

## TWENTY-SECOND DIVISION

[ CA-G.R. CR HC NO. 00996-MIN, January 30, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROBERT PANERIO Y AMPER, ACCUSED-APPELLANT,**

### D E C I S I O N

**LOPEZ, J.:**

#### The Case

Before this Court is an appeal under Rule 122 of the Revised Rules of Criminal Procedure filed by accused-appellant Robert Panerio y Amper assailing the September 21, 2011 Judgment<sup>[1]</sup> of Branch 25<sup>[2]</sup> of the Regional Trial Court of Cagayan de Oro City in Criminal Case No. 2010-750. Accused-appellant was found by the court *a quo* guilty beyond reasonable doubt for Violation of Section 5, par. 1, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and he was sentenced to life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) with no subsidiary penalty in case of non-payment of the fine.

#### The Antecedent Facts

In an Information<sup>[3]</sup> dated July 12, 2010, accused-appellant Robert Panerio y Amper was indicted for Violation of Section 5(illegal sale of dangerous drugs), par. 1, Article II of R.A. 9165. The accusative portion of the Information reads:

That on or about the 8<sup>th</sup> day of July 2010 at about 1:30 in the morning, at Poblacion, Tagoloan, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver and give away to poseur buyer, in a drug buy bust operation, two (2) plastic sachets weighing 0.02 gram and 0.01 gram , of METHAMPHETAMINE HYDROCHLORIDE (*shabu*), a dangerous drug, after receipt of the buy bust money.

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty to the offense charged.<sup>[4]</sup>

Thereafter, trial on the merits proceeded.

#### The Version of the Prosecution

From the testimonies of the prosecution witnesses, namely, SPO3 Ariel Tactacon (SPO3 Tactacon), PO3 Roel Sereño (PO3 Sereño), PO3 Dennis Pienzenaves (PO3 Pienzenaves), PO1 Bernardo Lagoy, Jr. (PO1 Lagoy, Jr.), and Susan Monalem, it was

established that on July 7, 2010, at around 3:00 o'clock in the afternoon, PO3 Sereño of the Tagoloan Police Station, Tagoloan, Misamis Oriental, received an information from a female confidential informant (CI) that accused-appellant Robert Panerio is engaged in selling *shabu*, an illegal drug, at Zone 6-B, Baluarte, Tagoloan, Misamis Oriental. PO3 Sereño immediately reported this information to his superior, PS/Insp. Fe Mabilen Barsobia, who in turn ordered him and his companion to validate the report. Thus, through the same CI, a test buy operation was made to accused-appellant and as a result thereof, the CI was able to purchased one (1) sachet of *shabu* worth P500.00 from the accused-appellant. Consequently, at about 8:00 o'clock in the evening of the same date, the police authorities of the Tagoloan Police Station coordinated<sup>[5]</sup> with the Philippine Drug Enforcement Agency – Regional Office X (PDEA-X) and submitted a Pre-Operational Report<sup>[6]</sup> relative to the buy-bust operation plan upon the accused-appellant.<sup>[7]</sup>

Thereafter, a team composed of SPO3 Tactacon, PO3 Piencenaves, PO1 Lagoy, Jr., and PO3 Sereño was formed in order to conduct a buy-bust operation using the same CI to act as the poseur buyer. At around 10:00 o'clock in the evening, a briefing on the buy-bust operation together with the CI was conducted at their office and it was agreed that the buy-bust operation will happen at Centerpoint Videoke Bar at Taliwan, Poblacion, Tagoloan. It was agreed that PO1 Lagoy, Jr. and PO3 Sereño will position inside the videoke bar while SPO3 Tactacon and PO3 Piencenaves will position themselves outside the videoke bar. The team likewise prepared the marked money consisting of four (4) P100.00 bills and one (1) fake P1,000.00 bill to be use as the buy-bust money. The buy-bust money were all dusted with ultra-violet fluorescent powder by the PNP Crime Laboratory and were given to the CI. The team agreed on the pre-arranged signal which is for the CI to remove her jacket if the transaction is already consummated. The buy-bust operation and the marked money to be use were all entered in the Police Blotter.<sup>[8]</sup>

At about 10:30 in the evening, the police operatives proceeded to the Centerpoint Videoke Bar using a Starex van. PO3 Sereño coordinated with a certain Susan Monalem, the owner of the videoke bar, and he asked permission that he and PO1 Lagoy, Jr. be allowed to stay at the kitchen of the said establishment while waiting for the arrival of the accused-appellant. SPO3 Tactacon and PO3 Piencenaves, on the other hand, stayed inside the vehicle parked at the back of the videoke bar while waiting for the accused-appellant.

At about 1:00 o'clock in the morning of the following day or on July 8, 2010, the accused-appellant and the CI arrived and went inside the videoke bar. In the meantime, PO3 Sereño and PO1 Lagoy, Jr. took turn in peeping through a hole at the kitchen door located about two (2) to three (3) meters away from where the accused-appellant and the CI were seated and they watched and observed on what transpired between the accused-appellant and the CI. They observed that the accused-appellant and the CI were talking, although they could not hear what they were talking about, while drinking Red Horse beer. At about 30 minutes later, it was PO1 Lagoy, Jr. who saw the actual exchange of the money and the alleged illegal drug and he signaled to PO3 Sereño that the agreed pre-arranged signal was already given by their CI. Immediately thereafter, PO1 Lagoy, Jr. and PO3 Sereño rushed towards the accused-appellant and recovered from the latter the P1,000.00 faked money and upon further search on accused-appellant's pocket, they recovered the other four (4) marked money, a disposable lighter, two (2) pieces P100.00 bill,

one (1) P200.00 bill, two (2) simpacks, a black cellular phone, and the key of the motorcycle used by accused-appellant.

The CI, on the other hand, went outside the videoke bar using the back door and turned over to PO3 Piencenaves the two (2) transparent cellophanes containing white crystalline substance she bought from the accused-appellant and she hurriedly walked away. PO3 Piencenaves and SPO3 Tactacon immediately went inside the videoke bar to help PO1 Lagoy, Jr. and PO3 Sereño arrest the accused-appellant. While inside the bar, an inventory<sup>[9]</sup> was made on the confiscated items including the two (2) transparent cellophanes given by the CI which were subsequently marked as "RMS-1" and "RMS-2" by PO3 Sereño. Photographs were also taken inside the videoke bar on the seized items and the inventory was witnessed by Susan Monalem, the bar owner, and a certain Rommel Matia-ong. The two (2) witnesses were likewise made to sign the inventory list prepared by the police operatives at the crime scene right after the arrest of the accused-appellant.

Moreover, while accused-appellant was handcuffed and was being frisked by the police, Susan Monalem, the owner of the videoke bar, pointed out to the arresting police officers the motorcycle driven by the accused-appellant in coming to the videoke bar. The motorcycle was parked outside the videoke bar and when the police operatives went outside, PO3 Sereño opened the U-box of the motorcycle in the presence of Susan Monalem and some by-standers and found a plastic cap with one (1) sachet of white crystalline substance inside it and he also found one (1) aluminum foil. These items were likewise included in the inventory of the seized items, and were correspondingly marked as "R" and "R-1," respectively.

Immediately thereafter, the accused-appellant was brought to the police station. The incident was again entered in the police blotter<sup>[10]</sup> and the seized items were again inventoried and pictures were taken thereat. Likewise, the corresponding laboratory requests<sup>[11]</sup> for the chemistry examinations of the seized items and of the person of the accused were prepared by the police officers and immediately thereafter, the accused and the specimens to be subjected for laboratory examination were brought to the PNP Crime Laboratory in Patag, Cagayan de Oro City.

The laboratory results for the two (2) sachets containing white crystalline substance recovered during the buy-bust operation and marked as "RMS-1" and "RMS-2" weighing 0.02 gram and 0.01 gram, respectively, all gave positive results to the test for the presence of Methamphetamine Hydrochloride or *shabu*, a dangerous drug. Likewise, the sachet with white crystalline substance recovered at the U-box of the motorcycle used by accused-appellant and marked as "R" also gave positive result to the test for the presence of Methamphetamine Hydrochloride or *shabu*.<sup>[12]</sup>

Corollarily, the UV Palmar examination conducted on the both hands of accused-appellant gave positive result for the presence of bright green ultraviolet fluorescent powder on the palmar and dorsal aspects of his hands. Likewise, the marked money used and recovered during the buy-bust operation all revealed positive results for the presence of bright green ultraviolet fluorescent powder.<sup>[13]</sup>

#### The Version of the Defense

Accused-appellant denied the accusation imputed against him. He testified that at about 7:30 o'clock in the evening of July 7, 2010, he was at his house at Baluarte, Tagoloan, Misamis Oriental, having a drink with his father, mother and aunt Myrtel

Rosel. At about 11:00 o'clock in the evening, a certain Marites, a distant relative of his, texted him and requested him to fetch her at Puerto, Cagayan de Oro City as there was no more available transportation for her to come home at Baluarte, Tagoloan. He then borrowed the motorcycle of his aunt and proceeded to Puerto in order to fetch the said Marites. On their way back to Tagoloan, Misamis Oriental, the said Marites instructed him to stop over at the Pasalubong Center at Tagoloan in order to buy some cellphone load. They stayed for about 10-15 minutes at the Pasalubong Center and he was able to consume six (6) bottles of beer. Thereafter, the said Marites suggested that they will proceed to the Centerpoint Videoke Bar in Tagoloan and have some more drink.

When they reached the videoke bar, they ordered Red Horse beer. After consuming two (2) bottles of Jumbo Red Horse beer, he persuaded the said Marites to come home because his aunt might use the motorcycle which he just borrowed. The said Marites then gave him P1,000.00 bill to pay the beer they ordered. When he received the money, he noticed that there was a yellow tape on it and the texture was different, so, he told Marites that the money she gave him might be a fake money. Suddenly, four (4) policemen came in using the backdoor while the said Marites immediately stood up and went outside the bar. He begged Marites not to leave him but she nonetheless left him. He was then handcuffed and he inquired from the policemen what his fault was but the policemen did not give him a coherent answer. Subsequently, the policemen searched him, undressed him and took away his key, wallet and cellphone. He was then made to sit down while the policemen went outside towards his parked motorcycle and opened the U-box of the motorcycle. He was subsequently brought to the Municipal Hall of Tagoloan, Misamis Oriental.

#### The Ruling of the Regional Trial Court

After due proceedings, the court *a quo* rendered the assailed decision dated September 21, 2011, finding the accused guilty beyond reasonable doubt of the crime charged. The dispositive portion of the assailed Judgment reads:

WHEREFORE, premises considered, this Court hereby finds the accused ROBERT PANERIO, GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 5, Article II of R.A. 9165, and hereby sentences him to LIFE IMPRISONMENT, and pay a Fine in the amount of P500,000.00 without subsidiary imprisonment in case of non-payment of Fine.

Let the penalty imposed on the accused to be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act, that no man is above the law, and that crime does not pay. The pecuniary gain and benefit which one can enjoy from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted, convicted, and penalized to the full extent of the law.

SO ORDERED.

Hence, the present appeal.

Assignment of Error

Accused-appellant assigned the lone error in his appellant's brief thus:

THAT THE HONORABLE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED ON THE BASIS THAT THE ACCUSED DID NOT COMMIT SAID CRIME AT THE TIME HE WAS ARRESTED AND THE DRUGS AND ITS PARAPHERNALIAS (SIC) WERE ILLEGALLY OBTAINED BECAUSE THERE WAS NO SEARCH WARRANT AND WARRANT OF ARREST ISSUED BY A COMPETENT COURT.

#### This Court's Ruling

We find no merit to the appeal.

The elements necessary for a prosecution for violation of Section 5, Article II of RA 9165 or sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.<sup>[14]</sup> The term *corpus delicti* means the actual commission by someone of the particular crime charged.<sup>[15]</sup>

In the case at bar, all the elements necessary for the conviction of the accused-appellant for violation of the provision on illegal sale of dangerous drugs under RA 9165 are present. The collective testimonies of the prosecution witnesses, as well as the documentary evidence offered in court, provide a detailed picture of the sequence of the events that lead to the consummation of the transaction.

Records undoubtedly show that accused-appellant was caught in *flagrante delicto* selling *shabu* during the buy-bust operation conducted by the police operatives of Tagoloan Police. It should be noted that before the buy-bust operation was conducted by the police operatives, a test-buy operation was made on the person of the accused-appellant using the same CI who informed the Tagoloan Police regarding the illegal drug pushing activity of the accused-appellant. The test buy was made to verify the said information. Significantly, the sachet of white crystalline substance bought by the CI from the accused-appellant during the test buy operation gave positive result for methamphetamine hydrochloride or *shabu*. As a result thereof, the Tagoloan Police coordinated with the PDEA-X in order to conduct a buy-bust operation and eventually, conducted an entrapment operation upon the person of the accused-appellant.

The buy-bust operation was successful and was carried out in accordance with the law. It was PO1 Lagoy, Jr. who saw the actual exchange of the items from the accused-appellant which were found out later on to be *shabu*, an illegal drug, and the marked money used as payment thereof by the CI acting as the poseur buyer. The pertinent portion of the testimony of PO1 Lagoy, Jr. on this matter reads:

PROS. LLOREN

Q: While sitting at the kitchen, what happened?

A: At 1:00 o'clock in the morning, the confidential agent and the subject person arrived.

Q: And then after they arrived, what happened?

A: We saw that they ordered one bottle of Red Horse.