

TWENTY-SECOND DIVISION

[CA-G.R. CR HC NO. 01053-MIN, February 24, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MONIR JAAFAR Y TAMBUYONG ALIAS "MANA", ACCUSED-APPELLANT.

D E C I S I O N

INTING, J.:

Before Us is an Appeal^[1] filed by accused Monir Jaafar (Jaafar) assailing the Decision^[2] of Branch 2, Regional Trial Court (RTC), Isabela City, Basilan, convicting him of illegal sale of shabu, in violation of Section 5, Article II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the Decision states:

WHEREFORE, premises considered, accused Ahmad Gani y Idjirani a.k.a. "Botchoy" is hereby ACQUITTED of the above charge for want of sufficient evidence. The property bond posted for his provisional liberty is ordered cancelled and returned to its lawful owner. WHEREAS, accused Monir Jaafar y Tambuyong a.k.a "Mana" is found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.0604 gram of shabu, a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P500,000.00.

SO ORDERED.

The facts of the case are as follows:

Version of the Prosecution:^[3]

At around 8:00 o'clock in the morning on September 10, 2009, a civilian informant (CI) went to the police station of Marketsite Barangay, Isabela City, Basilan and reported to the Chief of Police, Police Superintendent Alberto Larubis (Larubis) that a certain Mana, later identified as accused-appellant Monir Jaafar Y Tambuyong (Jaafar), is selling shabu at the Port Area Barangay from midnight until 4:00 in the morning.

Larubis then instructed SPO4 Enrico Morales (Morales) to form a buy-bust team and to coordinate with the Philippine Drug Enforcement Agency (PDEA). Morales was designated as the team leader.

At around 11:45 in the evening on the same day, the buy-bust team together with the representatives from the PDEA were briefed on the operation. PO1 Marlon Takazi Look (Look) was assigned as the poseur-buyer while PO2 Bobby Rey Bucoy (Bucoy)

and PDEA agent Mark Anthony Dela Cruz (Dela Cruz) were designated as the arresting officers upon receiving the pre-arranged signal of "lighting a cigarette".

Around 1:45 in the morning of September 11, 2009, the team proceeded to the house of Jaafar. The CI and Look walked ahead of the other members of the team. When the CI and Look reached his house, Jaafar met them at the door and asked them if they wanted to buy shabu. Look replied in the positive and gave Jaafar a marked Five Hundred Peso (P500.00) bill. Jaafar then called someone inside his house, allegedly Ahmad Gani (Ahmad), who then handed him a pack of shabu. Jaafar in turn handed the pack to Look. Look then lighted a cigarette. Bucoy and Dela Cruz then rushed to arrest Jaafar. Jaafar was able to run away and throw the marked money. However, Bucoy and Dela Cruz caught Jaafar. Look, on the other hand, picked up the marked money.

Look marked the confiscated items from Jaafar with his initials and gave them including the marked money to Morales, the team leader. The team then brought Jaafar and Ahmad to the police station. At the police station, Larubis prepared a letter-request for the examination of the confiscated items. At the crime laboratory, Forensic Chemist Melvin Manuel marked the items. His Chemistry Report revealed that the item tested was positive for methamphetamine hydrochloride (shabu), a dangerous drug.

Consequently, an Information for Violation of Section 5, Article II, in relation to Section 26 of Republic Act No. 9165 otherwise known as The Comprehensive Dangerous Drug Act of 2002 was filed against Jaafar and Ahmad. The accusatory portion of the Information reads:

That on the 11th day on September 2009 at Barangay Port Area, Isabela City, Zamboanga Peninsula, Philippines and within the jurisdiction of this Honorable Court, the above named accused, not being authorized by law to sell, deliver, give away to another, transport or distribute any dangerous drug, conspiring and confederating together, mutually aiding and assisting one another, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 Marlon Takazi M. Look, who acted as poseur-buyer, one (1) heat sealed transparent plastic sachet containing white crystalline substance weighing 0.0604 grams which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (SHABU), knowing same to be a dangerous drug.

CONTRARY TO LAW.

Version of the Defense:^[4]

At around midnight of September 10, 2009, Jaafar was at an internet café near the police station watching people play computer games. There, he asked his friend Mahmud Joe to teach him how to operate a computer. After staying for more than an hour in the internet café, Jaafar and his other friend, Michael, decided to go home. After walking a few distance, they parted ways. When he was turning his way to his house which is an inferior part of an alley, he noticed around five to six (5 to 6) police officers coming from the opposite direction. One of them pointed a gun at him and told him not to run. Out of fear, he ran towards the main road until he was

caught. They bodily searched him but nothing was found; they then brought him to the police station where he was detained.

The Regional Trial Court (RTC), Branch 2, Isabela City, Basilan, convicted Jaafar of the offense charged but acquitted his co-accused Ahmad. Aggrieved, Jaafar filed the instant appeal and raised the following errors:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT;

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT DESPITE BLATANT VIOLATION OF SECTION 21 OF RA 9165 COMMITTED BY THE ARRESTING TEAM.

Our Ruling

The appeal is without merit.

“Under Section 5 of R.A. 9165, the elements that must be proven for the successful prosecution of the illegal sale of shabu are as follows: (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.”^[5]

In the instant case, the following are clear: (1) the poseur-buyer is Look^[6]; (2) Jaafar received the Five Hundred Peso (P500.00) marked money^[7] as purchased money; and (3) Jaafar gave the shabu to Look in consideration of the marked money^[8].

Jaafar, however, asserts that the shabu was not formally offered in the RTC. Hence, the RTC cannot consider it and he should be acquitted.

“The State xxx is obliged to present the corpus delicti in court to support a finding of guilt beyond reasonable doubt.”^[9] “The corpus delicti in cases involving dangerous drugs is the presentation of the dangerous drug itself.”^[10]

The records reveal that in the Formal Offer of Evidence submitted by the prosecution in relation to the Petition for Bail, the prosecution offered the sachet containing shabu; that the prosecution copy-furnished the defense, albeit only the counsel of accused Ahmad,^[11] with the Formal Offer of Evidence; that the RTC issued an Order dated September 2, 2010, admitting the exhibits offered by the prosecution, which include the sachet of shabu, and ordering that the the Petition for Bail of Ahmad be submitted for resolution; that the Order states *“On August 25, 2010, the prosecution formally offered xxx and its submarkings only as to the accused Ahmad Gani.”*^[12]; and that the prosecution made another Formal Offer of Evidence, which does not include the sachet of shabu, copy- furnishing only the counsel of Jaafar^[13];