

## **SEVENTH DIVISION**

**[ CA-G.R. CR No. 06532, February 23, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER ESTABILLO Y SEVILLA ,ACCUSED-APPELLANT.**

### **DECISION**

**LAMPAS PERALTA, J.:**

Before the Court is an appeal from the Decision dated December 6, 2013<sup>[1]</sup> in Criminal Case No. DC 04-358 of Branch 57, Regional Trial Court, Angeles City, Third Judicial Region, finding accused-appellant Elmer Estabillo y Sevilla guilty beyond reasonable doubt of violation of Section 5<sup>[2]</sup>, Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

### **THE ANTECEDENTS**

Around 1:30 P.M. of November 1, 2004, a "civilian asset" informed the Drug Enforcement Unit of the Philippine National Police in Angeles City, through Police Chief Inspector Eufemio de Guia Espino, about the sale by accused-appellant of illegal drugs at Zamora Street, corner Agapito del Rosario Street, Lourdes Northwest, Angeles City. Upon receiving the information, Police Chief Inspector Eufemio de Guia Espino conducted a briefing and formed a buy-bust team composed of PO1 Frederick T. Torres as poseur-buyer and Officer Ernie Guarin, Officer Mendoza and Officer Lagman, as back-up. Before proceeding to the target area, Police Chief Inspector Eufemio de Guia Espino gave three (3) P100.00 bills<sup>[3]</sup> to PO1 Frederick T. Torres who marked each bill with his initials "FTT".

Upon arrival at the target area, PO1 Frederick T. Torres and the "civilian asset" proceeded to meet accused-appellant, while the other members of the team stayed about 10 to 15 meters away. After the "civilian asset" introduced PO1 Frederick T. Torres to accused-appellant, PO1 Frederick T. Torres told accused-appellant that he was buying P300.00 worth of shabu. PO1 Frederick T. Torres gave accused-appellant the marked money and the latter proceeded to an alley, about 10 meters away, where he met an unidentified man who received the marked money. In turn, said man handed to accused-appellant a plastic sachet of shabu. Accused-appellant then went back to PO1 Frederick T. Torres and gave him the plastic sachet of shabu. Thereupon, PO1 Frederick T. Torres gave the pre-arranged signal by scratching his nape. Officer Ernie Guarin and PO1 Frederick T. Torres came to the scene and arrested accused-appellant. The other members of the buy-bust team chased the unidentified man who had the marked money, but he was able to escape.

On the same day, November 1, 2004, accused-appellant was brought to the police station where PO1 Frederick T. Torres marked the plastic sachet of shabu received from accused-appellant with his initials "FTT", and prepared an inventory thereof in the presence of accused-appellant and Raul Suscano, a media representative.<sup>[4]</sup>

Police Chief Inspector Eufemio de Guia Espino also prepared the "Request for Laboratory Examination"<sup>[5]</sup> of the confiscated substance. An initial field test on the seized substance conducted by Officer Ernie Guarin showed that it was "positive for the presence of Methamphetamine Hydrochloride (MHCL), a dangerous drug".<sup>[6]</sup>

On November 2, 2004, PO3 Cetunico brought the plastic sachet of shabu, as marked, to the PNP Crime Laboratory Office 3, Camp Olivas, San Fernando City, Pampanga for examination. Ma. Luisa G. David, PNP Forensic Chemical Officer, examined the specimen which tested positive of "Methylamphetamine hydrochloride", per Chemistry Report No. D-365-2004.<sup>[7]</sup>

However, accused-appellant claims that he was merely framed-up by the police. Allegedly, "while he was seated at the back of the owner type jeep parked outside their ancestral house, x x x a policeman went directly to him and immediately handcuffed him". Thereafter, he was brought to the PDEA office, where the police officers inflicted injuries upon him. He just came to learn during the inquest that he was being charged with selling illegal drugs.<sup>[8]</sup>

An information was filed with the trial court against accused-appellant charging him with violation of Sections 5, Article II, RA 9165, to wit:

"That on or about the 1st day of November, 2004 in the City of Angeles, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and/or deliver to a poseur buyer one (1) small size plastic sachet containing SHABU (Methamphetamine Hydrochloride, weighing more or less THREE TENTHS OF A GRAM (0.3) grams which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW."<sup>[9]</sup>

Upon arraignment, accused-appellant pleaded "not guilty" to charge.<sup>[10]</sup> At the pre-trial<sup>[11]</sup>, the defense admitted the following:

1. The identity of accused-appellant;
2. The presence of accused-appellant at Zamora Street, corner Agapito del Rosario Street, Lourdes Northwest, Angeles City on November 1, 2004 around 2:00 P.M.

The prosecution and the defense also stipulated on the testimony of PNP Forensic Chemical Officer Ma. Luisa G. David.

During the trial, the prosecution presented SPO1 Frederick T. Torres and Officer Ernie Guarin as witnesses. On the other hand, the defense presented accused-appellant and his wife, Florence Estabillo, as witnesses.

On December 6, 2013, the trial court rendered a Decision convicting accused-appellant of violation of Section 5, Article II, RA 9165 and sentencing him to suffer life imprisonment and to pay a fine of P500,000.00. The decretal portion of the Decision reads:

"WHEREFORE, the prosecution having established its case against the accused and having proven the guilt of the accused beyond reasonable doubt, the Court hereby finds ELMER ESTABILLO Y SEVILLA GUILTY beyond reasonable doubt of the crime as alleged in the Information and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT for Violation of Section 5, R.A. 9165 and a fine of Php500,000.00

SO ORDERED.<sup>[12]</sup>

Hence, accused-appellant filed the present appeal which is premised on this sole assignment of error:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.<sup>[13]</sup>

### **THE ISSUE**

Whether the trial court erred in finding accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II, RA 9165.

### **THE COURT'S RULING**

In convicting accused-appellant of violation of Section 5, Article II, RA 9165, the trial court gave weight and credence to the positive testimonies of PO1 Frederick T. Torres and Officer Ernie Guarin. The trial court also noted that accused-appellant merely made a general denial and failed to give any plausible reason for the alleged planting of evidence by the police against him. Neither did he file any charges against the police officers. Said the trial court:

"It is very clear from the evidence of the prosecution that a civilian informant came to their office and reported the selling of drugs by a certain Elmer and the information was received by their Chief of Office Maj. Espino who conducted a briefing for a possible buy bust operation wherein Frederick Torres was designated as the poseur buyer and Guarin as one of the back up. Three pieces of Php 100.00 bills were given to Torres who marked the same and they proceeded to the target area at Zamora St., corner Agapito del Rosario, Lourdes Northwest, Angeles City. Torres went there with the asset and they met Elmer Estabillo. A sale of shabu occurred where Estabillo received the marked money from Torres and the former went to a nearby alley where he met with another man who received the marked money and gave Estabillo a plastic sachet and when he gave the plastic sachet containing shabu to Torres, accused Elmer Estabillo was arrested.

Going now to the evidence presented by the defense, the same consist of the testimony of accused Elmer Estabillo and Florence Estabillo who denied that he ever sold shabu to Officer Torres. He told the Court that he does not know anything about the shabu. Estabillo made a general denial that he ever commit the crime as imputed to him but failed to give any plausible reason why would the police plant said evidence against him. Estabillo also admitted that he did not file any charges against the

police officers who arrested him.

x x x

x x x

x x x

With complete knowledge that the defense of denial is very weak, accused Estabillo did not even try to boost its theory by presenting testimonial and documentary proof convincing enough to strengthen his credibility as well as its evidence.

The failure of Estabillo to present a witness who could corroborate his testimony is a silent proof that his defense is weak and could not stand on its own.”<sup>[14]</sup>

Accused-appellant, however, impugns his conviction on the grounds that (i) the testimonies of prosecution witnesses PO1 Frederick T. Torres and Officer Ernie Guarin were inconsistent as to the pre-arranged signal; (ii) there was no valid buy-bust operation because of lack of coordination with the PDEA; (iii) the corpus delicti was not duly proven because the evidence was not marked immediately at the place where it was seized, and no photograph thereof was taken either at the place of the arrest or at the police station.<sup>[15]</sup>

The asseverations are unfounded.

Accused-appellant was caught selling illegal drugs during a buy-bust operation conducted by the police officers. It is settled that a buy-bust operation is a valid means of arresting violators of Republic Act No. 9165.<sup>[16]</sup> It is "a form of entrapment, in which the violator is caught in flagrante delicto and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime."<sup>[17]</sup>

There is no merit in accused-appellant's contention that there was no valid buy-bust operation due to lack of coordination with the Philippine Drug Enforcement Agency (PDEA). Prior coordination with the PDEA is not an indispensable element of a proper buy-bust operation. As held in **People v. Balaquit**<sup>[18]</sup>:

“In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition sine qua non for every buy-bust operation. After all, a buy-bust is just a form of an in flagrante arrest sanctioned by Section 5, Rule 113 16 of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.”

The trial court cannot be faulted in giving weight and credence to the testimonies of prosecution witnesses which proved beyond reasonable doubt accused-appellant's culpability. Basic is the rule that in order to successfully prosecute an accused for

illegal sale of drugs, the prosecution must be able to prove the (i) identities of the buyer and seller, the object and the consideration of the sale, and (ii) the delivery of the thing sold and the receipt by the seller of the payment therefor.<sup>[19]</sup>

PO1 Frederick T. Torres, the poseur-buyer, positively testified on the essential details of the buy-bust operation, including the consummation of sale of illegal drugs between him and accused-appellant. Thus:

"Q On November 1, 2004, tell us your whereabouts at 1:30 in the afternoon?

A We were in our office at Camp Tomas Pepito, Sto. Domingo, Angeles City, sir.

Q On that particular date and time, what happened?

A The civilian asset personally called in our office and informed us regarding the illegal drug activities at Brgy. LNW, sir.

X X X

X X X

X X

**X**

Q Who received the same?

A Our chief, sir.

X X X

X X X

xx

X

Q What happened next?

A He (chief) informed a team to conduct police operation, sir.

X X X

X X X

X X

**X**

Q Who were the members of the team?

A Officer Ernie Guarin, Officer Mendoza, and Officer Lagman, sir.

Q What will be your participation in that operation?

A I was designated as poseur buyer, sir.

Q What about Police Officer Ernie Guarin, what will be his participation?

A As a back up, sir.

Q After you were designated to act as a poseur buyer, what happened next?

A Our chief gave me three (3) pieces of P100.00 bills and I had them photo copied, sir.

Q After you photo copied the 3 P100.00 bills, what did you do, if any?

A I put my markings on the bill, sir.

X X X

X X X

X X

X

Q After placing your markings, what happened next?

A We proceeded to the target place, sir.

X X X

X X X

X X

X

Q Where exactly?

A At Zamora St., Lourdes Northwest, sir.

X X X

X X X

X X