

## TWENTY-SECOND DIVISION

[ CA-G.R. CR. HC. NO. 00924-MIN, January 24,  
2014 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANDOY MOHAMMAD Y MASILIN, ACCUSED-APPELLANT.**

### D E C I S I O N

**LOPEZ, J.:**

Before the Court is an appeal from the February 23, 2011 Decision<sup>[1]</sup> of the Regional Trial Court, Branch 13, Zamboanga City (court a *quo*) which convicted Andoy Mohammad y Masilin (appellant) guilty beyond reasonable doubt of the crime for violation of Section 5, Article II of Republic Act (RA) No. 9165 also known as the "*Comprehensive Dangerous Drugs Act of 2002*" and sentenced appellant the penalty of life imprisonment and a fine of Php500,000.00.

The antecedent facts are as follows:

This case finds its origin in two separate informations filed against the appellant on June 2, 2005 before the court a *quo*. For the sale of prohibited drugs in violation of Section 5, Article II of RA No. 9165, the information [Criminal Case No. 5775 (21686)] against appellant reads as follows:

That on or about June 01, 2005, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drugs, did then and there willfully, unlawfully and feloniously, SELL AND DELIVER to PO2 ALLAN FABIAN PANTELEON, a member of the PNP, who acted (sic) as buyer, one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance having a total weight of 0.0085 grams, which when subjected to qualitative examination gave a positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (*shabu*), knowing the same to a dangerous drug.

CONTRARY TO LAW.<sup>[2]</sup>

The other information [Criminal Case No. 5776 (21687)] charged appellant with possession of dangerous drugs under Section 11, Article II of RA 9165, reads:

That on or about June 01, 2005, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession, and under his custody and control, two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having a total weight of 0.0686

grams, which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (*shabu*), knowing the same to a (sic) dangerous drug.

CONTRARY TO LAW.<sup>[3]</sup>

Upon arraignment, appellant pleaded "not guilty" to both charges.<sup>[4]</sup> Thereafter, cases were tried on the merits.

The evidence for the prosecution consisting of the testimonies of PO2 Allan Fabian Pantaleon, PO2 Bensar Elhano, and P/Insp. Melvin Manuel is summarized, thus:

In the morning of June 1, 2005, PO2 Pantaleon, a member of the Sangali Police Station Anti-Drugs Unit, received a tip from his confidential informant that appellant was selling *shabu* at barangay Sangali, Zamboanga City. PO2 Pantaleon immediately relayed the information to P/Insp. Luciano Ramos, the chief of police. A briefing was then conducted, during which PO2 Pantaleon was designated as poseur-buyer, while PO1 Elhano and PO1 Aldrine Perez were assigned as back-up. SPO2 Pantaleon was handed a Php100.00 bill with serial number BA 893948 to be used as marked money. The team also agreed that PO2 Pantaleon was to hold his right shoelace as a signal to PO1 Perez and PO1 Elhano that the transaction has been consummated.

At around 1:00 in the afternoon, the team proceeded to the target area and positioned themselves strategically. PO2 Pantaleon was met by the confidential agent and was introduced to the appellant. Thereafter, PO2 Pantaleon gave the Php100.00 marked money to the appellant, who in turn handed one (1) heat-sealed sachet with contents suspected to be *shabu* and one aluminum foil. After the exchange, PO2 Pantaleon executed the pre-arranged signal by holding his right shoelace. Upon seeing the same, PO1 Elhano and PO1 Perez, immediately rushed to the place and arrested the appellant. PO1 Elhano recovered the Php100.00 bill marked money and two (2) more heat-sealed sachets in the possession appellant. PO1 Elhano and PO1 Perez then brought appellant to the police station for investigation. At the police station, PO2 Pantaleon immediately marked the one (1) heat-sealed sachet with his initials "AFP" (Allan Fabian Pantaleon) and turned it over to PO3 Luis Catamco, the designated investigator. PO2 Elhano on the one hand, turned over to PO3 Catamco the two (2) other recovered heat-sealed sachets at the police station. The two (2) sachets and the marked money were then marked by PO3 Catamco with his initials "LBC". PO3 Catamco likewise prepared an inventory<sup>[5]</sup> of the confiscated items and a letter request<sup>[6]</sup> addressed to the Regional Crime Laboratory, Region IX, Zamboanga City.

P/Insp. Manuel, a forensic chemist from the Regional Crime Laboratory, Zamboanga City, conducted the laboratory examination on the seized drugs. His testimony was however, dispensed with after the parties stipulated:<sup>[7]</sup> that he is an expert in forensic chemistry; that he was the forensic chemist of the PNP Crime Laboratory on June 1, 2005 when said office received a Request for Laboratory Examination on one sachet of white crystalline substance which when examined gave positive result of methamphetamine hydrochloride or *shabu* as indicated in Chemistry Report No. D-172-2005; that he has no personal knowledge of the origin of the said specimen *shabu*; and that he did not personally receive the said specimen when transmitted to their Office.

The evidence for the defense on the one hand, which consists of the lone testimony of appellant raised denial and frame-up as defense, thus:

He averred that on June 1, 2005, while walking home after work, he was approached by two (2) men in civilian clothes near the Sangali Shell gas station. They asked him if he knew Mumin Elias and when he replied in the affirmative, they asked him to accompany them to the latter's house. When they reached Mumin's house, there was no one there. He was then surprised when one of the men poked a gun at him and when he protested and asked why and what his fault was, they told him not to protest and to just go with them so he would not be hurt. They brought him straight to the Sangali Police Station, where they told him that if he could not help them find Mumin, they will accuse him of the illegal sale of dangerous drugs since his height and appearance were the same.

After due proceedings, the court *a quo* on February 23, 2011 issued the assailed Order, thus:

WHEREFORE, in view of the foregoing considerations, this Court finds accused ANDOY MOHAMMAD y MASILIN guilty beyond reasonable doubt in Criminal Case No. 5775 (21686) for violation of Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165) and sentences him to suffer the penalty of life imprisonment and to pay the fine of Five Hundred Thousand Pesos (P500,000.00) without subsidiary imprisonment in case of insolvency.

Criminal Case No. 5776 (21687) for violation of Section 11, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165) is ordered DISMISSED and said accused acquitted of the charge for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.<sup>[8]</sup>

In ruling for the conviction of appellant on the illegal sale of dangerous drugs, the court *a quo* held that there was a consummated exchange of the marked money and the seized drugs between appellant and PO2 Pantaleon (poseur buyer). The court *a quo* likewise gave probative value to the testimonies of the prosecution witnesses who positively identified appellant as the person who sold the illegal drugs. The court *a quo* added that against the positive and clear evidence of the prosecution and despite the straightforward and consistent testimonies of the prosecution witnesses, appellant offered only alibi and frame-up as defense which is viewed with disfavor by the courts as it can be easily concocted and it is one of the most hackneyed line of defense in dangerous drug cases.

The court *a quo* however dismissed the charged for illegal possession with a finding that there is no showing that appellant exerted effort to preserve the integrity and evidentiary value of the thing seized from his possession. The court *a quo* likewise noted the testimony of PO2 Elhano that the other two (2) heat-sealed sachets recovered from appellant were marked by the investigator with initials "LBC", and through this initial that PO2 Elhano identified the sachets. This notwithstanding, the prosecution failed to present the investigator to identify them. Moreover, while the testimony of the forensic chemist was dispensed with by the parties, there was no showing that the two (2) sachets allegedly confiscated from appellant were subjected for laboratory examination to determine whether the same was a

prohibited or regulated drug. Only the sachet subject of the sale, as stipulated was found positive for the presence of methamphetamine hydrochloride.

Hence, the appeal.

#### Assignment of Error:

In this appeal, appellant raised a lone assignment of error, thus:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[9]</sup>

#### The Court's Ruling:

The appeal for acquittal is without merit.

For the successful prosecution of the illegal sale of *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>[10]</sup> Thus, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.<sup>[11]</sup>

In the case at bar, the prosecution positively identified appellant as the person who sold the drug to the poseur buyer (PO2 Pantaleon) for a sum of Php100.00. PO2 Pantaleon recalled:

Q While you were at Sangali Police Station on said date and time, what happened thereat, if any?

A My confidential informant called me through cell phone and informed that a certain Andoy is selling *shabu*.

Q And did he inform you where was Andoy selling Shabu?

A At Sangali, sir.

Q So, after you were informed by your confidential informant about this Andoy, what did you do after that?

A I told him to proceed to Sangali police station, sir.

Q And, did he go to Sangali police as told by you?

A Yes, sir.

Q So, what happened after he arrived there?

A When he arrived at Sangali Police Station, he informed (sic) that a certain Andoy is continuously selling *shabu* and I told him to, from time to time monitor him.

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Q So how about you, what did you do when you said you went to the area?

A I informed to my (sic) Chief of Police, the late Senior Inspector Luciano Ramos about a certain Andoy.

Q What did Senior Inspector Ramos doing (sic) when