

## FIRST DIVISION

[ G.R. NO. 170359, July 27, 2007 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PHILIP  
DILAO Y CASTRO, ACCUSED-APPELLANT.**

### D E C I S I O N

**GARCIA, J.:**

Under automatic review is the May 26, 2005 Decision<sup>[1]</sup> and September 16, 2005 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in *CA-G.R. C.R.-H.C. No. 00920*, affirming *in toto* the February 27, 2003 Joint Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Caloocan City, Branch 127, in *Criminal Case Nos. C-65963 and C-65964*, finding appellant Philip Dilao y Castro guilty of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

#### The Case

On July 31, 2002, in the RTC of Caloocan City, two (2) separate Informations were filed against accused-appellant charging him, in the first, with violation of Section 5, Article II, of R.A. No. 9165. Docketed in the same court as Criminal Case No. C-65963, the first Information<sup>[4]</sup> alleges, as follows:

That on or about the 19<sup>th</sup> day of July 2002, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there wilfully(*sic*), unlawfully and feloniously sell and deliver to PO1 ROLANDO DE OCAMPO who posed as buyer, METHYLAMPHETAMINE HYDROCHLORIDE (SHABU) weighing 0.06 grams, a dangerous drug, without the corresponding license or prescription therefor, knowing the same to be such.

CONTRARY TO LAW.

The other Information,<sup>[5]</sup> docketed as Criminal Case No. C-65964, charges accused-appellant with violation of Section 11, Article II, also of R.A. No. 9165, allegedly committed in the following manner:

That on or about the 19<sup>th</sup> day of July 2002, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there willfully (*sic*), unlawfully and feloniously have in his possession, custody and control METHAMPHETAMINE (*sic*) HYDROCHLORIDE (SHABU) weighing 0.07 grams, knowing the same to be a dangerous drug under the provisions of the above-cited law.

## CONTRARY TO LAW.

Criminal Case No. C-65964 was originally raffled to Branch 120 of the court, while Criminal Case No. C-65963 to Branch 127 thereof. On arraignment, accused-appellant, assisted by counsel, pleaded "Not Guilty" to both charges. Thereafter, and on motion of appellant's counsel, the two (2) cases were consolidated and assigned to Branch 127, after which a joint trial ensued.

Presented by the prosecution as its evidence were the testimonies of four (4) police officers belonging to the Drug Enforcement Unit of Caloocan City Police Station and that of the forensic chemist, plus the marked money and the plastic sachets of "shabu."

### The Evidence

The People's version of the incident is well laid out in the People's Brief<sup>[6]</sup> filed by the Office of the Solicitor General, to wit:

On July 19, 2002, around nine o'clock in the evening, a police informer called up the [DEU] Unit, Caloocan City Police Station, and "[spoke] to PO2 Rolando de Ocampo [who was told] " that an *alias* Philip was rampantly selling *shabu* along Pangako St., Bagong Barrio, Caloocan City. The informer also identified the drug pusher as Philip Dilao y Castro, herein appellant.

PO2 de Ocampo relayed the said information to their Chief, Captain Jose Valencia, who told him to verify the information. PO2 de Ocampo again spoke to the informer on the phone and asked how they could entrap appellant. xxx.

PO3 Rodrigo Antonio informed Capt. Valencia about the conversation between the informer and PO2 de Ocampo. Acting thereon, Capt. Valencia instructed PO3 Antonio to form and head a team to conduct a surveillance and "buy-bust" operation. Aside from PO3 Antonio, the team was composed of PO2 Ferdinand Modina and PO1 Joel Rosales as back-up, and PO2 de Ocampo as poseur-buyer. Capt. Valencia provided the P100 bill to be used as "buy-bust" money with serial number ZX 985203. PO2 de Ocampo marked the money with his initials, RDO, and the date, 07/19/02. The team had their operation blotted. Then, they proceeded to the target area ...and arrived thereat around 10:15-10:20 p.m.

PO3 Antonio's team was met by the informer at a burger machine near the target area. PO2 de Ocampo was then accompanied by said informer to appellant. Meanwhile, the rest of the members of the team positioned themselves in strategic places nearby.

The informer pointed to appellant who was standing outside a billiard court along Pangako St., Bagong Barrio, Caloocan City. Then, they approached appellant and PO2 de Ocampo was introduced to him as a buyer of *shabu*. PO2 de Ocampo then addressed appellant, "Pare, pa-iskor ng piso," and handed him the marked money. Appellant seized him

up ... and then got a plastic sachet containing a white crystalline substance ....

After the exchange, PO2 de Ocampo examined first the contents of the plastic sachet and then gave the pre-arranged signal ... to show that the "buy-bust" operation was completed. Thereafter, he introduced himself to appellant as a police officer and told him: "Pare, pong ka na," meaning he was already caught, while the rest of the team closed in on them.

PO2 de Ocampo recovered the marked money and P200 more in different denominations from appellant while PO2 Modina recovered another plastic sachet containing a white crystalline substance. PO2 de Ocampo asked appellant where he got the P200 but he was not given a reply. He then informed appellant of his constitutional rights ....

Appellant was turned over to ... PO3 Fernando Moran, together with the seized articles. In the presence of PO2 de Ocampo and PO2 Modina, PO3 Moran placed the initials "PCD" on the specimens.

On even date, Capt. Valencia requested for laboratory examination of the seized articles. Subsequently, PO2 de Ocampo and PO2 Modina executed a "Pinagsamang Sinumpaang Salaysay" about the incident.

P/Insp. Erickson Lualhati Calbocal, forensic chemist of the Philippine National Police, Crime Laboratory, Camp Crame, conducted a laboratory examination on said specimens and found the same positive for methylamphetamine hydrochloride. His findings are contained in Chemistry Report No. D-323-02. (Words in brackets added.)

For its part, the defense presented the following: appellant himself and Jose Bandico.

Denial and alleged frame-up were appellant's main exculpatory line. In his Brief,<sup>[7]</sup> appellant summarized the version of the defense as follows:

xxx. At about 8:00 to 9:00 o'clock p.m. of July 19, 2002, he [appellant] was playing billiard opposite alias "Joker" at the billiard hall xxx located along Pangako St., Bagong Barrio, Caloocan City. He and his companions were surprised when ... police officers led by PO3 Antonio suddenly appeared ... [and] instructed all persons there numbering <sup>[8]</sup> including his friend companion Socrates Manalad alias "Sote". They told them, "WALANG TATAKBO MAY TAWAG SA AMIN MAY NAGBEBENTA NG SHABU DITO", and ... individually frisked them. Nothing illegal were recovered from all of them. Thereafter, six (6) of them were allowed to leave, leaving behind himself and Manalad who were handcuffed and made to board one of the two (2) owner-type vehicles, parked near the North Diversion Road. While the jeep was running, he and Manalad asked the operatives: "WALA KAMING KASALANAN, ANO BANG KASALANAN NAMIN?" to which PO3 Antonio retorted: "KUNG GUSTO NINYONG MAKAWALA KAYO MAGPALIT ULO KAYO". He initially protested but upon being told by PO3 Antonio: "OKAY KAHIT WALA KAYONG KASALANAN MATUTULUYAN KAYO, NGAYON KUNG AYAW NINYONG MATULUYAN PALIT

ULO NA LANG KAYO". He was made to understand, that was an order for them to point to the police other persons in exchange for their release ..... He pretended to have agreed to this proposal xxx. The police officers stopped the owner-type vehicle at the corner of Evangelista St. and EDSA, Caloocan City, near the Toyota Motors and let him alight. His handcuff was removed. PO3 Antonio and PO2 Modina then asked him the name of the drug pusher he was supposed to point. In response, he mentioned a fictitious name, one alias "JETT" ..... Then, the police officers remarked: "O SIGE PAGKATAPOS... PAG NATAPOS ANG TRABAHO NA TO PUWEDE NA KAYONG UMUWI". They made him board again the vehicle and they proceeded to Katarungan Street.

Upon arrival thereat, his handcuff was removed. As he planned, he immediately fled but the police officers pursued and cornered him .... His captors got provoked and took turns in slapping and mauling him. He was brought first to the Ospital ng Kalookan where he was supposedly physically examined [then] taken to the DEU, Caloocan City Police Station. xxx. At the DEU, the police informed him that he could have been freed if not for the fact that he fooled them (DAHIL PINAGOD MO KAMI") hence, he was charged for Violation of Sections 5 and 11 of the Dangerous Drugs Law. At around 11:00 o'clock in the evening of the same date, while he was inside the DEU detention cell, he was investigated by the police investigator. The next day, July 20, 2002, Manalad, was released. At about 3:00 o'clock [p.m.] of that day, he was brought before the Inquest Prosecutor who conferred only with PO2 Modina and PO2 De Ocampo without even bothering to examine him about the incident.

He denied the charges leveled against him .... He explained that he first saw PO2 Modina when he was allowed to alight the jeep at Toyota Motors, EDSA and that he saw PO2 De Ocampo only during the inquest. He admitted that he had no previous quarrel or misunderstanding with the arresting police officers ... who he came to know only when he was arrested.

He was unable to file any complaint against the concerned police officers for the physical injuries inflicted on him and for filing fabricated charges against him as he has been detained since January [July] 19, 2002. (Word in bracket supplied).

JOSE BANDICO alias "Joker" substantially corroborated the testimony of appellant on the ownership of the billiard hall, the fact of the latter's arrest on July 19, 2002 and that nothing illegal was taken from appellant when frisked by the police in the hall. Alias "Joker" also testified about the accused playing rotation billiard with him since 2:00 p.m. and how the police officers, after the arrest, even got the P260.00 bet.

#### The Trial Court's and the CA's Ruling.

In its joint decision<sup>[8]</sup> dated February 27, 2003, the trial court found appellant guilty beyond moral certainty of doubt of the offenses charged against him and accordingly sentenced him, thus:

THEREFORE, premises considered and the prosecution having established to a moral certainty the guilt of Accused PHILIP DILAO y CASTRO of the crimes charged, this Court hereby renders judgment as follows:

1. In Crim. Case No. 65963 for Violations of Sec. 5, Art. II of RA 9165 this Court, in the absence of any aggravating circumstance, hereby sentences the aforementioned Accused to LIFE IMPRISONMENT; and to pay the fine of five hundred thousand pesos (P500,000.00) without any subsidiary imprisonment in case of insolvency;
2. In Crim. Case No. 65964 for Violation of Sec. 11, Art. II of the same Act, this Court, in the absence of any modifying circumstance, sentences the common Accused to a prison term of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay the fine of three hundred thousand pesos (P300,000.00), without any subsidiary imprisonment in case of insolvency.

xxx xxx xxx

SO ORDERED.

Therefrom, appellant came directly to this Court considering the penalty imposed.

Per Resolution dated March 9, 2005,<sup>[9]</sup> however, the Court, in line with its ruling in *People v. Mateo*,<sup>[10]</sup> referred the cases to the CA for intermediate review, whereat it was docketed *C.A.—G.R. CR.-H.C. No. 00920*.

On May 26, 2005, the CA rendered its Decision<sup>[11]</sup> affirming *in toto* that of the trial court, thus:

WHEREFORE, the appealed Decision dated February 27, 2003 of the trial court is affirmed in toto.

SO ORDERED.

Aggrieved, appellant sought reconsideration, which the CA denied in its Resolution of September 16, 2005.<sup>[12]</sup>

The case is again with this Court pursuant to the *Notice of Appeal* filed by appellant with the appellate court which has forwarded the entire records of the case to this Court.

In its Resolution of February 20, 2006, the Court accepted the appeal and required the parties to file their supplemental briefs, if they so desire.

In his manifestation<sup>[13]</sup> of March 21, 2006, appellant in effect waived the filing of any supplemental brief and declared that he is adopting his brief dated May 20, 2004, heretofore submitted before the Court, wherein he raised the following matters: