

## FIRST DIVISION

[ G.R. No. 236596, January 29, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MUSTAFA SALI Y ALAVVADDIN A.K.A. "TAPANG/PANG,"  
ACCUSED-APPELLANT.**

### R E S O L U T I O N

**PERALTA, C.J.:**

On appeal is the November 21, 2017 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01335-MIN which affirmed the March 31, 2014 Decision<sup>[2]</sup> of the Regional Trial Court (RTC), 9<sup>th</sup> Judicial Region, Branch 13, Zamboanga City in Criminal Case Nos. 24967 and 24968, finding accused appellant Mustafa Sali y Alawaddin a.k.a. "Tapang/Pang" guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information dated July 5, 2010, Sali was charged with violation of Section 5, Article II of R.A. No. 9165, committed as follows:

That on or about June 21, 2010, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there wil[l]fully, unlawfully and feloniously, SELL and DELIVER to IO1 Michael C. Lanza, a member of [the] Philippine Drug Enforcement Agency (PDEA) 9, who acted as poseur-buyer, one (1) small heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0241 gram, which when subjected to qualitative examination gave positive result to the test for Methamphetamine Hydrochloride (SHABU), knowing the same to be a dangerous drug.

CONTRARY TO LAW.<sup>[3]</sup>

Another Information was filed on the same date before the RTC against Sali for violation of Section 11, Article II of R.A. No. 9165, committed as follows:

That on or about June 21, 2010, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, not being authorized by law, did then and there wil[l]fully, unlawfully and feloniously have in hits possession and under his custody and control one (1) small heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0155 gram, which when subjected to qualitative examination gave positive result to the test

for Methamphetamine Hydrochloride (SHABU), knowing the same to be a dangerous drug.

CONTRARY TO LAW.<sup>[4]</sup>

In his arraignment, Sali pleaded not guilty<sup>[5]</sup> to both charges. He was detained at the Zamboanga City Jail during the trial of the case.

The prosecution presented three (3) witnesses, namely: Intelligence Officer 1 (IO1) Michael C. Lanza, IO1 Bracio B. Natividad and IO1 Joel Sacro. The defense, for its part, presented the accused and a certain Sandra Ahil.<sup>[6]</sup>

### ***Version of the Prosecution***

On June 21, 2010, at around 10:00 a.m., a confidential informant (CI) reported to Intelligence Officer 3 (IO3) Abdulsokor S. Abdulgani of the Philippine Drug Enforcement Agency (PDEA) that a certain "Tapang" is engaged in selling drugs in Campo Islam, Zamboanga City. The report was relayed to Senior Police Officer 1 Faigdar A. Jaafar who directed IO3 Abdulgani to form a buy-bust team. During the planning of the operation, IO1 Lanza was assigned as the poseur-buyer, to be accompanied by the CI, and IO1 Natividad was tasked to serve as back-up. A marked money of two hundred pesos (P200.00) was given to IO1 Lanza by IO3 Abdulgani to serve as the buy-bust money. Further, IO1 Lanza was instructed that after the consummation of the sale, he would remove his bull cap as a pre-arranged signal to execute the arrest.<sup>[7]</sup>

At about 1:00 p.m. of the same date, after coordination with the Zamboanga City Police, the buy-bust team proceeded to Campo Islam, Zamboanga City. Upon arrival, IO1 Lanza, together with the CI, walked towards the *sari-sari* store of Sali. At the *sari-sari* store, the CI called out for "Pang" and Sali peeked out of the window. The CI introduced IO1 Lanza to Sali as a buyer and when Sali asked how much, IO1 Lanza responded "200." Sali then drew from his left pocket a coin purse and pulled from it one ( 1) small sachet containing white crystalline substance and gave it to IO1 Lanza. In return, IO1 Lanza verified if it was indeed *shabu* then gave the two hundred pesos (P200.00) to Sali. Immediately after the sale was done, IO1 Lanza removed his bull cap, and IO1 Natividad rushed to the scene and arrested Sali. IO1 Lanza introduced themselves as PDEA agents and told Sali that he was under arrest for violation of R.A. No. 9165. Sali was apprised of his constitutional rights in Tagalog. The one (1) small sachet containing white crystalline substance that was subject of the sale was marked as "MCL" and the same was turned over to IO1 Sacro, the investigator.<sup>[8]</sup> IO1 Sacro marked the said one (1) small sachet with "JPS," his initials, and "06/21/10."<sup>[9]</sup>

In the meantime, IO1 Natividad, as a matter of procedure, frisked Sali and found another sachet of suspected *shabu*, a coin purse, the marked money, and other paper bills. IO1 Natividad proceeded to mark the suspected *shabu* with his initials "BBN" and turned it over to IO1 Sacro who marked the same with "JPS" "06/21/10." IO1 Sacro was in possession of the contraband until Sali was brought to the police station where IO1 Sacro conducted the inventory of the confiscated items. After the inventory, IO1 Sacro prepared the letter-request for the examination of the suspected drugs which were received by one Police Officer 3 Paner of the Philippine

National Police Crime Laboratory, Zamboanga City. The qualitative examinations of the sachet marked as "MCL" "JPS" "06/21/10," weighing 0.0241 gram, and the sachet marked as "BBN" "JPS" "06/21/10," weighing 0.0155 gram, were conducted by Police Senior Inspector Mark Christian N. Maceda. 10 Both sachets were found positive for the presence of Methamphetamine Hydrochloride or *shabu* as shown in Chemistry Report No. D-031-2010.<sup>[11]</sup> Meanwhile, the urine sample of Sali yielded a positive result for the presence of Methamphetamine Hydrochloride or *shabu* as reflected in Chemistry Report No. CD T -040-2010.<sup>[12]</sup>

### ***Version of the Defense***

Between 12:00 and 1:00 p.m. of June 21, 2010, Sali was at his parents' house in Campo Islam, Zamboanga City, helping with the thanksgiving celebration for his one-year old son, Arjamar. He was with his family, together with his sisters Kah Manis and Kah Sandra. While thereat, he heard his son crying in the bedroom, prompting him to check the room; looking outside, he heard the voices of two (2) male persons in civilian attire, armed with pistols, looking for Mustafa. He went out of the room and was asked by the same persons if he was Mustafa, he answered positively. Immediately thereafter, he was pulled by the said persons outside the house. He was ordered by the same persons to go with them for some questions. Initially, he resisted but he was restrained by handcuffs. He asked for the persons' identities but was only told to go with them or else he would be hurt. At this point, Sali was very scared and he cried as he also saw his mother crying with the rest of his family seated. Sali was then subjected to a body search but nothing was found. Subsequently, he observed that around eight men were already waiting outside and went to search the house but the search went futile.<sup>[13]</sup>

Eventually, Sali was brought inside a vehicle and to the police station. He was made to sit down and was told that he was seen with a companion who was always going to Recondo to buy *shabu* but he denied such fact and said that he did not know any of it. Furthermore, Sali was told that he should help the police authorities and if he failed to do so, he would be put in jail. The investigation continued and Sali was subsequently asked to produce fifty thousand pesos (P50,000.00) for his release. The police officers told Sali to ask his family for the said amount, prompting him to ask his sister Kah Manis but to no avail. Since he cannot produce the said amount, he remained in jail.<sup>[14]</sup>

### ***RTC Ruling***

After trial, the RTC handed a guilty verdict on Sali for illegal possession and sale of *shabu*. The dispositive portion of the March 31, 2014 Decision states:

WHEREFORE, in the light of all the foregoing, [this] Court finds accused MUSTAFA SALI y ALAWADDIN a.k.a. "TAPANG/PANG":

1. In Criminal Case No. 24967 GUILTY beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED

THOUSAND PESOS (P500,000.00) without subsidiary imprisonment in case of insolvency;

2. In Criminal Case No. 24968 GUILTY beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of TWELVE YEARS (12) AND ONE (1) DAY TO TWENTY (20) YEARS OF IMPRISONMENT and a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00) without subsidiary imprisonment in case of insolvency[.]

The methamphetamine hydrochloride (shabu) subject of these cases are ordered turned over to the proper government agency for disposition.

SO ORDERED.<sup>[15]</sup>

### ***CA Ruling***

On appeal, the CA affirmed the RTC Decision. The CA agreed with the findings of the trial court that the prosecution effectively established that the chain of custody of the seized dangerous drugs — from the seizure, marking, submission to the laboratory for testing, and presentation in court — was not compromised. Likewise, all the elements in the prosecution for illegal possession of dangerous drugs were established by the prosecution beyond reasonable doubt. The fact that the contraband was found in Sali 's physical possession shows that he freely and consciously possessed the dangerous drugs. The CA was not convinced by Sali 's assertion that the markings on the confiscated sachets were insufficient as mere initials, without the signature and name of the suspect and a date, did not make the same unique and distinct. For the appellate court, it agreed with the Office of the Solicitor General that it is not required for the apprehending officer to put his initials and signature on the seized items and any distinguishing mark suffices to set apart as evidence the dangerous drugs or other related items seized from the accused. Lastly, the CA was in the position that even if the police officers did not strictly comply with the requirements of Section 21, Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165, the non compliance did not affect the evidentiary weight of the drugs seized from Sali and the chain of custody of evidence in the present case is shown to be unbroken.

Before us, the People and Sali manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Essentially, Sali maintains his position that there is no moral certainty on the *corpus delicti*, lapses in the strict compliance with the requirements of Section 21 of R.A. No. 9165 must be explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.

### ***Our Ruling***

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and Sali should be acquitted based on reasonable doubt.

Under Section 5, Article II of R.A. No. 9165 on illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: