

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR HC No. 01758, January 29, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENITO PALARAS Y LAPU-OS, ACCUSED-APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal on the Decision^[1] of the Regional Trial Court (RTC), Branch 69, Silay City dated November 14, 2013 in Criminal Cases Nos. 8561-69 and 8562-69 finding accused-appellant Benito Palaras y Lapuos *a.k.a.* "Bitoy" guilty beyond reasonable doubt of the charges against him, and sentencing him with life imprisonment and a fine of P500,000.00 for violating Section 5, Article II of Republic Act (RA) 9165;^[2] and imprisonment for a period of 12 years and 1 day as minimum, to 17 years and 4 months as maximum, and a fine of P400,000.00 for violating Section 11, Article II of the same law.

The Antecedents

Accused-appellant Benito Palaras y Lapu-os (appellant) was indicted in Criminal Cases Nos. 8561-69 and 8562-69 for violating Sections 5 and 11, respectively, of Article II of Republic Act 9165 under the following Informations, *viz.*:

CRIMINAL CASE NO. 8561-69^[3]

That on February 22, 2012 in Silay City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one sachet of shabu marked as "BIT1", a prohibited drug to an asset of the Silay City PNP posing as a poseur buyer in exchange for two One Hundred peso bills with serial numbers SQ914777 & ZE353426 and one fifty peso bill with serial number SB19053 all marked with an underline at the last digit of each serial number.

CONTRARY TO LAW.

CRIMINAL CASE NO. 8562-69^[4]

That on February 22, 2012 in Silay City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control four sachets of shabu marked as Bit2, Bit3, Bit4 & Bit5, a prohibited drug without any license or permit to possess the same.

CONTRARY TO LAW.

When arraigned, appellant pleaded not guilty to both offenses charged.^[5] After the pre-trial,^[6] the two cases were jointly tried.

The prosecution's account was testified to by P./Insp. Hernand Donado, PO2 Christopher Panes, PCI Paul Jerome Puentesquina, PO2 Reynado Bernil, Jr., Hon. Ireneo Celis, Jr., SPO1 Rayjay Rebadoma, PO1 Henry Ramos, PO2 Ian Libo-on and Noel Lacson. Their version was summarized^[7] by the OSG, as follows:

The Intelligence Section of the Philippine National Police of Silay City (PNP Silay City) received reports that a certain Benito Palaras y Lapu-os a.k.a. "Bitoy", a resident of Sitio Matagoy, Barangay Rizal, Silay City, was actively engaged in selling shabu in the said area together with his brother, Joemarie Palaras, who had been previously arrested for a similar offense.

Pursuant to the said reports, P/Supt. Rosauro R. Francisco, Jr., the Chief of Police of PNP Silay City ordered surveillance, monitoring and casing operation on appellant Palaras. A test buy operation was then undertaken with the use of a confidential asset, who acted as the poseur-buyer. A sachet of shabu was purchased by the poseur-buyer from Palaras for the sum of Two Hundred Fifty Pesos (P250.00). The item purchased from the accused in said test buy was brought to the PNP Crime Laboratory of Negros Occidental Provincial Police Office (NOPPO) on 14 December 2011. The contents of the said plastic sachet was "Positive" for *methamphetamine hydrochloride (shabu)*, a dangerous drug, as shown in Chemistry Report No. D-241-2011^[8].

A buy-bust operation was thus set on 22 February 2012, to be conducted by the same police unit on appellant Palaras. Two (2) 100.00 bills and a P50.00 bill were marked by underlining the last digit of the serial numbers in each of them.^[9] The same were subscribed to before Prosecutor Ma. Lisa Lorraine H. Atotubo, as the money to be used in said buy-bust operation. This was entered in the blotter logbook of PNP Silay City as Entry No. 024885.^[10]

The planned buy bust operation was coordinated with the Philippine Drug Enforcement Agency (PDEA), Regional Office 6. A Pre-operation Report^[11] and Coordination Form^[12] were likewise issued. A short briefing was done at the office of the Intelligence Section of PNP Silay City where the details of the operation were planned. The members of the buy bust operation were PO2 Bernil, PO2 Libo-on, and a number of civilian agents of the police unit, with PO2 Bernil as the lead police officer.

The marked bills were given by PO2 Bernil to the confidential asset, who was to act as the poseur-buyer. Ahead of the other members of the buy bust team, the latter proceeded to Burgos Street, Barangay Rizal, Silay City, where the accused was plying his illegal trade. He was instructed to immediately call PO2 Bernil the moment he sees Palaras at the said

place. Shortly, the poseur-buyer made the call that he had already seen Palaras in the area. The other members of the buy-bust team soon followed. They positioned themselves a few meters away from where the poseur-buyer was at the time in a manner that their presence would not be noticed by Palaras, but sufficient for them to clearly see Palaras and the poseur-buyer.

The poseur-buyer approached a person seated on a tricycle parked at the street. Since the former was a previous customer of Palaras, the latter did not become suspicious. The poseur-buyer took out from his pocket the marked bills and handed them to Palaras, who readily received it and placed it in his pocket. Palaras, thereafter, took something from his pocket and gave it to the poseur-buyer. As they parted ways, the poseur-buyer gave the pre-arranged signal that the sale had already been consummated by placing his right hand on top of his head. The other members of the buy bust team, specifically PO2 Bernil, SPO1 Rebadomia, and PO2 Libo-on, hurriedly proceeded towards Palaras. Palaras, upon noticing the police officers approaching, attempted to escape but was promptly apprehended.

A search on the body of Palaras was done by PO2 Bernil. The latter recovered, from the left pocket of the pants of Palaras, the marked bills, as well as four (4) small heat-sealed transparent plastic sachets containing white crystalline substances. These transparent plastic sachets were handed by PO2 Bernil to PO2 Ian Libo-on, who marked them at the place where the same were recovered as "BIT2", "BIT3", "BIT4" and "BIT5", respectively.

On the other hand, the poseur-buyer handed to PO2 Bernil a small heat-sealed transparent plastic sachet containing a crystalline substance which the former received from Palaras, PO2 Bernil, in turn, handed it to PO2 Libo-on and the latter marked it as "Bit1", the buy bust item.

Palaras and the items recovered from him were then brought to the police station of PNP Silay City. An inventory^[13] was made of the items seized and recovered from Palaras, which he signed. The said inventory was witnessed by, among others: Councilor Ireneo Celis, a media representative Ed Gumban, Kagawad Noel Lacson, and DOJ representative Danilo Tumlos.

Thereafter, the plastic sachets recovered and seized from Palaras were brought to the PNP Crime Laboratory NOPPO at Bacolod City for laboratory examination. A Chemistry Report No. D-049-2012^[14] was issued by PCI Paul Puentespin, a forensic chemist, showing that all the seized items, with an aggregate weight of 0.06 grams, were tested "Positive" for *methamphetamine hydrochloride (shabu)*, a dangerous drug.

On the other hand, appellant and his niece testified for the defense. According to appellant, on February 22, 2012, at around 4:00 o'clock in the afternoon, he was conversing with his friends inside a private tricycle in front of Kahilwayan in *Barangay 2*, Silay City. Suddenly, two persons clad in civilian clothes and carrying

guns approached the tricycle. They aimed at appellant and handcuffed him. Appellant resisted and asked those persons what crime he committed but they did not give him any reply. Another person wearing a sweatshirt and also carrying a gun arrived. This person forced appellant to go in front of the jeep and when thereat, the person inserted his hand into appellant's pocket. Appellant protested as his pocket had holes but the person continued what he was doing. Then, a cap of a Tanduay bottle fell to the ground and the person picked it up. Another person arrived and took pictures of the incident. Thereafter, appellant was forced to board on a green multicab and was brought to Silay City police headquarters. He was then brought to the office of the Chief of Police where he saw small transparent plastic sachets on the table. The photographer arrived and took P250.00 from his pocket and put the money on the table together with the small plastic sachets. The photographer took photographs of appellant and the items on the table. The police officers told appellant to sign certain documents and if he would not, they would file another case against him.

According to Jenny Palaras Casiano (Jenny), appellant's niece, she was watching the television at around 5:00 o'clock in the afternoon on February 22, 2012 when she was called by her neighbor. She ran outside and was told that her uncle, herein appellant, was forcefully held by police officers. She rushed to the area and there, she saw her uncle who asked for her help. When she was about to leave the place, she saw police officer Bernil put inside the right pocket of her uncle a plastic cup containing shabu which slipped down because the pocket had a hole. Bernil took the plastic cup which contained shabu. There were several people in the vicinity who saw the incident and they applauded when the planted items fell down. The police may have felt ashamed, hence, when their back-up arrived, they left the place. Jenny just cried and informed the members of their family and her father about what happened.

After the trial court evaluated the parties' evidence, it convicted appellant of the charges. The dispositive portion of its Decision reads, *viz.*:

WHEREFORE PREMISES CONSIDERED:

In Criminal Case No. 8561-69, this Court finds accused, BENITO PALARAS y LAPUOS, *a.k.a.* "BITOY", GUILTY of 'Violation of Section 5, Article II of Republic Act No. 9165' (The Comprehensive Dangerous Drugs of 2002) as his guilt had been proven by the prosecution beyond any reasonable doubt.

Accordingly, this Court sentences accused, BENITO PALARAS y LAPUOS, *a.k.a.* "BITOY", to suffer the penalty of Life Imprisonment, the same to be served by him at the National Penitentiary, Muntinlupa City, Rizal.

Accused Benito Palaras y Lapuos, *a.k.a.* "Bitoy" is, further, ordered to pay a fine of P500,000.00.

In Criminal Case No. 8562-69, this Court finds accused, BENITO PALARAS y LAPUOS, *a.k.a.* "BITOY", GUILTY of 'Violation of Section 11, Article II of Republic Act No. 9165' (The Comprehensive Dangerous Drugs of 2002), as the prosecution had proven his guilt for said crime beyond any reasonable doubt.

Accordingly, and in application of the pertinent provisions of the Indeterminate Sentence law, this Court sentences accused, BENITO PALARAS y LAPUOS, a.k.a. "BITOY", to suffer the imprisonment for a period of from TWELVE (12) YEARS and ONE (1) DAY as Minimum, to SEVENTEEN (17) Years and FOUR (4) Months as Maximum, the same to be served by him at the National Penitentiary, Muntinlupa City, Rizal.

Accused named is, further, ordered to pay a fine of P400,000.00.

In the service of the sentences imposed by this Court on accused, Benito Palaras y Lapuos, a.k.a. "Bitoy", his period of detention pending trial of this case shall be credited in his favor.

Accused, Benito Palaras y Lapuos, a.k.a. "Bitoy" is, in the meantime, remanded to the custody of the Jail Warden of the Bureau of Jail Management and Penology (BJMP), Silay City, Negros Occidental, pending his transfer to the National Bilibid Prisons, where he shall serve the sentence imposed on him by this Court.

The one (1) small heat-sealed transparent plastic sachet containing white crystalline substance in it of methamphetamine hydrochloride ('Shabu') subject of the buy bust operation on the accused and the four (4) small heat-sealed plastic sachets, likewise, containing methamphetamine hydrochloride ('Shabu') on them, with a total weight of 0.6 grams, are ordered remitted to the Philippine Drug Enforcement Agency (PDEA), Negros Occidental Police Office, Camp Alfredo Montelibano, Bacolod City, for proper disposition.

NO COSTS.

SO ORDERED.^[15]

Aggrieved, appellant elevated the matter to Us and cited the following errors, thus:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO SUFFICIENTLY PROVE THE SALE TRANSACTION;

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

This Court's Ruling

The appeal is unimpressed with merit.

Appellant's arguments focused on the supposed impropriety of his conviction for the