

## THIRD DIVISION

[ G.R. No. 243793, November 27, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOESON AGUILAR Y CIMA FRANCA, ACCUSED-APPELLANT.**

### DECISION

#### CARANDANG, J.:

This is an ordinary appeal<sup>[1]</sup> filed by accused-appellant Joeson Aguilar y Cimafranca (Aguilar) assailing the Decision<sup>[2]</sup> dated September 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02650. The CA affirmed the Judgment<sup>[3]</sup> dated June 9, 2017 of the Regional Trial Court of Dumaguete City, Branch 30 (RTC) in Criminal Case No. 2015-23112, where it ruled as follows:

**WHEREFORE**, in the light of the foregoing, the Court hereby finds the accused Joeson Aguilar y Cimafranca **GUILTY** beyond reasonable doubt of the offense of illegal sale of 5.19 grams of *shabu* in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The two (2) heat-sealed transparent plastic sachets with markings "JA-BB1-08-18-15" and "JA-BB2-08-18-15," with signature respectively containing 5.19 grams of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Joeson Aguilar y Cimafranca shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.<sup>[4]</sup>

#### The Antecedents

Aguilar was charged with violation of Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in an information that states:

That on or about the 18<sup>th</sup> day of August, 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law; did, then and there willfully, unlawfully and criminally sell to a poseur[-]buyer two (2) heat-sealed transparent plastic sachet[s] containing 5.19 grams of white crystalline substance of Methamphetamine Hydrochloride, otherwise known as

"SHABU", a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. 9165.<sup>[5]</sup>

The witnesses for the prosecution testified that at around 9:30 a.m. of August 14, 2015, the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) of the Negros Oriental Provincial Police Office received a tip from a confidential informant that a certain "Tonton" was engaged in the sale of illegal drugs in Barangay Looc, Dumaguete City. The Chief of PAIDSOTG ordered Police Officer 3 Serito Ongy (PO3 Ongy) to conduct surveillance and casing operations to verify the information. PO3 Ongy directed Police Officer 1 Crisanto Panggoy (PO1 Panggoy) and PO1 William Vera Cruz (PO1 Vera Cruz) to perform the surveillance and casing operations.<sup>[6]</sup>

On August 17, 2015, PO1 Panggoy, PO1 Vera Cruz, and the confidential informant went to Barangay Looc, where they were able to observe that "Tonton" was selling drugs. At around 9:00 p.m. that day, the confidential informant introduced PO1 Panggoy to "Tonton." PO1 Panggoy told him that he wanted to buy *shabu* worth P20,000.00, to be delivered the following day. "Tonton" agreed to deliver the *shabu* at 6 p.m. of August 18, 2015.<sup>[7]</sup>

At 2:30 p.m. of August 18, 2015, a briefing was conducted for the buy-bust operation against "Tonton."<sup>[8]</sup> PO1 Panggoy was designated as the *poseur*-buyer, PO1 Vera Cruz as his back-up and photographer, and the rest of the PAIDSOTG as perimeter security. PO1 Panggoy prepared the P500.00 bill as buy-bust money by marking it with "CP" and bundled it together with cut-up manila paper<sup>[9]</sup> to make it appear that it was P20,000.00. The coordination request was given to the Philippine Drug Enforcement Agency (PDEA), and a coordination control number and a certificate of coordination were issued.<sup>[10]</sup>

Before 6:00 p.m., PO1 Panggoy, PO1 Vera Cruz, and the rest of the buy-bust operation team proceeded to Barangay Looc. PO1 Panggoy waited for "Tonton" in front of a basketball court by the road. When he saw "Tonton," he approached him and asked for the *shabu*. "Tonton" asked him to show the money, and so PO1 Panggoy quickly flashed it to him. "Tonton" then took out two heat-sealed transparent plastic sachets containing white crystalline substance and gave them to PO1 Panggoy. PO1 Panggoy examined the contents of the sachet and handed the buy-bust money to "Tonton." When "Tonton" was about to turn his back to leave, PO1 Panggoy held him. He arrested him and informed him of his constitutional rights in a Visayan dialect. PO1 Panggoy asked him if he understood and "Tonton" nodded. He also conducted a body search and recovered the buy-bust money<sup>[11]</sup> from "Tonton's" hand.<sup>[12]</sup> PO1 Panggoy asked "Tonton" for his real name and the latter identified himself as Aguilar.<sup>[13]</sup>

When the back-up team arrived, PO1 Panggoy turned Aguilar over to PO1 Vera Cruz. PO1 Panggoy marked the two sachets with Aguilar's initials and signed them. Upon seeing that there were a number of people gathering around the area, the buy-bust operation team brought Aguilar to the Dumaguete City police station together with the confiscated items, which were in PO1 Panggoy's possession.<sup>[14]</sup>

At the police station, PO1 Panggoy conducted an inventory of the sachets and the buy-bust money, and prepared an inventory of the property seized in the presence of Aguilar, media representative Juancho Gallarde (Gallarde), Department of Justice representative Anthony Benlot (Benlot), and Barangay Captain Angelita Ragay (Ragay). All of them signed the inventory, together with PO3 Ongy. PO1 Vera Cruz took photographs during the inventory.<sup>[15]</sup> The inventory states that two pieces of transparent plastic sachets containing suspected *shabu* granules/powder and one marked P500.00 bill with bogus money used as buy-bust money were recovered from Aguilar.<sup>[16]</sup>

PO1 Panggoy placed the sachets in a brown envelope, which he sealed with a tape and signed. He prepared a memorandum request for crime laboratory examination and drug test. Afterwards, he went to the Negros Oriental Provincial Crime Laboratory. PO3 Edilmar Manaban (PO3 Manaban) received the brown envelope and retrieved the sachets inside to confirm that these were the items listed in the memorandum request. After confirming it, he placed the sachets back in the envelope and resealed it.<sup>[17]</sup> PO3 Manaban then placed the envelope inside his locker, which only he could access. He also collected a urine sample from Aguilar and placed it inside the refrigerator of the crime laboratory.<sup>[18]</sup>

On August 19, 2015,<sup>[19]</sup> PO3 Manaban submitted the memorandum request, the brown envelope, and the urine sample to Police Chief Inspector Josephine Llana (PCI Llana). She examined the contents of the sachets and the urine sample and found that they tested positive for the presence of methamphetamine hydrochloride. PCI Llana stated her findings in her chemistry reports. She kept the specimens in the evidence vault of the crime laboratory prior to their submission in court.<sup>[20]</sup>

An information for violation of Section 5, Article II of R.A. 9165 was filed against Aguilar.<sup>[21]</sup> He entered a plea of not guilty.<sup>[22]</sup>

Aguilar argued that he was inside his house fixing his speaker when five persons, whose faces were covered, entered and ransacked his house. They pointed their guns at him and, later, handcuffed him. Aguilar's mother Corazon, who was at home, saw what happened. Thereafter, Aguilar was brought to the back of the National Bureau of Investigation office where he was shown a picture of a male person and a female person. He was asked if he knew them but he did not. Aguilar was then brought to the police station. He saw that a sachet of *shabu* and a P500.00 bill were on top of a table. He was made to sit beside the table but he objected, claiming that none of the items on the table belonged to him.<sup>[23]</sup>

PCI Llana submitted her chemistry reports and the specimens to the court during trial.<sup>[24]</sup> She was presented as a witness for the prosecution together with PO3 Ongy, PO1 Panggoy, PO1 Vera Cruz, Gallarde, Benlot, Ragay, PO3 Manaban, and PDEA Agent Francisfil Tangerang.<sup>[25]</sup> Aguilar and his mother, Corazon, testified for the defense.<sup>[26]</sup>

### **Ruling of the RTC**

On June 9, 2017, the RTC found Aguilar guilty beyond reasonable doubt of the crime charged and sentenced him to a penalty of life imprisonment and to pay a fine of

P500,000.00.<sup>[27]</sup> The RTC held that the prosecution was able to establish that Aguilar sold dangerous drugs.<sup>[28]</sup> The testimonies of their witnesses were more credible than those of the defense. There was also no showing that PO1 Panggoy was motivated by ill will against Aguilar.<sup>[29]</sup> As for Aguilar's arrest, it is valid because he was caught *in flagrante delicto*. Moreover, Aguilar did not question his arrest before his arraignment.<sup>[30]</sup>

With respect to the integrity and evidentiary value of the drug specimens, the RTC ruled that they were not compromised. PO1 Panggoy marked the sachets at the crime scene. He brought them to the police station to conduct an inventory. The inventory was done in the presence of all the required witnesses. Photographs were taken. PO1 Panggoy then brought the sachets to the crime laboratory where PO3 Manaban received them. PO3 Manaban turned them over to PCI Llena, who submitted them to the RTC.<sup>[31]</sup>

Aguilar appealed to the CA.

### **Ruling of the CA**

On September 27, 2018, the CA denied the appeal and affirmed the RTC judgement *in toto*.<sup>[32]</sup> First, the CA held that all the elements of Section 5, Article II of R.A. 9165 were proven.<sup>[33]</sup> PO1 Panggoy positively identified Aguilar as the one who handed to him the sachets containing *shabu*. Aguilar received the buy-bust money as payment for the *shabu*.<sup>[34]</sup> The CA ruled that the testimonies of the prosecution's witnesses attesting to these were credible.<sup>[35]</sup> Further, no ill will on the part of the police operatives to falsely charge Aguilar was shown.<sup>[36]</sup> *Second*, Section 21 of R.A. 9165 was complied with. All the persons who had the drugs in their custody were presented in court.<sup>[37]</sup> *Third*, Aguilar never assailed his arrest before he was arraigned. He was, thus, deemed to have waived any objection to it.<sup>[38]</sup>

Aguilar appealed the ruling of the CA to this Court. Both Aguilar<sup>[39]</sup> and the Office of the Solicitor General,<sup>[40]</sup> on behalf of plaintiff-appellee, manifested that they would no longer file a supplemental brief before this Court because their respective briefs before the CA have sufficiently discussed their positions.

### **Arguments of the Accused**

*First*, Aguilar argued that he was not committing a crime when he was arrested. Hence, his arrest and the search conducted in connection to it were unlawful. Any evidence which were seized as a result were inadmissible. That being the case, there was no basis to sustain his conviction. *Second*, Aguilar pointed out that Section 21 of R.A. 9165 was not complied with. The inventory and taking of the photographs were not done at the place of arrest. Also, PO1 Panggoy did not immediately mark the items after recovering them. Further, Gallarde, Benlot, and Ragay were not present when the items were seized from Aguilar. They testified that the seized items were already marked and placed on top of the table when they arrived at the police station to observe the inventory. As such, they failed to observe its conduct. No justifiable ground was given by the police officers for their lapses. Consequently, the identity and integrity of the seized items were compromised.

*Third*, the fact of sale was not sufficiently established. PO1 Panggoy's testimony was insufficient to prove the sale because no one corroborated it with respect to the consummation of the sale.<sup>[41]</sup>

### **Arguments of Plaintiff-Appellee**

*First*, plaintiff-appellee argued that all the elements of a sale of a prohibited drug were established in this case through PO1 Panggoy's testimony and the other evidence submitted in court. *Second*, Section 21 of R.A. 9165 was complied with. The conduct of the marking in the police station was justified because people were already milling about the buy-bust area. In any event, R.A. 9165 does not require that the marking be done in the place where the buy-bust operation was conducted. *Third*, Aguilar's arrest was valid because he was caught *in flagrante delicto*. *Fourth*, the penalty imposed was correct.<sup>[42]</sup>

### **Issue**

Whether or not the CA erred in upholding the conviction of Aguilar.

### **Ruling of the Court**

The appeal is meritorious.

It is well-settled that the factual findings of the trial court, when affirmed by the CA, are binding on this Court unless facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner.<sup>[43]</sup> Despite the uniform factual findings of the RTC and the CA in this case, a review thereof is called for.

According to PO1 Panggoy, the payment he gave to Aguilar consisted of one P500.00 bill and bogus money made of cut manila paper. He explained that the bogus money was as thick as a bundle of P50,000.00,<sup>[44]</sup> albeit the payment due to Aguilar was only P20,000.00. It is incredulous that PO1 Panggoy's payment was handed to him even though the bulk of it consists of cut-out manila paper and, therefore, evidently fake. That Aguilar would part with the dangerous drugs after PO1 Panggoy merely flashed the payment to him is doubtful considering the sum involved. The police's version of a legitimate buy-bust operation lacks credence. An exchange of a few pieces of peso bills for a small volume of *shabu* can be believable but for more than five grams of *shabu* worth P20,000.00 with one genuine bill and a bundle of cut-out manila paper to be accepted by the accused without question, and about to be counted by him,<sup>[45]</sup> is certainly incredulous. We, thus, find the veracity of the prosecution's version of what transpired on August 18, 2015 questionable.

Further, Section 21 of R.A. 9165, as amended by R.A. 10640,<sup>[46]</sup> was not complied with. Section 21(1) states:

- (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the