

## EN BANC

[ G.R. No. 231989, September 04, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMY LIM Y MIRANDA, ACCUSED-APPELLANT.**

### DECISION

**PERALTA, J.:**

On appeal is the February 23, 2017 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 01280-MIN, which affirmed the September 24, 2013 Decision<sup>[2]</sup> of Regional Trial Court (RTC), Branch 25, Cagayan de Oro City, in Criminal Case Nos. 2010-1073 and 2010-1074, finding accused-appellant Romy Lim y Miranda (*Lim*) guilty of violating Sections 11 and 5, respectively, of Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information dated October 21, 2010, Lim was charged with illegal possession of Methamphetamine Hydrochloride (*shabu*), committed as follows:

That on or about October 19, 2010, at more or less 10:00 o'clock in the evening, at Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, willfully, unlawfully, criminally and knowingly have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.02 gram, accused well-knowing that the substance recovered from his possession is a dangerous drug.

Contrary to, and in violation of, Section 11, Article II of Republic Act No. 9165.<sup>[3]</sup>

On even date, Lim, together with his stepson, Eldie Gorres y Nave (*Gorres*), was also indicted for illegal sale of *shabu*, committed as follows:

That on or about October 19, 2010, at more or less 10:00 o'clock in the evening, at Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a PDEA Agent acting as poseur-buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.02 gram, accused knowing the same to be

a dangerous drug, in consideration of Five Hundred Pesos (Php500.00) consisting of one piece five hundred peso bill, with Serial No. FZ386932, which was previously marked and recorded for the purpose of the buy-bust operation.

Contrary to Section 5, Paragraph 1, Article II of Republic Act No. 9165.<sup>[4]</sup>

In their arraignment, Lim and Gorres pleaded not guilty.<sup>[5]</sup> They were detained in the city jail during the joint trial of the cases.<sup>[6]</sup>

The prosecution presented Intelligence Officer (*IO*) 1 Albert Orellan, IO1 Nestle Carin, IO2 Vincent Orcales, and Police Senior Inspector (*PSI*) Charity Caceres. Aside from both accused, Rubenia Gorres testified for the defense.

### ***Version of the Prosecution***

Around 8:00 p.m. on October 19, 2010, IO1 Orellan and his teammates were at Regional Office X of the Philippine Drug Enforcement Agency (*PDEA*). Based on a report of a confidential informant (*CI*) that a certain "Romy" has been engaged in the sale of prohibited drugs in Zone 7, Cabina, Bonbon, Cagayan de Oro City, they were directed by their Regional Director, Lt. Col. Edwin Layese, to gather for a buy-bust operation. During the briefing, IO2 Orcales, IO1 Orellan, and IO1 Carin were assigned as the team leader, the arresting officer/back-up/evidence custodian, and the *poseur-buyer*, respectively. The team prepared a P500.00 bill as buy-bust money (with its serial number entered in the PDEA blotter), the Coordination Form for the nearest police station, and other related documents.

Using their service vehicle, the team left the regional office about 15 minutes before 10:00 p.m. and arrived in the target area at 10:00 p.m., more or less. IO1 Carin and the CI alighted from the vehicle near the corner leading to the house of "Romy," while IO1 Orellan and the other team members disembarked a few meters after and positioned themselves in the area to observe. IO1 Carin and the CI turned at the corner and stopped in front of a house. The CI knocked at the door and uttered, "*ayo, nang Romy.*" Gorres came out and invited them to enter. Inside, Lim was sitting on the sofa while watching the television. When the CI introduced IO1 Carin as a *shabu* buyer, Lim nodded and told Gorres to get one inside the bedroom. Gorres stood up and did as instructed. After he came out, he handed a small medicine box to Lim, who then took one piece of heat-sealed transparent plastic of *shabu* and gave it to IO1 Carin. In turn, IO1 Carin paid him with the buy-bust money.

After examining the plastic sachet, IO1 Carin executed a missed call to IO1 Orellan, which was the pre-arranged signal. The latter, with the rest of the team members, immediately rushed to Lim's house. When they arrived, IO1 Carin and the CI were standing near the door. They then entered the house because the gate was opened. IO1 Orellan declared that they were PDEA agents and informed Lim and Gorres, who were visibly surprised, of their arrest for selling dangerous drug. They were ordered to put their hands on their heads and to squat on the floor. IO1 Orellan recited the Miranda rights to them. Thereafter, IO1 Orellan conducted a body search on both.

When he frisked Lim, no deadly weapon was found, but something was bulging in

his pocket. IO1 Orellan ordered him to pull it out. Inside the pocket were the buy-bust money and a transparent rectangular plastic box about 3x4 inches in size. They could see that it contained a plastic sachet of a white substance. As for Gorres, no weapon or illegal drug was seized.

IO1 Orellan took into custody the P500.00 bill, the plastic box with the plastic sachet of white substance, and a disposable lighter. IO1 Carin turned over to him the plastic sachet that she bought from Lim. While in the house, IO1 Orellan marked the two plastic sachets. Despite exerting efforts to secure the attendance of the representative from the media and *barangay* officials, nobody arrived to witness the inventory-taking.

The buy-bust team brought Lim and Gorres to the PDEA Regional Office, with IO1 Orellan in possession of the seized items. Upon arrival, they "booked" the two accused and prepared the letters requesting for the laboratory examination on the drug evidence and for the drug test on the arrested suspects as well as the documents for the filing of the case. Likewise, IO1 Orellan made the Inventory Receipt of the confiscated items. It was not signed by Lim and Gorres. Also, there was no signature of an elected public official and the representatives of the Department of Justice (*DOJ*) and the media as witnesses. Pictures of both accused and the evidence seized were taken.

The day after, IO1 Orellan and IO1 Carin delivered both accused and the drug specimens to Regional Crime Laboratory Office 10. IO1 Orellan was in possession of the sachets of *shabu* from the regional office to the crime lab. PSI Caceres, who was a Forensic Chemist, and Police Officer 2 (*PO2*) Bajas<sup>[7]</sup> personally received the letter-requests and the two pieces of heat-sealed transparent plastic sachet containing white crystalline substance. PSI Caceres got urine samples from Lim and Gorres and conducted screening and confirmatory tests on them. Based on her examination, only Lim was found positive for the presence of *shabu*. The result was shown in Chemistry Report No. DTCRIM-196 and 197-2010. With respect to the two sachets of white crystalline substance, both were found to be positive of *shabu* after a chromatographic examination was conducted by PSI Caceres. Her findings were reflected in Chemistry Report No. D-228-2010. PSI Caceres, likewise, put her own marking on the cellophane containing the two sachets of *shabu*. After that, she gave them to the evidence custodian. As to the buy-bust money, the arresting team turned it over to the fiscal's office during the inquest.

### ***Version of the Defense***

Around 10:00 p.m. on October 19, 2010, Lim and Gorres were in their house in Cabina, Bonbon, Cagayan de Oro City. Lim was sleeping in the bedroom, while Gorres was watching the television. When the latter heard that somebody jumped over their gate, he stood up to verify. Before he could reach the door, however, it was already forced opened by the repeated pulling and kicking of men in civilian clothing. They entered the house, pointed their firearms at him, instructed him to keep still, boxed his chest, slapped his ears, and handcuffed him. They inquired on where the *shabu* was, but he invoked his innocence. When they asked the whereabouts of "Romy," he answered that he was sleeping inside the bedroom. So the men went there and kicked the door open. Lim was then surprised as a gun was pointed at his head. He questioned them on what was it all about, but he was told to keep quiet. The men let him and Gorres sit on a bench. Lim was apprised of his

Miranda rights. Thereafter, the two were brought to the PDEA Regional Office and the crime laboratory. During the inquest proceedings, Lim admitted, albeit without the assistance of a counsel, ownership of the two sachets of *shabu* because he was afraid that the police would imprison him. Like Gorres, he was not involved in drugs at the time of his arrest. Unlike him, however, he was previously arrested by the PDEA agents but was acquitted in the case. Both Lim and Gorres acknowledged that they did not have any quarrel with the PDEA agents and that neither do they have grudges against them or *vice-versa*.

Rubenia, Lim's live-in partner and the mother of Gorres, was at her sister's house in Pita, Pasil, Kauswagan the night when the arrests were made. The following day, she returned home and noticed that the door was opened and its lock was destroyed. She took pictures of the damage and offered the same as exhibits for the defense, which the court admitted as part of her testimony.

### ***RTC Ruling***

After trial, the RTC handed a guilty verdict on Lim for illegal possession and sale of *shabu* and acquitted Gorres for lack of sufficient evidence linking him as a conspirator. The *fallo* of the September 24, 2013 Decision states:

WHEREFORE, premises considered, this Court finds that:

1. In Criminal Case No. 2010-1073, accused ROMY LIM y MIRANDA is hereby found GUILTY of violating Section 11, Article II of R.A. 9165 and is hereby sentenced to suffer the penalty of imprisonment ranging from twelve [12] years and one [1] day to thirteen [13] years, and to pay Fine in the amount of Three Hundred Thousand Pesos [P300,000.00] without subsidiary imprisonment in case of non-payment of Fine;

2. In Criminal Case No. 2010-1074, accused ROMY LIM y MIRANDA is hereby found GUILTY of violating Section 5, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the Fine in the amount of Five Hundred Thousand Pesos [P500,000.00].

3. In Criminal Case No. 2010-1074, accused ELDIE GORRES y NAVE is hereby ACQUITTED of the offense charged for failure of the prosecution to prove his guilt beyond reasonable doubt. The Warden of the BJMP having custody of ELDIE GORRES y Nave, is hereby directed to immediately release him from detention unless he is being charged of other crimes which will justify his continued incarceration.<sup>[8]</sup>

With regard to the illegal possession of a sachet of *shabu*, the RTC held that the weight of evidence favors the positive testimony of IO1 Orellan over the feeble and uncorroborated denial of Lim. As to the sale of *shabu*, it ruled that the prosecution was able to establish the identity of the buyer, the seller, the money paid to the seller, and the delivery of the *shabu*. The testimony of IO1 Carin was viewed as simple, straightforward and without any hesitation or prevarication as she detailed in a credible manner the buy-bust transaction that occurred. Between the two conflicting versions that are poles apart, the RTC found the prosecution evidence worthy of credence and no reason to disbelieve in the absence of an iota of malice,

ill-will, revenge or resentment preceding and pervading the arrest of Lim. On the chain of custody of evidence, it was accepted with moral certainty that the PDEA operatives were able to preserve the integrity and probative value of the seized items.

In so far as Gorres is concerned, the RTC opined that the evidence presented were not strong enough to support the claim that there was conspiracy between him and Lim because it was insufficiently shown that he knew what the box contained. It also noted Chemistry Report No. DTCRIM 196 & 197-2010, which indicated that Gorres was "NEGATIVE" of the presence of any illicit drug based on his urine sample.

### ***CA Ruling***

On appeal, the CA affirmed the RTC Decision. It agreed with the finding of the trial court that the prosecution adequately established all the elements of illegal sale of a dangerous drug as the collective evidence presented during the trial showed that a valid buy-bust operation was conducted. Likewise, all the elements of illegal possession of a dangerous drug was proven. Lim resorted to denial and could not present any proof or justification that he was fully authorized by law to possess the same. The CA was unconvinced with his contention that the prosecution failed to prove the identity and integrity of the seized prohibited drugs. For the appellate court, it was able to demonstrate that the integrity and evidentiary value of the confiscated drugs were not compromised. The witnesses for the prosecution were able to testify on every link in the chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court. Anent Lim's defense of denial and frame-up, the CA did not appreciate the same due to lack of clear and convincing evidence that the police officers were inspired by an improper motive. Instead, the presumption of regularity in the performance of official duty was applied.

Before Us, both Lim and the People manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.<sup>[9]</sup> Essentially, Lim maintains that the case records are bereft of evidence showing that the buy-bust team followed the procedure mandated in Section 21(1), Article II of R.A. No. 9165.

### ***Our Ruling***

The judgment of conviction is reversed and set aside, and Lim should be acquitted based on reasonable doubt.

At the time of the commission of the crimes, the law applicable is R.A. No. 9165.<sup>[10]</sup> Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the law, defines chain of custody as-

the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary