

FIRST DIVISION

[G.R. No. 210610, January 11, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
MARILOU HILARIO Y DIANA AND LALAINA GUADAYO Y ROYO,
ACCUSED. MARILOU HILARIO Y DIANA, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is an appeal filed by accused-appellant Marilou D. Hilario (Hilario) of the Decision^[1] dated July 18, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05244, affirming with modification the Decision^[2] dated August 23, 2011 of the Regional Trial Court (RTC) of Lemery, Batangas, Branch 5 in Criminal (Crim.) Case Nos. 10-2008, 11-2008, and 13-2008. In its assailed Decision, the appellate court found Hilario guilty of illegal sale of dangerous drugs, in violation of Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002; but acquitted Hilario and her co-accused Lalaine R. Guadayo (Guadayo) of illegal possession of dangerous drugs, penalized under Article II, Section 11 of Republic Act No. 9165. The RTC had previously convicted Hilario and Guadayo of all charges against them.

On January 25, 2008, three Informations were filed before the RTC against Hilario and Guadayo, to wit:

Docket No.	Accused	Charge
Crim. Case No. 10-2008	Hilario	Illegal Sale of Dangerous Drugs (Article II, Section 5 of R.A. No. 9165)
Crim. Case No. 11-2008	Hilario	Illegal Possession of Dangerous Drugs (Article II, Section 11 of R.A. No. 9165)
Crim. Case No. 13-2008	Guadayo	Illegal Possession of Dangerous Drugs (Article II, Section II of R.A. No. 9165)

The Information in Crim. Case No. 10-2008 accused Hilario of illegal sale of dangerous drugs, allegedly committed as follows:

That on or about the 22nd day of January, 2008, at about 11:00 o'clock in the evening, at Barangay Maguihan, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully sell, deliver and give away one (1) small heat-sealed transparent plastic sachet containing methamphetamine

hydrochloride commonly known as "*shabu*", weighing 0.04 gram, referred to as specimen A (NBS-1) in Chemistry Report No. BD-012-08, a dangerous drug.^[3]

Hilario was also charged with illegal possession of dangerous drugs under the Information in Crim. Case No. 11-2008, thus:

That on or about the 22nd day of January, 2008, at about 11:00 o'clock in the evening, at Barangay Maguihan, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in her possession, custody and control one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as "*shabu*", weighing 0.03 gram, referred to as specimen B (NBS-2) in Chemistry Report No. BD-012-08, a dangerous drug.^[4]

The Information in Crim. Case No. 13-2008 was similarly worded to that in Crim. Case No. 11-2008, except that it incriminated Guadayo for illegal possession of "one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as '*shabu*,' weighing 0.04 gram, a dangerous drug."^[5]

When arraigned on April 29, 2008, Hilario and Guadayo pleaded not guilty to the charges against them.^[6]

The prosecution presented a lone witness, Police Officer (PO) 1 Nemesio Brotonel de Sagun (de Sagun) of the Philippine National Police (PNP), then assigned in Lemery, Batangas. PO1 de Sagun testified that on January 22, 2008, at around 11:00 in the evening, he was with PO2 Arnold Magpantay (Magpantay) and PO1 Melvin Cabungcal (Cabungcal) in Sitio Bagong Barrio, Barangay (Brgy.) Maguihan, Lemery, Batangas, to conduct surveillance and a buy-bust operation. PO1 de Sagun, in civilian clothes, acted as poseur-buyer and was able to buy *shabu* for P500.00 from Hilario. Upon consummation of the sale, PO1 de Sagun personally arrested Hilario and marked the P500.00-bill he paid Hilario as "NBS-1" and the *shabu* Hilario sold to him as "NBS-2." After the arrest, PO1 de Sagun brought Hilario to the Lemery police station and turned over custody of Hilario to the investigator-on-duty, but PO1 de Sagun could not recall the name of said investigator. PO1 de Sagun also claimed that he prepared an inventory of the seized items in the presence of "Ma'm Orlina" and Sims Garcia, representatives from the Department of Justice (DOJ) and the media, respectively. PO1 de Sagun then brought the seized items to the Batangas Provincial Crime Laboratory Office for examination, and according to him, the submitted specimen tested positive for *shabu*.^[7]

PO1 de Sagun further recounted that during the buy-bust operation, Guadayo ran away, so PO2 Magpantay had to chase after her. When PO2 Magpantay subsequently caught up with Guadayo, he recovered and confiscated from her another sachet of *shabu*. PO1 de Sagun, though, admitted that he was not personally present when PO2 Magpantay seized the sachet of *shabu* from Guadayo.

During PO1 de Sagun's direct examination, a brown sealed envelope was presented, and when opened, it contained two heat-sealed transparent sachets of *shabu*. When questioned as to why there were two sachets of *shabu*, PO1 De Sagun maintained

that he confiscated only one sachet from Hilario, and suggested that the other sachet was the one seized by PO2 Magpantay from Guadayo. Between the two sachets of *shabu*, PO1 de Sagun identified the sachet marked "NBS-1" as the one which he confiscated from Hilario.^[8]

When PO1 de Sagun was subjected to cross-examination, he reiterated that he had marked the P500.00-bill used in the buy-bust operation as "NBS 1" and the sachet of *shabu* bought from Hilario as "NBS-2." When pressed further by the defense counsel on the fact that he identified the sachet of *shabu* marked as "NBS-1" as the one he seized from Hilario, PO1 de Sagun confirmed the apparent discrepancies in his testimony.^[9]

Also in the course of PO1 de Sagun's cross-examination, he attested that he, PO2 Magpantay, and PO1 Cabungcal went to Brgy. Maguihan on January 22, 2008 based on information gathered from concerned citizens that sale of dangerous drugs was rampant in the area; they prepared a pre-operation report but he did not have a copy of the same with him at the trial; they did not know nor did they conduct a surveillance of Hilario and Guadayo prior to January 22, 2008; and when they went to Brgy. Maguihan, they were not certain of the subject of their buy-bust operation.

The prosecution additionally submitted as evidence the *Magkalakip na Sinumpaang Salaysay* dated January 22, 2008 of PO1 de Sagun and PO2 Magpantay; Chemistry Report No. BD-012-08 dated January 23, 2008 issued by Police Chief Inspector (P/CInsp.) Jupri Caballegan Delantar, Forensic Chemical Officer, of the Batangas Provincial Crime Laboratory Office, PNP; the sachet of *shabu* with marking "NBS-1;" and photocopy of the P500.00-bill with Serial No. 665579 and marking "NBS-1." Chemistry Report No. BD-012-08 stated that two specimens were seized from Hilario, *i.e.*, Specimens A (NBS-1) and B (NBS-2), weighing 0.04 gram and 0.03 gram, respectively, which both tested positive for Methamphetamine Hydrochloride, a dangerous drug.

For its part, the defense called Hilario^[10] and Guadayo^[11] to the witness stand. Hilario used to live in Tondo, Manila, but their house was demolished, so she and her family moved to Brgy. Maguihan in Lemery, Batangas in March 2007. Guadayo lived with and served as a babysitter for Hilario's sister-in-law.

According to the combined narrative of Hilario and Guadayo, on January 22, 2008, at about 10:00 in the evening, they were both at Hilario's house. Hilario was tending to her sick 12-year-old daughter, and Guadayo was there to help Hilario with the laundry. A neighbor, Feliciano Anuran (Anuran), had just arrived to borrow a DVD, when three police officers entered Hilario's house. Among the police officers, Hilario already knew PO1 de Sagun at that time because the latter frequented their place. The police officers demanded that Hilario show them the money and *shabu*. Hilario replied that she did not have any money and *shabu*. Without presenting any warrant, the police officers, particularly, PO1 de Sagun, then searched Hilario's house, but found nothing. At this point, Anuran ran out of the house and was chased by the police officers. When the police officers returned, they invited Hilario and Guadayo to the police station to answer some of the police officers' questions. When Hilario further inquired as to the reason for the invitation, the police officers told her to just go with them. The police officers brought Hilario, Guadayo, and even Hilario's sick daughter to the police station, and after only a short stay at an office in the police station, and without actually being asked any questions, all three were put in

jail. On January 23, 2008, Hilario and Guadayo were subjected to a drug test, and on January 24, 2008, they were brought to Batangas City for inquest proceedings.

On August 23, 2011, the RTC promulgated its Decision, finding Hilario and Guadayo guilty of all the charges against them. The RTC highlighted that this was a case of a buy-bust operation and adjudged that the prosecution was able to prove all the elements of the offenses charged, to wit, the prosecution witness, PO1 de Sagun, testified on how the buy-bust transaction took place and properly identified the poseur-buyer and seller, plus the illegal drug was presented as evidence in court. The RTC sentenced Hilario and Guadayo as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 10-2008, accused Marilou Hilario y Diana, is hereby found guilty beyond reasonable doubt for violating Sec. 5 of Republic Act 9165 and is hereby sentenced to suffer the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00);
2. In Criminal Case No. 11-2008, accused Marilou Hilario y Diana, is hereby found guilty beyond reasonable doubt for violating Sec. 11 of Republic Act 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment;
3. In Criminal Case No. 13-2008, accused Lalaine Guadayo y Royo, is hereby found guilty beyond reasonable doubt for violating Sec. 11 of Republic Act 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment.^[12]

The Motion for Reconsideration of Hilario and Guadayo was denied for lack of merit by the RTC in an Order^[13] dated September 26, 2011. Hilario and Guadayo filed a Notice of Appeal,^[14] which the RTC granted in an Order^[15] dated October 5, 2011.

The appeal of Hilario and Guadayo before the Court of Appeals was docketed as CA-G.R. CR.-H.C. No. 05244.

In its Decision dated July 18, 2013, the Court of Appeals partially granted the appeal.

The Court of Appeals affirmed the conviction of Hilario for illegal sale of dangerous drugs in Crim. Case No. 10-2008, finding PO1 de Sagun's testimony on the completed buy-bust operation credible. It was amply proven by PO1 de Sagun's testimony that a sale of *shabu* transpired between Hilario as the seller and PO1 de Sagun as the poseur-buyer. The appellate court also cited the presumption of regularity in PO1 de Sagun's performance of his official duties; the absence of proof of ill motive on PO1 de Sagun's part to falsely impute a serious crime against Hilario; and substantial compliance with the procedure on custody of evidence in drug cases since PO1 de Sagun took custody of the sachet of *shabu* seized from Hilario and personally delivered the same to the crime laboratory for examination, wherein it was tested positive for *shabu*.

The Court of Appeals though, in the same Decision, acquitted Hilario in Crim. Case No. 11-2008 and Guadayo in Crim. Case No. 13-2008, for the following reasons:

Criminal Case No. 11-2008

On the other hand, this Court disagrees with the trial court in finding accused-appellant Hilario guilty for violation of Section 11 of R.A. No. 9165.

x x x x

In prosecution for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.

Significantly, in the present case, only one sachet of *shabu* was confiscated from accused-appellant [Hilario], the one subject of the sale. No evidence was shown that she was further apprehended in possession of another quantity of prohibited drugs not covered by or included in the sale. As correctly argued by the plaintiff-appellee, the accused cannot be convicted for possession of the prohibited drugs she sold because possession of dangerous drugs is generally inherent in the crime of sale.

In *People v. Posada*, the Supreme Court ruled that possession of prohibited or dangerous drugs is absorbed in the sale thereof, citing the case of *People v. Lacerna* x x x.

x x x x

To reiterate, only one (1) *shabu* sold by accused-appellant, Hilario was established. There was no other evidence that another *shabu* as found in her possession, not covered by the sale and probably intended for a different purpose like another sale or for her own use was proven. Accordingly, she cannot be convicted separately for illegal possession and for illegal sale because in this particular case possession is absorbed in the act of sale thereof.

Criminal Case No. 13-2008

Anent, accused-appellant, Guadayo, this Court is convinced that the trial court erred in finding the accused guilty for violation of Section 11 of R.A. No. 9165.

The prosecution was able to establish that appellant Guadayo was in possession of a sachet of *shabu* as testified to by PO1 De Sagun who recounted that PO1 Magpantay pursued and arrested Guadayo x x x.

x x x x

Unfortunately, the record is bereft of proof on the chain of custody of the *shabu* taken from appellant Guadayo. PO1 De Sagun did not state that the sachet of *shabu* was handed to him by PO1 Magpantay after it was confiscated from appellant Guadayo. The chain of custody rule requires that the testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. Notably, in this case, the prosecution failed to put on witness stand PO1