

## THIRD DIVISION

[ G.R. No. 175590, February 09, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERNANDO VILLAMIN Y SAN JOSE ALIAS ANDOY, ACCUSED-  
APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated July 19, 2006 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00967, affirming the Decision<sup>[2]</sup> dated May 7, 2003 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 20, in Criminal Case No. 2332-M-2002, finding accused-appellant Fernando Villamin guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) 9165.

The facts, as culled from the records, are the following:

Members of the Drug Enforcement Unit (DEU) of San Jose del Monte Police Station received a report from a civilian informant and from the Barangay Captain of Barangay Gumaok, San Jose del Monte, Bulacan sometime during the first week of August 2002, that a certain Fernando Villamin, *alias* "Andoy," was engaged in the sale of *shabu*<sup>[3]</sup> in that same place. <sup>[4]</sup> Thus, a team composed of Senior Police Officer 2 (SPO2) Mario Llarinas, Eduardo Ocampo, a police aide, and a civilian asset, was formed to conduct a test-buy operation of *shabu* from accused-appellant.<sup>[5]</sup>

A civilian asset of the DEU and Police Aide Eduardo Ocampo, on August 15, 2002, went to accused-appellant in order to buy *shabu*. Accused-appellant informed them that he ran out of stock and asked them to return the following day. When the civilian asset and Eduardo Ocampo returned the next day, accused-appellant informed them that the *shabu* was not yet available and again suggested that they return the following day.<sup>[6]</sup>

On August 17, 2002, a team -- composed of SPO4 Abelardo Taruc; Police Officers 2 (PO2) Mario Llarinas and Nasser Saiyadi; members of the DEU; and four (4) police aides, namely; Eduardo Ocampo, Jude Illana, Glendo Villamor, and Jerson Bausa -- was then formed to conduct a buy-bust operation directed at accused-appellant.<sup>[7]</sup> The designated leader and poseur-buyer was SPO4 Taruc.<sup>[8]</sup> In connection therewith, SPO4 Taruc prepared two P100.00 marked bills before the buy-bust operation.<sup>[9]</sup>

The team then proceeded to Barangay Gumaok, San Jose del Monte, Bulacan at around 11:00 o'clock in the morning. SPO4 Taruc and the civilian asset approached the house of accused-appellant, while the rest positioned themselves at strategic locations near the house. The civilian asset introduced SPO4 Taruc to accused-

appellant and told the latter that SPO4 Taruc wanted to buy shabu worth P200.00. Accused-appellant responded, saying, "*Meron na, meron na.*"<sup>[10]</sup> Afterwards, accused-appellant entered his house. When accused-appellant opened the door of the house, SPO4 Taruc noticed that there were several people sniffing shabu inside the same house. After a few minutes, accused-appellant came out of his house holding a small packet/plastic sachet. Accused-appellant approached SPO4 Taruc, and the latter handed the former the two P100.00 marked bills. Thereafter, accused-appellant gave the plastic sachet he was holding to SPO4 Taruc.<sup>[11]</sup>

SPO4 Taruc, after making sure that the content of the plastic sachet was indeed *shabu*, held the hands of accused-appellant and placed him under arrest. Accused-appellant was, thereafter, frisked and the marked money, along with six more sachets of *shabu*, were seized from him. As a signal to the other members of the buy-bust operation team that the transaction was already completed, SPO4 Taruc placed his hand on his head. Hence, the rest of the team hurried to apprehend accused-appellant and the other people inside the house. However, the others scampered to different directions.<sup>[12]</sup> The police officers and their aides were able to apprehend only two women, namely: Alma Frial, accused-appellant's neighbor, and Joselyn Patilano-Cabardo, accused-appellant's live-in partner.<sup>[13]</sup>

Also recovered inside the house of accused-appellant were six other sachets of *shabu* and *shabu* paraphernalia. Subsequently, accused-appellant, Alma Frial, and Joselyn Patilano-Cabardo, as well as the evidence recovered, were brought to the police headquarters where the members of the buy-bust operation team also prepared their joint affidavits.<sup>[14]</sup>

The seven (7) plastic sachets of *shabu*, including the one bought from accused-appellant during the buy-bust operation, as well as the drug paraphernalia, were referred to the Philippine National Police (PNP) Crime Laboratory.<sup>[15]</sup> Forensic Chemist, PNP Inspector Nellson Sta. Maria, after conducting a series of tests to determine the contents of the gathered pieces of evidence, came out with the following findings:

**SPECIMEN SUBMITTED:**

A - One (1) heat-sealed transparent plastic sachet with markings "AT-FV" containing 0.145 gram of white crystalline substance.

x x x

**FINDINGS:**

Qualitative examination conducted on the above stated specimens gave POSITIVE result to the test for the presence of Methylamphetamine hydrochloride,<sup>[16]</sup> a regulated drug.<sup>[17]</sup>

Resultantly, three separate Informations were filed charging accused-appellant, and the others who were caught during the buy-bust operation, with violation of Secs. 5,

6 and 11, Art. II of R.A. 9165, which read, as follows:

Criminal Case No. 2331-M-2002

The undersigned City Prosecutor accuses Fernando Villamin y San Jose alias Andoy of violation of Section 11, Art. II of R.A. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," committed as follows:

That on or about the 17<sup>th</sup> day of August, 2002, in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in his possession and control six (6) heat-sealed transparent plastic sachets containing Methylamphetamine Hydrochloride having a total weight of 1,042 grams, which is a regulated drug.

Contrary to law.

Criminal Case No. 2332-M-2002

The undersigned City Prosecutor accuses Fernando Villamin y San Jose alias Andoy of Violation of Section 5, Art. II of R. A. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," committed as follows:

That on or about the 17<sup>th</sup> day of August, 2002, in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, deliver dispatch in transit and transport one (1) heat-sealed transparent plastic sachet containing Methylamphetamine Hydrochloride weighing .145 gram, which is a regulated drug.

Contrary to law.

Criminal Case No. 2333-M-2002

The undersigned City Prosecutor accuses Fernando Villamin y San Jose alias Andoy of Violation of Section 6, Art. II of R. A. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," committed as follows:

That on or about the 17<sup>th</sup> day of August, 2002, San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously openly maintain his residence located at Brgy. Gumaok East, this City, as drug den where drugs are administered/sold, dispensed and used.

Contrary to law.

On September 4, 2002, accused-appellant pleaded Not Guilty to all the charges against him. Thereafter, trial ensued.

The Prosecution presented the testimonies of Police Officer 3 (PO3) Nasser Saiyadi, [18] SPO4 Abelardo Taruc, [19] SPO2 Mario Llarina, [20] and Police Aide Eduardo Ocampo [21] who testified as to the facts earlier narrated.

The defense, on the other hand, presented the testimonies of accused-appellant [22] and his live-in partner, Joselyn Patilano-Cabardo. [23] According to accused-appellant, on August 17, 2002, around 7:00 o'clock in the morning, he was having breakfast inside his house at Barangay Gumaok, San Jose del Monte, Bulacan, when three persons entered his house through the kitchen door. Alma Frial, one of the three persons, asked accused-appellant if she and her companions could stay in his house because somebody was chasing them, and said that one of her companions was in trouble. Accused-appellant refused the request of Alma for fear of being implicated in whatever trouble Alma and her two companions were involved. Accused-appellant added that Joselyn Patilano-Cabardo, his live-in partner, overheard the above conversation and told the former not to allow Alma Frial and her companions to stay in their house. Accused-appellant, in turn, told Alma Frial about the sentiments of his live-in partner.

Later on, as narrated by accused-appellant, somebody kicked the kitchen door of his house. Three men entered as the door opened, with one of them saying, "*Walang kikilos, dyan ka lang.*" The two other men immediately proceeded to the room of accused-appellant and Cabardo. Accused-appellant was then asked, "*Nasaan na yung mga kasama mo?*" To this he replied that nobody else was inside the house except he and his live-in partner. Upon realizing the commotion, accused-appellant's live-in partner shouted, "*Wala kayong karapatan na pumasok dito.*"

Meanwhile, somebody outside the house shouted, "*Mayroong tao dito.*" Thereafter, four persons, one of them Alma Frial, entered accused-appellant's house. One of the men who earlier barged inside the house of accused-appellant said, "*Sinungaling ka, ang sabi mo hindi nanggaling dito yang mga taong iyan.*" Joselyn Patilano-Cabardo tried to help accused-appellant but another man said, "*Isa ka pa, maingay ka, kasama ka rin.*" It was then that SPO4 Taruc ordered, "*Dalhin na ninyo iyan.*" However, Cabardo said, "*Bakit ninyo kami dadalhin, wala naman kaming kasalanan?*"

In short, accused-appellant denied that he was caught selling *shabu*, a denial which Joselyn Patilano-Cabardo corroborated.

The RTC found accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 in Criminal Case No. 2332-M-2002, but acquitted him of the other charges. The dispositive portion of the trial court's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

(1) In **Criminal Case No. 2332-M-2002**, the Court finds accused **Fernando Villamin y San Jose**, guilty beyond reasonable doubt of **Violation of Section 5, Article II of R. A. 9165** and hereby sentences him to life imprisonment. He is also ordered to pay a fine of Five Hundred Thousand Pesos (P500,00.00);

(2) In Criminal Cases Nos. 2331-M-2002 and 2333-M-2002, the Court finds that the prosecution failed to prove beyond reasonable doubt the guilt of accused Fernando Villamin y San Jose of the crimes charged and he is therefore acquitted;

(3) For insufficiency of evidence, the Court hereby acquits accused Joselyn Patilano-Cabardo and Alma Frial y Caluntod in Criminal Case No. 2334-M-2002.

The dangerous drugs and drug paraphernalia submitted as evidence in these cases are hereby ordered to be transmitted to the Dangerous Drugs Board (DDB).

SO ORDERED.

Due to the penalty imposed, which is Life Imprisonment, the case was elevated to this Court on appeal. However, per Resolution<sup>[24]</sup> of this Court dated March 28, 2005, the case was transferred to the CA in conformity with the Decision of this Court dated July 7, 2004 in *People v. Mateo*,<sup>[25]</sup> modifying the pertinent provisions of the Revised Rules of Criminal Procedure, particularly Sections 3 and 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125, and any other rule insofar as it provides for direct appeals from the RTC to this Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment; as well as the resolution of this Court *en banc*, dated September 19, 1995, on Internal Rules of the Supreme Court, in cases similarly involving the death penalty, pursuant to this Court's power to promulgate rules of procedure in all courts under Article VIII, Section 5 of the Constitution, and allowing an intermediate review by the CA before such cases are elevated to this Court.

The CA, in its Decision dated July 19, 2006, affirmed the conviction of accused-appellant. The dispositive portion reads as follows:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit, and the assailed decision is AFFIRMED and UPHeld *in toto*.

SO ORDERED.

Accused-appellant, in his Brief dated September 20, 2004, ascribes the following errors, to wit: