

FIRST DIVISION

[G.R. No. 187047, June 15, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL CRUZ Y CRUZ, ACCUSED-APPELLANT.**

D E C I S I O N

PEREZ, J.:

This is an appeal from the Decision ^[1] dated 23 September 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02603, affirming *in toto* the Decision ^[2] dated 22 September 2006 of the Regional Trial Court (RTC) of Parañaque City, Branch 259, in Criminal Case No. 05-0254, finding herein appellant Manuel Cruz y Cruz guilty beyond reasonable doubt of illegal sale of 1.53 grams of *shabu*, a dangerous drug, in violation of Section 5, ^[3] Article II of Republic Act No. 9165, ^[4] thereby, sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

Appellant Manuel Cruz y Cruz was charged in two (2) separate Informations ^[5] both dated 24 February 2005 with violation of Sections 5 and 11, ^[6] Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 05-0254 and Criminal Case No. 05-0255. The Informations read as follows:

Criminal Case No. 05-0254

That on or about the 23rd day of February 2005 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], a (sic) not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously **sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport Methylamphetamine Hydrochloride (*shabu*) weighing 1.53 gram, a dangerous drugs** (sic). ^[7] [Emphasis supplied].

Criminal Case No. 05-0255

That on or about the 23rd day of February 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], not being authorized by law to possess, did then and there willfully, unlawfully and feloniously **have in his possession and under his control and custody Methylamphetamine Hydrochloride (*shabu*) weighing 1.42 gram, a dangerous drug.** ^[8] [Emphasis supplied].

Upon arraignment, appellant, assisted by counsel *de officio*, pleaded NOT GUILTY [9] to both charges. By agreement of the parties, the pre-trial conference was terminated. [10] Trial on the merits ensued thereafter.

The prosecution presented the testimony of Police Officers 2 Nemesio Gallano (PO2 Gallano) and Darwin Boiser (PO2 Boiser), both of whom are members of the Philippine National Police (PNP) assigned at the District Anti-Illegal Drugs Special Operation Team (DAID-SOT), Southern Police District, Fort Bonifacio, Taguig, Metro Manila. [11] PO2 Gallano acted as the *poseur*-buyer while PO2 Boiser served as the immediate back-up of PO2 Gallano in the buy-bust operation against appellant.

The formal taking of the testimony of Police Inspector Abraham Verde Tecson (P/Insp. Tecson) was dispensed [12] with after both parties stipulated on the following Exhibits and its sub-markings, to wit: (1) Exhibit "A," the Request for Laboratory Examination [13] of the two small heat-sealed transparent plastic sachets containing white crystalline substance seized from appellant and duly marked as "NG-1-230205" and "NG-2-230205," respectively; (2) Exhibit "B," the small brown size mailing envelope that contained the two small heat-sealed transparent plastic sachets with white crystalline substance; [14] and (3) Exhibit "C," the Chemistry Report No. D-143-05. [15] The said stipulation was subject to the condition that P/Insp. Tecson has no personal knowledge of the facts and circumstances surrounding the recovery of the subject specimen; that he only made a qualitative examination of the same; and that Physical Science Report No. D-143-05 was not made under oath. [16]

As culled from the records and testimonies of the aforesaid prosecution witnesses, the factual antecedents of this case are as follows:

On 23 February 2005, at around 1:30 p.m., while Senior Police Officer 2 Rey Millari (SPO2 Millari) was at their office at DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila, a male informant came in with an information that a certain *alias* Maning was engaged in selling illegal drugs at *Sitio* de Asis, *Barangay* San Martin de Porres, Parañaque City. SPO2 Millari immediately relayed such information to Police Chief Inspector Tito M. Oraya (P/Chief Insp. Oraya), Chief of DAID-SOT. P/Chief Insp. Oraya then directed PO2 Gallano, one of the police operatives of DAID-SOT, to verify the said information. PO2 Gallano acceded by making telephone calls to the people he knew in *Sitio* de Asis, *Barangay* San Martin de Porres, Parañaque City. PO2 Gallano asked each of them if they knew a certain *alias* Maning to which all positively responded and disclosed that *alias* Maning was, indeed, involved in the illegal sale of drugs in their place. [17]

Thereafter, PO2 Gallano told P/Chief Insp. Oraya that the information relayed to them by the male informant was true and accurate. Accordingly, a buy-bust operation against *alias* Maning was planned and a team was formed composed of: PO2 Gallano, who was designated as the *poseur*-buyer; PO2 Boiser, who was to serve as PO2 Gallano's immediate back-up; SPO2 Millari, Police Officer 3 Sergio Delima (PO3 Delima), PO2 Gerald Marion Lagos (PO2 Lagos), PO2 Cerilo Zamora (PO2 Zamora) and the other police operatives of DAID-SOT, all of whom were assigned as perimeter back-up. P/Chief Insp. Oraya then gave four (4) pieces of

P500.00 peso bills amounting to P2,000.00 to PO2 Gallano as buy-bust money, which the latter marked with "JG," representing the initials of Jose Gentiles, Chief of the District Intelligence and Investigation Branch. During the briefing, the male informant was also present. The pre-arranged signal of the buy-bust team was a missed call from PO2 Gallano to PO2 Boiser. [18]

At around 5:00 p.m., the buy-bust team, together with the male informant, proceeded to the target area on board two vehicles. Upon arrival thereat at around 5:45 p.m., the buy-bust team parked their vehicles along Tanyag Street. PO2 Gallano and the male informant alighted from their vehicle and walked towards the house of *alias* Maning while the rest of the buy-bust team followed them discreetly. Upon reaching the house of *alias* Maning, who at that time was standing on a street in front of his house, the male informant, who personally knew *alias* Maning, approached the latter and introduced PO2 Gallano as a security guard in need of *shabu* for his personal use. At this juncture, PO2 Boiser and the rest of the buy-bust team, who were all in civilian clothes, were already strategically deployed at the target area at a distance of about 10 to 15 meters away from *alias* Maning, PO2 Gallano and the male informant. The male informant likewise told *alias* Maning that PO2 Gallano is his friend. *Alias* Maning then asked PO2 Gallano how much *shabu* he would buy and where he used to buy such stuff. PO2 Gallano told *alias* Maning that he used to get it in Ususan, Taguig. *Alias* Maning then asked for PO2 Gallano's money and the latter handed to the former the marked money consisting of four (4) pieces of P500.00 peso bills amounting to P2,000.00. In exchange thereto, *alias* Maning gave PO2 Gallano one piece plastic sachet containing white crystalline substance equivalent to the money the latter gave to the former. [19]

Immediately thereafter, PO2 Gallano gave a missed call to PO2 Boiser as their pre-arranged signal signifying that the sale transaction has already been consummated. PO2 Boiser and the rest of the buy-bust team, who were just within the vicinity of the target area, proceeded, at once, to the place where PO2 Gallano, *alias* Maning and the male informant were. PO2 Gallano and the other members of the buy-bust team then introduced themselves to *alias* Maning as police officers. PO2 Gallano with the help of PO2 Boiser effected the arrest of *alias* Maning. In the course thereof, another plastic sachet containing white crystalline substance was recovered by PO2 Gallano in the possession of *alias* Maning. The marked money consisting of four (4) pieces of P500 peso bills amounting to P2,000.00 was also recovered from *alias* Maning. PO2 Gallano then marked the one piece plastic sachet containing white crystalline substance subject of the sale with "NG-1-230205" while the other plastic sachet also containing white crystalline substance found in the possession of *alias* Maning on the occasion of his arrest was marked with "NG-2-230205." [20]

Thereafter, appellant was brought to the office of DAID-SOT, Southern Police District, Fort Bonifacio, Taguig, Metro Manila, for investigation and proper documentation. In the course thereof, *alias* Maning was later on identified to be Manuel Cruz y Cruz, the herein appellant. A request for the drug testing of the appellant and for the laboratory examination of the two (2) plastic sachets containing white crystalline substance seized from him were likewise made. The said two (2) plastic sachets containing white crystalline substance were subsequently brought to the PNP Crime Laboratory in Camp Crame, Quezon City, for examination. The examination conducted thereon yielded positive result to the tests for the presence of methylamphetamine hydrochloride or *shabu*, a dangerous drug,

[21] as evidenced by Chemistry Report No. D-143-05. [22]

The defense, on the other hand, presented the lone testimony of herein appellant, who denied all the accusations against him.

Appellant claimed that, on 23 February 2005, he was working as a dispatcher of passenger jeepneys in Tanyag Street, *Sitio de Asis, Barangay San Martin de Porres, Parañaque City*. At around 3:00 p.m., he went home to answer the call of nature and to take a bath. From his workplace to his house, there is a distance of about 100 meters. Upon arrival thereat, he found out that somebody was still using the comfort room so he opted to stay in the garage and watched the children playing video games. [23]

After a while, four to five male persons in civilian clothes, who introduced themselves to be policemen, entered the gate of his house and immediately arrested and handcuffed him for his alleged refusal to cooperate and to give them "*tong*." He was then pulled outside and was forcefully boarded inside a vehicle. He was, thereafter, brought to Fort Bonifacio, Taguig, Metro Manila, and was detained thereat for the alleged recovery of *shabu* in his possession. The following day, he was brought to the Parañaque City Hall for inquest. The fiscal informed him that he was charged with the illegal sale of *shabu*. He was later on detained at the Parañaque City Jail. [24]

The trial court, convinced on the merits of the prosecution's case, rendered a Decision dated 22 September 2006 finding appellant guilty beyond reasonable doubt in Criminal Case No. 05-0254 for the crime of illegal sale of *shabu*, a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165 and sentenced him to suffer the penalty of life imprisonment and a fine of P500,000.00. The trial court, however, ordered the dismissal of Criminal Case No. 05-0255 for the crime of illegal possession of *shabu*, a dangerous drug, in violation of Section 11, Article II of Republic Act No. 9165, elucidating that appellant's possession of small quantity of *shabu* can be considered as part and parcel of his nefarious trade. The trial court, thus, decreed:

WHEREFORE, PREMISES CONSIDERED, finding **MANUEL CRUZ [y] CRUZ GUILTY** beyond reasonable doubt for **Violation of Section 5, Art. II, [Republic Act No.] 9165**, he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00. **Criminal Case No. 05-0255** against Manuel Cruz Cruz for alleged **violation of Section 11, Art. II, [Republic Act No.] 9165 is ordered dismissed said possession of small quantity of *shabu* being considered as part and parcel of his nefarious trade.**

The Clerk of Court is directed to prepare the *Mittimus* for the immediate transfer of MANUEL CRUZ [y] CRUZ from Parañaque City Jail to New Bilibid Prisons, Muntinlupa City, and to forward the specimen subject of these cases to the Philippine Drug Enforcement Agency [PDEA] for proper disposition. [25] [Emphasis supplied].

Appellant appealed the aforesaid trial court's Decision to the Court of Appeals *via*

Notice of Appeal. [26]

In his Brief, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE [APPELLANT]'S SEARCH AND ARREST AS ILLEGAL.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. [27]

After a thorough study of the records, the Court of Appeals rendered the assailed Decision dated 23 September 2008, affirming *in toto* appellant's conviction for violation of Section 5, Article II of Republic Act No. 9165.

The Court of Appeals ratiocinated as follows:

Sufficient evidence was presented by the prosecution to show that **appellant was caught in *flagrante delicto* in a legitimate entrapment operation** conducted by the police.

x x x x

The passing of *shabu* from appellant's hand to PO2 [Gallano] in exchange for P2,000.00 constituted a violation of Republic Act No. 9165. The police officers were, therefore, justified in arresting appellant without any warrant and in seizing the plastic sachets containing white crystalline substance as *corpus delicti* of the crime. x x x

Appellant argues that he was framed up. The police officers planted the evidence against him and records do not show that the marked money was recorded in the police blotter.

Appellant's defense of denial and frame up is without basis. The testimony of PO2 [Gallano] was corroborated by the testimony of PO2 [Boiser]. **Their testimonies are supported by other evidence which are - (a) the sachets containing illegal substance seized from the appellant and (b) the marked money.** x x x

x x x x

The Court is convinced that the guilt of the appellant was proven beyond reasonable doubt. He was caught in *flagrante delicto* in a buy-bust operation. A buy-bust operation is a form of entrapment whereby ways