

## **SECOND DIVISION**

**[ G.R. No. 246284, June 16, 2021 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MICHAEL ANDANAR Y SIENDO ALIAS "KOKAK" AND MARY JANE  
GARBO Y MARIPOSQUE, ACCUSED-APPELLANTS.**

### **D E C I S I O N**

**LAZARO-JAVIER, J.:**

#### **The Case**

This appeal assails the Decision<sup>[1]</sup> dated June 23, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08364 affirming the verdict of conviction against Michael Andanar y Siendo alias "Kokak" (appellant) for two (2) counts of violation of Section 5, Article II of Republic Act No. 9165 (RA 9165), and Mary Jane Garbo y Mariposque (appellant), for Section 6, Article II, RA 9165.

#### **The Proceedings Before the Trial Court**

#### **The Charge**

On August 2, 2010, appellant Andanar was charged with violation of Section 5, Article II of RA 9165 (illegal sale of dangerous drugs), *viz.*:

#### **CRIM. CASE # 17220**

That on or about the 28<sup>th</sup> day of July, 2010 in the City of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully and knowingly sell, deliver, and give away to poseur buyer PO2 Noel O. Antillion, Jr., the amount of zero point zero seven gram of white crystalline granular substance contained in one (1) heat sealed transparent plastic sachet, (NOA-1-280710) for and in consideration of the amount of Php 500.00, which was found positive to the test of Methamphetamine Hydrochloride, or commonly known as "shabu", a dangerous drug, in violation of the above cited law.<sup>[2]</sup>

#### **CRIM. CASE# 17221**

That on or about the 28<sup>th</sup> day of July, 2010 in the City of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver, and give away to MORIEL

GUTIERREZ, alias "PATOK" in the presence of poseur buyer PO2 Noel O. Antillon, Jr., a minute quantity of white crystalline granular substance contained in one (1) heat sealed transparent plastic [sachet], which substance was subsequently placed in a holder/funnel made of aluminum foil; prior to burning/sniffing in another piece of aluminum foil; where particles of the said substance were left in the first-mentioned foil, (NOA-2-280710); for and in consideration of the amount of Php 500.00; which was found positive to the test of Methamphetamine Hydrochloride, or commonly known as "shabu", a dangerous drug, in violation of the above-cited law.<sup>[3]</sup>

while appellant Garbo was charged with violation of Section 6, Article II of RA 9165 (illegal maintenance of a den, dive, or resort), viz.:

### **CRIM. CASE # 17222**

That on or about the 28<sup>th</sup> day of July, 2010 in the City of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, inside a house, which she intentionally maintained as a den, dive, or resort, where dangerous drugs were actually and habitually stored, distributed, sold or used in any form; and where the following paraphernalia for the use of drugs were actually and habitually stored, distributed, sold or [used] in any form; and where the following paraphernalia [for] the. use of drugs were found; one (1) black box; one (1) heat-sealed transparent plastic sachet; one (1) aluminum foil strip; one (1) rolled aluminum foil; one (1) white disposable lighter; and one (1) green disposable lighter; in violation of the above-cited law.<sup>[4]</sup>

Meantime, Moriel Gutierrez y Del Castillo (Gutierrez) who was charged with illegal possession of dangerous drugs died. Thus, the case against him got dismissed.

On arraignment, appellants pleaded not guilty.<sup>[5]</sup> Joint trial ensued.

During the pre-trial, the prosecution and the defense stipulated on the following:

- 1) appellants were the same persons accused in the Information,
- 2) the trial court had jurisdiction over the appellants,
- 3) Police Chief Inspector Abraham Tecson duly executed Physical Science Report No. D-260-10S which found the seized specimen positive for methylamphetamine hydrochloride.<sup>[6]</sup>

### **Prosecution's Version**

SPO2 Noel Antillon, Jr. (SPO2 Antillon, Jr.), SPO2 Ernesto Sanchez (SPO2 Sanchez), PO3 Vergelio Del Rosario (PO3 Del Rosario), PO2 Elmar Manuel (PO2 Manuel), members of the Station Anti-Illegal Drugs Task Force, Taguig City, and Forensic Chemist P/Chief Inspector Abraham Tecson (P/CI Tecson) testified for the prosecution. Their testimonies may be summarized, in this wise:

On July 28, 2010, a confidential informant reported to their office about illegal drug

activities on Camachile Street, Western Bicutan, Taguig City. Police Chief Major Porfirio Calagan briefed SPO2 Sanchez, PO1 Balbin,<sup>[7]</sup> PO3 Brion,<sup>[8]</sup> and SPO2 Antillon, Jr. on a buy-bust operation to be launched in the target area. SPO2 Antillon, Jr. was assigned as poseur buyer while the rest, as back-up members. He was also handed ten (10) pieces of P100.00 bills as buy-bust money.<sup>[9]</sup>

After coordinating with the Philippine Drug Enforcement Agency (PDEA), the buy-bust team proceeded to the target area. There, SPO2 Antillon, Jr. and the confidential informant saw Garbo in front of her house. The confidential informant greeted her and introduced SPO2 Antillon, Jr. as someone who wanted to buy *shabu*. The confidential informant then asked Garbo where Andanar was. She said that Andanar was fetching something and then invited them inside her house to wait. Inside the house, they met Gutierrez, who was also waiting for Andanar.<sup>[10]</sup>

After about thirty (30) minutes, Andanar arrived. He asked SPO2 Antillon, Jr. how much *shabu* he wanted to buy. The latter answered P1,000.00 worth. Since he only had two (2) plastic sachets with him, Andanar agreed to sell P500 worth of *shabu* to SPO2 Antillon, Jr. while the other, to Gutierrez. SPO2 Antillon, Jr. handed the P500.00 buy-bust money to Andanar while the latter, in turn, gave him a plastic sachet with white crystalline substance. Garbo told SPO2 Antillon, Jr. that he could already use the drug for an additional P20.00. He declined, saying he had his own pipe in the car.<sup>[11]</sup>

Since SPO2 Antillon, Jr. was inside Garbo's house, he could not signal the other team members that the sale had been consummated. Thus, he instructed the confidential informant to go outside and signal the team. When the rest of the team arrived, SPO2 Antillon, Jr. arrested Andanar while SPO2 Sanchez arrested Garbo and Gutierrez. SPO2 Antillon, Jr. frisked Andanar and recovered from the latter the buy-bust money. He also frisked Gutierrez and recovered an aluminum foil and a lighter.<sup>[12]</sup>

The team brought appellants and Gutierrez to the police station where the marking, inventory, and photographing were done. The team had to leave the *situs criminis* because a crowd had already gathered around.<sup>[13]</sup>

SPO2 Antillon, Jr. handed the seized items to the case investigator PO3 Vergelio Del Rosario (PO3 Del Rosario) who prepared the following documents: affidavit of arrest, inventory report, spot report, booking sheets, and request for laboratory examination.<sup>[14]</sup> SPO2 Antillon, Jr. and PO3 Del Rosario brought the specimen to the crime laboratory where it was received by PO2 Manuel.<sup>[15]</sup>

Both the defense and the prosecution stipulated on the qualifications of Forensic Chemist P/CI Tecson and the fact that he received subject specimens which he tested and found positive for methamphetamine hydrochloride, a dangerous drug. They also stipulated that he reduced his findings in Physical Science Report No. D-260-105, stating thus:

x x x x

One (1) heat-sealed transparent plastic sachet with markings "NOA-1-280710" containing 0.07 gram of white crystalline substance.

[O]ne (1) aluminum foil strip with markings "NOA-2-280710" containing

white crystalline substance.

[O]ne (1) rolled aluminum foil with markings "NOA-3-280710" containing residue.

x x x x<sup>[16]</sup>

Finally, the parties stipulate that P/CI Tecson had no personal knowledge of the source of the drugs.

### **Defense's Version**

Garbo testified that on July 28, 2010, she was watching a game near her house on Camachile Street, Western Bicutan, Taguig City when SPO2 Antillon, Jr. suddenly approached her, placed his arm around her, and told her to walk with him quietly towards a vehicle. She was made to board the vehicle and brought to the police station where she saw Andanar and Gutierrez. She admitted that she met Andanar once before, but not Gutierrez.<sup>[17]</sup>

On the other hand, Andanar testified that on the day in question, he was at home sleeping. Three (3) men wearing civilian clothes suddenly barged in, introduced themselves as police officers, and asked him to bring out the supposed illegal drugs he was hiding. They also searched his house but they did not find any illegal drugs. He was placed in handcuffs and brought to the police station. There, he saw Garbo and Gutierrez.<sup>[18]</sup>

### **The Ruling of the Regional Trial Court**

By Decision<sup>[19]</sup> dated May 19, 2016, the trial court found appellants guilty as charged, thus:

**WHEREFORE**, in the premises, the accused **MICHAEL ANDANAR** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of selling without any authority 0.07 gram of Methylamphetamine Hydrochloride or "shabu", a dangerous drug in violation of Sec. 5, 1<sup>st</sup> par., Article II of R.A. 9165 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00)** for Criminal Case Nos. 17220-D and 17221-D; and **MARY JANE GARBO** is hereby found **GUILTY BEYOND REASONABLE DOUBT** of Violation of Section 6 of Article II of R.A. 9165 and is hereby sentenced to suffer the penalty of **TWELVE (12) YEARS AND ONE (1) DAY OF IMPRISONMENT** and a fine of **ONE HUNDRED THOUSAND PESOS (PHP100,000.00)** in Criminal Case No. 17222-D.

x x x x

**SO ORDERED.**<sup>[20]</sup>

The trial court gave full credence to the testimonies of the prosecution witnesses who were police officers performing their official functions. The trial court found the chain of custody to have been duly established and, thus, rejected appellants' denial and theory of frame up.<sup>[21]</sup>

## **The Proceedings Before the Court of Appeals**

On appeal, appellants faulted the trial court for rendering the verdict of conviction allegedly despite 1) the prosecution's failure to prove the elements of illegal sale of drugs and illegal maintenance of a drug den and 2) the alleged procedural omissions during the buy-bust operation: a) the absence of any insulating witnesses during the inventory and photographing of the seized items; b) the fact that the inventory and photographing were done at the police station, not at the place of arrest; and, c) the prosecution's failure to present the testimony of the person who received the confiscated *shabu* from the crime laboratory.<sup>[22]</sup>

For its part, the People, through the Office of the Solicitor General (OSG), countered, in the main: 1) the elements of illegal sale of drugs and illegal maintenance of den were all proven; 2) there was substantial compliance with the chain of custody rule. Besides, the parties stipulated on the testimonies of the prosecution witnesses, thus, the defense had impliedly admitted that there was no break in the chain of custody; 3) the presumption of regularity in the performance of the police officers' official functions prevails over appellants' bare denial and theory of frame up.<sup>[23]</sup>

## **The Ruling of the Court of Appeals**

In its assailed Decision<sup>[24]</sup> dated June 23, 2017, the Court of Appeals affirmed.

## **The Present Appeal**

Appellants now seek affirmative relief from the Court and prays anew for their acquittal. For the purpose of this appeal, the OSG<sup>[25]</sup> and appellants<sup>[26]</sup> both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

## **Core Issue**

Did the Court of Appeals err in affirming the trial court's verdict of conviction against Andanar for illegal sale of dangerous drugs and Garbo for illegal maintenance of drug den, respectively?

## **Ruling**

### **Sale of dangerous drugs**

Andanar was charged with illegal sale of dangerous drugs allegedly committed on July 28, 2010. The governing law is RA 9165, before its amendment in 2014.

Section 21, Article II of RA 9165 reads:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources