

FIRST DIVISION

[G.R. No. 215713, January 22, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BOBBY S. ABELARDE, ACCUSED-APPELLANT.

D E C I S I O N

DEL CASTILLO, J.:

"Law enforcers should not trifle with the legal requirement [set forth in Section 21 of Republic Act (RA) No. 9165] to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."^[1]

Factual Antecedents:

On April 4, 2005, the Office of the City Prosecutor of Cebu City charged the accused-appellant Bobby S. Abelarde a.k.a. Roberto S. Abelarde, with violation of Section 5, Article II of RA 9165, under an Information which alleged –

That on or about the 24th day of March, 2005, at about 5:15 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of the law, did then and there sell, deliver or give away to poseur buyer one (1) heat sealed transparent plastic packet of white crystalline substance weighing 0.03 gram, locally known as shabu, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[2]

This case was docketed as Criminal Case No. CBU-72995 of the Regional Trial Court (RTC) of Cebu City.

The next day, April 5, 2005, the Office of the City Prosecutor of Cebu City filed another Information against the same accused-appellant, this time for violation of Section 11, Article II of RA 9165. The Information this time read as follows –

That on or about the 24th day of March, 2005, at about 5:15 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control six (6) heat sealed

transparent [plastic packets] of white crystalline substance weighing 0.24 gram, locally known as shabu, containing methylamphetamine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.^[3]

This second case was docketed as Criminal Case No. CBU-72996 of the RTC of Cebu City.

Arraigned on these two cases, the accused-appellant, assisted by a lawyer from the Public Attorney's Office, entered a negative plea to both indictments.^[4]

During the pre-trial conference, the accused-appellant admitted the following:

- 1) The qualification of the Forensic Chemist, Police Chief Inspector Mutchit G. Salinas (PCI Salinas), of the Cebu Philippine National Police (PNP) Crime Laboratory;
- 2) The existence of the Chemistry Report, marked as Exhibit "A" Criminal Case No. CBU-72995;
- 3) The existence of the same Chemistry Report also marked as Exhibit "A" in Criminal Case No. CBU-72996;
- 4) The existence of the buy-bust money;
- 5) The existence of the Joint Affidavit of SPO1 Elmer Villanueva Abelgas (SPO1 Abelgas), SPO1 Willard Cayang Selibio (SPO1 Selibio); PO2 Rene Genobatin Labiaga (PO2 Labiaga), PO1 Aldwin Nacorda Vicada (PO1 Vicada), all members of the Miscellaneous Team of the PNP, Cebu City. This joint affidavit was marked as Exhibit "B" in Criminal Case No. CBU-7299S and marked as Exhibit "C" in Criminal Case No. CBU-72996.
- 6) The identity of the accused-appellant; and
- 7) The fact that the accused-appellant was attested on the afternoon of March 24, 2005 at Sitio Suba, Pasil, Cebu City, although the accused-appellant is challenging the legality of his arrest.^[5]

Version of the Prosecution:

The Government presented only one witness to prove its case: SPO1 Selebio, a member of the so-called "Miscellaneous Team" of the Cebu City PNP which arrested the accused-appellant that afternoon of March 4, 2005 somewhere in Suba, Pasil, Cebu City. The testimony of PCI Salinas, forensic chemist of the Cebu PNP Crime Laboratory was dispensed with, for the reason that the defense admitted the existence of the letter request for chemical examination of the prohibited substance *shabu* involved in these cases, as well as the existence of the chemistry report embodying the result of the chemical examination thereof.^[6]

SPO1 Selibio testified^[7] that on the afternoon of March 24, 2005, he received a call from a concerned citizen that a certain person was engaged in the trading of illegal drugs, somewhere in Garfield, interior portion of Suba, Pasil in Cebu City; that upon receipt of the call, he and his fellow police officers all members of the Miscellaneous Team of the Cebu City PNP, held a "briefing" together with the confidential informant for the purpose of conducting a "buy-bust" operation. Apart from himself, the other members of this "buy-bust" team were SPO1 Abelgas, PO2 Labiaga, PO1 Vicada and a civilian poseur-buyer. After they reached Garfield Street, *Sitio* Suba, *Barangay* Pasil, Cebu City their civilian poseur-buyer approached the accused-appellant and struck up a conversation, with the latter. From a distance, SPO1 Selibio saw their poseur-buyer give to the accused-appellant the pre-marked P100.00 (with Serial Number XC704764), in exchange for something. At this point, the poseur-buyer scratched his head, the pre-arranged signal that the transaction had been consummated, so he and the members of his team rushed toward the accused-appellant and arrested him. He and his teammates frisked the accused-appellant and were able to recover from him a packet of *shabu*. Further search of the accused appellant's body yielded yet another six packets of the banned substance *shabu*.

The packets of *shabu* were then marked and later sent to the PNP Crime Laboratory at Camp Sotero Cabahug in Cebu City for chemical examination. The chemical analysis disclosed that the specimens were positive for the presence of methamphetamine hydrochloride, a dangerous drug locally known as *shabu*.

Version of the Defense:

The accused-appellant categorically denied that he ever sold *shabu* to anyone that afternoon of March 24, 2005 in Pasil, Cebu City, or that he was in possession of *shabu* at the said place and time. He claimed that he was simply "framed-up" by the police officers, and that the alleged packets of *shabu* allegedly taken from him were "planted" evidence.^[8]

The accused-appellant, who earns his living as a tricycle driver, testified that on the afternoon in question, he went to the house of one "Nanay," his neighbor at Magsaysay Street, Cebu City, to buy water for bathing and washing; that as no water was yet coming out of "Nanay's" faucet, he passed the time watching TV at the gate of the house of mother neighbor, a certain "Mommy," whose house was just opposite, or across from, the house of "Nanay;" that in Nanay's house he in fact saw some acquaintance like Lily and her companions who were playing cards; that while waiting for his pail to be filled with water, police officers appeared in the scene, and after one "balding" police officer had pointed to him, another police officer whom he identified in court as "Sir Willard," at once frisked him; that he resisted the frisking, but this Sir Willard told him to shut up, and to stop being "stubborn" and "just go with them;"^[9] that because he insisted that he did not know what wrongdoing he had done, and because the police officers did not care to reply to his query as to what crime he had committed, he put up a stronger resistance to their frisking of his body; that in fact the frisking of his body by the policemen yielded nothing at all; that apparently incensed at his resistance, the police officers forcibly brought him to the Tabo-an Police Station, in Cebu City; that while there, the police officers asked him "who are the drug lords in our place;"^[10] and that when he replied that "I do not know about that"^[11] the police officers became more infuriated and told him that they would "[add] Section 5 to my case;"^[12] and that because he exhibited a

persistently defiant attitude, he was brought by the police to another police station, where he was mauled by a police officer, whose name he could not now recall.

Marily Torrecampo, the accused-appellant's neighbor in Magsaysay Street, *Sitio Suba, Barangay Pasil*, Cebu City testified^[13] that on the afternoon in question she was in her house playing cards, when the accused-appellant passed by and she invited him to attend the "visita iglesia;" that without replying to her invitation in a clear-cut manner, the accused-appellant went on his way, and the next thing she saw was that the accused-appellant was fetching water, and she later saw him watching television at the opposite end of the street alley where they lived; that after a little while, she suddenly noticed the presence of police officers in that place, and when the police officers got to their alley, one of the police officers pointed to the accused-appellant as the "one selling *shabu*,"^[14] and the other police officers at once "handcuffed and arrested"^[15] the accused-appellant; that the police officers also frisked the accused-appellant "but we never saw that something was taken from him;"^[16] that while being frisked, the accused-appellant put up a strong resistance, but the police officers forcibly brought him with them; that at this point the accused-appellant "shouted to call his mother,"^[17] and she herself also called another person "to call Bobby's mother to inform the mother of Bobby that Bobby was arrested;"^[18] and that she remembered that the people around them even asked the policemen, "what are you doing with Bobby?"^[19] that "he is being treated like a pig x x x considering that [when] Bobby rolled to the ground, they bodily carried Bobby."^[20]

Ruling of the Regional Trial Court:

Given these facts, the RTC of Cebu City, Branch 13,^[21] held:

The prosecution proved all the elements of the crime of Sale under Sec. 5, Art. II, RA 9165. Thus, the identity of the seller as well as their buyer were clearly proven. There was an exchange of shabu weighing 0.03 gram for P100.00. The shabu was identified, marked, presented, and admitted in evidence.

All the elements of possession of the dangerous drugs are likewise present. Thus, after a search incident to a lawful arrest, the police officers found six (6) packets of shabu weighing 0.24 gram in the personal possession of the accused. There is a clear intent to possess them because they were found in his possession. The six (6) plastic packets of shabu were identified, marked, presented and admitted in evidence.

This court is not inspired by the self-serving, general denial interposed by the accused. He did not know any of the police officers who arrested him.

There is no evidence that the poseur-buyer had an ax to grind against him. The police officers had no ill-motive to plant evidence against the accused. There is a presumption that the arrest and search of the accused were done in the performance of their public functions. His other

witness, Narile Torrecampo who is a close friend of his wife also testified in plain denial of the testimony of prosecution witness Selebio. It must be remembered that when the accused testified, he did not mention Narile Torrecampo.^[22]

The RTC thereafter disposed as follows –

WHEREFORE, judgment is hereby rendered finding ACCUSED BOBBY S. ABELARDE also known as Roberto S. Abelarde GUILTY in CBU-72995, for violation of Sec. 5, Art. II, RA 9165 and sentences him to LIFE IMPRISONMENT and fine in the amount of P500,000.00 and in CBU-72996, he is likewise found GUILTY of violating Sec. 11, Art. II, RA 9165, and sentences him to TWELVE (12) YEARS AND ONE (1) DAY TO FOURTEEN (14) YEARS of imprisonment, plus fine in the amount of P300,000.00.

The seven (7) packs of shabu are hereby ordered, CONFISCATED. in favor of the government and DESTROYED pursuant to the [p]rovisions of RA 9165.

With costs against the accused in both cases.

SO ORDERED.^[23]

Ruling of the Court of Appeals

From this judgment, accused-appellant appealed to the Court of Appeals (CA), where his appeal was docketed as CA-G.R. CEB-CR HC No. 01072. The accused-appellant's appeal was predicated on a single assignment of error: that the State failed to prove his guilt beyond reasonable doubt. After review, the appellate court rejected the appeal, but made a slight modification in the penalty meted out in Criminal Case No. CBU-72996, thus –

All told, the Court finds nothing in the records that would justify a deviation from the findings of the trial court that the guilt of the accused for the illegal sale and possession of illegal drugs have been proven beyond reasonable doubt.

Under Section 5 of Republic Act No. 9165, the unauthorized sale of shabu, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00. Hence, the penalty of life imprisonment and fine in the amount of P500,000.00 imposed by the trial court in CBU-72995 for violation of Section 5, Art. II, RA 9165 is proper.

Section 11(3) of Republic Act No. 9165 provides that the illegal possession of less than five grams of shabu is penalized with