

## EIGHTEENTH DIVISION

[ CA-G.R. No. CR HC 01305, February 28, 2014 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROMEO "BIMBIM" JUMAO-AS, ACCUSED-APPELLANT.**

### D E C I S I O N

**DIY, J.:**

On Appeal is the Decision<sup>[1]</sup> dated November 19, 2009 rendered by Branch 13, Regional Trial Court (RTC) of Cebu City, 7th Judicial Region, in Criminal Case No. CBU-75944 wherein accused-appellant **ROMEO "BIMBIM" JUMAO-AS** was found guilty beyond reasonable doubt of violation of Section 11, Article II, of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the assailed decision reads:

**WHEREFORE**, judgment is hereby rendered finding accused **ROMEO "BIMBIM" JUMAO-AS** GUILTY beyond reasonable doubt of the crime of possession of 11.27 grams of Shabu, a dangerous drug, and sentences him to **TWENTY (20) YEARS AND ONE (1) DAY TO LIFE IMPRISONMENT**, plus fine in the amount of P400,000.00.

The 28 packs of shabu weighing 11.27 grams and marked as Exhibit B, for the prosecution are hereby ordered, **CONFISCATED**, in favor of the government and **DESTROYED** pursuant to the Provision of RA 9165.

**SO ORDERED.**

### The Antecedents

On January 30, 2006, an Information was filed with the Regional Trial Court, docketed as Criminal Case No. CBU-75944,<sup>[2]</sup> the accusatory charge reading as follows:

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That on January 28, 2006 at about 4:30 A.M in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused with deliberate intent and without being authorized by law, did then and there have in possession and under his control TWENTY EIGHT (28) SMALL HEAT-SEALED PLASTIC PACKS HAVING A TOTAL WEIGHT OF 11.27 GRAMS CONTAINING WHITE CRYSTALLINE SUBSTANCE, locally known as "SHABU", a dangerous drug.

CONTRARY TO LAW.

xxx

During his arraignment, herein accused-appellant pleaded not guilty to the charge.  
[3]

A pre-trial conference<sup>[4]</sup> was conducted on December 20, 2007. Thereafter, trial on the merits ensued.

***Version of the prosecution:***

To prove its case, the prosecution presented the following witnesses: PO2 Roy Carlo Veloso and PO3 Benigno Andrew Ilagan of IDMB, CCPO.<sup>[5]</sup> The testimony of Police Chief Inspector Mutchit Salinas, Forensic Chemical Officer, was dispensed with since the defense admitted her expertise as well as the existence of both the seized illegal items and chemistry report.

The facts as culled from the records and testimony of the prosecution witnesses are as follows:

On January 28, 2006, at around 4:30 o'clock early in the morning, the search warrant<sup>[6]</sup> issued by Branch 15, RTC of Cebu City against Bimbim Jumao-as ("Bimbim", for brevity) was implemented by police operatives at Bimbim's residence located at Sitio Dita, Brgy. Pulang Bato, Cebu City. The police operatives were composed of P/Supt. Pablo Labra, PCI Aurelio Sanchez, (PCI Sanchez),<sup>[7]</sup> PO3 Pandong,<sup>[8]</sup> PO3 Andrew Ilagan, PO2 Edward Abatayo, PO3 Corderos,<sup>[9]</sup> and some personnel from the Vice Control Section of Cebu City Police Office.<sup>[10]</sup> Barangay Tanod Bienvenido Coca<sup>[11]</sup> of Pulang Bato was invited to witness the search.<sup>[12]</sup> PO2 Roy Carlo Veloso and PO3 Benigno Andrew Ilagan were designated as the recorder and searcher, respectively.<sup>[13]</sup> The house target of the search was a single story house with a basement.

Upon arriving at the house, PCI Sanchez knocked on the door. Upon opening the door, Bimbim was immediately informed by PCI Sanchez that a search warrant was issued against him.<sup>[14]</sup> PCI Sanchez handed over a copy of the search warrant to Bimbim.<sup>[15]</sup> After the latter read the same, he permitted the police operatives to search his house.<sup>[16]</sup>

PO3 Ilagan, started searching inside the house in the presence of PO2 Veloso, Barangay Tanod Bienvenido Coca, and Bimbim.<sup>[17]</sup> The search was conducted first at the upper ground floor of the house and thereafter at the basement where the room of Bimbim was located. In Bimbim's room, specifically underneath the pillows, PO3 Ilagan found 28 plastic packs containing white crystalline substance. As standard procedure, PO3 Ilagan handed said 28 plastic packs to PO2 Veloso for recording.<sup>[18]</sup> PO2 Veloso made the marking and recording of the seized items at the police station.<sup>[19]</sup>

After said marking and recording, the 28 plastic packs containing white crystalline substance were submitted to the PNP Crime Laboratory for analysis. Consequently, Forensic Chemist Mutchit Salinas issued Chemistry Report No. D-182-2006 which stated that the seized specimen yielded positive for Methamphetamine

Hydrochloride.<sup>[20]</sup>

For his part, PO3 Ilagan testified that the police operatives barged into the house target of the search upon hearing a commotion coming from inside. This was immediately after PCI Sanchez knocked on the door five times and stated their purpose.<sup>[21]</sup>

***Version of the defense:***

To refute the accusations leveled against accused-appellant, the defense solely presented accused-appellant himself, Romeo "Bimbim" Jumao-as.

The defense presented a different version of the incident. In the early morning of January 28, 2006, at about 4:30 o'clock, Bimbim was sleeping at the house of his aunt as he was the one in charge of tending his aunt's pigs. Suddenly, Bimbim heard a loud noise coming from a vehicle which prompted him to go out of his aunt's house and to check what it was.<sup>[22]</sup> Bimbim then saw an L-300 van parked in front of his parents' house which is located approximately five meters away from his aunt's house.<sup>[23]</sup> While Bimbim was walking towards his parents' house, he saw police officers enter the same. At the same time, two of the police officers, one of whom was identified as PO2 Veloso, approached and handcuffed Bimbim.<sup>[24]</sup> Bimbim asked the police officers what crime he had committed but instead of answering his question, the police officers just ordered him to board the van.<sup>[25]</sup> Bimbim merely learned later on from the driver of the L-300 van that the police officers were searching the house by virtue of a search warrant issued against him.<sup>[26]</sup>

As mentioned hereinabove, on November 19, 2009, the court a quo rendered the assailed Decision<sup>[27]</sup> finding accused-appellant guilty beyond reasonable doubt of the crime of violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On January 20, 2010, a Notice of Appeal<sup>[28]</sup> was filed by accused-appellant.

On March 20, 2010, accused-appellant filed his Appellant's Brief<sup>[29]</sup> assigning the following errors - -

I.

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND UNRELIABLE TESTIMONIES OF THE ARRESTING OFFICERS.

II.

THE TRIAL COURT ERRED IN CONVICTING APPELLANT DESPITE THAT THE INTEGRITY OF THE CORPUS DELICTI WAS DUBIOUS.

III.

THE TRIAL COURT ERRED IN FINDING THAT THE POLICE OFFICERS

ACTED REGULARLY IN THE PERFORMANCE OF THEIR DUTY.

#### IV.

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN BEYOND REASONABLE DOUBT ACCUSED-APPELLANT'S GUILT.

In his Appellant's Brief,<sup>[30]</sup> accused-appellant strongly asserts that he should not have been convicted of the crime of violation of Section 11, Article II of Republic Act No. 9165.

First, accused-appellant claims that there are material and substantial inconsistencies in the testimony of the prosecution witnesses, PO2 Veloso and PO3 Ilagan, which could seriously affect the credibility of their testimony, to wit:

1. PO2 Veloso testified that it was accused-appellant who opened the door, while PO3 Ilagan testified to the contrary, that the police officers barged into the house target of the search immediately upon hearing a commotion coming from inside the house immediately after PCI Sanchez knocked on the door five times and stated their purpose; and
2. PO2 Veloso testified that he marked the allegedly seized evidence at the house subject of the search, while PO3 Ilagan stated that the marking was done at the police station.<sup>[31]</sup>

Second, accused-appellant, asserts that the illegal items purportedly seized from accused-appellant are dubious due to the following procedural lapses:

1. The marking of the illegal items seized were not made in the presence of accused-appellant and in the presence of a representative from the media and the department of justice, and any elected public official in violation of par. 1, Section 21, Article II of RA 9165; and
2. There was no photograph taken of the illegal items purportedly seized from accused-appellant.

Aside from the above-mentioned procedural lapses, accused-appellant avers that the prosecution failed to establish that the police officers took the necessary precautions in ensuring that there had been no change in the condition of the items allegedly seized from accused-appellant and that there was no opportunity for someone not in the chain of custody to have been in possession of the items seized.

#### ***The Ruling of the Court***

The appeal is meritorious.

No less than Section 14, Article III of the Constitution mandates:

Section 14. xxx (1)

(2) In all criminal prosecutions, **the accused shall be presumed innocent until the contrary is proved** xxx

(Emphasis ours)

The principal effect of the guarantee of presumption of innocence is that no person shall be convicted unless the prosecution has proved him guilty beyond reasonable doubt.<sup>[32]</sup> Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. Nevertheless the burden of proof still rests on the state. The accused, if he so chooses, need not present evidence. He merely has to raise a reasonable doubt and whittle away from the case of the prosecution. The constitutional presumption of innocence demands no less.<sup>[33]</sup>

After an assiduous assessment of the evidentiary records, this Court is not convinced that the prosecution has presented sufficient evidence to engender that moral certitude exacted by our Constitution to prove the guilt of the accused. The prosecution miserably failed to establish an unbroken chain of custody of the allegedly seized contraband from accused-appellant.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,<sup>[34]</sup> which implements R.A. No. 9165, defines chain of custody as follows:

Chain of Custody' means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, **from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction**. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition.

(Emphasis Ours)

Furthermore, in the case of People v. Dela Cruz,<sup>[35]</sup> the Supreme Court held:

In Lopez v. People, we had the occasion to expound on the chain of custody rule, thus:

**As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next**