

EIGHTEENTH DIVISION

[CA-G.R. CR HC No. 01566, July 31, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBY ORBE Y LEGASPI ALIAS "NENENG", ACCUSED-APPELLANT.

DECISION

INGLES, G. T., J.:

The Case

This is an appeal by Ruby Orbe y Legaspi alias "Neneng" from the Decision dated October 9, 2012 rendered by Branch 25 of the Regional Trial Court in Iloilo City in Crim. Case Nos. 10-68326; 10-68327; and 10-68328 which convicted her of violation of Section 5, in relation to Section 26 and Section 11 all under Article II of the Comprehensive Dangerous Drugs Act of 2002^[1] and sentenced her to life imprisonment for Violation of Sec. 5 of R.A. 9165 and imprisonment of 12 years to 14 years for Violation of Sec. 11 of R.A. 9165.

The Antecedent Facts

Culled from the records, prosecution's version of the incident is as follows:

On January 15, 2010, Police Chief Inspector Ramir Gallardo (Major Gallardo) received information that a certain Ruby Orbe was engaged in the selling of *shabu* in Barangay Bakhaw, Mandurriao, Iloilo City.^[2] PO1 Rexie Diaz (PO1 Diaz) accompanied by a civilian agent, then went to Barangay Bakhaw to verify the said information about Orbe's illegal activities.^[3] During the said verification operation, the civilian agent introduced PO1 Diaz to Orbe as a certain "Jerome" from Oton, Iloilo. After conducting the said verification, PO1 Diaz concluded that Orbe was indeed a "Marot" or a drug pusher, however, she did not sell anything to them because she allegedly will not sell to a person whose identity she is not acquainted with.^[4]

On February 6, 2010, PO1 Diaz went back to Barangay Bakhaw together with his confidential agent, and this time, the agent was able to buy P500.00 worth of *shabu*, and the purchase was witnessed by PO1 Diaz.^[5]

After the successful test buy conducted on February 6, 2010, Major Gallardo then composed a team on February 8, 2010 to conduct a buy-bust operation against Orbe. SPO2 Jose Espina (SPO2 Espina) acted as Team Leader, SPO1 Gerson Deypalubos, as back-up, PO1 Morales and PO1 Hiponia, as members of the team and PO1 Acap, as close-in back up and PO1 Diaz, as *poseur-buyer*.^[6] Major Gallardo gave PO1 Diaz a total of five-hundred (P500.00) pesos as buy-bust money, composed of one (1) two-hundred (P200.00) peso bill, two (2) one-hundred

(P100.00) peso bills and two (2) fifty-peso (P50.00) bills. PO1 Diaz then marked the said bills by putting a "check" mark on one side of each bill and writing his initials "R.E.D." on the other sides thereof.^[7] The arrangement agreed upon by the team during the briefing was that, after the transaction was to be completed, PO1 Diaz will execute a pre-arranged signal to prompt PO1 Acap to make a "*miscall*" to the Team Leader, who will then proceed to their area and make the arrest.^[8]

At 3:10 in the afternoon of the same day, PO1 Diaz, together with PO1 Acap arrived at the house of Orbe in Barangay Bakhaw.^[9] Upon seeing Orbe in front of her house, PO1 Diaz signified his intention to buy *shabu*. Orbe then told them to wait outside because there were other people still inside the house. Once the other people went out of the house, Orbe then invited PO1 Diaz and PO1 Acap to come inside her house, and once inside, they followed Orbe to her room.^[10] When asked by Orbe how much he was intending to purchase, PO1 Diaz told her that he wanted to purchase one (1) gram worth of *shabu*. Orbe however declined the offer, saying that previous buyers already left her with less than enough.^[11] However, when PO1 Diaz told Orbe that he was willing to purchase a lesser amount and gave her the marked money, the latter accepted and placed the money inside a red wallet.^[12] After receiving the money and placing the same in her red wallet, Orbe then told Del Rosario to give them P500.00 worth of *shabu*, consisting of one sachet and examined its contents, he immediately executed the pre-arranged signal – allegedly prompting PO1 Acap to make the agreed upon "*miscall*".^[13] When the back-up arrived, the team then introduced themselves as policemen and affected the arrest. Orbe was arrested personally by PO1 Diaz while co-accused Del Rosario was arrested by PO1 Acap.^[14] After herein appellant and Del Rosario were apprised by the arresting officers of the nature of their offense as well as their constitutional rights, the team conducted a limited search within the room, the area of the arrest.^[15] The first plastic sachet of *shabu* bought from Orbe being already in his possession, PO1 Diaz placed the markings "RLO-BB" on it. Three (3) plastic sachets allegedly containing *shabu* were likewise recovered from the above limited search and were forthwith marked with "RLO-1", "RLO-2" and "RLO-3" respectively. Another three (3) plastic sachet containing what appears to be *shabu* residue were likewise recovered on top of Orbe's bed and the same were likewise marked as "RLO-4", "RLO-5" and "RLO-6" respectively. Orbe's red wallet where the buy-bust money was hidden was likewise recovered and marked on the spot as "RLO-7".^[16]

An inventory of the seized items was then conducted right away within the house of Ruby Orbe, in the presence of accused-appellant herself, accused Del Rosario, the arresting officers, Barangay Captain Ruby Galano, Kagawad Eduardo Alegrado, media representative Julius Padilla, and the photographer, PO1 Vladimir Andalos (although the accused refused to sign the Inventory of the Confiscated and Seized Articles).^[17]

On the same day, and immediately after the conduct of the inventory, PO1 Diaz put all the pieces of evidence inside two (2) plastic bags and then proceeded to the PNP Crime Laboratory, and there, he personally submitted the sachets of *shabu* for examination at around 7:40 o'clock in the evening. The laboratory examination was then conducted by Police Senior Inspector Ma. Cecilia G. Tang (PSI Tang), a Forensic Chemist of the PNP Regional Crime Laboratory.^[18] The results for the laboratory

examination of the seized plastic sachets designated as "RLO-BB", as well as the other plastic sachets designated as "RLO-1" to "RLO-6", came out positive for Methamphetamine hydrochloride, or *shabu*. The results were all detailed in Chemistry Report No. 028-2010.^[19]

Accused-appellant Orbe and former co-accused John Del Rosario were both indicted in three separate informations for violation of Section 5 in relation to Section 26, Section 11 and Section 12 all under Article II of Republic Act No. 9165^[20], to wit:

Criminal Case No. 10-68326^[21]

"That on or about the 8th day of February 2010 Iloilo City, Philippines, and within the jurisdiction of this Honorable Court, both above-named accused, in conspiracy with one another, with deliberate intent, did, then and there willfully, unlawfully and criminally sell, distribute and deliver to PNP poseur-buyer one (1) piece elongated heat-sealed plastic sachet containing methamphetamine hydrochloride (*shabu*), a dangerous drug, weighing 0.04 grams in consideration of Five Hundred Pesos (Php500.00), without authority of law and legal justification to sell and distribute the same in violation of the said law; that one (1) – Two Hundred Peso bill with Serial Number GV950777, two (2)-One hundred Pesos bill with Serial Numbers NC 291614 and WY201509 and two (2) pieces marked fifty peso bills with Serial Numbers QGO49912 and GR203713 used as buy bust money were recovered from the possession of the herein Accused."

Criminal Case No. 10-68327^[22]

"That on or about the 8th day of February 2010 Iloilo City, Philippines and within the jurisdiction of this Honorable Court, both above-named accused, not being lawfully authorized to possess any dangerous drug, did, then and there willfully, unlawfully and criminally have in their possession and under their custody and control one (1) big heat-sealed transparent plastic sachet containing 0.06 grams of white crystalline substance and two (2) small heat-sealed plastic sachets containing 0.03 grams and 0.02 grams of white crystalline substance which was found positive to the test for methamphetamine hydrochloride, a dangerous drug in violation of the said law."

Criminal Case No. 10-68328^[23]

"That on or about the 8th day of February 2010 Iloilo City, Philippines, and within the jurisdiction of this Honorable Court, both above-named accused, with deliberate intent and without justifiable motive, did, then and there willfully, unlawfully and criminally have in their possession, custody and control three (3) pieces small plastic sachets containing '*shabu*' residues, two (2) pieces disposable lighters used as scissors, two (2) pieces bamboo sticks, several pieces of rolled and crumpled cut foils, several empty plastic packs, one (1) heat sealed plastic sachet containing aluminum foils, all paraphernalia/equipment fit and intended for

administering, consuming, ingesting and introducing into the body Methamphetamine Hydrochloride '*shabu*', a dangerous drug, without authority to possess the same."

When arraigned, the accused-appellant Orbe and her co-accused pleaded not guilty to all Informations.^[24] Thereafter, trial on the merits ensued.

The prosecution presented the testimonies of P/SInsp. Ma. Cecilia G. Tang, PO1 Vladimir Andaluz, PO1 Rexie Diaz and PO2 Federico Ygan. The defense on the other hand presented accused-appellant Orbe, Dennis Orbe, Rizza Villarosa and John Del Rosario.

On October 9, 2012, Judgment was rendered by the trial court, the dispositive portion of which, states:

"Wherefore, the Court desists from pronouncing a verdict of guilty as to John Del Rosario. There is no clear evidence that he himself was engaged in the selling of *shabu* or possession thereof. He is acquitted of the offense charged.

The Court finds Ruby Orbe guilty of the offense charged. She is also pronounced guilty beyond reasonable doubt of possession of other sachets of *shabu*.

Wherefore, the Court imposes upon Ruby Orbe the penalty of life imprisonment for Violation of Sec. 5 of R.A. 9165 and imprisonment of 12 years to 14 years for Violation of sec. 11 of R.A. 9165.

There is lack of evidence for violation of Sec. 12 of R.A. 9165 she is acquitted of the same.

The dangerous drugs are ordered to be turned over to the PDEA for destruction.

SO ORDERED."

The trial court found the herein accused-appellant Orbe guilty as charged for violation of Sec. 5 and Sec. 11 of R.A. 9165. However, the trial court acquitted Orbe for violation of Sec. 12 of R.A. 9165 due to lack of evidence. The said court likewise acquitted Orbe's co-accused, John Del Rosario, also for lack of evidence.

Aggrieved, the accused-appellant filed the instant appeal based on the following assignments of error:

1. That the trial court failed to give credit to the testimonies of the accused and her witnesses.
2. That the trial court erred in giving credence to the testimony of the arresting police officers.

Accused-appellant's submissions:

The accused-appellant Orbe contends that her guilt was not proven beyond

reasonable doubt. Orbe asserts that the procedure for the custody and disposition of confiscated dangerous drugs as laid down in Section 21 of RA 9165 were not complied with.

Appellant insists that at the time of the alleged buy-bust operation, appellant Orbe was dragged inside her house by PO1 Diaz and PO1 Acop, as testified to by defense witnesses Rizza Villarosa and Dennis Orbe (accused-appellant's daughter and husband, respectively) and as witnessed by former co-accused John Del Rosario who were all inside Orbe's house when the incident took place.

Appellant Orbe argues, that the testimonies of prosecution witnesses are inconsistent and uncorroborated on its material points. Only PO1 Diaz, the poseur-buyer, was present during the alleged buy-bust operation. The prosecution evidence further shows that when the photographer arrived, the drugs and other seized items were already laid out on the bed inside the room of appellant Orbe. Hence, the testimony of PO1 Diaz is insufficient to establish the supposed sale and possession of illegal drugs when pitted against the testimonies of the defense witnesses who saw and vividly narrated how appellant Orbe was framed by the police.

Appellant Orbe point to the following inconsistencies in the testimonies of the prosecution witnesses:

1. That PO1 Andalos has been a police officer for only four years and yet he testified that he has been an exhibit custodian for the police from 2002 or a period of eight (8) years at the time he testified^[25].

2. That Police Officer Vladimir Andalos testified that he went together with Inspector Gallardo to the house of appellant Orbe and picked up Prosecutor Javier on the way and the three of them arrived together at the scene of the crime.^[26] However, the testimony of PO1 Diaz shows that PO1 Andalos arrived first then followed by Prosecutor Javier ten minutes later.^[27] The testimonies of the prosecution also show a disparity in the time of the buy-bust operation and the actual time when the witnesses to the drug inventory arrived at the crime scene^[28].

3. The police officers who planned and conducted the buy-bust operation intended to purchase one gram of *shabu* which would be valued at more or less P6,000.00 but only brought P500.00 as buy bust money^[29].

4. That PO1 Diaz testified that the seized items were recovered in the presence of the DOJ and barangay representatives when in truth and in fact, the confiscated items were already laid out in bed when the witnesses to the inventory arrived at appellant Orbe's house.

Finally, appellant Orbe points out that the prosecution failed to establish proper chain of custody of the seized items as it failed to present SPO2 Salcedo who took custody of the said illegal drugs subject matter of this case before and after its examination. There is also no showing that the subject illegal drugs were taken into custody by the prosecution witnesses, how the seized drugs were handled and how the supposed custodians kept the identity and integrity of the seized drugs or if they are even the same items that were allegedly seized from appellant Orbe's home.