

THIRD DIVISION

[G.R. No. 178876, June 27, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO CONCEPCION Y CLEMENTE AND HENRY CONCEPCION Y
CLEMENTE, ACCUSED-APPELLANTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

On appeal before Us is the Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01808 dated 18 May 2007 which affirmed *in toto* the decision dated 13 December 2005^[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, convicting accused-appellants Alfredo Concepcion y Clemente and Henry Concepcion y Clemente of Violation of Section 5,^[3] Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellants, together with Hegino dela Cruz, were charged before the RTC of Malolos, Bulacan, with Violation of Section 5, Article II of Republic Act No. 9165 under the following information:

That on or about the 27th day of November, 2002, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, without authority of law and legal justification, in conspiracy with one another, did then and there wilfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drugs consisting of three (3) heat-sealed transparent plastic sachets weighing 5.080 grams, 4.446 grams and 4.362 grams, respectively.^[4]

When arraigned, appellants and accused Dela Cruz pleaded not guilty to the crime charged. ^[5]

The prosecution presented two witnesses: Police Officer (PO2) Peter Sistemio^[6] and PO2 Arlan Arojado,^[7] both regular members of the Philippine National Police (PNP) and assigned with the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 3, Bulacan Provincial Office, Barangay Saluysoy, Meycauayan, Bulacan.

The version of the prosecution is as follows:

Sometime in the afternoon of 26 November 2002, a confidential informant reported to Senior Police Officer (SPO)1 Buenaventura R. Lopez at the PDEA, Regional Office No. 3, Bulacan Provincial Office, Barangay Saluysoy, Meycauayan, Bulacan, that an alias Totoy was engaged in selling drugs, particularly *shabu*, in Barangay Guyong, Sta. Maria, Bulacan. SPO1 Lopez instructed the confidential agent to set a drug deal

with alias Totoy and order ten (10) grams of *shabu*. The confidential informant returned and confirmed that the delivery of the 10 grams of *shabu* would be made in Barangay Guyong at 2:00 a.m. of 27 November 2002. A buy-bust operation was planned and a team formed. The team was composed of SPO1 Lopez as team leader; PO2 Sistemio as the poseur-buyer; and PO2 Arojado, PO2 Navarette and PO2 Kho as back-up operatives.

The team, together with the confidential informant, proceeded to Barangay Guyong and arrived thereat at 1:15 a.m. of 27 November 2002. PO2 Sistemio and the confidential informant alighted from their vehicle and proceeded to a waiting shed along the highway. The rest of the team positioned themselves ten to twenty meters away in their parked vehicles. At around 2:00 a.m. a violet Hyundai van with plate number XAM-592 arrived with appellants and accused Dela Cruz on board. Dela Cruz was driving, while appellant Alfredo Concepcion, a.k.a. Totoy, was seated beside him and appellant Henry was at the back. The confidential informant introduced PO2 Sistemio to Totoy who asked the latter how much *shabu* he would buy. PO2 Sistemio replied he would buy two plastic packs of *shabu* equivalent to ten grams. Totoy answered that each pack was worth P6,000.00 and got two plastic packs from the van's compartment and gave them to PO2 Sistemio. Appellant Henry Concepcion said, "*Mura pa yan, direkta kasi kami.*" [8] PO2 Sistemio also heard someone say, "*Magandang klase yang stuff na yan.*" [9] After receiving the two plastic packs, PO2 Sistemio lit a cigarette, the pre-arranged signal for the other members of the buy-bust team to approach and arrest the culprits. The boodle money that PO2 Sistemio had with him was no longer given to Totoy.

Upon seeing PO2 Sistemio light a cigarette, the other team members blocked the vehicle. PO2 Arojado was ordered by PO2 Sistemio to search the van's glove compartment where the former recovered a medium-sized plastic sachet. Appellants and accused Dela Cruz were apprehended and brought to the PDEA office. The two plastic sachets [10] given by appellant Alfredo Concepcion to PO2 Sistemio, and the other one [11] recovered in the glove compartment, were marked with the initials "P.S. A," "P.S. A-1" and "A.G.A.," respectively. On the same day, per request [12] of SPO1 Lopez, these plastic sachets containing white crystalline substance were sent to the PNP Provincial Crime Laboratory Office 3, Bulacan Provincial Office, Camp Alejo Santos, Malolos, Bulacan, for laboratory examination to determine the presence of dangerous drugs. After a qualitative examination was conducted on the specimens, Police Inspector Nellson C. Sta. Maria, Forensic Chemical Officer, issued Chemistry Report No. D-700-2002 with a conclusion that said specimens contained methylamphetamine hydrochloride (*shabu*), a dangerous drug. [13]

The testimony of SPO1 Buenaventura Lopez was dispensed with due to the admission by the defense that his testimony would merely corroborate the testimony of PO2 Arojado, and that the alleged buy-bust operation was coordinated through cellular phone, but the same was not duly recorded before Barangays Guyong and Poblacion per certifications issued by the Barangay Captains of said barangays. [14] With the defense's admission of the existence, due execution and genuineness of the request for laboratory examination, the Chemistry Report and specimens submitted, the testimony of Police Inspector Nellson C. Sta. Maria was also dispensed with.

After the prosecution formally offered its evidence,^[15] appellants and accused Dela Cruz, with leave of court, filed their respective demurrers to evidence,^[16] which the trial court denied on 1 March 2005 for lack of merit.^[17]

The defense presented three witnesses: (1) appellant Alfredo Concepcion; (2) Julieta dela Rosa, appellant Alfredo's spouse and appellant Henry's sister-in-law; and (3) accused Hegino dela Cruz.

Appellant Alfredo Concepcion disclosed that appellant Henry Concepcion is his brother and accused Hegino dela Cruz is his brother's friend. He narrated that at around 8:00 to 9:00 p.m. of 26 November 2002, he was in his house at RG Nicolas, Poblacion, Sta. Maria, Bulacan, when he, together with appellant Henry Concepcion, Hegino dela Cruz, Armando Cabral and Leopoldo Igueza, was arrested by elements of the PDEA. They were about to rest when they were arrested and handcuffed. PDEA operatives, whom he later came to know when the instant case was filed, entered his house and stayed for more or less thirty minutes. They were loaded into the vehicle of accused Hegino dela Cruz. His wife and the wife of appellant Henry were present when he was arrested. They were then brought to the PDEA headquarters and were told that they had *shabu*.

Appellant Alfredo Concepcion said he had no knowledge about the police officers' allegation that he and his co-accused sold *shabu* to a poseur-buyer in Barangay Guyong, Sta. Maria, Bulacan. At the time of the supposed sale of *shabu*, he claims they were already at the PDEA headquarters. He denied he had *shabu* and that the police officers recovered nothing from his house. He was informed by his wife that a cell phone was missing in their house when the latter went to the PDEA headquarters. Appellant Alfredo added that upon his instruction, his wife reported his alleged arrest in his home before the Office of the Punong Barangay of Barangays Guyong and Poblacion.^[18]

Julieta dela Rosa testified that between 8:00 p.m. and 9:00 p.m. of 26 November 2002, she was inside her house together with her brother-in-law (appellant Henry) and sister-in-law. Her husband, appellant Alfredo Concepcion, was outside with his friends (Armando Cabral and Leopoldo Abreza^[19]) waiting for the vehicle of her other brother-in-law (Roberto Concepcion) which vehicle Alfredo would use in accompanying his friends to Manila. While she was watching television inside her house, she heard a commotion outside and when she opened a window, she saw her husband, accused Hegino dela Cruz, Armando and Leopoldo already handcuffed and being loaded into a van owned by accused Hegino. She went out and asked the person who handcuffed her husband the reason for this. She learned that the person who handcuffed her husband was a member of the PDEA. She was told to go inside the house and not to make any noise. She went inside to call her sister-in-law and when she went out again, her husband and all the others were no longer there.

Julieta followed them to the office of the PDEA in Saluysoy St., Meycauayan, Bulacan. SPO1 Buenaventura Lopez told her that a case was filed against her husband because they recovered something from him which she said was not true. Thereafter, she went home and proceeded to the barangay hall of Poblacion to report that her husband and his companions were arrested without anything being

recovered from them.^[20] She then went to the police station of Sta. Maria, Bulacan, to check if the PDEA coordinated with them. She claims a certification^[21] was issued showing that there was no coordination made by PDEA. In connection with the instant case, she and her sister-in-law, Anna Juan, who is the wife of appellant Henry Concepcion, executed a sworn statement.^[22] Lastly, she explained she did not know what happened outside where her husband and his friends were apprehended.

Next to take the stand for the defense was accused Hegino dela Cruz who testified that in the late afternoon of 26 November 2002, he was in his house at Lalakhan, Sta. Maria, Bulacan. While resting, someone informed him that appellant Henry Concepcion called and was renting his Hyundai van with plate number XAM-592 registered in his wife's name. He then proceeded to the house of Henry at RG Nicolas St. (formerly Calderon), Sta. Maria, Bulacan, and arrived thereat before 8:00 p.m. He parked the van in front of Henry's house. While seated at the driver's seat, he talked with Henry who told him, "*Luluwas kami*." Henry was standing beside the van while Alfredo Concepcion was seated at the side with two companions. While he was conversing with Henry, a vehicle suddenly arrived. One of its passengers told him to alight and face the van, while the other passengers went to the house of Alfredo Concepcion. He was frisked and was arrested without being informed of the reason therefor. He, together with appellants Concepcion, was brought to Saluysoy St., Meycauayan, Bulacan. In going to said place, they rode his van, which was driven by a PDEA member. Upon reaching the place, he called his family and came to know that the PDEA was filing a drug case against him and was told that there was *shabu* in the compartment of the van. He denied he had illegal drugs and that he was the only one using the van. Prior to the incident, he had not been charged with any offense in any other court.

On 13 December 2005, the trial court rendered its decision convicting appellants Alfredo and Henry Concepcion with, but acquitting accused Hegino dela Cruz of, the crime charged. The decretal portion of the decision reads:

WHEREFORE, the foregoing considered, this Court finds accused Alfredo Concepcion y Clemente and Henry Concepcion y Clemente **GUILTY beyond reasonable doubt** of the offense of Violation of Section 5, Article II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences **EACH** of them to suffer the penalty of **LIFE IMPRISONMENT AND A FINE OF P500,000.00**.

Accused Hegino dela Cruz is hereby **ACQUITTED** of the offense charged for insufficiency of evidence. Accordingly, the Jail Warden of the Bulacan Provincial Jail is hereby **DIRECTED** to release accused Hegino dela Cruz from detention unless he is being held for some other lawful cause.

In the service of their sentence, accused Alfredo Concepcion and Henry Concepcion who are detention prisoners shall be credited with the entire period of their preventive imprisonment.

The drugs subject matter of this case is hereby forfeited in favor of the

government. The Branch Clerk of Court is hereby directed to turn over the same to the Dangerous Drugs Board for proper disposal thereof.^[23]

In convicting the brothers Concepcion, the trial court gave credence to the testimonies of PO2 Sistemio and PO2 Arojada when they positively identified appellant Alfredo Concepcion as the one from whom they bought and got the sachets of *shabu*. Also from their testimonies, the trial court found that appellant Henry Concepcion conspired with appellant Alfredo in trading the dangerous drugs for which they were charged. Appellant Henry's statement " *Mura pa yan, direkta kasi kami*" when he tried to persuade the poseur-buyer to accept the price of the drugs when the buy-bust transaction was taking place, convinced the trial court of his participation in the offense. The trial court further applied in favor of the PDEA agents the presumption of regularity in the performance of official duty. As regards accused Dela Cruz, the trial court was not convinced of his guilt. It explained that mere presence in the scene of the crime was not sufficient to convict in light of PO2 Sistemio's statement that he was not certain if it was accused dela Cruz who uttered "*Magandang klase yang stuff na yan.*"

On 15 December 2005, appellants Alfredo and Henry Concepcion filed a Notice of Appeal.^[24] In an Order dated 3 January 2006, the trial court approved the notice of appeal and directed the Branch Clerk of Court to immediately transmit the entire records of the case to the Court of Appeals pursuant to Administrative Circular No. 20-2005.^[25]

In its decision dated 18 May 2007, the Court of Appeals totally agreed with the trial court. It disposed of the case as follows:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Decision dated December 13, 2005 of the Regional Trial Court of Malolos City, Bulacan, Branch 78 in Criminal Case No. 3328-M-2002 is hereby AFFIRMED and UPHELD.

With costs against the accused-appellants.^[26]

On 31 May 2007, appellants Alfredo and Henry Concepcion filed a Notice of Appeal with manifestation were terminating the legal services of their private counsel and praying that they be represented by the Public Attorney's Office (PAO).^[27] On 15 June 2007, the Court of Appeals gave due course to the Notice of Appeal and ordered the forwarding of the records of the case to the Supreme Court. The appellate court appointed the PAO to represent the appellants.^[28]

With the elevation of the records to the Court and the acceptance of the appeal, the parties were required to file their respective supplemental briefs, if they so desired, within thirty days from notice.^[29] The parties manifested that they were not filing supplemental briefs, arguing that the relevant issues of the case had been discussed in their respective briefs filed before the Court of Appeals.

Accused-appellants make the following assignment of errors:

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THE HONORABLE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT