

## SECOND DIVISION

[ G.R. No. 177220, April 24, 2009 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUBEN ROBLES Y NOVILINIO, APPELLANT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Challenged in this appeal is the December 4, 2006 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00306<sup>[1]</sup> affirming the June 18, 2004 Decision of Branch 259 of the Regional Trial Court of Parañaque City in Crim. Case No. 02-0842-3 finding Ruben Robles y Novilinio alias *Bombay* (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with illegal sale and illegal possession of *shabu* in two separate Amended Informations, both dated August 27, 2002, reading:

First Amended Information

That on or about the 5th day of July 2002, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being 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 give away, distribute and sell to a customer for P100.00 pesos one (1) small heat sealed transparent plastic sachet containing crystalline substances (*shabu*), weighing 0.09 gram, which when examined were found positive for Methylamphetamine Hydrochloride (*shabu*), a dangerous drug, in violation of the above-cited law.<sup>[2]</sup>

Second Amended Information

That on or about the 5th day of July 2002, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being 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 and under his control and custody one (1) heat sealed transparent plastic sachet containing white crystalline substance which when examined was found to be positive for Methylamphetamine Hydrochloride (*shabu*), weighing 0.16 gram, a dangerous drug, in violation of the above-cited law.<sup>[3]</sup>

One Leogando Pilapil (Pilapil) was also indicted for illegal possession of *shabu* under a similarly worded Amended Information of even date.<sup>[4]</sup>

On arraignment, appellant and Pilapil pleaded not guilty.<sup>[5]</sup>

The combined testimonies of PO2 Marlou Besoña (PO2 Besoña)<sup>[6]</sup> and PO3 Elorde Malicse (PO3 Malicse)<sup>[7]</sup> of the Drug Enforcement Unit (DEU) of the Parañaque City Police Station reflect the following version of the prosecution:

At around 5:00 in the afternoon of July 5, 2002, the above-named witnesses received a report from a confidential informant that a certain alias *Bombay*, later identified to be appellant, was peddling *shabu* along Dimasalang Street, Barangay Baclaran, Parañaque City. DEU Chief Wilfredo Calderon immediately constituted a buy-bust team composed of PO2 Besoña, PO3 Malicse, SPO3 Hyacinth Ocfemia (SPO3 Ocfemia), SPO1 Mario Vidallon (SPO1 Vidallon), and PO3 Elmer Magtanong (PO3 Magtanong). PO2 Besoña was designated poseur-buyer.

The buy-bust team proceeded to the target area wherein the informant pinpointed appellant as the *shabu* peddler. With his back-up team members strategically positioned, PO2 Besoña approached appellant and asked, "*Puwede bang umiskor?*" (May I have a fix?). Appellant asked how much to which PO2 Besoña replied P100. Appellant thereafter told PO2 Besoña, "*Akin na.*" (Give it to me).

PO2 Besoña thereupon tendered a marked P100 bill to appellant who, in exchange, handed over a transparent plastic sachet containing a white crystalline substance. PO2 Besoña at once raised his right hand as a pre-arranged signal, prompting the other team members to close in and arrest appellant. PO2 Besoña turned over the substance to SPO3 Ocfemia, and the marked money to SPO1 Vidallon. The team also arrested Pilapil, who was then with appellant, as a similar substance was recovered from him.

Appellant and Pilapil, were brought to the Parañaque City Police Station for investigation. The members of the team executed a *Pinagsamang Sinumpaang Salaysay* (Joint Sworn Statement)<sup>[8]</sup> which additionally stated that at the time of appellant's arrest, he voluntarily surrendered two more transparent plastic sachets both containing the same white crystalline substance.

A total of four transparent plastic sachets each containing a white crystalline substance were thus recovered from appellant and Pilapil which, when subjected to laboratory tests, were found positive for methylamphetamine hydrochloride (*shabu*).<sup>[9]</sup>

For their part, appellant<sup>[10]</sup> and Pilapil<sup>[11]</sup> gave their side as follows:

Between 5:00 PM and 6:00 PM, Pilapil was at Bagong Silang Street, Baclaran, Parañaque City playing *cara y cruz* with about ten to eleven persons. Appellant was eating barbecue at corner Dimasalang and Bagong Silang Streets, around nine meters away from Pilapil and his companions when four persons in civilian clothes carrying short firearms suddenly arrived. The players scampered away, but Pilapil and an unnamed companion were left behind and arrested.

Pilapil and his companion were boarded on an owner-type jeep which headed toward appellant. Appellant was frisked, hence, he demanded for an explanation, peeving the arresting men who handcuffed him and ordered to join Pilapil and his companion in the jeep.

Appellant, Pilapil and his companion were first brought to the Parañaque Community Hospital for a medical check-up, and then to the Coastal Police Station. At the station, they were frisked but no *shabu* was recovered from their person or shown to them. Pilapil's money amounting to P400 was confiscated, however.

Pilapil's companion was released in the evening as his relatives came to pick him up. Appellant and Pilapil, on the other hand, were detained and eventually charged.

By Decision dated June 18, 2004,<sup>[12]</sup> the trial court found appellant guilty of both illegal sale and illegal possession of *shabu*. Pilapil was acquitted. Thus the trial court disposed:

**WHEREFORE, PREMISES CONSIDERED, finding Ruben Robles GUILTY** beyond reasonable doubt of Violation of Section 5 Art. II RA 9165 for unlawfully selling 0.09 gram of Methamphetamine Hydrochloride (*shabu*). He is hereby sentenced to a penalty of life imprisonment and to pay a fine of P500,000.00 and sentenced also to 12 years imprisonment and to pay a fine of P300,000.00 for Violation of Section 11 Art. II RA 9165 for illegal possession of 0.16 gram of Methamphetamine Hydrochloride (*shabu*).

For insufficiency of evidence and failure of the prosecution to present that quantum of proof necessary to overcome the constitutional presumption of innocence in favor of the accused, the Court hereby pronounces **Leogardo** (sic) **Pilapil NOT GUILTY** of Violation of Section 11 Art. II RA 9165 for alleged possession of 0.09 gram of Methamphetamine Hydrochloride.

The Clerk of Court is directed to prepare the Mittimus for the immediate transfer of Ruben Robles from Parañaque City Jail to New Bilibid Prisons, Muntinlupa City. He is further directed to forward all specimen in these cases to the Philippine Drugs Enforcement Agency for proper disposition.

<sup>[13]</sup>

In convicting appellant, the trial court relied on the presumption that law enforcement officers have performed their duties regularly and the rule that denial as a defense is inherently weak.

By Decision of December 4, 2006,<sup>[14]</sup> the Court of Appeals sustained appellant's conviction for illegal sale of *shabu*, but exonerated him on the charge of illegal possession. It found, among other things, that the elements of illegal sale were sufficiently established by the testimonies of PO2 Besoña and PO3 Malicse.

On the charge of illegal possession, the appellate court held that the records bore discrepancies in the identity of the illegal substance which, coupled with the prosecution's failure to distinguish the *shabu* subject of the sale from that found in appellant's possession, warranted appellant's acquittal on reasonable doubt.