

FIFTH DIVISION

[CA-G.R. CR-HC No. 05867, April 30, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER
MADRIAGA, ACCUSED-APPELLANT.**

D E C I S I O N

CARANDANG, J.:

This is an appeal from the Decision^[1] dated October 31, 2012 of the Regional Trial Court of Laoag City, Branch 13, finding accused-appellant Elmer Madriaga guilty of illegal sale of shabu and sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The antecedent facts:

The Information^[2] charging accused-appellant for Violation of Section 5, Article II of Republic Act (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" reads as follows:

"That on or about 8:00 P.M. of December 02, 2010 in the City of Laoag and within the jurisdiction of thie Honorable Court, the above named accused, did then and there willfully, unlawfully and feloniously deliver to a police officer who acted as a poseur buyer two (2) plastic sachets containing Methamphetamine Hydrochloride popularly known as "shabu" a dangerous drug worth Php 1,500.00 with an aggregate weight of 0.0545 grams, without the necessary license or authority issued by competent authorities in violation of the aforecited law.

CONTRARY TO LAW."

Accused-appellant, duly assisted by counsel, entered a plea of "not guilty" during the arraignment.^[3] Trial on the merits ensued.

The prosecution established that on December 2, 2010, at around 8:00 in the evening, SPO4 Rovimmanuel Balolong (hereinafter "SPO4 Balolong") of the Laoag Police Station was informed by their police asset that he was able to arrange for the sale by a prospective buyer of shabu worth P1,500.00 from a certain Elmer Madriaga (accused-appellant) which the latter will deliver at General Luna corner Fontanilla Streets.^[4] SPO4 Balolong relayed the information to the Chief of Police and the latter immediately organized a team to conduct a buy-bust operation against accused-appellant. SPO4 Balolong called upon SPO1 Arcel Moises Agbayani ("SPO1 Agbayani") and PO2 Melecio Antonio ("PO2 Antonio") and conducted a briefing. He designated PO2 Antonio to act as poseur-buyer while SPO1 Agbayani and himself will serve as back-up.^[5]

PO2 Antonio was instructed by SPO4 Balolong to submit the Coordination Form^[6] at the PDEA Office in San Nicolas. SPO4 Balolong also recorded in their police blotter the three (3) pieces of P500.00 bills with serial numbers BX157864, FM733463 and EN807813^[7], which will be used as marked money. After PO2 Antonio's coordination with the PDEA, the preparation of the pre-operation report, and their final briefing, SPO4 Balolong and SPO1 Agbayani went ahead to the designated place where the transaction would take place to position themselves. PO2 Antonio and the asset remained at the police station, waiting for SPO4 Balolong's call before proceeding to the target area.^[8] Upon arriving at the corner of General Luna and Novales Streets, which a block away from General Luna cor. Fontanilla Streets, SPO4 Balolong then called PO2 Antonio.

PO2 Antonio and their asset proceeded to EM Disco and Videoke Bar located at Barangay 1, Discolandia, Laoag City where they saw accused-appellant wearing a white sando. The asset introduced PO2 Antonio to accused-appellant as buyer of shabu. Accused-appellant asked PO1 Antonio how much he would buy, to which PO1 Antonio replied, "P1,500.00" and then handed the marked three (3) pieces of P500.00 to accused-appellant. Accused-appellant told them to meet him at the back of the Iglesia ni Cristo Church.^[9]

PO2 Antonio and their asset waited for accused-appellant at the back of the Iglesia ni Cristo Church located at General Luna Street corner Fontanilla Streets. After fifteen (15) minutes, accused-appellant arrived on board a BMX bicycle, and handed two (2) small plastic sachets of shabu to PO2 Antonio who then placed the items inside his pocket. Thereafter, PO1 Antonio took hold of accused-appellant's hand, introduced himself as a police officer and placed him under arrest. SPO4 Balolong and SPO1 Agbayani came to help PO2 Antonio because accused-appellant was resisting arrest.^[10] SPO4 Balolong apprised accused-appellant of his constitutional rights and asked him if he had authority to sell, shabu, to which he did not respond. They brought accused-appellant to the police station and prepared charges against him.^[11]

At the police station, accused-appellant was booked and the operation was reflected in the Police Blotter. PO2 Antonio marked the seized two (2) plastic sachets with his initials "MRA-1" and "MRA-2" in the presence of accused-appellant and SPO4 Balolong. He thereafter handed the plastic sachets to SPO4 Loreto Ancheta ("SPO4 Ancheta"), the evidence custodian, and the latter also marked the same with his own marking of "LCPS".^[12] SPO4 Ancheta prepared a letter-request for laboratory examination (Exh. "C")^[13] and submitted the specimens to the Ilocos Norte Crime Laboratory Office. The letter-request and the specimens were received by Police Inspector Roanalaine Baligod ("PI Baligod"), a forensic chemist, who conducted initial and confirmatory examination on the two (2) plastic sachets.^[14] The specimens tested positive for the presence of Methamphetamine Hydrochloride.^[15]

Accused-appellant denied the accusation against him. He testified that he is a welder and a businessman who sells RTW (ready-to-wear) clothes and processed meat to his neighbors. On December 2, 2010 at around 8:00 o'clock p.m., he went to the house of a certain Nana Glo located along Fontanilla Street to collect payment of the processed meat and RTW he sold to the latter. Nana Glo was not around so he waited for about thirty (30) minutes and then decided to just head back home. While he was walking, accused-appellant met a man along the road who suddenly

grabbed him. He tried to shove the man, but his two (2) other male companions suddenly came and grabbed him. He repeatedly asked for their purpose and reason in holding him up, but the male persons proceeded to board him inside a car. He was brought to the Laoag City Police Station where he was frisked by one of the three (3) male persons whom he later recognized as SPO4 Balolong. Accused-appellant was also able to recognize his two (2) other male companions to be PO2 Antonio and SPO1 Agbayani whom he already met before. SPO4 Balolong recovered from him a small notebook which he uses for his business. SPO4 Balolong then opened the drawer of his table, brought out a match box and retrieved two (2) small plastic sachets and said "**Daytoy ne two (2) nga plastic ti shabu**" (Here are two (2) plastic sachets of shabu). They took pictures of him and the items. Afterwards, he was brought to the detention cell of the police station.^[16]

In its Decision dated October 31, 2012, the trial court convicted accused-appellant of illegal sale of shabu, the dispositive portion of which states:

"WHEREFFORE, judgment is hereby rendered finding accused Elmer Madriaga GUILTY as charged of illegal sale of shabu and is therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The shabu subject of this case is confiscated, the same to be disposed as the law prescribes.

SO ORDERED."

Hence, this appeal. Accused-appellant imputes the following errors committed by the trial court, to wit:

-I-

THAT THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

-II-

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND THE CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.

We find the appeal devoid of merit.

Accused-appellant asserts that the buy-operation conducted against him was legally infirm due to discrepancies attending the operation particularly as to: (1) the time when police officers coordinated with PDEA; (2) the Coordination Form has no signature of the person who purportedly received it; and (3) the Pre-Operation Report was submitted a day after the buy-bust operation was conducted. Accused-appellant likewise argues that there was a broken chain of custody of the illegal drugs taking into account the glaring lapses committed by the prosecution witnesses from the time the alleged illegal drugs were seized from accused-appellant up to the time the same were presented in court. There were no representatives from the media, the Department of Justice (DOJ), and an elected public official who should witness the inventory of the seized items, contrary to Section 21, Article II of RA

9165. No evidence was presented to prove that an inventory was made and SPO4 Ancheta, the custodian of the illegal drugs, and PI Baligod, the Forensic Chemist, were not presented to testify. In sum, accused-appellant claims that the prosecution failed to establish the identity of the *corpus delicti*; the proper chain of custody, disposition and integrity of the seized illegal drugs were never observed by the prosecution witnesses with unwavering exactitude.

We have judiciously examined the records of the case and We find no error committed by the trial court in convicting herein accused-appellant for selling methamphetamine hydrochloride, more popularly known as *shabu*, in violation of Section 5, Article II of RA 9165. The trial court's decision is very comprehensive and it exhaustively discussed all the material points raised by accused-appellant. Pertinent portion of the trial court's ruling reads:

"In the instant case, the Court is with moral certainty that in the totality of its evidence, the prosecution has established that the buy bust operation in which the accused sold the contraband happened. Despite the inconsistencies they committed, the two principal prosecution witnesses involved in the arrest of the accused were nonetheless sufficiently credible. They were satisfactorily straightforward, they appeared honest and candid and the manner they testified evinced moral certainty. They were able to show that the accused, whose name they heard for the first only from the police asset and who had not as yet been included in their order of battle, was a small time peddler who sources from other drug personalities the shabu that he sold and who usually entertained customers at their disco place in Brgy. 1, Laoag City and delivered the contraband at the back of Iglesia ni Cristo. Such modus operandi is never contrary to human nature and common experience. The Court had in fact similar cases in the past."

In this appeal, accused-appellant points out the discrepancies committed by the police officers in conducting the buy bust operation. *First*, he claims that the time when the police officers coordinated with PDEA . *i.e.*, 7:10 p.m., was way ahead from the time SPO4 Balolong purportedly received the tip from the informant regarding the sale of shabu by accused-appellant, which is 8:00 p.m. *Second*, the Coordination Form submitted to the Regional Office bears no signature of the person who allegedly received the same and the time of 8:15 p.m. did not even tally with the time of coordination recorded at the PDEA Regional Office, which was around 7:10 p.m. *Third*, the Pre-Operation Report was not submitted together with the Coordination Form. It was only submitted a day after the buy-bust operation.

The foregoing inconsistencies do not detract from the fact that a buy bust operation was conducted against accused-appellant. In fact, these inconsistencies do not relate to the elements of the offense committed. What is established from the foregoing is the fact that the police officers actually coordinated with the PDEA before conducting the buy bust operation against accused-appellant. We have carefully perused the records and this Court believes that the coordination by the police officers with the PDEA Office in San Nicolas was done at 8:15 pm as written in the Coordination Form (Exh. "H").^[17] We cannot give credence to the Certificate of Coordination issued by the PDEA Regional Office which recorded the time of coordination to be 7:15 p.m. considering that the statements therein were extracted only from their data base and not from the hard copy of the Coordination Form transmitted to them thru fax. IO1 Lonjawon, who was presented by the defense, is not competent to establish the