

THIRD DIVISION

[G.R. No. 205787, November 22, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO
ARPOSEPLE Y SANCHEZ AND JHUNREL SULOGAOL Y DATU,
ACCUSED-APPELLANTS.**

DECISION

MARTIRES, J.:

This resolves the appeal of Pablo Arposeple y Sanchez (*Arposeple*) and Jhunrel Sulogaol y Datu^[1] (*Sulogaol*) from the 3 October 2011 Decision^[2] of the Court of Appeals (CA), in CA G.R. CR-HC No. 00865 which affirmed, but with modification as to the fine imposed in Criminal Case No. 12853, the 20 November 2007 Omnibus Decision^[3] of the Regional Trial Court (RTC) in Criminal Case Nos. 12852 to 12854.

THE FACTS

Arposeple and Sulogaol were both charged with three counts of violation of certain provisions of R.A. No. 9165 before the RTC of Tagbilaran City, Bohol, viz:

**CRIM. CASE NO. 12852
(Viol. of Sec. 5, Art. II, R.A. 9165)**

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously, and knowingly, without any legal purpose, sell, transfer, deliver and give away One (1) transparent cellophane sachet containing small amount of white powdered substance commonly known as shabu powder which could no longer be measured in terms of weight, but could not be more than 0.01 gram, for and in consideration of the amount of Five Hundred Pesos (P500.00) Philippine currency, the accused knowing fully well that the above-mentioned substance which contains METHAMPHETAMINE HYDROCHLORIDE is a dangerous drug and that they did not have any lawful authority, permit or license to sell the same, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. 6425, as amended.^[4]

**CRIM. CASE NO. 12853
(Viol. of Sec. 11, Art. II, R.A. 9165)**

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously, and knowingly have in their possession, custody, and control two (2) pcs. empty transparent cellophane sachets containing suspected shabu leftover which could no longer be measured in terms of weight, but could not be more than 0.01 gram, the accused knowing fully well that the above-mentioned substance which contains Methamphetamine Hydrochloride is a dangerous drug and that they did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section II, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. 6425, as amended.^[5]

CRIM. CASE NO. 12854
(Viol. of Sec. 12, Art. II, R.A. 9165)

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously and knowingly have in their possession, custody and control to wit: two (2) pcs. rolled aluminum foil used as tooter; two (2) pcs. folded aluminum foil; two (2) pcs. disposable lighters; one (1) pc. bamboo clip; and one (1) pc. half blade, the accused knowing fully well that the abovementioned items are the instruments, apparatus or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing dangerous drug into the body, and that he did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section 12, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. No. 6425, as amended.^[6]

When arraigned, both appellants pleaded not guilty; thus, the consolidated trial of these cases took place.

The Version of the Prosecution

To prove its cases, the prosecution presented the testimonies of the following: Police Superintendent (*P/Supt.*) Victoria C. de Guzman (*De Guzman*), Police Officer 2 (*PO2*) Jay E. Ramos (*Ramos*), Police Officer I (*PO1*) Earl U. Tabuelog (*Tabuelog*), Police Inspector (*P/Insp.*) Miguel Jimenez (*Jimenez*), and Barangay Kagawad Mary Jane Ruiz (*Ruiz*).

At around 3:00 a.m. on 21 September 2005, Jimenez, who was the Assistant City Drug Enforcement Officer, held a briefing at his office on a buy-bust operation to be

carried out at Ubuja District, Tagbilaran City. The briefing, with the appellants as the subjects of the buy-bust operation, was attended by the buy-bust team (*team*) composed of PO3 Rolando Bagotchay (*Bagotchay*), PO3 Jonathan Bafiocia, PO3 Rodante Sanchez, PO3 Norman Brunidor (*Brunidor*), PO2 Jay Tizon, Ramos, Tabuelog, PO2 Ruben Baculi, who was the representative of the Criminal Investigation and Detection Group, and the informant. Jimenez gave P500.00^[7] to Ramos, the poseur-buyer, while Bagotchay would be the recorder and property custodian. Jimenez instructed Ramos to take off his cap as the pre-arranged signal that the transaction had been consummated.^[8]

After the briefing, the team proceeded to their designated area, i.e., the Monastery of the Holy Spirit (*monastery*) located at CPG North Avenue, Ubuja District, Tagbilaran City. Ramos and the informant proceeded in front of the monastery while the rest of the team positioned themselves at the nearby GH Motors.^[9]

Ramos instructed the asset to inform the appellants that he had a friend who wanted to buy shabu. After the asset returned from a house in front of the monastery, the appellants arrived. The asset introduced Ramos to the appellants who at first were hesitant to sell him shabu. Sulogaol told Arposeple, "Ato lang ni hatagan bay,"^[10] to which the latter replied "sige hatagan na lang nato."^[11] With the agreement to sell shabu, Ramos gave the P500.00 marked money to Arposeple, while Sulogaol took one transparent sachet from his pocket and handed this to Arposeple who in turn gave it to Ramos. With the sale consummated, Ramos took off his cap but, as the team approached, the appellants ran in opposite directions.^[12]

Ramos chased Arposeple until they reached a house fronting the monastery. Ramos got hold of Arposeple's shirt but as they grappled they found themselves inside the house. With the aid of Brunidor and Bagotchay, Ramos was able to handcuff Arposeple. A body search on Arposeple yielded a playing card case^[13] containing the following: one piece sachet with suspected shabu leftover;^[14] a hundred peso bill;^[15] two pieces empty transparent cellophane sachets containing suspected shabu leftover;^[16] two pieces of aluminum foil used as tooters;^[17] two pieces folded aluminum foil;^[18] two pieces disposable lighters;^[19] one piece bamboo clip;^[20] and one piece half-blade.^[21] The marked five-hundred-peso^[22] bill was found in Arposeple's left pocket. Ramos informed Arposeple of his constitutional rights.^[23]

Tabuelog caught Sulogaol after a brief chase. The body search on Sulogaol yielded negative. Tabuelog likewise informed Sulogaol of his constitutional rights.^[24]

Ramos turned over the seized items to Bagotchay who filled out the certificate of inventory.^[25] The inventory was witnessed by the appellants and by Barangay Kagawads Ruiz and Felixia Ligue, and Zacarias Castro and Willy Maestrado, who acted as representatives of the Department of Justice (DOJ) and the media, respectively.^[26] Except for the appellants who refused to sign the certificate of inventory, the other witnesses did.^[27]

The appellants were brought to the Tagbilaran Police Station for proper disposition^[28] while Ramos and Tabuelog executed their respective affidavits^[29] in

relation to what had happened during the buy-bust operation.^[30]

At 3:05 p.m. on the same day, the Philippine Provincial Crime Laboratory Office of Camp Francisco Dagohoy, Tagbilaran City (*laboratory*), received a request^[31] for the laboratory examination of the following: one piece transparent cellophane sachet (labelled PA/JS-09-21-01 YB); two pieces empty transparent cellophane sachets (labelled PA/JS-09-21-05-02 YB and PA/JS-09-21-05-03 YB); two pieces aluminum foil used as tooters (labelled PA/JS-09-21-05-04 YB and PA/JS-09-21-05-05); and two pieces aluminum foil (labelled PA/JS-09-21-05-06 YB and PA/JS 09-21-05-07 YB). These were marked by De Guzman, the forensic chemical officer of the laboratory, as specimens "A," "B" and "B-1"; "C" and "C-1"; "D" and "E," respectively. On 22 September 2005, after the laboratory examination, De Guzman came up with Chemistry Report No. D-117-2005^[32] stating that, except for specimen "E" labelled as PA/JS 09-21-05-06 YB, all the specimens were positive for the presence of methamphetamine hydrochloride.^[33]

It was also on 21 September 2005 that the laboratory received the request^[34] for drug/urine test on the appellants to determine whether they had used any prohibited drugs. The screening laboratory test and the confirmatory examination conducted the following day were done in the presence of the appellants. The screening tests on both appellants yielded positive results for the presence of methamphetamine hydrochloride and negative for marijuana. De Guzman's findings were contained in Chemistry Report Nos. DT-242-2005^[35] and DT-243-2005^[36] for Arposeple and Sulogaol, respectively. The confirmatory tests on the urine samples of the appellants likewise gave positive results for the presence of methamphetamine hydrochloride as evinced in Chemistry Report Nos. DT-242A-2005^[37] and DT-243A-2005^[38] for Arposeple and Sulogaol, respectively.^[39]

The Version of the Defense

The defense presented their version of what happened in the morning of 21 September 2005 through Myra Tara (*Tara*), Joan Cortes Bohol (*Bohol*), Arposeple and Sulogaol.

Tara testified that at about 4:30 a.m. on 21 September 2005, while she was sleeping at the house she was renting with Cory Jane Rama (*Rama*), she was awakened by the appellants who wanted to borrow P200.00 to pay for the van that they hired to come back from Tubigon, Bohol. She handed the P200.00 to Sulogaol, and while peeping from the window, she saw Sulogaol hand the P200.00 to the driver of the van parked in front of the house.^[40]

Arposeple and Sulogaol proceeded to the room the former used to rent but since its present occupant, Ondoy, had a visitor, Arposeple and Sulogaol went back to Tara's place and requested that she allow them to play *tong-its* inside her house while waiting for daylight. She acceded and allowed them to use her playing cards.^[41]

While Tara, together with Rama, Jessa, and Susan, was sleeping inside the room, she was awakened by the sound of a strong kick to the door of the house. Two persons barged in saying, "We are policemen! Do not move!" while pointing their guns at Arposeple and Sulogaol. The two men grabbed Arposeple and Sulogaol,

dragged them out of the house, and handcuffed them. Arposeple and Sulogaol protested while they were being frisked but to no avail. Two other policemen outside the house boarded Arposeple and Sulogaol into a parked police vehicle.^[42]

Bohol, Tara's landlady, testified that she knew Arposeple, he being her former boarder. Before Arposeple's stay at her house, he stayed at an adjacent room which was occupied thereafter by Ondoy Belly. At about 2:00 a.m. on 21 September 2005, she observed a passenger van parked outside the house and saw Sulogaol hand money to its driver. At about 3:00 a.m., she heard banging on the door of the other house. Thinking nothing of the commotion, she went back to sleep.^[43]

When Bohol woke up at about 6:00a.m., she saw a vehicle and four uniformed policemen outside. She saw Arposeple and Sulogaol who, while resisting the policemen's arrest, claimed that they did not commit any crime. The policemen told Arposeple and Sulogaol to explain themselves at the police station. Arposeple, who was in handcuffs, and Sulogaol were made to board a vehicle.^[44]

After the vehicle had gone, Bohol went to Tara's house and saw Tara, Jessa, Mylene Amora, and Tara's visitor seated on the bed and trembling. The house was in disarray and Tara's playing cards were scattered on the floor and on the bed. They told her that Arposeple and Sulogaol were playing cards with them when the policemen came; that Arposeple had refused to go with the policemen claiming he did not commit any crime.^[45]

In his defense, Arposeple testified that in the early dawn of 21 September 2005, he went to Tara's house to borrow money to pay for the car rental. He and Sulogaol had come from Cebu and were on their way to Tubigon-Tagbilaran, Bohol, when they rented the van. He chose to pass by Tara to borrow P100.00 because she was his friend. After paying for the rental, he and Sulogaol stayed at Tara's place and played with her cards. Tara took care of her child while Susan, Jessa, and Cory were sleeping.^[46]

At about 3:00 a.m., three men kicked the door, entered the house, and pointed their guns at him and Sulogaol. He asked what crime they had committed but Ramos told him to produce the shabu. He told PO2 Ramos he had nothing to show because he had no shabu. Ramos frisked him and Sulogaol while Ramos' companions searched around. Ramos found nothing on him and on Sulogaol.^[47]

After a while, other policemen arrived and, together with Ramos, frisked him and Sulogaol. While he was in handcuffs, Ramos frisked him again.^[48]

Ramos and his two companions then left and soon after returned with Jimenez. He and Sulogaol were again frisked and ordered to remove their clothes and to lower their underwear to their knees. Nothing was found in their person. Ramos got shabu, money, tin foil, and a lighter from his pocket and placed these on the table. Arposeple protested Ramos' act of planting evidence but Ramos told him to explain himself at the police station. He was made to board a police car while Sulogaol was being investigated by the policemen. He told Tara that she and Sulo aol would be his witnesses as they had seen the policemen plant evidence.^[49]