pesos (P200.00) to appellant, who then put the money inside her right pocket while drawing a plastic sachet from her left pocket. Appellant handed the plastic sachet to Fariñas. Thereafter, Fariñas gave the pre-arranged signal of taking off his cap. PO2 Igno and Tolentino immediately approached and arrested appellant. PO2 Tolentino asked

appellant to empty her pockets, and the buy-bust money as well as another plastic sachet were recovered from her. The plastic sachet containing *shabu* was marked with appellant's initials "PBT" at the crime scene by Fariñas. Appellant was then brought to the Makati Police Headquarters.<sup>[7]</sup> The plastic sachets containing *shabu* were brought to the Philippine National Police (PNP) Crime Laboratory for examination.<sup>[8]</sup> Chemistry Report Number D-959-03 revealed that the specimens submitted yielded positive results for *shabu*.<sup>[9]</sup>

As the lone witness for the defense, appellant testified that she was inside her house on 30 July 2003 in Danlig Street when several men, who claimed to be from the *barangay*, knocked on the door and eventually forced their way into her house. Appellant was dragged out of the house and forcefully boarded her into a vehicle. She was brought to the *barangay* hall of *Barangay* Pitogo where she was brought inside a room, frisked, and asked to undress. Despite the fact that nothing was recovered from her, appellant was brought to the PNP-Criminal Investigation Division where she underwent a drug test. Appellant denied selling *shabu* and any knowledge of a buy-bust operation.<sup>[10]</sup>

After trial, the RTC rendered a decision finding appellant guilty of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 03-2795 and sentencing her to suffer life imprisonment and to pay a fine of P500,000.00. She was however acquitted of the charge for violation of Section 11, Article II of Republic Act. No. 9165 in Criminal Case No. 03-2796, for insufficiency of evidence. The trial court found the prosecution's evidence as sufficient to prove the elements for illegal sale of *shabu*.

On appeal, the Court of Appeals affirmed the judgment of the RTC. The Court of Appeals vouched for the credibility of the prosecution witnesses and rejected appellant's defense of denial, holding the same as inherently weak.

In appealing her conviction before this Court, appellant opted to adopt the same arguments in her Brief before the Court of Appeals. To prove that her guilt was not proven beyond reasonable doubt, appellant challenges the credibility of the testimony of prosecution witnesses, particularly their contradicting statements regarding whether a surveillance was conducted prior to the buy-bust operation or not. Appellant then questions the non-presentation of the forensic chemist to corroborate the alleged findings that the substance examined was found positive for *shabu*. Finally, appellant disputes the presumption that the MADAC operative had regularly performed their duties. Appellant claims that certain regulations providing for the chain of custody of seized drugs were not followed. There was no physical inventory nor a photograph of the drugs allegedly confiscated from appellant.

On the contrary, the Office of the Solicitor General (OSG) maintains that appellant's guilt was proven beyond reasonable doubt. The prosecution was able to prove that appellant was arrested in a buy-bust operation and she was positively identified as the person who sold the illegal drugs to the *poseur*-buyer. The OSG justifies the alleged inconsistencies in the testimonies of prosecution witnesses as being minor or trivial which did not detract from the fact that appellant was caught *in flagrante delicto* as a result of the buy-bust operation. The non-presentation of the forensic chemist, the OSG adds, is immaterial because the Chemistry Report revealed that the specimens were found positive for *shabu* and such evidence was not contested

by the defense. With respect to the chain of custody, the OSG argues that the contraband items were initialled by Fariñas in appellant's presence and the Chemistry Report confirmed that they were positive for *shabu*. The incident was likewise documented in the Spot Report.

After scouring the records of this case, we do not find any cogent reason to depart from the ruling of the Court of Appeals. Otherwise stated, we agree with the lower courts' finding that the guilt of the appellant was established beyond reasonable doubt.

In every prosecution for illegal sale of *shabu* under Section 5, Art. II of Republic Act No. 9165 or the "*Comprehensive Dangerous Drugs Act of 2002*," the following elements must be sufficiently proved: (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 therefor.<sup>[11]</sup> All these elements were duly established. Appellants were caught in *flagrante delicto* selling *shabu* through a buy-bust operation conducted by MADAC operatives.

At the outset, we affirm the findings of the trial court with respect to the credibility of the prosecution witnesses considering that the trial court had the opportunity to observe the conduct and demeanor of the witnesses during the trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings.<sup>[12]</sup>

The *poseur*-buyer, MADAC operative Fariñas, positively testified that the sale of *shabu* took place and appellant was caught red-handed, thus:

PROS. BAGAOISAN:

And, how long did you wait for the accused?

WITNESS:

We just waited for seconds and then we saw alias Beng because the informant called her, sir.

PROS. BAGAOISAN:

Now, where did the accused come from?

WITNESS:

Their house is located at the corner of Danlig and Tolentino Streets and their fence is quite low, so the informant just called her, sir.

PROS. BAGAOISAN:

What did you do after the informant called the accused?

WITNESS:

Alias Beng went out of their house, sir.

PROS. BAGAOISAN:

What happened after Alias Beng went out?

WITNESS:

I was introduced by the informant to her, sir.

PROS. BAGAOISAN:

How were you introduced to the accused?

WITNESS:

That I am interested of *shabu* and then I am going to buy *shabu*, sir.

PROS. BAGAOISAN:

And, what did the accused reply, if any?

WITNESS:

Alias Beng asked the informant if I am okay, sir.

PROS. BAGAOISAN:

And, what was the reply of the informant if there was any?

WITNESS:

The informant replied: "*Okay yan mare, kaibigan ko yan.*"

PROS. BAGAOISAN:

What happened next after that?

WITNESS:

I gave the Two Hundred Pesos to Alias Beng and she took it from me, sir.

PROS. BAGAOISAN:

And, what did the accused do after she received the buy bust money?