

# FIRST DIVISION

[ G.R. No. 227739, January 15, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOSEPH SOLAMILLO AMAGO AND CERILO BOLONGAITA  
VENDIOLA, JR., ACCUSED-APPELLANTS.**

## D E C I S I O N

**PERALTA, C.J.:**

On appeal is the May 31, 2016 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 01953 which affirmed the September 17, 2014 Judgment<sup>[2]</sup> of the Regional Trial Court (RTC), 7<sup>th</sup> Judicial Region, Branch 30, Dumaguete City, in Criminal Case No. 2013-21877, finding accused-appellants Joseph Solamilio Amago and Cerilo Bolongaita Vendiola, Jr. guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

In an Amended Information<sup>[3]</sup> dated September 25, 2013, accused-appellants were charged with illegal transportation of dangerous drugs, specifically, violation of Section 5, Article II of R.A. No. 9165, committed as follows:

That on or about the 5<sup>th</sup> day of September, 2013 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA VENDIOLA, JR. conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and knowingly deliver or transport six [6] pieces elongated heat-sealed transparent plastic sachet/s containing white crystalline substance weighing 0.05 gram/s, 0.06 gram/s, 0.05 gram/s, 0.06 gram/s, 0.02 gram/s and 0.07 gram/s, respectively, or with a total aggregate weight of 0.31 [gram], more or less, without any lawful authority or permission to deliver or transport the same and which substances after examination conducted on specimen was found positive to the test of Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of Republic Act No. 9165.

That the accused JOSEPH SOLAMILLO AMAGO was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-105-13.

That the accused CERILO BOLONGAITA VENDIOLA, JR., was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-106-13.

Contrary to Section 5, Article II of Republic Act No. 9165.<sup>[4]</sup>

In their arraignment, accused-appellants pleaded not guilty<sup>[5]</sup> and the trial of the case subsequently ensued.

The prosecution presented Police Chief Inspector (*PCI*) Josephine Llana, Police Officer 3 (*PO3*) Edilmar Manaban, Police Officer 2 (*PO2*) Rico Larena, Police Auxiliary Unit (*PAU*) member Emilio Silva Pinero, Police Senior Inspector (*PSI*) Don Richmon Conag, *PO2* Placido Xandro Paclauna, Police Officer 1 (*PO1*) Ranie Cuevas Lee, Department of Justice (*DOJ*) representative Anthony Chilius Benlot, *Barangay* Banilad *Kagawads* Ceasar A. Parong and Alfredo M. Omoyon, and media representatives Juancho Gallarde and Anthony Maginsay as its witnesses. Meanwhile, the defense presented accused-appellants as its witnesses.

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

On September 5, 2013, at around 8:00 a.m., *PO2* Larena was on duty at the Dumaguete City Police Station, together with Piñero, a civilian contractual employee of the City of Dumaguete detailed with the *PAU*, a program for the city to augment the police force. They were ordered by *PSI* Conag to join in the conduct of a police checkpoint along the South National Highway, at the crossing of Sta. Monica Road, *Barangay* Banilad, Dumaguete City, as a security measure to strengthen precautions against any possible terror plans by any threat group or individual law violator. *PO2* Larena and Piñero went to the said area at around 8:30 a.m. of the same day. They positioned themselves at about one hundred (100) meters away from the checkpoint sign for northbound vehicles to pass through them before reaching the actual checkpoint stand sign.<sup>[6]</sup>

At around 9:45 a.m. of the same day, *PO2* Larena and Piñero noticed two (2) persons onboard a blue and black Honda Wave 125 motorcycle, bearing LTO plate number 2352 IR, pass by their location. Before reaching the checkpoint sign, the driver of the motorcycle appeared to be rattled and he abruptly executed a U-turn and went back towards the direction of *PO2* Larena and Piñero. The action of the two (2) persons led *PO2* Larena and Piñero to believe that they have committed traffic violations or were transporting/delivering something illegal. *PO2* Larena was prompted to walk in the middle of the road and Piñero to drive his motorcycle to block the two (2) motorists. Before the two (2) motorists could reach *PO2* Larena and Piñero, the driver intentionally slumped down his motorcycle and, in doing so, his t-shirt was lifted, enabling *PO2* Larena to see in plain view the handle of a handgun that was tucked in his waistband. *PO2* Larena and Piñero cautiously went over to the driver and his companion. *PO2* Larena asked the driver for the necessary license and permit to carry the said firearm. However, the driver could not produce the necessary papers, leading to his arrest for illegal possession of firearm by *PO2* Larena; he was simultaneously apprised of his constitutional rights in the Visayan dialect. Subsequently, the driver was identified as Amago. Meanwhile, at the same instance that the motorcycle was slumped down, Piñero saw a folding knife protrude from the left pocket of the passenger. As he informed *PO2* Larena of what he saw, they confiscated the knife from the passenger.<sup>[7]</sup>

As *PO2* Larena confiscated from Amago the loaded handgun which was a caliber .45 pistol colt with serial number 566124, he bodily searched Amago and was able to recover and seize another load of magazine, a black-colored holster, a cellular phone, and money amounting to five hundred sixty pesos (P560.00). The utility box

of the motorcycle was also searched by PO2 Larena to check if there were other illegal firearms concealed inside. Eventually it was found out that the utility box contained one (1) peppermint gum container with six (6) elongated heat-sealed transparent plastic sachets containing white crystalline granules. From his training and experience, PO2 Larena was able to conclude that the sachets contained "shabu." This led to the rearrest of Amago for illegal possession of "shabu" and was again apprised of his constitutional rights in Visayan dialect.<sup>[8]</sup>

At the crime scene, PO2 Larena marked the six (6) heat-sealed transparent plastic sachets with "JSA-P1-9-5-13" to "JSA-P6-9-5-13" then signed the same. JSA stood for Joseph Solamillo Amago, P stood for the crime of possession, and numbers 9-5-13 referred to the date of the incident. The other items that were recovered from Amago were also marked at the crime scene. Subsequent to the marking of the items recovered from Amago, PO2 Larena arrested the passenger for illegal possession of bladed weapon and was apprised of his constitutional rights, also in the Visayan dialect. Incident to his arrest, the passenger was bodily searched, which resulted in the recovery and seizure of one (1) improvised tooter and one (1) folder strip of aluminum foil suspected to be used for illegal drugs. The passenger was later identified as Vendiola. At the crime scene, PO2 Larena marked the three (3) items confiscated from Vendiola, as follows: "CBVJ-P1-9-5-13" for the improvised tooter; "CBVJ-P2-9-5-13" for the folding knife; and "CBVJ-P3-9-5-13" for the aluminum foil.<sup>[9]</sup> The same method was used in marking the items seized from Vendiola.

After marking the items confiscated from accused-appellants, PO2 Larena conducted an inventory of the seized items in their presence, together with *Barangay* Banilad *Kagawad* Felomino Flores, Jr., Omoyon, Parong, Maginsay, and Gallarde, who signed the two (2) receipts/inventories prepared by PO2 Paclauna, who was ordered to proceed to the crime scene. PO2 Larena as seizing officer and PO1 Lee, the assigned photographer, signed both receipts/inventories during the conduct of the inventory. PO2 Larena and Pinero then brought the seized and confiscated items, together with accused-appellants, to the Dumaguete City Police Station for the continuation of the inventory, as well as the standard booking procedure. The inventory was continued at the City Anti-Illegal Drugs Operations Task Group office inside the police station as the DOJ representative, Benlot, arrived and signed both receipts/inventories upon verification that the items listed tallied with the items he saw on the table. When the inventory was finished, PO2 Larena placed the six (6) transparent plastic sachets, containing suspected "shabu," inside a brown envelope and sealed it with a masking tape and affixed his signature thereon. PO2 Larena then prepared a Memorandum Request for Laboratory Examination and Drug Test for Amago and a Memorandum Request for Drug Test for Vendiola, addressed to the Provincial Chief of the Philippine National Police Crime Laboratory Office in Dumaguete City and signed by PSI Benedick Poblete.<sup>[10]</sup>

It was PO3 Manaban from the crime laboratory who received the tape-sealed envelope containing six (6) heat-sealed transparent plastic sachets with markings "JSA-P1-9-5-13" to "JSA-P6-9-5-13," indicated in the Memorandum Request, at 2:15 p.m. Upon checking if the contents tallied with the Memorandum Request, PO3 Manaban resealed the envelope and kept the items inside his locker to which he has the only access to. Afterwards, PO3 Manaban took separate urine samples from accused-appellants and kept the same in the refrigerator in the laboratory. At 6:05

a.m. of September 6, 2013, PO3 Manaban submitted Jo a forensic chemist of the crime laboratory, PCI Llena, the tape-sealed envelope containing the seized items. Upon receipt, PCI Llena made her own markings on the specimens, and weighed them that resulted with an aggregate weight of 0.31 gram. The conduct of a qualitative examination on the seized items yielded a positive result for Methamphetamine Hydrochloride. Her findings and conclusions were indicated in her Chemistry Report No. D-156-13. Urine samples were taken from accused-appellants, and the screening and confirmatory tests conducted gave a positive result for the presence of Methamphetamine. The results were indicated in Chemistry Report No. DT-105-13 and Chemistry Report No. DT-106-13. The pieces of evidence were then kept in the evidence vault of the crime laboratory, accessed only by PCI Llena, prior to the submission to the court for trial.<sup>[11]</sup>

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

The defense presented accused-appellants as its witnesses, and the following facts were established in their combined testimonies.

Amago is married, worked as a bamboo furniture maker, and a resident of *Barangay* Lutao, Bacong, Negros Oriental. On the other hand, Vendiola is married, worked as an ambulance driver, and is a resident of West Poblacion, Bacong, Negros Oriental. Accused-appellants are longtime friends and neighbors as they are residents of adjacent *barangays*.<sup>[12]</sup>

At about 7:00 a.m. of September 5, 2013, Amago was at his house tending to his cow and at past 8:00 a.m., he decided to go to Dumaguete City to collect his receivables from his customers on Sta. Rosa Street, Dumaguete City who previously bought bamboo furniture on installment basis. Meanwhile, also at around 8:00 a.m., Vendiola just finished his duty as an ambulance driver of Bacong Municipal Health Office. As he was off duty, Vendiola immediately went to a privately-owned auto repair shop because the ambulance he was using needed an oil change. The shop mechanic then told him that he needed an oil filter to be procured by him at Diesel Auto Parts in Tabuc-tubig, Dumaguete City.<sup>[13]</sup>

During that time, Amago was traversing the South National Highway onboard a borrowed motorcycle allegedly owned by Roger Pamen. Vendiola saw Amago and asked where Amago was headed. Amago replied that he was on his way to Dumaguete City and Vendiola asked for a ride since he was also headed to Dumaguete City to buy the said oil filter. Upon reaching Dumaguete City, Amago saw a checkpoint sign somewhere near Sta. Monica Road, Banilad, Dumaguete City. He slowed down and eventually stopped before reaching the checkpoint knowing that the registration of the borrowed motorcycle had already expired. While both accused-appellants were parked on the shoulder of the road, they were approached by a male person in civilian clothes who introduced himself as a police officer and later identified by Amago as PO2 Paclauna. Right after, Amago was asked to show his driver's license and registration. He told PO2 Paclauna that the motorcycle he was driving had an expired registration and that it was borrowed. Eventually, PO2 Paclauna informed Amago that he would impound the motorcycle.<sup>[14]</sup>

Thereafter, Vendiola disembarked from the motorcycle while Amago remained seated there. PO1 Lee approached Vendiola and the two spoke with each other;

Amago did not hear the conversation. PO1 Lee then approached and informed PO2 Paclauna that Amago still had not returned the three thousand pesos (P3,000.00) that PO1 Lee gave him for the bamboo intended for the fence of his house. PO2 Paclauna responded and told PO1 Lee, "butangan nato ni" which means that they would plant evidence against Amago. Right after, PO2 Paclauna kicked the motorcycle while Amago was still seated thereon that resulted in Amago falling from the motorcycle. Vendiola tried to approach Amago but he was told by PO1 Lee to go away. PO1 Lee then dragged Vendiola towards a Tamaraw FX which was parked about fifty (50) meters away from where Amago fell. Afterwards, PO1 Lee bodily searched Vendiola and recovered from him a request slip from the shop mechanic, a folding knife, and twenty-five pesos (P25.00); afterwards, Vendiola was made to board the Tamaraw FX.<sup>[15]</sup>

On the other hand, Amago was handcuffed by PO2 Paclauna, together with another police officer in civilian clothes, and was dragged towards the grassy portion near an acacia tree in the same direction where the Tamaraw FX was parked. Later on, a table taken from the Tamaraw FX was set up on a grassy area. The items recovered and seized from Amago were placed on the table. It was then when Amago was told that the six (6) sachets, containing suspected "*shabu*," came from the utility box of the borrowed motorcycle he was driving.<sup>[16]</sup>

When Amago was detained, it was the only time when he found out that he was charged with possession of illegal drugs. Surprisingly, when Amago was preparing his counter-affidavit, he was informed that he was already being charged with violation of Section 5, Article II of R.A. No. 9165. Amago denied the crimes charged against him and claimed that he had no knowledge of the drugs that were allegedly taken from the motorcycle he was driving.<sup>[17]</sup>

Vendiola, on the other hand, did not know that he was already arrested when he was made to board the Tamaraw FX. He also denied ownership of the drug paraphernalia allegedly recovered from him. He was surprised by the fact that he was being chafed with violation of Section 5, Article II of R.A. No. 9165 as there were no illegal drugs confiscated from him. Lastly, he denied knowing PO2 Larena and Pinero prior to the incident nor does he have any grudge with either of the two.<sup>[18]</sup>

### ***RTC Ruling***

After trial, the RTC handed a guilty verdict on accused-appellants for violation of Article II, Section 5 of R.A. No. 9165 for the sale, trade, delivery, administration, dispensation, distribution and transportation of *shabu*. The dispositive portion of the September 17, 2014 Judgment<sup>[19]</sup> states:

WHEREFORE, in the light of the foregoing, the two (2) accused JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA VENDIOLA, JR. are hereby found GUILTY beyond reasonable doubt of the offense of illegal transport of 0.31 gram of *shabu* in violation of Section 5, Article II of RA 9165 and are hereby sentenced each to suffer a penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The six (6) heat-sealed transparent plastic sachets with markings "JSA-