

## FIRST DIVISION

[ G.R. No. 181040, March 15, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RAYMOND FABIAN Y NICOLAS AND ALLAN MACALONG Y  
BUCCAT, ACCUSED-APPELLANTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Assailed before the Court is the July 20, 2007 Decision <sup>[1]</sup> of the Court of Appeals in CA-G.R. CR.-H.C. No. 02310. The Court of Appeals affirmed the May 29, 2006 Decision <sup>[2]</sup> of the Regional Trial Court (RTC) of Marikina City, Branch 192 finding appellant Raymond Fabian y Nicolas alias Jaja guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, <sup>[3]</sup> and finding appellant Allan Macalong y Buccat guilty beyond reasonable doubt of violation of Section 11, paragraph 2(3), Article II of Rep. Act No. 9165.

The prosecution charged appellants with violation of Sections 5 and 11 of Rep. Act No. 9165 in two (2) Informations which read:

**Criminal Case No. 2004-2961-D-MK**

That on or about the 16<sup>th</sup> day of August 2004, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly deliver and give away to ALLAN MACALONG y BUCCAT 0.06 gram of white crystalline substance, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW. <sup>[4]</sup>

**Criminal Case No. 2004-2962-D-MK**

That on or about the 16<sup>th</sup> day of August 2004, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control of 0.06 gram of white crystalline substance, which is a dangerous [drug], in violation of the above-cited law.

CONTRARY TO LAW. <sup>[5]</sup>

Upon arraignment on November 17, 2004, both appellants, assisted by a counsel *de oficio*, pleaded "Not Guilty." [6] Thereafter, trial on the merits ensued.

The prosecution presented the following version:

On August 16, 2004, PO1 Roberto Muega, a member of the Marikina City Police Station's Anti-Illegal Drugs Special Operations Task Force (SAIDSOTF), received a call from a concerned citizen regarding the rampant sale of illegal drugs in Camia Street, Doña Petra, Concepcion Uno, Marikina City. Acting on the report of the concerned citizen, a team composed of P/Supt. Romeo Abaring, PO1 Muega, PO2 Edwin Dano, PO2 Ferdinand Brubio and PO2 Christopher Anos was created to conduct surveillance in the area and possible buy-bust operation. PO2 Christopher Anos was the designated poseur-buyer. The team coordinated with the Philippine Drug Enforcement Agency (PDEA). After receiving PDEA Reference Number 1608-04-05 by fax machine, they proceeded to the target area.

At around 7:40 in the evening, the officers arrived at Camia Street and began observing the activities of the people in the area. PO1 Muega positioned himself near the driver's door of an FX taxi parked along Camia Street. A few moments later, he noticed Macalong enter a small alley. After several minutes, Macalong came out of the alley, this time accompanied by Fabian. Macalong and Fabian stood near the FX taxi and started whispering to each other. PO1 Muega then saw Fabian hand over to Macalong a small plastic sachet containing white crystalline substance, which he suspected to be *shabu*. Immediately, PO1 Muega introduced himself as a police officer and arrested Fabian and Macalong. He signalled to the other police officers, who came to his aid in apprehending the two suspects.

The officers recovered a plastic sachet containing white crystalline substance from Macalong's hand. They informed Fabian and Macalong of the cause of their arrest as well as their constitutional rights. PO1 Muega marked the confiscated plastic sachet with "ABM-RM POSS 8/16/04." He also had control and custody of the plastic sachet from the time of the arrest until they reached the SAIDSOTF office. PO1 Muega prepared the request for laboratory examination and together with the plastic sachet, brought it to the Philippine National Police (PNP) Crime Laboratory, National Headquarters, in Camp Crame, Quezon City. [7] PO1 Jennifer G. Tantoy, forensic chemical officer of the PNP Crime Laboratory, examined the marked specimen, which tested positive for methamphetamine hydrochloride or *shabu*. [8]

On the other hand, appellants denied the charges against them. Raymond Fabian testified that on August 16, 2004, at around 4:00 in the afternoon, he was cleaning their FX Taxi, which was parked along Camia Street, when an owner-type jeep and a red car stopped near him. Two (2) men in civilian clothes disembarked from their vehicle and approached him. Four (4) other persons were left inside the vehicles. PO2 Ferdinand Brubio asked him if he knew a certain "Bobong." He told them that he did not know the person. He was frisked and forced to board the FX taxi that he was cleaning. The officers took the key of the FX taxi from him. At the precinct, PO2 Brubio informed him that he was arrested for illegal possession of *shabu*. It was only there where he met his co-accused Macalong. He denied that it was PO1 Muega who frisked him because the latter was left inside the vehicle. He further denied that PO1 Muega saw him handing over a plastic sachet to Macalong. [9]

For his part, Macalong testified that on August 16, 2004 at around 6:00 in the evening, he was riding a tricycle along Dama de Noche Street, Twinville Subdivision in Marikina City, on his way home to San Mateo, Rizal. Suddenly, an owner-type jeep slowed down beside them forcing the tricycle to stop. PO2 Brubio, who was wearing short pants and shirt, alighted from the jeep and approached him. He was ordered to get out of the tricycle and raise his hands. When PO2 Brubio searched his front and back pockets, PO2 Brubio recovered a pack of cigarettes and his wallet. PO2 Brubio asked the tricycle driver and the other passengers to leave the area. Macalong was unable to leave because his driver's license was inside his wallet. He asked why PO2 Brubio took his wallet, but the latter simply said that they were just going to look inside. At the precinct, a small plastic containing white crystalline substance was shown to him. According to Macalong, it was the first time he came to know that he was being charged with violation of the Comprehensive Dangerous Drugs Act. He further denied that he knew Raymond Fabian, whom he just met at the police station at around 7:00 in the evening of the same date. [10]

After trial on the merits, the RTC of Marikina City, Branch 192 found appellants guilty beyond reasonable doubt of the offenses charged. The dispositive portion of the Decision dated May 29, 2006 reads:

WHEREFORE, in Criminal Case No. 2004-2961-D-MK, the Court finds the accused, Raymond Fabian y Nicolas @ Jaja, GUILTY BEYOND REASONABLE DOUBT of Violation of Section 5, Article II of Republic Act 9165. Applying Article 63 of the Revised Penal Code, and there being no mitigating or aggravating circumstance attending the commission of the crime, the accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and TO PAY A FINE OF FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

In Criminal Case No. 2004-2962-D-MK, the Court finds the accused, Allan Macalong y Buccat, GUILTY BEYOND REASONABLE DOUBT of violation of Section 11, paragraph 2(3), Article II of Republic Act 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to THIRTEEN (13) YEARS, as maximum, and to PAY A FINE of THREE HUNDRED THOUSAND (P300,000.00) PESOS.

The *shabu* subject matter of this case is hereby confiscated in favor of the Government and to be turned over to the Dangerous Drugs Board for proper disposal, without delay.

SO ORDERED. [11]

On appeal, appellants assailed the credibility of the police officers and insisted that they were framed-up. They denied having committed the illegal acts attributed to them; thus, there were no legal bases for their arrest. According to them, the trial court's assessment of the evidence was unduly selective and the evidence was not scrutinized in its totality, with the trial court disregarding important facts which would warrant the acquittal of the appellants based on reasonable doubt. They

stressed that factual findings of the trial court may be reversed if, by the evidence on record or lack of it, it appears that the trial court overlooked, misunderstood or misapplied certain facts or circumstance of weight or substance which, if considered, would affect the result of the case. [12]

In a Decision dated July 20, 2007, the Court of Appeals affirmed the judgment of conviction. The appellate court found that the inconsistencies appellants pointed out were plainly minor and refer only to collateral matters, which do not touch on the commission of the crime itself or detract from the positive identification of appellants as the culprits in the violation of the Comprehensive Dangerous Drugs Act. At any rate, the appellate court ruled that the elements of the violation of Rep. Act No. 9165 were clearly established by the prosecution. [13]

The Court of Appeals also rejected appellants' claim that all the members of the arresting team should have been presented before the court to testify on appellants' guilt. It held that the proposed testimony of the other members of the team is not essential for appellants' conviction as long as the principal witnesses for the State have already adequately testified on the material and essential matters of the charged delivery and possession of the prohibited drug. [14]

Hence, this appeal.

The sole issue in this case is whether appellants are guilty beyond reasonable doubt of violation of (1) Section 5, Article II of Rep. Act No. 9165 for the delivery of 0.06 gram of *shabu*; and (2) Section 11, Article II of Rep. Act No. 9165 for the possession of 0.06 gram of *shabu*, respectively.

The appeal lacks merit.

Sections 5 and 11, Article II of Rep. Act No. 9165 read:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* -- **The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed** upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, **deliver, give away to another**, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

SEC. 11. *Possession of Dangerous Drugs.* -- The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

**(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (Emphasis supplied.)**

The Court sustains the finding of the lower courts that the prosecution sufficiently established appellants' guilt beyond reasonable doubt for violations of Sections 5 and 11 of Article II of Rep. Act No. 9165. The prosecution proved that appellant Fabian illegally delivered a plastic sachet containing *shabu* to appellant Macalong, who knowingly possessed the same. Moreover, the subject drugs were also proven to be positive for methamphetamine hydrochloride, as evidenced by "Chemistry Report No. D-367-04" conducted by Forensic Chemical Officer and PO1 Jennifer G. Tantoy of the PNP Crime Laboratory.

PO1 Muega narrated the events that took place the night appellants were apprehended. He testified in a direct and unequivocal manner on all the factual elements of the crime, to wit:

PROS. And when these two came out of the alley, what  
AMOS: happened next?

WITNESS: They went in front of me near the FX and I heard them  
whispering something and then I saw Raymond Fabian  
handed over a small transparent plastic to the other  
person.

PROS. Did you hear what they were whispering about?  
AMOS:

WITNESS: No, Sir.

PROS. You said you saw Raymond Fabian handed a plastic  
AMOS: sachet. What was unusual with this transparent sachet?

WITNESS: It contains white substance, Ma'am.

PROS. After you saw him gave that transparent plastic sachet  
AMOS: to Allan Macalong, what happened next?

WITNESS: I slowly approached them.

PROS. And then what happened next?