

## **SECOND DIVISION**

**[ CA-G.R. CR HC NO. 06096, March 27, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF--APPELLEE, VS.  
FRANCIS TABOY Y AQUINO ACCUSED-APPELLANT.**

### **DECISION**

**GONZALES-SISON, M., J:**

For review is the Joint Decision<sup>[1]</sup> dated March 12, 2013 of the Regional Trial Court (RTC), Third Judicial Region, Branch 68, Caloocan City in Criminal Case Nos. 12-01, 12-60, and 12-61.

Three (3) Informations docketed as Criminal Case Nos. 12-01, 12-60, and 12-61 were filed before the trial court charging the accused with Violation of Sections 5, 12 and 15, Article II, R.A. No. 9165 (illegal sale of dangerous drug, illegal possession of drug paraphernalia, and illegal use of dangerous drug) otherwise known as "Comprehensive Dangerous Drugs Act of 2002" committed as follows:

#### **"Criminal Case No. 12-01 (Illegal Sale of Dangerous Drugs)**

"That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and feloniously sell one(1) heat-sealed transparent plastic sachets (sic) containing Methamphetamine Hydrochloride commonly known as "shabu" a dangerous drug without being authorized by law, weighing 0.051 gram more or less to poseur buyer PO1 Jojie S. Navero.

Contrary to law.<sup>[2]</sup>

#### **Criminal Case No. 12-60 (Illegal Possession of Drug Paraphernalia)**

That on or about January 5, 2012 at around 3:45 P.M. at Camiling Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, then and there willfully, unlawfully and feloniously, have in possession and control drug paraphernalia's (sic) fit or intended for consuming dangerous drugs such as one (1) disposable lighter, one (1) stainless lighter and one (1) roll of aluminum foil without being authorized by law.

Contrary to law."<sup>[3]</sup>

#### **"Criminal Case No. 12-61 (Illegal Use of Dangerous Drugs)**

That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally without being authorized by law, use Methamphetamine Hydrochloride, known as shabu a dangerous drug and was found positive for use of said drug after conformatory test.

Contrary to law.<sup>[4]</sup>

When arraigned, accused, with the assistance of *counsel de officio*, entered a plea of not guilty to all the charges.<sup>[5]</sup>

After pre-trial, trial on the merits ensued. The prosecution offered documentary and testimonial evidence through its witnesses, namely: PS1 Angelito Angel (Forensic Chemist), PO2 Jojie S. Navero, PO3 Edgar Esteban, Brgy. Captain Renato de Mayo, and PO Jason Carbonell. The trial court summed up the prosecution's evidence in the following manner, to wit:

"Acting on the information of the confidential agent that he was going to buy shabu from accused Francis Tabor, P'Sr. Insp. Diosdado Lagasca, then Chief of Police, Camiling Police Station, immediately formed a buy-bust team to conduct buy-bust operation against accused Tabor on January 5, 2012. The buy bust team was composed of PO2 Jojie Navero who was tasked as poseur-buyer, SPO2 Librado Calma, who was assigned as the Team Leader and police officers Nestor Agustin, Edgar Esteban, and Alexander Juan who were designated as back-up security force.

The buy-bust team, thereafter, prepared the buy-bust money in the amount of P500.00 peso bill which they marked with the initial of their Chief of Police "DRL". A PDEA Coordination sheet was similarly prepared and transmitted to the PDEA office.

After all the necessary documentary requirements had been completed, the buy-bust team members proceeded to the target area, i.e. Baltazar St., Barangay Caarosipan-Palimbo, Camiling, Tarlac.

Upon reaching the area of operation at around 3:45 p.m., PO2 Jojie Navero and the confidential agent posted themselves at the road near the accused's house while the back-up team posted themselves at the strategic locations.

Afterwards, PO2 Jojie Navero and the confidential agent saw accused Tabor coming out of his house. PO2 Navero and the informant then approached accused Tabor and they had an exchange of the buy-bust money and the plastic sachet of shabu. Without any communication at all, PO2 Navero handed to accused Tabor the buy-bust money while the latter gave the plastic sachet of shabu.

When accused Tabor sensed the approaching PO3 Esteban however, the former sped away on board his motorcycle. Policemen Nestor Agustin and Alexander Juan then chased accused Tabor. After a brief chase, Policemen

Juan and Agustin cornered accused Tabor, arrested him and brought him to the barangay hall where accused's small backpack was found out to be containing drug paraphernalia such as disposable lighter, aluminum foil, scissor, several pieces of plastic sachets for repacking, monies, cellphones, and booklets containing the list of customers and debtors of illegal drugs trade.

Subsequently, PO2 Navero marked the seized plastic sachet of shabu with the initials of the accused and their team leader "FT/LC" at the barangay hall in the presence of Barangay Captain Renato de Mayo and Mayor Neil Agustin. Thereat, PO3 Esteban also prepared a confiscation receipt of the confiscated items which was signed by the said Barangay Captain, the Mayor and the accused himself.

Accused Tabor was thereafter brought by the buy-bust team to the Camiling Police station for investigation. The plastic sachet of shabu seized from the accused remained in possession of PO2 Navero.

Afterwards, a request for laboratory examination of the seized item and a request for Drug test of accused were made. PO2 Navero and PO3 Esteban then forwarded the seized item to the PNP Crime Laboratory, Camp Makabulos, Tarlac City where the same was examined by police chemist P/Insp. Angelito Angel. The accused was also subjected to urine test at the said PNP Crime Laboratory.

Accused's drug test yield positive result as evidenced by Chemistry report No. CDT-004-12 Tarlac issued by the PNP Crime Laboratory. As regards the item seized from accused, the same was found positive of shabu as per Chemistry report No. D-003-12 Tarlac."<sup>[6]</sup>

The defense on the other hand presented the accused himself, the *gist* of his testimony, is as follows:

"Accused Francis Tabor, as expected, denied the accusation against him and, instead presented a different version of what transpired on the day of his arrest. He claimed that in the whole night of January 4, 2012 until 1:00 o'clock in the afternoon of the following day, he slept in the house of his sister Jovy Baguio at Baltazar Street, Barangay Caarosipan-Palimbo, Camiling, Tarlac due to lack of sleep from a drinking spree. After waking-up, he decided to go the house of his brother Geronimo Tabor which is besides (sic) the Salvador General Hospital, Palimbo-Caarosipan, Camiling, Tarlac. Upon reaching his brother's house and alighting from his motorcycle however, policeman Alexander Juan and his companion were running towards him with their guns drawn on him. He then raised his hands.

The policeman Juan and his companion then took his bag and brought him towards the national Romulo Highway. When they reached the said highway, the said policemen pushed him inside a waiting Revo driven by the Chief of Police. Once inside the van, the bodyguard of the Mayor slapped him and poked a gun on him. When the Chief of Police noticed the inhuman treatment made by the bodyguard on him, the former

prevented the said bodyguard from further harming him.

Subsequently, the policemen on board the van brought him to the Camiling Police Station. Thereat, the policemen frisked him, took from him his cellphones and monies while the mayor's bodyguard boxed him again causing him to fall down.

Afterwards, SPO1 Calma appeared at the investigation room, brought out his bag and showed to him the plastic sachet of shabu allegedly taken from his bag. When he denied ownership of the said item, they opened his bag and emptied the same on the table. It turned out that his bag contained drug paraphernalia and his monies.

Thereafter, Barangay Captain de Mayo and the Mayor arrived at the police station where they were asked to sign the confiscation receipt.”<sup>[7]</sup>

By decision dated March 12, 2013, the trial court found the accused guilty beyond reasonable doubt of all the charges against him, the *fallo* thereof reads as follows, to wit:

“WHEREFORE, accused Francis Tabor y Aquino is found guilty beyond reasonable doubt for violation of Secs. 5, 12 and 15, Article II of RA 9165 (illegal sale of shabu, illegal possession of drug paraphernalia, and illegal use of prohibited drug, respectively) and hereby sentences him as follows:

1) in Criminal Case No. 12-01 for illegal sale of prohibited drugs – the penalty of life imprisonment and a fine of Php500,000.00;

2) in Criminal Case No. 12-60 for illegal possession of drug paraphernalia – the penalty of six (6) months and one (1) day to four years and a Fine of Php10,000.00;

3) in Criminal Case No. 12-61 for illegal use of prohibited drug – the penalty of six (6) months drug rehabilitation in a government drug rehabilitation center.

The OIC Clerk of Court of this Court is directed to transmit the subject items of these cases to the PDEA for proper disposal.

SO ORDERED.”<sup>[8]</sup>

In convicting the accused of illegal sale of prohibited drugs and illegal possession of drug paraphernalia, the trial court ratiocinated that the prosecution has shown that all corresponding elements thereof were present. It debunked accused's defense of denial or frame up because he failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. The trial court went on saying that considering that the accused's drug test yielded a positive result, he is likewise guilty of illegal use of prohibited drugs.

*Unfazed*, accused, now appellant, comes to this Court via this instant appeal and assigns the following errors for Our resolution, to wit:

**I.**

**THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION.**

**II.**

**THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AND SEARCH OF HIS PERSON AS ILLEGAL.**

**III.**

**THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES.**

**IV.**

**THE COURT A QUO GREAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE BROKEN CHAIN CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.<sup>[9]</sup>**

Appellant questions the validity of the buy-bust operation and points out the following irregularities which he claim attended its conduct: (1) lack of communication or conversation in the consummation of the sale of the illegal sale between him and PO2 Navero (2) lack of warrant of arrest and unreasonable search and seizure and, (3) non-compliance with the procedures laid down under Section 21 of RA 9165. Appellant claims that the first irregularity does not conform to the natural course of things whilst the other irregularities discredit the presumption of regularity in the performance of official duties accorded to police officers.

The appeal was strongly opposed by the People through the Office of the Solicitor General (OSG). It maintains that the trial court committed no reversible error in disregarding the defense of denial by the appellant and in holding that the prosecution has proved beyond reasonable doubt the guilt of appellant to the offenses charged. All the elements of illegal sale and possession of dangerous drugs were duly established by the prosecution and the positive result of the presence of shabu in the urine of appellant confirmed that he uses the illegal drug. <sup>[10]</sup>

***The Court sustains appellant's conviction and the penalties meted against him.***

Section 5, Rule 113 of the Rules of Court provides for lawful warrantless arrests, viz:

"Sec. 5. Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person: