

## EN BANC

[ G.R. No. 151205, June 09, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARLOW DE GUZMAN Y DELA CRUZ AND JESUS VILLANUEVA Y CALMA, APPELLANTS.**

### DECISION

#### PER CURIAM:

This is an automatic review of the decision of the Regional Trial Court of Malabon Branch 72 in Criminal Case No. 24671-MN finding the two accused, Marlow De Guzman y Dela Cruz and Jesus Villanueva y Calma, guilty of violation of Section 15, Article III of Republic Act No. 6425, as amended by Republic Act No. 7659.

The accused were charged with the crime of drug pushing in an Information that states:

That on or about the 23rd day of March 2001, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping with one another, being a police officer and private person respectively and without authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver in consideration of the amount of Two pieces of Five Hundred Peso Bill and mixed with bundles of boodle money to a poseur-buyer white crystalline substance contained in two (2) big resealable plastic bags with markings "RSF-1" and "RSF-2" Net Weight of RSF-1 – 1,049.27 grams and Net Weight of RSF -2 – 1,054.86 grams with a total Net Weight of 2,104.13 grams which substances when subjected to chemistry examination gave positive results for EPHEDRINE HYDROCHLORIDE and METHAMPHETAMINE HYDROCHLORIDE for the contents of RSF-1 and EPHEDRINE HYDROCHLORIDE for the contents of RSF-2 otherwise known as "shabu" which are both regulated drugs.

The prosecution relied on the testimony of NBI Agent Charlemagne Veloso who apprehended the accused in a buy-bust operation conducted on March 23, 2001 in Malabon, Metro Manila. Veloso, a member of the Special Task Force Division, testified that on March 22, 2001, an informant reported that he had set a deal with a certain Mr. Chang for the purchase of two kilos of shabu for P1,000,000.00. The transaction was set at noontime of March 23, 2001 at Wendy's Restaurant along Edsa, Caloocan City. A team of NBI personnel consisting of Atty. Reynaldo Esmeralda, Dominador Villanueva, Rommel Vallejo, Eric Isidoro, Rolan Fernandez, Job Gayas and Veloso himself, planned a buy-bust operation against Mr. Chang. Veloso was designated as poseur-buyer and the team prepared the marked money mixed with bundles of boodle money to be used in the operation. In the morning of March 23, 2001, the team proceeded to the agreed meeting place, bringing with them the marked money. The members of the team boarded separate vehicles going

to Wendy's. Veloso and the informant used a private van while the rest of the team rode in two other vehicles. Upon reaching the area, the team coordinated with the local police of Caloocan City. Veloso and the informant entered the restaurant where they met a man who introduced himself as Walter Sy. He was, however, later identified as Marlow De Guzman, a member of the Philippine National Police (PNP), from his official ID which was seized after his apprehension. After some small talk, De Guzman demanded to see the money. Veloso showed him the P500.00 bill mixed with boodle money. De Guzman then instructed them to follow his vehicle, a 1978 Mitsubishi Galant with plate number NEB 391, as somebody was waiting at Tugatog, Malabon. The other members of the team followed them discreetly as they proceeded to Tumariz Street, Tugatog, Malabon. De Guzman was met by Jesus Villanueva who was carrying two plastic bags. De Guzman and Villanueva boarded the van and handed Veloso the two plastic bags. Veloso checked the bags and examined their contents. After confirming that they contained white crystalline substance or shabu, he introduced himself as an NBI operative and gave the pre-arranged signal to the other members of the team. Other team members rushed to their vehicle and helped in apprehending the two suspects. Veloso confiscated the driver's license of Jesus Villanueva. He also kept the marked money inside the vehicle for safety. Upon arrival at the NBI office, team member Rolan Fernandez took custody of the seized substance and delivered them to the Forensic Chemistry Division for laboratory examination. Fernandez marked the plastic bags before turning them over to the Forensic Chemist. After examining the substance, the NBI Chemist issued a certification that the seized items were positive for methamphetamine hydrochloride. After the arrest of the suspects and examination of the contents of the plastic bags, the NBI did the usual booking preparatory to the inquest proceedings. Upon conclusion of the inquest, the prosecution recommended the filing of an information against the two accused.<sup>[1]</sup>

Rolan Fernandez, Special Investigator at the NBI, stated that he was part of the buy-bust team and he was present during the operation against the accused on March 23, 2001. After S/I Veloso arrested De Guzman and his companion, the team immediately proceeded to their office and S/I Veloso turned over to him two transparent plastic bags containing white crystalline substance which appeared to be methamphetamine hydrochloride. He then turned over the plastic bags to the Forensic Chemist for investigation.<sup>[2]</sup>

NBI Forensic Chemist Ferdinand I. Cruz confirmed that on March 23, 2001, he received from NBI Agent Rolan Fernandez a request for laboratory examination of two plastic bags with markings "RSF 1" and "RSF 2" containing white crystalline substance. He opened the bags in the presence of Fernandez and weighed the same. He then performed a physical and chemical examination of their contents. The chemical examination revealed that the contents of the plastic bag marked as "RSF 1" are positive for ephedrine hydrochloride and methamphetamine hydrochloride and the contents of the plastic bag marked as "RSF 2" are positive for methamphetamine hydrochloride. He said that ephedrine hydrochloride is a regulated drug.<sup>[3]</sup>

The defense presented a different version of the story.

Victor Ermita, a resident of Tugatog, Malabon, Metro Manila, testified that on March 23, 2001, around 12:00 noon, he was buying food at Sabel's *Lugawan* in Tugatog,

Malabon when he saw a man running and shouting for help. Another man who heard the plea stood and said, "I am a policeman! What's the problem?" Ermita identified the latter as accused Marlow De Guzman. Some NBI personnel approached De Guzman and held him. De Guzman struggled. The NBI personnel pushed him and handcuffed him after he fell. In the meantime, the man being pursued by the NBI continued to run and evaded his pursuers. The NBI personnel then boarded De Guzman and his companion, Jessie, in a van.<sup>[4]</sup>

Accused Marlow De Guzman also took the witness stand. He admitted that he was a police officer assigned to the mobile patrol. He stated that on March 23, 2001, around 11:00 in the morning, he and Jesus Villanueva were at the *lugawan* of Aling Sabel in Acaro, Lascano Street when he saw a man, a certain Andoy, screaming, "*Hinahabol ako!*" He stood up and approached the pursuers and introduced himself as police officer. But the latter repelled him. De Guzman pretended to draw a gun from his waist but the pursuers pushed him and identified themselves as NBI agents. De Guzman was arrested, boarded on a van and brought to the NBI office. The NBI personnel kept him in a room and interrogated him. They were insisting that the shabu came from him. De Guzman, however, swore that he saw the alleged shabu for the first time at the NBI office and there was only one plastic bag at that time. Then he heard Atty. Esmeralda ask why only one bag of shabu was taken when there should have been at least three. One of the members replied that he could even produce two to three kilos. When De Guzman went out of the room, he saw Villanueva come in. De Guzman heard sounds from the room as if someone was being boxed and hit. Villanueva came out of the room after thirty minutes with bruises. Villanueva told him that they hit his arm and fingers with a hammer and he could hardly move. De Guzman also told the court that he saw the NBI personnel dividing money among themselves, saying, "*Eto'ng sa iyo, eto'ng sa iyo.*" They pocketed the money which they divided. He was an armslength away from them.<sup>[5]</sup>

The defense also presented NBI Agent Job Gayas as hostile witness. Agent Gayas, who has been with the NBI for eight years, testified that he was part of the buy-bust operation against the two accused, but he was not with the arresting team. He was riding in his own vehicle together with S/I Fernandez and S/I Villa. They stayed about 100 meters away from the scene of the operation. Hence, he did not actually see the transaction between the suspects and the poseur-buyer. They were only advised over the radio of the on-going operations and its consummation. They moved out of the area as soon as the operation was completed. Agent Gayas also testified on some of the standard operating procedures observed during buy-bust operations. He said that it is a standard operating procedure that the suspects undergo a medical check-up before they are committed to detention. The records of the NBI showed that accused Villanueva did not have a medical certificate. He also said that during buy-bust operations, the NBI normally coordinates with the local police when it conducts an operation. In this case, however, the records do not show that the NBI coordinated with the local police of Malabon, although they did with the local police of Caloocan City.<sup>[6]</sup>

The trial court believed the version of the prosecution and found both accused guilty of the charge. It meted accused Jesus Villanueva the penalty of *reclusion perpetua*, and accused Marlow De Guzman the supreme penalty of death, considering the presence of the aggravating circumstance of his being a police officer. The dispositive portion of the decision states: