

TWENTY-THIRD DIVISION

[CA-G.R. CR HC NO. 00997-MIN, February 27, 2015]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CHRISTOPHER ALOYON Y ALEGRE, ACCUSED-APPELLANT.**

D E C I S I O N

CONTRERAS, J.:

Appealed^[1] to this Court is an Omnibus Decision^[2] dated November 11, 2011 of the Regional Trial Court, Branch 4, Butuan City finding accused-appellant Christopher Aloyon y Alegre guilty beyond reasonable doubt in Criminal Case Nos. 11181 and 11182 for violation of Sections 5 and 11, Article II of the Republic Act No. 9165 otherwise known as *Comprehensive Dangerous Drugs Act of 2002*.

The case stemmed from an incident averred in two (2) Informations^[3] all dated May 20, 2005, as follows:

That on or about 4:45 in the afternoon of May 10, 2005, at P3, Brgy. 15, San Ignacio, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, and deliver one (1) sachet of methamphetamine hydrochloride, otherwise known as shabu weighing zero point zero five one two (0.0512) grams a dangerous drugs to a poseur-buyer for a consideration of 500 pesos marked moneys, a dangerous drugs.

CONTRARY TO LAW: (Violation of Sec. 5 Art II of R.A. NO. 9165)

That on or about 4:45 in the afternoon of May 10, 2005, at P3, Brgy. 15, San Ignacio, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody two (2) sachets of shabu weighing a total of zero point one six four two (0.1642) grams of methamphetamine hydrochloride, otherwise known as shabu which is a dangerous drug.

CONTRARY TO LAW: (Violation of Sec. 11 Art II of R.A. NO. 9165)

On August 15, 2005, when arraigned on both cases, appellant with the assistance of a counsel pleaded not guilty.^[4]

The prosecution presented SPO1 Estelito O. Gono (Gono for brevity), PO2 Rey Gabrielle Maderal (Maderal for brevity), SPO1 Irish Fe N. Benigian (Benigian for brevity) and PSI Norman Gales Jovita (Jovita for brevity) as witnesses to establish

the following:

Gono's testimony:^[5] On May 10, 2005, at 4:45 P.M. at Purok 3, Barangay 15, San Ignacio, Butuan City, he and other police officers conducted a buy-bust operation against appellant. He was with Maderal, Benegian, PO3 Delos Santos and PO2 Alvizo. Their police asset acted as poseur-buyer. Before the jump off, they prepared a PHP 500.00 bill as marked money. Benigian entered the serial number of the bill, HA253608, into the logbook at their office. They also caused the powder dusting of the bill.

At the time of the buy-bust operation, Gono, Maderal and Benigian were standing eighteen (18) meters away from poseur-buyer and appellant. They could clearly view the transaction between the latter as there was no obstruction from their sight. Poseur-buyer approached appellant. Shortly, the former gave the marked PHP 500.00 bill to appellant who accepted the same and then gave poseur-buyer something that looked like a small sachet.

Poseur-buyer executed the pre-arranged signal after receiving the small sachet. Gono's group, after seeing the signal, approached the poseur-buyer and appellant. The poseur-buyer then walked towards Gono and handed the sachet to him. Appellant, on the other hand, went inside a video karera shop. Gono, Delos Reyes and the rest went inside the video karera shop while Maderal and Alvizo were posted outside the shop acting as security. The group who went outside the shop informed appellant that they were conducting a buy-bust operation against him. Delos Santos then brought appellant outside the shop as the indoors was narrow. Gono asked appellant where the marked money was and the latter replied that it was in the secret pocket of his short pants. Gono retrieved the bill from his pocket. He asked accused if there were other sachets of shabu, and appellant said there was none. Then, they conducted a body search on him, and they recovered two (2) sachets of shabu tucked inside his brief. Then they informed him of the reason of his arrest as well as his constitutional rights.

Thereafter, the buy-bust team brought him to their office at the Philippine Drug Enforcement Agency (PDEA), BCPO. In going there, it was Maderal, as evidence custodian, who carried the sachets of shabu. Upon arriving thereat, Maderal marked the first sachet, which was the product of the buy-bust operation, with his initials "RBM-A1" and the two (2) other sachets, which were seized in appellant's possession, with "RBM-B1" - "RBM-B2." The team took a photo of the evidence with the accused. They prepared four (4) requests for laboratory addressed to the PNP Crime Laboratory, such as request for examination on the first sachet of shabu; request for examination on the other two (2) sachets of shabu; request for drug test on appellant; and request for the marked money. They also prepared certificate of inventory/confiscation receipt, affidavit of apprehension, and the sworn statements of Gono and Delos Santos. Thenceforth, Gono and Maderal brought appellant and the evidence to the crime laboratory for examination. It was actually Maderal who brought and delivered the written request and all the seized items to the Crime Laboratory.

Maderal was no longer presented at the trial. Instead, the parties entered into stipulations that Maderal received the sachets of shabu from Gono; she was the one also who made the markings on the sachets in both criminal cases; she brought the three sachets of shabu at the Crime Laboratory for examination; and she prepared

the request for powder dusting of the marked money and for the chemical examination for the presence of ultraviolet rays on the marked money and on appellant. Benigian's testimony in open court was also dispensed with after the defense counsel agreed that Benigian was a member of the buy-bust team and that the Certificate of Inventory was prepared.

Jovita's testimony:^[6] Jovita was a forensic chemical officer of the Surigao del Norte Provincial Crime Laboratory. He was presented as expert witness. He testified that he had received in his office the above-mentioned four (4) requests for laboratory. After the examination, the three (3) sachets yielded positive results for methamphetamine hydrochloride, a dangerous drug. He then reduced his findings into writing and prepared Chemistry Report No. D-066-2005 on the first sachet of shabu and Chemistry Report No. D-167-2005 on the other two (2) sachets. On the other tests, the PHP 500.00 bill tested positive of fluorescent powder while appellant got negative.

On the other hand, the defense presented appellant as sole witness in defense of himself.

Appellant was a *trisikad* driver. He lived with his wife, one child and parents-in-law in Purok 4, Barangay 17, San Ignacio, Butuan City. On May 10, 2005, at 4:45 PM, he was just at home. After a while, he went to the video karera shop, which was quite far from his house, located at Montilla Street, Purok 15, Barangay San Ignacio, Butuan City. He played video karera alone. After about thirty (30) minutes, two (2) policemen entered the shop and immediately frisked him. They ushered him outside the shop and searched his shortpants. They recovered two (2) pieces of PHP 50.00 bills. There were no barangay officials or representative from the media present at the time the police officers searched and apprehended him. Thereafter, they boarded a tricycle and went to BCPS. There, the police officers conducted a body-search on him again, and then he was put in jail.^[7]

After the trial proceedings, the lower court rendered the assailed Omnibus Decision^[8] dated November 11, 2011, the dispositive portion^[9] of which reads:

WHEREFORE, premises considered, in Criminal Case No. 11181, accused Christopher Aloyon y Alegre is found guilty beyond reasonable doubt for violation of Section 5, of Article II of Republic Act 9165, and is hereby sentenced to life imprisonment and to pay a fine of Five Hundred Pesos (P500,000.00), without subsidiary imprisonment in case of insolvency.

In Criminal Case No. 11182, accused is likewise found guilty beyond reasonable doubt for violation of Section 11 of Article II of Republic Act 9165, and is hereby sentenced to undergo imprisonment of the indeterminate penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and a fine of three hundred thousand pesos (P300,000.00) without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentences in accordance with the Rule on service of sentence as embodied in the Revised Penal Code at Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte.

The sachets of shabu subject of both Criminal Cases Nos. 11181 and 11182, are hereby declared forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.

On appeal, appellant raised the following assignment of errors:[10]

I.

THE COURT A *QUO* ERRED WHEN IT ADMITTED THE PROSECUTION'S EVIDENCE DESPITE BEING INADMISSIBLE IN EVIDENCE BEING A FRUIT OF THE POISONOUS TREE.

II.

THE COURT A *QUO* GRAVELY ERRED WHEN IT CONVICTED APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE THE SALE OF SHABU BEYOND REASONABLE DOUBT

III.

THE COURT A *QUO* ERRED WHEN IT CONVICTED APPELLANT DESPITE PROSECUTION'S FAILURE TO ESTABLISH COMPLIANCE OF SECTION 21 OF R.A. 9165 AND THE CHAIN OF CUSTODY REQUIREMENT.

In essence, the issue that should be resolved in this case is whether the prosecution has established the guilt of appellant beyond reasonable doubt.

The appeal has merit.

Non-presentation of the poseur-buyer.

Appellant argues that the alleged sale of *shabu* between him and the poseur buyer was not established because the poseur-buyer was not presented as witness; he was apprehended on the basis of mere suspicion; Gono's testimony that the poseur buyer bought sachets of *shabu* from him was hearsay and is inadmissible in evidence against him.[11]

There are two notable jurisprudence, which serve as guideposts in disposing this case. First is the *People of the Philippines v. Dionisio Tadepa*, [12] wherein the Supreme Court declared the following:

In the case at bench, we are not convinced that the state has presented sufficient evidence to engender that moral certitude exacted by the fundamental law to prove the guilt of the accused. Accordingly, we reverse his conviction on reasonable doubt. The prosecution built its case solely on the testimony of Team Leader Sgt. Alfiler who admitted that he was some seven (7) to eight (8) meters away from where the actual transaction took place. As a consequence, he said that he did not hear the conversation which transpired between Pat. Triste and the accused.