

## SECOND DIVISION

[ G.R. No. 180508, September 04, 2009 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO RAMOS Y VIRAY, APPELLANT.**

### DECISION

**CARPIO MORALES, J.:**

Assailed by way of appeal is the August 7, 2007 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR.-H.C. No. 02241 which affirmed the March 24, 2006 Decision of Branch 135 of the Regional Trial Court (RTC) of Makati City in Criminal Case Nos. 05-1712 to 05-1713 convicting Antonio Ramos y Viray alias *Dinol* (appellant) for violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 (the *Comprehensive Dangerous Drugs Act of 2002*) - selling 0.01 gram and possessing 0.05 gram of *shabu*, respectively.

The inculpatory portions of the two separate Informations both dated September 14, 2005 indicting appellant read:

Crim. Case No. 051712

That on or about the 13th day of September 2005, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription did then and there willfully, unlawfully and feloniously sell, distribute and transport zero point zero one (0.01) gram of Methylamphetamine Hydrochloride which is a dangerous drug in consideration of the amount of two hundred (Php 200.00) pesos.<sup>[2]</sup> (Underscoring supplied)

Crim. Case No. 051713

That on or about the 13th day of September 2005, in the City of Makati Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession ZERO POINT ZERO FIVE (0.05) grams of Methylamphetamine Hydrochloride which is a dangerous drug.<sup>[3]</sup> (Underscoring supplied)

At the pre-trial conference, the defense admitted, among other things, the execution and authenticity of the Physical Science Reports, thus dispensing with the testimony

of the Forensic Chemist.<sup>[4]</sup>

Based on the documentary evidence and collective testimonies of its two witnesses, Noel Pulido (Pulido),<sup>[5]</sup> an operative of the Makati Anti Drug Abuse Council (MADAC), and PO2 Ronnie Aseboque (PO2 Aseboque),<sup>[6]</sup> a member of the Makati City Police Station Anti-Illegal Drugs Special Operations Task Force (SAID-SOTF), the prosecution established the following version:

On September 10, 2005, Pulido, together with other operatives of the MADAC, conducted a surveillance operation on the activities of appellant whose name appeared in the Drug Watch List of Barangay Pitogo, Makati City where he was observed to be selling *shabu* to tricycle drivers at the tricycle terminal along Pitogo St., Guadalupe Nuevo, Makati City.

The positive result of surveillance operation led the Makati City Police SAID-SOTF to form a buy-bust team which PO3 Esterio Ruiz (PO3 Ruiz) headed, with Pulido and PO2 Aseboque as members. PO2 Aseboque, who was designated as the poseur-buyer, was given a one hundred peso bill bearing Serial No. EF951982, and two fifty peso bills bearing Serial Nos. GT851008 and FQ688087. The bills were pre-marked with PO2 Aseboque's initials "REA" on the lower left hand corner thereof. It was agreed that PO2 Aseboque's removal of a towel which was to be draped over his shoulder would signal that the buy-bust transaction was consummated.

The buy-bust team coordinated with the Philippine Drug Enforcement Agency (PDEA) which gave it operation Control Number NOC 1309-05-13.<sup>[7]</sup>

At around 6:35 p.m. of September 13, 2005, the buy-bust team, together with its "asset," repaired to a billiard hall along Camino de la Fe St., Barangay Guadalupe Nuevo where Pulido positioned himself across the street as the other members of the team positioned themselves nearby.

As the "asset" spotted appellant who was standing in front of the billiard hall, he, together with PO2 Aseboque, approached him and introduced PO2 Aseboque as a buyer. Appellant thereupon asked how much to which he (PO2 Aseboque) replied "*Dalawang daan lang pare.*"

Appellant at once brought out a small yellow-colored tin case from which he took out one small heat-sealed transparent plastic sachet containing a white crystalline substance which he handed to PO2 Aseboque who in turn handed him the marked one hundred and two fifty peso bills. At that instant, PO2 Aseboque executed the pre-arranged signal, drawing the other team members to rush to the scene.

PO2 Aseboque then handcuffed appellant as he introduced himself as a police officer, and recovered from his right front pocket<sup>[8]</sup> the yellow tin case which yielded two other plastic sachets also containing white crystalline substances. In the presence of appellant, he marked his initials "REA" on the plastic sachet subject of the sale, "REA 1" and "REA 2" on the two sachets retrieved from the tin case, and "REA 3" on the small yellow tin case.

With the seized items, appellant was brought for investigation to the Makati City Police SAID-SOTF where P/Supt. Marietto Valerio prepared a memorandum dated

September 13, 2005<sup>[9]</sup> addressed to the Chief of the Chemistry Section of the Philippine National Police (PNP) Crime Laboratory in Makati City requesting for a laboratory examination of the substances contained in the three plastic sachets to determine the presence of *shabu*. Pulido and PO2 Aseboque later executed a Joint Affidavit of Arrest<sup>[10]</sup> dated September 14, 2005 recounting the details of the buy-bust operation leading to appellant's arrest.

Upon receipt of the three sachets and tin case on September 13, 2005 at 7:35 p.m., Police Senior Inspector Sharon Lontoc Fabros, Forensic Chemical Officer of the Southern Police District Crime Laboratory Office conducted a laboratory examination thereof which disclosed the following findings, as recorded in Physical Science Report No. D-219-05S.<sup>[11]</sup>

#### SPECIMEN SUBMITTED:

A - One (1) small tin case with markings "REA 3" having three (3) heat-sealed transparent plastic sachets, containing white crystalline substance with the following markings and recorded net weights:

A-1 ("REA") = 0.01 gram  
A-2 ("REA-1") = 0.03 gram  
A-3 ("REA-2") = 0.02 gram

x x x x

#### FINDINGS:

Qualitative examination conducted on the above-stated specimens A-1 through A-3 gave POSITIVE result to tests for the presence of Methylamphetamine hydrochloride, a dangerous drug. x x x

#### CONCLUSION:

Specimens A-1 through A-3 contain Methylamphetamine hydrochloride, a dangerous drug. (Underlining supplied)

Denying the accusation, appellant<sup>[12]</sup> gave the following version:

At around 6:45 p.m. of September 13, 2005, while he was walking along Camino Dela Fe Street, Guadalupe Nuevo heading towards his mother's house, he was suddenly grabbed from behind by five unidentified persons who poked a gun at him. Upon inquiring what his violation was, he was told that they were looking for someone named "Danny." He denied knowing any such individual, however. He was then handcuffed, forced into a *Revo* vehicle parked nearby, and brought to the police station.

At the police station, someone took out a small plastic sachet and a yellow tin can from a drawer, as another said "*Sige tuluyan niyo na siya, ito na ebidensiya natin.*"

In fine, appellant denied the accusation and claimed that the evidence against him was "planted."

Cherry Clasara,<sup>[13]</sup> a friend of appellant's sister, corroborated appellant's account of the circumstances under which he was accosted.

By Decision<sup>[14]</sup> of March 24, 2006, the trial court found appellant guilty of both illegal sale and illegal possession of Methylamphetamine Hydrochloride or *shabu*, disposing as follows:

**WHEREFORE**, it appearing that the guilt of the accused ANTONIO RAMOS Y VIRAY was proven beyond reasonable doubt for violation of Sections 5 and 11, Article II of R.A. 9165, as principal, with no mitigating or aggravating circumstances, accused is hereby sentenced:

1. In Criminal Case No. 05-1712, to suffer life imprisonment, and to pay a fine of Five Hundred Thousand Pesos [P500,000.00];
2. In Criminal Case No. 05-1713, to suffer imprisonment for an indeterminate term of twelve <sup>[12]</sup> years and one <sup>[1]</sup> day, as minimum, to fourteen <sup>[14]</sup> years and eight <sup>[8]</sup> months, as maximum, and to pay a fine of Three Hundred Thousand Pesos [P300,000.00]; and
3. To pay the costs.

Let the zero point zero one [0.01] gram, and the total of zero point zero five [0.05] gram of Methylamphetamine Hydrochloride be turned over to the PDEA for proper disposition.

SO ORDERED.<sup>[15]</sup> (Underscoring supplied)

On appeal, the Court of Appeals, by Decision of August 7, 2007, affirmed the trial court's decision, it holding that, contrary to appellant's claim, the policemen had duly complied with the procedure laid down in Section 21 (1), Article II of R.A. No. 9165 as evidenced by the testimony of PO2 Aseboque that an inventory of the seized items had been conducted; and that the failure of the law enforcers to strictly comply with the said provision, not being fatal, did not render appellant's arrest illegal nor the evidence against him inadmissible.<sup>[16]</sup>

In brushing aside his defense of frame-up, the appellate court noted that appellant failed to adduce evidence on the possible motive of the police officers to falsely charge him.

Hence, the present appeal.

The appeal is impressed with merit.

While the trial court's findings of fact are entitled to great weight and are not