

## SPECIAL FOURTH DIVISION

[ CA-G.R. CR No. 06054, May 30, 2014 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOSE JAMILLO QUILATAN Y DELA CRUZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**TOLENTINO, A.G., J.:**

This is an appeal from the decision<sup>[1]</sup> dated February 25, 2013 of the Regional Trial Court of Parañaque City, Branch 259 in consolidated Criminal Case Nos. 09-0667, for violation of Section 5, Article II, RA 9165, and 09-0668, for violation of Section 11, Article II RA 9165, where the accused-appellant was found guilty of both offenses. The dispositive portion of the said decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In *Criminal Case No. 09-0667 for Violation of Sec. 5, Art. II, RA 9165*, the court finds accused **JOSE JAMILLO QUILATAN y DELA CRUZ, GUILTY** beyond reasonable doubt and is hereby sentenced to suffer the penalty of *life imprisonment and to pay a fine of Php 500,000.00*;

2. In *Criminal Case No. 09-0668 for Violation of Sec. 11, Art. II, RA 9165*, the court finds accused **JOSE JAMILLO QUILATAN y DELA CRUZ, GUILTY** beyond reasonable doubt and is hereby sentenced to suffer the penalty of *imprisonment of twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum and to pay a fine of Php 300,000.00*.

It appearing that accused **JOSE JAMILLO QUILATAN y DELA CRUZ** is detained at the Parañaque City Jail and considering the penalty imposed, the OIC-Branch Clerk of Court is directed to prepare the *Mittimus* for the immediate transfer of said accused from the Parañaque City Jail to the New Bilibid Prisons, Muntinlupa City.

The specimen are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.

SO ORDERED."

The prosecution's version of the facts is as follows:

On June 15, 2009, a report about the illegal drug activities of the accused-appellant was received by the Parañaque Police Station Anti-Illegal Drugs Special Operation Task Group from a female informant / asset. A buy-bust operation team was

immediately formed composing of PO2 Elbert Ocampo (Ocampo), who was designated as poseur-buyer, and SPO1 Luminog Lumibao (immediate back-up), P/Insp. Roque Tome, SPO4 Alberto Sanggalang, SPO1 Ricky Macaraeg, PO3 Fernan Acbang, and PO2 Domingo Julaton as back-ups.

After coordinating with the PDEA, the police operatives, together with their informant, proceeded to the target area in Tramo St., Brgy. San Dionisio, Parañaque City at around 9:15 in the evening of the same day. At the site, Ocampo and the informant went ahead to approach the accused-appellant, who, upon seeing the informant, asked "*iiskor ka ba?*". Instead of uttering a reply, the informant introduced Ocampo to the accused-appellant as a taxi driver who needed a P500.00 worth of shabu. Ocampo handed the buy bust money to the accused-appellant, which was composed of one (1) P200.00 and three (3) P100.00 bills, and after counting the same, the latter gave to the former a plastic sachet containing a (0.12 grams) white crystalline substance suspected to be shabu. The sale having been consummated, Ocampo alerted his team and gave the pre-arranged signal by removing his cap. Seeing Lumibao rushing to the scene, Ocampo revealed himself as a police officer and immediately apprehend the accused-appellant. Another sachet (containing 0.12 grams) of suspected shabu and the buy-bust money were recovered from the person of the accused-appellant.

They then proceeded to the Barangay Hall of San Dionisio, Parañaque City, and there, in the presence of the accused-appellant and Brgy. Desk Officer Rodolfo Enrique, Ocampo marked and prepared an inventory of the items recovered from the accused-appellant. Thereafter, they went back to the police station whereby a request for laboratory examination was made, which, together with the seized items, was brought personally by Ocampo to the PNP Crime Laboratory of Southern Police District in Brgy. San Antonio, Makati City, and which specimen, when tested, turned out positive for methamphetamine hydrochloride.<sup>[2]</sup>

#### Version of the Defense.

The accused-appellant alleged that at around 7:30 pm on June 15, 2009, he was on board his motorcycle on his way to the house of his in-laws in San Dionisio, Parañaque City to fetch his wife when he was suddenly blocked by a car and then arrested for driving without a helmet. He was invited to the police headquarters for investigation. Before arriving at their destination, he was able to talk to his wife, who had gone first to the police station, and who informed her that the policemen were asking for P10,000.00 to settle his case. Surprised of the huge amount for such a small offense, he argued with the policemen to the latter's disappointment. His act angered the policemen which caused them to accused him of selling illegal drugs. He was then detained at the Special Investigation Commission (SID) facility. At around 4:30 am, the following morning, he was brought to a Brgy. Hall where the policemen presented items on the top of the table and then took pictures thereof in his presence. He is thus crying frame-up. He also stated that the policemen who arrested him were not the ones who testified in court. He said that he didn't know both sets of policemen.

Finding the narration of the accused-appellant a mere alibi, which cannot prevail over the presumption of regularity in the performance of official function created in favor of the police operatives, the trial court convicted the accused-appellant of illegal sale and illegal possession of shabu. For the trial court, the defense of the accused-appellant that the charges against him just came out because the

policemen failed to extort money from him crumbled because of the failure to present his wife to corroborate his narration. The trial court opined that if his claim is true at all, then why was there never a case filed against the policemen. What further militates against the accused-appellant is the fact that the accused-appellant never mentioned a thing about his predicament to Desk Officer Rodolfo Enrique when he was brought to the Brgy. Hall of San Dionisio, Parañaque City.

Hence, the instant appeal interposing the lone issue that:

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE APPREHENDING TEAM'S NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT No. 9165."<sup>[3]</sup>

The petitioner's proposition that the prosecution failed to prove his guilt beyond reasonable doubt is anchored on his claim that the chain of custody in the handling of prohibited drugs, which is governed by Section 21 of RA 9165, was not sufficiently established. He states that there were no representatives from the media, the Department of Justice, and elected barangay official when the marking of the seized evidence was made. There is also this allegation that the marking was not immediately done at the scene of the crime, but they had to head to the Brgy. Hall of San Dionisio, Parañaque City, which is a good 500-meter distance from where the buy-bust operation happened, to do the markings, photographing, and inventory of the seized items.

Sec. 21 of R.A. 9165, also known as the Comprehensive Dangerous Drugs Act of 2002, set out the mandatory procedure that law enforcers must observe following the seizure of prohibited drugs:

"(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;"

Also, Section 21 (a) of the Implementing Rules and Regulations of RA 9165 provides the following:

"(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending