

## THIRD DIVISION

[ G.R. No. 238589, June 26, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLEN  
BAHOYO Y DELA TORRE, ACCUSED-APPELLANT.**

### DECISION

**REYES, A., JR., J.:**

On appeal is the Decision<sup>[1]</sup> dated November 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08744, which affirmed *in toto* the Decision<sup>[2]</sup> dated October 26, 2016 of the Regional Trial Court (RTC) of Makati City, Branch 65, in Criminal Case Nos. R-MKT-16-01156 to 16-01157, finding accused-appellant Allen Bahoyo y Dela Torre (Bahoyo) guilty of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165; otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

#### The Facts

In two separate Informations dated July 17, 2016, Bahoyo was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Informations read as follows:

Criminal Case No. R-MKT-16-01156-CR  
(Violation of Section 5, Article II, R.A. No. 9165)

On July 17, 2016, in the City of Makati, the Philippines, accused not being lawfully authorized by law and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell and distribute one (1) heat sealed plastic sachet containing methamphetamine hydrochloride with a weight of zero point four thousand eight hundred thirty[-]five (0.4835) - gram, a dangerous drug, in consideration of the amount of five hundred (Php500.00) pesos, in violation of the afore-cited law.

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

Criminal Case No. R-MKT-16-01157-CR  
(Violation of Section 11, Article II, R.A. No. 9165)

On July 17, 2016, in the City of Makati, the Philippines, accused, not being authorized by law and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, control and direct custody three (3) heat[-]sealed plastic sachets, containing methamphetamine hydrochloride (also known as shabu) with a total weight of zero point five thousand eight hundred eighteen (0.5818) [gram], a dangerous drug, in violation of the afore-

said law.

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

Upon being arraigned on July 26, 2016 for violation of Section 11 of R.A. No. 9165, and on August 24, 2016, for violation of Section 5 of the same Act, Bahoyo, assisted by counsel, separately entered a plea of "Not guilty" for the two offenses.<sup>[5]</sup>

### **Version of the Prosecution**

The prosecution presented two witnesses: Police Officer 2 Sherwin Limbauan (PO2 Limbauan), the poseur-buyer, and PO2 Leonard Sebial (PO2 Sebial), the backup member of the entrapment operation.

On July 17, 2016, a confidential informant arrived at the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of the Makati Police Station and reported to PO2 Limbauan about the illegal drug activities of a certain Bahoyo of Barangay Valenzuela, Makati City. A team was immediately formed by Police Superintendent Anthony Bagsik, comprising often (10) police officers, including PO2 Limbauan and PO Sebial, for a possible buy-bust operation.<sup>[6]</sup>

PO2 Limbauan and PO2 Sebial were assigned as the poseur-buyer and the immediate back-up, respectively. PO2 Limbauan was provided with one 500-peso bill to be used as buy-bust money, which he marked by affixing his initials "SCL." It was further agreed that PO2 Limbauan will remove his ballcap to alert PO2 Sebial that the transaction was consummated. After coordinating with the Philippine Drug Enforcement Agency (PDEA), the team received another call from their informant that Bahoyo was presently at the streets of J.P. Rizal corner Sta. Lucia of Barangay Olympia, Makati City.<sup>[7]</sup>

From there, the buy-bust team proceeded to the target area wherein PO2 Limbauan met with the informant and proceeded to where Bahoyo was conducting his activities. Upon seeing Bahoyo, the informant and PO2 Limbauan approached him. The informant introduced PO2 Limbauan as a buyer who was interested in purchasing P500.00 worth of *shabu*. Bahoyo asked for the payment and PO2 Limbauan handed him the marked money. Bahoyo then took out from his pocket four (4) plastic sachets containing white crystalline substance and gave one sachet to PO2 Limbauan. Upon receiving the sachet from Bahoyo, PO2 Limbauan removed his ballcap to alert the team that the transaction has been completed. After introducing themselves as police officers and informing Bahoyo of his constitutional rights, PO2 Limbauan conducted a procedural search and three (3) more sachets containing white crystalline substance were recovered from Bahoyo. At the place of arrest, PO2 Limbauan marked the plastic sachet obtained from the sale with "SCL" and the sachets seized in Bahoyo's possession with "SCL-1," "SCL-2," and "SCL-3."<sup>[8]</sup>

Thereafter, the buy-bust team proceeded to the Makati Police Station where physical inventory was conducted and photographs were taken in the presence of Bahoyo and Cesar Morales (Morales), a media representative from *Remate*.<sup>[9]</sup>

PO3 Michael Danao (PO3 Danao) was the police investigator who prepared the

investigation report and requests for laboratory examination of the items that were purchased and obtained from the accused. PO3 Danao also testified that, after the inventory, he turned over to the forensic chemist the seized drugs as evidenced in the chain of custody form.<sup>[10]</sup>

Police Senior Inspector Ofelia Vallejo, the forensic chemist, received the seized items from PO3 Danao for laboratory examination and, thereafter, prepared Physical Science Report No. D-981-2016. The test revealed that the four (4) plastic sachets containing white crystalline substance were positive for methamphetamine hydrochloride or *shabu*.<sup>[11]</sup>

Morales, a media representative of the tabloid, testified that he signed the inventory form. He was the lone independent witness during the inventory.<sup>[12]</sup>

### **Version of the Defense**

Bahoyo himself was the lone witness for the defense. He vehemently denied the accusations hurled at him and testified that at 7:30 p.m., he was on his way home to Honradez Street, Barangay Olympia, Makati City when a commotion happened at the parallel side of the street.

Curious, he went to the scene and saw that, a woman was being forced by armed men to board a tricycle. When the men saw him, they grabbed his arm and brought him inside to be taken to the SAID-SOTG. Afterwhich, he was detained for the crimes charged.<sup>[13]</sup>

In a Decision<sup>[14]</sup> dated October 26, 2016, the RTC found Bahoyo guilty of the crimes charged, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. R-MKT-16-01156-CR, the court finds the accused, Allen Bahoyo y Dela Torre, GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II, RANo. 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred [T]housand Pesos (Php500,000.00).

2. In Criminal Case No. R-MKT-16-01157-CR, the court finds the same accused, Allen Bahoyo y Dela Torre, GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, RANo. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos (Php300,000.00).

The period of detention of the accused should be given full credit.

Let the dangerous drugs subject matter of these cases be disposed of in the manner provided for by law.

The Branch Clerk of Court is directed to transmit the plastic sachets containing shabu subject matter of these cases to the PDEA for said agency's appropriate disposition.

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

On appeal, the CA affirmed the ruling of the lower court. The appellate court held that the dangerous drugs which constitute the *corpus delicti* of the offense were properly secured and that the absence of a representative from the Department of Justice and an elected public official is not fatal to the prosecution's case. The dispositive portion of the CA Decision<sup>[16]</sup> dated November 21, 2017 reads:

#### PENALTY

Under RA 9165, the penalty for the unauthorized sale of shabu, regardless of quantity and purity, is life imprisonment to death and a fine ranging from Php500,000.00 to Php10,000,000.00. However, with the enactment of RA 9346, only life imprisonment and fine shall be imposed. Thus, the penalty imposed by the trial court, which is life imprisonment and a fine of Php500,000.00, is proper. On the other hand, the penalty for illegal possession of dangerous drugs, is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Php300,000.00 to Php400,000.00, if the quantity is less than five (5) grams. Here, accused-appellant Bahoyo was found to have been in possession of 0.5818 gram of shabu. Hence, he was properly meted the penalty of imprisonment ranging from twelve (12) [years] and one (1) day, as minimum, to fourteen (14) years and eight (8) months[, ] as maximum, and a fine of Php300,000.00.

**FOR THESE REASONS**, the appeal is **DENIED**. The assailed Decision dated October 26, 2016 of the Regional Trial Court in Criminal Case Nos. R- MKT-16-01156 to 16-01157 is **AFFIRMED**.

**SO ORDERED.**<sup>[17]</sup>

Hence, the present appeal.

#### **Ruling of the Court**

The appeal is meritorious.

To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>[18]</sup>

On the other hand, in order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the

thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.<sup>[19]</sup>

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution must show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.<sup>[20]</sup>

In *People v. Relato*,<sup>[21]</sup> the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. **It is settled that the State does not establish the corpus delicti when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.<sup>[22]</sup>

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 not only provides the manner by which the seized drugs must be handled but, likewise, enumerates the persons who are required to be present during the inventory and taking of photographs, viz.:

SEC. 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 of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis and underscoring Ours)