

## SECOND DIVISION

[ G.R. No. 216754, July 17, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HAVIB GALUKEN Y SAAVEDRA, ACCUSED-APPELLANT.**

### DECISION

**CAGUIOA, J:**

This is an Appeal<sup>[1]</sup> under Section 13(c), Rule 124 of the Rules of Court from the Decision<sup>[2]</sup> dated November 5, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 00972-MIN, which affirmed the Judgment<sup>[3]</sup> dated June 22, 2010 rendered by the Regional Trial Court, Branch 20, Tacurong City in Criminal Case No. 3144, finding accused-appellant Havib Galuken y Saavedra (Havib) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,<sup>[4]</sup> otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

### The Facts

Havib was charged with violating Section 5, Article II of RA 9165. The Information<sup>[5]</sup> filed against Havib pertinently reads:

That on or about 5:35 o'clock in the afternoon of May 26, 2009 beside MCI Commercial Building, Purok 9, Barangay Poblacion, Tacurong City, Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, did then and there, willfully, unlawfully and feloniously sell and found to have sold to 101 Roderick P. Falle two (2) sachets weighing zero point one two four two (0.1242) gram of Methamphetamine Hydrochloride commonly known as Shabu, a dangerous drug.

CONTRARY TO LAW.<sup>[6]</sup>

Upon arraignment, Havib pleaded not guilty to the charge.<sup>[7]</sup>

### *Version of the Prosecution*

The version of the prosecution, as summarized by the Solicitor General and adopted by the CA, is as follows:

At about 3:00 [o]'clock in the afternoon of 26 May 2009, I03 Adrian Alvariño (I03 Alvariño), Philippine Drug Enforcement Agency (PDEA) Provincial Director for South Cotabato and Sultan Kudarat, briefed I01 Llano, I01 Falle, a monitoring officer and the confidential informant on the narcotics operation to be conducted against appellant in Tacurong City.

During the briefing, I01 Falle was designated as the poseur buyer. He was given one (1) five hundred peso bill to be used in the operation, which he marked with his initials "RPF".

After the briefing, I01 Falle and the confidential informant proceeded to Caltex Station fronting Tacurong City Fit Mart, where the appellant was waiting. On the other hand, I01 Llano, who was designated as the arresting officer, and his two (2) companions followed I01 Falle and the confidential informant using a separate motorcycle.

When they reached the gasoline station, the confidential informant and I01 Falle approached the appellant. The confidential informant introduced I01 Falle as his cousin who wanted to buy shabu. The confidential informant negotiated with the appellant. After, I01 Falle told appellant to move faster because there might be PDEA agents on the lookout. Immediately, appellant pulled from his pocket two (2) transparent plastic bags containing shabu and after examining and confirming that the contents of the bags were actually shabu, I01 Falle handed to said person the buy-bust money.

I01 Falle lighted a cigarette, as a pre-arranged signal to alert his other companions who were, at that time, strategically positioned in the area.

Appellant ran toward the round ball but I01 Llano was able to apprehend him near MCI Commercial.

The team bought the appellant and the confiscated items at the Tacurong City Police Station. I01 Falle marked the two (2) sachets with "RPF" and "RPF-1". The police officers likewise prepared an inventory receipt signed by Barangay Poblacion Kagawad Pamplona and took photographs of the seized items.

At 9:00 o'clock in the evening of the same day, I01 Falle, I01 Llano and I03 Alvariño brought appellant to PDEA Regional Office in General Santos City. The two (2) sachets remained in the custody of I01 Falle.

At the PDEA Regional Office, I01 Falle prepared his affidavit and endorsed the sachets of shabu to I01 Llano.

The following day, I01 Falle and I01 Llano delivered the sachets to the PNP Regional Crime Laboratory Office 12 in General Santos City for examination. PO2 Edmund Delos Reyes received the sachets from them.

On the same day, PO2 Delos Reyes endorsed the sachets with a letter request for laboratory examination to Police Inspector Lily Grace Mapa, a

Forensic Chemist.

Police Inspector Mapa personally examined the items, which yielded positive for methamphetamine hydrochloride, as reflected in her report. After the examination, she turned over the sachets to the evidence custodian of the Laboratory Office, PO2 Sotero Tauro, Jr.<sup>[8]</sup>

#### *Version of the Defense*

On the other hand, the version of the defense, as summarized by the Public Attorney's Office and adopted by the CA, is as follows:

On May 26, 2012, [a]ppellant went to Tacurong Fit Mart located at Tacurong City in order to buy [a] T- Shirt. After buying one, he went to the Tacurong City Public Market to take his lunch. After eating, he walked his way to the terminal for passenger vehicles located near the round ball and was arrested by unknown persons.<sup>[9]</sup>

#### **Ruling of the RTC**

In the assailed Judgment dated June 22, 2010, the RTC convicted Havib of the less serious offense of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 instead of the offense of Illegal Sale Dangerous Drugs under Section 5, Article II of RA 9165, as charged in the Information.

The dispositive portion of the Judgment reads:

Wherefore, upon all the foregoing considerations, the Court finds the guilt of accused **HAVIB GALUKEN Y SAAVEDRA** to the crime of Illegal Possession of Methamphetamine Hydrochloride, otherwise known as shabu[,], beyond reasonable doubt and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from **TEN (10) YEARS** of prision mayor, as minimum, to **SEVENTEEN (17) YEARS** and **FOUR (4) MONTHS** of reclusion temporal, as maximum and to pay the fine of **THREE HUNDRED THOUSAND PESOS (P300,000.00)**.

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**IT IS SO ORDERED.**<sup>[10]</sup>

The RTC ruled that the evidence presented by the prosecution is insufficient to prove the crime of Illegal Sale of Dangerous Drugs.<sup>[11]</sup> The alleged poseur-buyer is not actually a buyer, but a delivery man.<sup>[12]</sup> Moreover, the prosecution was not able to

present the confidential informant who negotiated for the sale of the dangerous drugs.<sup>[13]</sup> Although Havib may not be convicted of the crime charged, he can however be convicted of the crime of Illegal Possession of Dangerous Drugs.<sup>[14]</sup> The offense of Illegal Sale of Dangerous Drugs necessarily includes the offense of Illegal Possession of Dangerous Drugs, the latter being offense which the prosecution has proved.<sup>[15]</sup> Lastly, the defense of denial by Havib is a weak defense which is self-serving.<sup>[16]</sup>

Aggrieved, Havib appealed to the CA.

### **Ruling of the CA**

In the assailed Decision dated November 5, 2014, the CA affirmed Havib's conviction with modifications. The dispositive portion of the Decision reads:

**ACCORDINGLY**, the Judgment dated 22 June 2010 finding accused appellant guilty is **AFFIRMED** with **MODIFICATION**. The accused-appellant Havib Galuken y Saavedra is found **GUILTY** beyond reasonable doubt of illegal sale of dangerous drugs and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00, without eligibility for parole.

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

The CA ruled that Havib should be convicted of Illegal Sale of Dangerous Drugs as charged, not Illegal Possession of Dangerous Drugs.<sup>[18]</sup> In stark contrast to the findings of the RTC, the CA found that all the elements of Illegal Sale of Dangerous Drugs are present.<sup>[19]</sup> During the trial, IO1 Roderick P. Falle (IO1 Falle) categorically described the sale from the time he received two (2) sachets of *shabu* from Havib, the payment of the consideration, and the subsequent arrest of Havib.<sup>[20]</sup> Notwithstanding that it was the informant who made initial contact with Havib, the CA was convinced that IO1 Falle did not simply act as *delivery man* of the marked money.<sup>[21]</sup> *First*, it is explicit in IO1 Falle's testimony that understandably it was the informant who would initiate the transaction by introducing the former as the potential buyer of the *shabu*.<sup>[22]</sup> *Second*, it was IO1 Falle who told Havib to hurry up the transaction as PDEA agents might be around the area.<sup>[23]</sup> It further ruled that the inconsistencies in the testimonies of IO1 Falle and IO1 Cielito E. Llano (IO1 Llano) pertained to minor, inconsequential or trivial matters that do not impair the proven elements of the commission of Illegal Sale of Dangerous Drugs.<sup>[24]</sup> Lastly, it ruled that the police officers substantially complied with the requirements of Section 21.<sup>[25]</sup>

Hence, the instant appeal.

### **Issue**

Whether the CA erred in finding Havib guilty of the crime of Illegal Sale of Dangerous Drugs.

### **The Court's Ruling**

The petition is meritorious. Havib is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense<sup>[26]</sup> and the fact of its existence is vital to sustain a judgment of conviction.<sup>[27]</sup> It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.<sup>[28]</sup> Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>[29]</sup>

In this connection, the Court has repeatedly held that Section 21,<sup>[30]</sup> Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, **strictly requires** that (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ).<sup>[31]</sup>

Verily, the three required witnesses **should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.**<sup>[32]</sup>

While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible<sup>[33]</sup> and that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void, this has **always** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>[34]</sup>

However, in the case at bar, the police officers completely disregarded the requirements of Section 21.

*First*, none of the required witnesses was present at the place of arrest. The police officers merely called-in a Barangay Kagawad and media representative when they were already at the police station to sign the inventory receipt which they had already prepared prior to the arrival of said witnesses. Thus, it is clear that they