

# FIRST DIVISION

[ G.R. No. 231981, August 20, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY BANQUILAY Y ROSEL, ACCUSED-APPELLANT.**

## DECISION

**PERALTA,\* J.:**

This is an appeal from the Decision<sup>[1]</sup> dated October 28, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 02127 affirming the Decision<sup>[2]</sup> dated August 11, 2015 of the Regional Trial Court (RTC) of Caibiran, Naval, Biliran, Branch 37, in Criminal Case No. CB-12-435 finding herein accused-appellant Henry Banquilay y Rosel (*Banquilay*) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.<sup>[3]</sup>

In an Information<sup>[4]</sup> dated May 3, 2012, Banquilay was charged with violation of Section 5, Article II of R.A. No. 9165, which reads:

That on or about the 2<sup>nd</sup> day of May 2012, at around 5:15 o'clock in the afternoon, more or less, in the Municipality of Caibiran, Biliran and within the jurisdiction of this Honorable Court, [the] above-named accused Henry Banquilay y Rosel, with intent of gain and without being authorized by law, did then and there, willfully, unlawfully, sell, trade, and deliver to one Floro Katangkatang, Jr., of PDEA [Region] 8, one (1) heat-sealed plastic sachet containing methylamphetamine hydrochloride or locally known as "shabu," a dangerous drug, per laboratory examination conducted by PNP Regional Crime Laboratory Office VIII, Camp Ruperto Kangleon, Palo, Leyte, to the damage and prejudice of the State.

Upon arraignment, Banquilay pleaded not guilty<sup>[5]</sup> to the offense charged.

The prosecution's evidence consists of the testimonies of: (1) PSI Vivienne Mae del Pilar-Malibago (*PSI Malibago*), the forensic chemist who examined the one (1) heat-sealed sachet containing a white crystalline substance (the *specimen*)<sup>[6]</sup> seized from Banquilay; (2) IO1 Floro Y. Katangkatang, Jr. (IO1 *Katangkatang*), the assigned poseur-buyer who seized the specimen from, and conducted the body search on the accused to retrieve the marked P1,000.00 bill with serial number DN858085,<sup>[7]</sup> among others;<sup>[8]</sup> (3) PO1 James Philip Canaleja (*PO1 Canaleja*), the officer assigned as the receiving police non-commissioned officer (*PNCO*) and the one who received the specimen from IO1 Katangkatang;<sup>[9]</sup> (4) IO1 Silas Aurelia (IO1 *Aurelia*), the assigned photographer during the buy-bust operation;<sup>[10]</sup> (5) IO3 Alex Tablate (IO3 *Tablate*), the assigned operation team leader and the one who arrested Banquilay;

[11] (6) *Barangay* Captain Leo Insigne (*Insigne*), the local elected official present to witness the body search on the accused and the inventory of the seized items, as well as the person who signed the inventory receipt; and (7) PO2 Leopoldo Vivero, Jr. (*PO2 Vivero*), the assigned arresting officer of the Caibiran Police Station and the one who assisted IO3 Tablate in arresting the accused.[12]

The evidence of the prosecution based on the records is summarized as follows: On May 2, 2012, at around 9:00 in the morning, several Philippine Drug Enforcement Agency (*PDEA*) agents, namely IO3 Tablate, IO1 Katangkatang, and IO1 Aurelia, among others, received instructions from their superior to conduct a buy-bust operation in Caibiran, Biliran. IO3 Tablate was assigned as the operation's team leader, while IO1 Aurelia was assigned as the operation photographer. IO1 Katangkatang was designated as the poseur-buyer and would be accompanied by their informant. The team prepared the *PDEA* pre-operation report[13] with Authority to Operate with control number M005-01-12A.[14] At around 1:00 in the afternoon, the team arrived at a beach resort outside of Caibiran, Biliran, to meet the rest of the team consisting of members of the Caibiran Police Station, and their informant. IO3 Tablate, along with PO2 Vivero of the Caibiran Police Station, were assigned as the arresting officers, while the rest served as back-up.

Upon reaching the town proper, the informant contacted Banquilay, and was told that the transaction would take place near a pharmacy store. Thereafter, IO1 Katangkatang and the informant proceeded to the pharmacy store and upon their arrival, they immediately saw a man wearing a white *sando* and a light colored pair of shorts, whom the informant identified as the accused-appellant Henry Banquilay y Rosel. The informant approached Banquilay and introduced IO1 Katangkatang as the buyer, and the latter asked if the "item" was available. Banquilay, in response, asked if they had the money. At around 5:20 in the afternoon, after handing the marked P1,000.00 bill to Banquilay, he handed one (1) heat-sealed sachet containing a white crystalline substance which he suspected to be "*shabu*."

After receiving the sachet, IO1 Katangkatang, serving as the custodian of the evidence seized, initiated the agreed upon signal by sending a missed call to IO3 Tablate. Afterwards, at around 5:30 in the afternoon, IO3 Tablate and PO2 Vivero saw that Banquilay was heading towards the bus terminal and they ordered him to stop. IO3 Tablate announced that they were *PDEA* agents and arrested Banquilay thereafter. Banquilay was then brought to the Caibiran Police Station wherein they waited for the necessary witnesses, with the media representative, Sajid Primo of *Radyo Natin*, awaiting their arrival. Upon *Barangay* Captain Insigne's arrival, IO1 Katangkatang conducted a body search on Banquilay and retrieved the marked P1,000.00 bill, a P500.00 bill, a cellular phone, four (4) capsules of *Mefenamic acid*, and three (3) capsules of *Amoxicillin*. The inventory was then conducted in the presence of Banquilay, the elected official, and the media representative, and IO1 Katangkatang placed his initials "FYK" and the date 5-1-12 on the plastic sachet. After that, the witnesses were asked to sign the Inventory Receipt,[15] and at around 8:00 in the evening, the team left for Tacloban City to have the white crystalline substance subjected to laboratory examination.

At around 12:35 past midnight on May 2, 2012, PO1 Canaleja, the assigned receiving PNCO at the Regional Crime Laboratory Office Region VIII, Camp Kangleon, Palo, Leyte, received a transparent plastic sachet containing a white

crystalline substance and marked with "FYK" and "5-1-12" from IO1 Katangkatang for laboratory examination. After receipt, he placed the same in a locker that only he could access as the receiving PNCO. At around 8:00 in the morning, he turned over the sachet to PSI Malibago for examination. Based on PSI Malibago's examination, the white crystalline substance tested positive for *methamphetamine hydrochloride* otherwise known as "*shabu*". She then prepared Chemistry Report No. D-04-2012<sup>[16]</sup> and signed the same.

The defense, on the other hand, presented two (2) witnesses: (1) one Christy P. Porpogo (*Porpogo*), who personally knew Banquilay as he was her neighbor; and (2) Banquilay himself.

Porpogo testified that she saw two (2) persons in civilian attire approach Banquilay, which she believed to be police officers. One of the persons held Banquilay's right arm, while the other one pointed a gun at him. Banquilay was then handcuffed and was brought to the police station. She was not able to do anything since she, along with the other witnesses, were all shocked at what happened.

Banquilay testified that on May 2, 2012, at around 5:15 in the afternoon, he was at a *lugawan* in Brgy. Victory. More or less six (6) persons arrived, one of which he recognized as PO2 Vivero. Afterwards, Vivero called him and asked for the location of one Monsa Veronique (*Veronique*), who was his close friend. Banquilay responded that he hasn't seen Veronique, and he was then invited to the police station for further questioning which he resisted. He maintained that the charges against him were not true and that the officers wanted him to accompany them to Veronique's house. He added that it was Veronique who sold the "*shabu*" to him, and that he was only at the *lugawan* to buy cheaper fish for him to re-sell, as a fish vendor.

In its Decision<sup>[17]</sup> dated August 11, 2015, the RTC held Banquilay guilty beyond reasonable doubt of the offense charged, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the Court hereby renders judgment finding accused HENRY BANQUILAY y ROSEL guilty beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Php500,000.00.

According to the RTC, Banquilay's bare denial that no buy-bust operation took place cannot prevail against the positive testimony of the prosecution witnesses. The positive declaration of IO1 Katangkatang as the poseur-buyer cannot be overcome by the simple and bare denial of Banquilay, given that there was marking, photographs, and inventory of the items in the presence of the witnesses required by law. The court also found that the integrity of the evidence relative to the "*shabu*" sold to the poseur-buyer has been well preserved.

Aggrieved, Banquilay filed a *Notice of Appeal* and elevated the case to the Court of Appeals. However, convinced by the credibility of the prosecution witnesses and their testimony, the appellate court affirmed the RTC Decision. Citing *People of the Philippines v. Palomares*,<sup>[18]</sup> the Court of Appeals held that the prosecution sufficiently established the following elements, namely the: (1) identity of the buyer and the seller, the object, and the consideration; and (2) delivery of the thing sold