

THIRD DIVISION

[G.R. No. 186418, October 16, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO LAZARO, JR. A.K.A JUN LAZARO Y AQUINO, ACCUSED-
APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

For review is the Decision^[1] dated 18 July 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02258 which affirmed with modification the Decision^[2] dated 27 April 2006 of the Regional Trial Court (RTC), Branch 61, Baguio City, in Criminal Cases No. 23227-R, No. 23228-R and No. 23229-R, finding accused-appellant Alfredo Lazaro, Jr. *a.k.a* Jun Lazaro y Aquino guilty of illegal sale, possession and use of *methamphetamine hydrochloride*, popularly known as *shabu*, under Sections 5, 11, and 15, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts gathered from the records are as follows:

On 17 June 2004, two separate informations were filed before the RTC against appellant for illegal sale and possession of *shabu* under Sections 5 and 11, Article II of Republic Act No. 9165. The accusatory portion of the informations read:

Criminal Case No. 23227-R

The undersigned accuses ALFREDO LAZARO, JR. a.k.a JUN LAZARO y AQUINO for VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT 9165 otherwise known as the COMPREHENSIVE Dangerous Drugs Act of 2002, committed as follows:

That on June 15, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, x x x, and without authority of law, did then and there willfully, unlawfully and feloniously sell, distribute and/or deliver One (1) small heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride known as *Shabu* in the amount of P3,000.00 [should be P300], weighing 0.05 gram to Poseur Buyer SPO1 Dennis G. Indunan, knowing fully well that said Methamphetamine Hydrochloride known as *Shabu* is a dangerous drug, in violation of the aforementioned provision of law.^[3]

Criminal Case No. 23229-R

The undersigned accuses JUN LAZARO y AQUINO for VIOLATION OF

SECTION 11, ARTICLE II OF REPUBLIC ACT 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 committed as follows:

That on June 15, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused x x x, did then and there willfully, unlawfully and feloniously have in his possession and control One (1) small heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride known as *Shabu* weighing 0.04 gram, a dangerous drug, without the corresponding license or prescription in violation of the aforecited provision of law.^[4]

On 18 June 2004, an information was filed with the RTC against appellant for illegal use of *shabu* under Section 15, Article II of Republic Act No. 9165, thus:

Criminal Case No. 23228-R

The undersigned accuses JUN LAZARO for VIOLATION OF SECTION 15 [ARTICLE II] OF REPUBLIC ACT 9165 [otherwise known as the Comprehensive Dangerous Drugs Act of 2002], committed as follows:

That on or about the 15th day of June, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously use Dangerous Drugs particularly Methamphetamine per the result of a Qualitative Examination conducted on the urine sample taken from him, in violation of the aforecited provision of law.^[5]

Subsequently, these cases were consolidated. When arraigned on 28 June 2004, appellant, assisted by counsel *de officio*, pleaded "Not guilty" to each of the charges.^[6] Trial on the merits thereafter followed.

The prosecution presented as witnesses Police Senior Inspector Hordan T. Pacatiw, Senior Police Officer (SPO) 1 Dennis G. Indunan, SPO1 Emerson A. Lingbawan and PO3 Paulino A. Lubos, all of whom are members of the Philippine National Police and were assigned at the Criminal Investigation and Detection Group, Anti-Illegal Drugs Team unit, Baguio City. Their testimonies, taken together, bear the following:

On 15 June 2004, at about 12:30 p.m., an informant went to the Criminal Investigation and Detection Group (CIDG), Anti-Illegal Drugs Team unit (AIDT), Baguio City, and reported to PO3 Paulino Lubos (PO3 Lubos) the drug trafficking activities of appellant in Central Bakakeng, Baguio City. PO3 Lubos relayed the information to Police Senior Inspector Hordan T. Pacatiw (Inspector Pacatiw), head of AIDT, who in turn, referred the matter to Senior Superintendent Marvin V. Bolabola (Superintendent Bolabola), chief of CIDG, Baguio City, for appropriate action. Superintendent Bolabola formed a team and planned a buy-bust operation. The team was composed of Inspector Pacatiw who would act as the team leader; SPO1 Dennis G. Indunan (SPO1 Indunan) as the poseur-buyer; PO3 Lubos as the seizing officer; and SPO1 Emerson A. Lingbawan (SPO1 Lingbawan) as the arresting officer. Superintendent Bolabola handed SPO1 Indunan three One Hundred Peso

(P100.00) bills to be utilized as buy-bust money. SPO1 Indunan marked the monies with "DG-06-15-04." Thereafter, the team coordinated the planned buy-bust operation with the Philippine Drug Enforcement Agency (PDEA).

At around 2:30 p.m. of the same date, the team, together with the informant, went to appellant's house at 181 Km. 3, Central Bakakeng, Baguio City. Upon arriving thereat, the informant and SPO1 Indunan saw appellant standing at the balcony of the third floor of the three-storey house. The informant proceeded inside appellant's house and talked with appellant at the balcony of the third floor, while SPO1 Indunan stood outside the house at a distance of 10 meters. The rest of the team positioned themselves outside appellant's house at a distance of 25 meters. Later, the informant signaled SPO1 Indunan to approach him and appellant at the balcony of the third floor. Thereupon, the informant introduced SPO1 Indunan to appellant as user and buyer of *shabu*. The informant subsequently excused himself and left SPO1 Indunan and appellant. Appellant then asked SPO1 Indunan how much worth of *shabu* he would want to buy. SPO1 Indunan answered he would like to purchase three hundred pesos (P300.00) worth of *shabu*. Appellant knocked at the door of a room in the balcony and called a certain "Bong." Bong is appellant's brother whose full name is Ferdinand Bong Lazaro. A man opened the door and handed a green box to appellant. Appellant opened the green box, took a plastic sachet from it, handed the plastic sachet to SPO1 Indunan, and demanded payment from the latter. After examining the contents of the plastic sachet and believing that the same contained *shabu*, SPO1 Indunan gave the three marked one hundred peso bills to appellant. At this juncture, SPO1 Indunan removed his sunglasses and placed it in his pocket as pre-arranged signal to the other members of the team.

The other members of the team rushed to the crime scene and identified themselves as police officers. Appellant tried to resist arrest but he was subdued by the team. Inspector Pacatiw then apprised appellant of his constitutional rights. Afterwards, SPO1 Indunan frisked and recovered from appellant the buy-bust money and the green box which contained another plastic sachet with white substance. SPO1 Indunan marked with "DG-06-15-04" the plastic sachet containing white substance sold to him by appellant, as well as the plastic sachet with white substance found inside the green box.

Meanwhile, Inspector Pacatiw knocked at the door of a room on the balcony and called on Bong to open the door but to no avail. Inspector Pacatiw and some members of the team then forcibly opened the door. Although the team found no one inside the room, they, however, subsequently saw a man, whom they believed to be Bong, running down the basement of the house and exiting through its back door. The man then disappeared.

Thereafter, the team discovered and seized at the third floor of the house several drug paraphernalias. The team made a written inventory on said paraphernalias, as well as the plastic sachet sold by appellant to SPO1 Indunan and the plastic sachet recovered in appellant's possession, in the presence of representatives from media, the Department of Justice (DOJ) and the *barangay*. Said representatives signed the inventory document on the seized items. Inspector Pacatiw took custody of the said seized items.

The team immediately brought appellant, as well as the items seized, to the office of the CIDG, Baguio City. Thereupon, the team made a booking sheet, arrest report, a

"Joint Affidavit of Arrest" and an "Affidavit of Poseur-Buyer" as regards the buy-bust operation. Superintendent Bolabola made a written request for physical examination of appellant to the PNP Benguet Provincial Crime Laboratory Office. After conducting a physical examination on appellant, Dr. Elizardo D. Daileg, medico-legal officer of the PNP Benguet Provincial Crime Laboratory Office, issued a medico-legal certificate attesting that no injuries were found on appellant's body. Superintendent Bolabola also made separate written requests to the PNP Benguet Provincial Crime Laboratory Office for drug test on appellant and a laboratory examination on the plastic sachet containing white substance sold by appellant to SPO1 Indunan and the plastic sachet with white substance found in appellant's possession. After conducting a laboratory examination on the urine sample taken from appellant, Police Officer 1 Juliet Valentin Albon, Forensic Analyst of the PNP Benguet Provincial Crime Laboratory Office (Forensic Analyst Albon), issued a report stating that appellant was positive for *shabu*. Likewise, after making laboratory tests, Forensic Analyst Albon issued a chemistry report certifying that the plastic sachet sold by appellant to SPO1 Indunan contained 0.05 gram of *shabu* while the plastic sachet recovered from appellant's possession contained 0.04 gram of *shabu*.^[7]

The prosecution also adduced documentary and object evidence to buttress the testimonies of its witnesses, to wit: (1) joint affidavit of the arresting officers signed by Inspector Pacatiw, SPO1 Lingbawan and PO3 Lubos (Exhibit A);^[8] (2) affidavit of the poseur-buyer signed by SPO1 Indunan (Exhibit B);^[9] (3) booking sheet and arrest report for appellant (Exhibit C);^[10] (4) request to conduct laboratory examination on the two plastic sachets recovered from appellant which was signed by Superintendent Bolabola;^[11] (5) request for drug test on appellant signed by Superintendent Bolabola (Exhibit D);^[12] (6) request for physical examination on appellant signed by Superintendent Bolabola (Exhibit E);^[13] (7) medico-legal certificate signed by Dr. Daileg (Exhibit E-1);^[14] (8) chemistry report on the drug test of appellant signed by Forensic Analyst Albon (Exhibit H);^[15] (9) chemistry report on the content of plastic sachet sold by appellant to SPO1 Indunan and the content of the plastic sachet recovered from possession of appellant signed by Forensic Analyst Albon (Exhibit I);^[16] (10) inquest disposition issued by the Office of the City Prosecutor, Baguio City (Exhibit J);^[17] (11) written inventory on the items seized from appellant signed by representatives from the media, DOJ and *barangay* (Exhibit M);^[18] (12) coordination sheet with the PDEA (Exhibit N);^[19] (13) receipt of the items seized from appellant signed by the members of the buy-bust team (Exhibit O);^[20] (14) two plastic sachet containing *shabu* sold by and recovered from the possession of appellant (Exhibit K);^[21] and (15) buy-bust money confiscated from appellant (Exhibit L).^[22]

For its part, the defense proffered the testimonies of appellant and his father, namely Alfredo Lazaro, Sr. to refute the foregoing accusations. Appellant denied any liability and claimed he was framed.

Appellant testified that on 15 June 2004, between 2:00 p.m. to 3:00 p.m., he was sleeping in his room at the third floor of a three-storey house located at 181 Km. 3, Central Bakakeng, Baguio City. He was roused from his sleep by the barking of dogs outside his house. He opened the door of his room and saw PO3 Lubos, Inspector Pacatiw, SPO1 Lingbawan, SPO1 Indunan and some members of the CIDG, Baguio

City, namely Warren Lacangan, Jojo Unata and Jun Digula approaching. PO3 Lubos tried to hit him with the gun but he evaded it. Inspector Pacatiw hit him several times in the stomach with a gun. Said policemen kicked him several times causing him to fall on the floor. Thereafter, the policemen destroyed the door of his brother's (Ferdinand Bong Lazaro) room and entered therein. He was dragged inside the said room. Inspector Pacatiw, SPO1 Lingbawan and PO3 Lubos then took the laptop, diskman, Buddha coin bank and power tools inside the room. Subsequently, the policemen brought him to the second floor of the house where he saw Jade Salazar (Jade), the live-in partner of his brother, Renato Lazaro. The policemen apprehended Jade, took the latter's bag and a green box, and asked her the whereabouts of Bong. He and Jade were later brought to the CIDG office, Baguio City. Thereupon, the policemen took his wallet, demanded an amount of P200,000.00, and told him to contact Bong so that the latter may help him settle his case.

While appellant and Jade were being held at CIDG office, Baguio City, a certain Rosita Salazar (Salazar), allegedly a Municipal Trial Court (MTC) Judge from Abra and Jade's grandmother, arrived and introduced herself to the policemen. The policemen ignored Salazar as the latter did not have any identification card. The policemen then brought appellant and Jade to the PNP Benguet Provincial Crime Laboratory Office where they were subjected to physical examination. Upon their return to the CIDG office, the policemen showed them three plastic sachets of *shabu* which would be used against them as evidence. Later, however, appellant learned that Jade was released by the policemen in exchange for a certain amount of money. During his detention in the CIDG office, he saw PO3 Lubos preparing the marked money. At that point, he realized that a case would be filed against him in court.

Appellant denied having sold to SPO1 Indunan one plastic sachet containing 0.05 gram of *shabu* on 15 June 2004. He claimed that it was impossible for the back-up members of the buy-bust team to have witnessed his alleged sale of *shabu* to SPO1 Indunan because there were big trees beside the three-storey house which blocked the view of persons on the ground looking up to the balcony of the third floor. He denied having received from Bong a green box during the alleged buy-bust and averred that Jade owned the green box.^[23]

Alfredo Lazaro, Sr., appellant's father, testified that on 15 June 2004, at about 2:00 p.m., he was watching television inside his room at the third floor of the three-storey house situated at 181 Km. 3, Central Bakakeng, Baguio City. Later, he heard the barking of dogs outside the house. Curious, he opened the door of his room. He then saw PO3 Lubos and several policemen mauling appellant. Shocked, he uttered "*apay dayta?*" (Why is that?). PO3 Lubos and the policemen stopped beating appellant. As he was already experiencing chest pains, he returned to his room. Subsequently, he saw the policemen carrying a backpack and a plastic bag the contents of which belonged to Bong.^[24]

The defense also submitted a written undertaking of Jade and a receipt of custody signed by Salazar in support of its contentions.^[25]

After trial, the RTC rendered a Decision convicting appellant in all of the criminal cases. In Criminal Case No. 23227-R, appellant was found guilty of violating Section 5 of Republic Act No. 9165 (illegal sale of *shabu*) and was sentenced to life