

EIGHTEENTH DIVISION

[CA-G.R. CR NO. 01327, February 26, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RONILO LABORTE Y PENALES @ DODONG, ACCUSED,**

MARY JANE NENIEL Y BARTIANA @ JANE, ACCUSED-APPELLANT.

D E C I S I O N

LOPEZ, J.:

Before Us is an appeal from the Joint Decision^[1] dated September 23, 2009 of the Regional Trial Court (RTC) Branch 4, Tagbilaran City in Criminal Case No. 13106 convicting accused-appellant of Violation of Section 5, Article II of Republic Act No. 9165.^[2] The dispositive portion of the said Decision states:

"WHEREFORE, premises considered, the Court renders judgment as follows:

1. In the above-entitled Criminal Case No. 13106, the Court finds both accused Ronilo Laborte y Penales alias Dodong and accused Mary Jane Neniela y Bartiana guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and, as penalized under paragraph 2 of the aforecited law, the said two accused are each sentenced to suffer the penalty of imprisonment ranging from Twelve (12) Years and One (1) Day, as minimum, to Twenty (20) Years, as maximum, and a fine of P200,000.00 each.

2. In the above-captioned Criminal Case No. 13107, accused Ronilo Laborte y Penales alias Dodong is acquitted of the instant charge for violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, ascribed to him, on the ground of reasonable doubt.

The prosecution's object evidences: - 1) one (1) heat-sealed transparent plastic sachet containing white crystalline substance (Exhibit E) in Criminal Case No. 13106; 2) Two (2) transparent cellophane packs and one (1) transparent cellophane sachet containing white crystalline substance which contains Methamphetamine Hydrochloride (Exhibits F, G, H) in Criminal Case No. 13107 – are ordered destroyed in accordance with the guidelines drawn up by the PDEA on the manner of proper disposition and destruction of such items pursuant to existing law, or governing rules.

The marked money in the amount of P1,500.00 consisting of 2 pcs 500-

piso bill and 5 pcs 100-piso bill (Exhibits M, N, O, P, Q and S) in Criminal Case No. 13106 are hereby confiscated and forfeited in favor of the government.

The money amounting to P8,850.00 (Exh. V) and Two (2) pcs NOKIA cellphones 2600 and 1100 (Exhibits W and W-1, respectively) are ordered returned to accused Laborte and Neniël.

In the service of their sentence in Crim. Case No. 13106, accused Ronilo P. Laborte and accused Mary Jane B. Neniël, being detention prisoners shall be credited fully with their respective preventive imprisonments if they agreed in writing to abide by the rules on convicted prisoners; otherwise, only 4/5 of their preventive imprisonment shall be credited in their favor.

SO ORDERED."

Accused Mary Jane Neniël y Bartiana and her co-accused were charged with Violation of Section 5, Article II of R.A. 9165 in an Information^[3] dated March 9, 2006 which reads as follows:

"That on or about the 6th day of March 2006, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully, feloniously and knowingly, without any legal purpose, sell, transfer, deliver and give away one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.32 gram to a poseur buyer for and in consideration of the amount of ONE THOUSAND FIVE HUNDRED PESOS (P1,500.00), Philippine Currency, the accused knowing fully well that the above-mentioned substance which contains Methamphetamine Hydrochloride is a dangerous drug and that they did not have any lawful authority, permit or license to possess and sell the same, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Sec. 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 repealing R.A. 6425, as amended."

Upon her arrest, accused was detained at the Tagbilaran City PNP Lock-up Jail and was later transferred to the CTRC, Cabawan District.^[4] On July 25, 2006, accused was arraigned with the assistance of Atty. Nicodemus A. Tago, and pleaded not guilty to the crime charged.^[5] Thereafter, trial on the merits ensued.

The Evidence for the Plaintiff-Appellee

From the testimonies of the prosecution witnesses, namely: P/Supt. Victoria Celis de Guzman, SPO3 Patrick Kibir, PO2 John Lynbert C. Yango, Bienvenido E. Navea and Manuel del Mundo, the following were established:

In the afternoon of March 6, 2006, PO2 Yango and other police officers PO3 Kibir, SPO4 Balistoy, SPO4 Bacus, PO3 Lumbab and PO2 Ramos, together with SPO3

Puagang, SPO1 Aniana, PO1 Garrote, PO3 Villapaz and PO2 Calimbayan, conducted a meeting for the operation of a buy-bust against accused-appellant and her co-accused, who are live-in partners, after learning of their illegal drug activities from an informant.^[6] It was agreed that the informant would purchase P1,500.00 worth of shabu. Through text messaging, the informant placed her order and the sale was to take place at the entrance of BQ Mall.^[7] At the mall, PO2 Yango positioned himself at a distance of about 3-5 meters from the poseur buyer while the rest of the team were in strategic areas within the mall. They were equipped with hand-held radios for communication.^[8]

When accused-appellant and her co-accused Laborte arrived on a motorcycle, the poseur buyer, with PO2 Yango nearby, approached Laborte and handed the buy-bust money to accused-appellant who placed them in her wallet.^[9] Co-accused Laborte then took something from his pocket which he handed to the poseur-buyer who, in turn, gave it to PO2 Yango. When PO2 Yango saw that the item looked suspiciously like shabu granules,^[10] PO2 Yango said "go, go, go" which was the agreed signal that the transaction was already consummated. The police officers then rushed towards accused-appellant and her co-accused who both sped away on the motorcycle upon noticing that police officers were rushing towards them.^[11] Police, however, caught up with them near McDonalds at the corner of Grupo and DPG Streets where both accused-appellant and her co-accused were arrested.^[12] A search was conducted on their persons and the marked money was recovered from accused-appellant's wallet. Two (2) packs and one (1) sachet of shabu granules were voluntarily surrendered by co-accused Laborte to the police officers. The packet subject of the sale had been turned over by the poseur buyer to PO2 Yango, marked by SPO1 Aniana and brought to the police station for laboratory examination. At the time of the search, there were civilian witnesses in the persons of Barangay Kagawad Navea and del Mundo as well as media representatives Maestrado, Capampangan and Castro.^[13] These witnesses were also present during the conduct of the inventory of seized items.^[14]

Thereafter, the suspected dangerous drug subject of the sale was submitted to the Crime Laboratory for examination^[15] by the Forensic Chemist who determined that the specimen was positive for methamphetamine hydrochloride as contained in Chemistry Report No. D-035-2006.^[16] Drug tests were also conducted on the urine samples of accused-appellant and her co-accused. The examination on accused-appellant's sample yielded a negative result^[17] while that of her co-accused was positive for the presence of a dangerous drug.^[18]

After the witnesses' testimonies, the prosecution formally offered their Exhibits "A" to "W" with sub-markings^[19] which were admitted by the trial court per Order of September 27, 2007.^[20]

The Evidence for the Accused-Appellant

In her testimony, accused-appellant declared that her co-accused Ronilo Laborte is her live-in partner for the past seven (7) months until their arrest on March 6, 2006.^[21] On that day, they were traveling on a motorcycle from Maribojoc, Bohol towards Panglao. While stopping for the red light, someone suddenly held the handle of the

motorcycle and turned off the ignition.^[22] Someone also suddenly took her hat and cellular phone. There were also several persons who surrounded their motorcycle. When she asked why she was told that it was because she had no helmet on and that the motorcycle's plate number was on the side of the vehicle.^[23] She and her co-accused were then searched. The persons who took her cellphone also searched her pocket and opened the motorcycle's compartment. Despite the search, nothing was recovered from her.^[24] It was when she and her co-accused were brought to the police station that she knew the persons were police officers.^[25] At the police station, she was brought to a room where she was undressed and searched. There was nothing found and she was later brought out and led to a table where she saw her co-accused and on the table were money, wallet and other items including shabu.^[26] Her wallet, which was also taken by the police officers, contained P10,000.00 which was supposed to be sent to her sick mother in Mindanao. The money was from her father who took out a loan from his office in order to send it to her mother.^[27]

Jonathan Ungab stated that he saw the incident that occurred on March 6, 2006 as he was traveling on a motorcycle behind accused-appellant and her co-accused.^[28] When they stopped at a red light at the intersection of Grupo and CPG, he saw that accused-appellant and her co-accused were held up and searched. He heard that they were arrested because of their involvement in drugs.^[29] While he was traveling behind accused-appellant and her co-accused, he did not notice them pass or drop by the main entrance of BQ Mall.^[30]

Epifanio Neniell declared that he is accused-appellant's father and that he worked for AVM Construction from whom he made a cash advance in the amount of P10,000.00 on March 4, 2006.^[31] He gave the money, which was intended for his wife's goiter operation, to accused-appellant on the following day, March 5, 2006. He doesn't know what happened to the money afterwards as he left for Cebu in the evening of March 5, 2006.^[32]

Gely Estoque stated that she is the Secretary and acting cashier of AVM Construction. She prepared the cash voucher for the request of Epifanio Neniell, who is part of their mechanical staff, for a cash advance of P10,000.00 in March 2006.^[33]

After the testimony of accused-appellant and her witnesses, she formally offered her Exhibits "1" to "5".^[34]

On September 23, 2009, the RTC Branch 4, Tagbilaran City rendered its Decision. Accused-appellant filed a Notice of Appeal^[35] which was given due course by the court *a quo*.^[36]

In her appeal before Us, accused-appellant made the following assignment of errors, to wit:^[37]

DESPITE THE FACT THAT THE IDENTITY OF THE POSEUR-BUYER WAS NOT DULY PROVEN AND ESTABLISHED BY THE PROSECUTION DURING TRIAL;

II

THE LOWER COURT ERRED WHEN IT SIMPLY ASSUMED AND PRESUMED THAT ACCUSED-APPELLANT CONSPIRED WITH HER CO-ACCUSED IN COMMITTING THE ALLEGED ILLEGAL SALE OF SHABU;

III

THE TRIAL COURT ERRED WHEN IT FAILED TO APPRECIATE THE NEGATIVE PROBATIVE IMPACT OF DEFAULTS, DEFECTS, IRREGULARITIES AND INCONSISTENCIES IN THE POLICE OPERATIONS AGAINST THE ACCUSED-APPELLANT; and

IV

THE TRIAL COURT ERRED IT WHEN GAVE GREATEST WEIGHT AND IMPORT TO THE DOCTRINE OF PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY THE POLICE OFFICERS AGAINST THE MORE PARAMOUNT CONSTITUTIONALLY MANDATED PRESUMPTION OF INNOCENCE OF THE ACCUSED-APPELLANT.

Our Ruling.

The appeal is without merit.

In cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers.^[38]

In this case, no such ill-motive had been shown. On the contrary, it was duly established by the prosecution that accused-appellant was validly caught *in flagrante delicto* violating Section 5 of the Dangerous Drugs Act pursuant to a buy-bust operation and in conspiracy with her co-accused.

Buy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities. A buy-bust operation is one form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of committing an offense, and must be undertaken with due regard for constitutional and legal safeguards.^[39]

However, while a buy-bust operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, it has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for