

FIRST DIVISION

[G.R. No. 203026, January 28, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NATHANIEL PASION Y DELA CRUZ A.K.A. "ATHAN" AND DENNIS
MICHAEL PAZ Y SIBAYAN, ACCUSED-APPELLANTS.**

R E S O L U T I O N

PEREZ, J.:

This is an appeal from the Decision^[1] of the Court of Appeals (CA) promulgated on 30 January 2012 affirming the Decision^[2] of the Regional Trial Court (RTC) Branch 13, Laoag City sustaining the verdict of conviction of accused-appellants Nathaniel Pasion y dela Cruz (Pasion) and Dennis Michael Paz y Sibayan (Paz) for violation of Sections 5 and 11 of Republic Act No. 9165 (R.A. No. 9165) or the "Comprehensive Dangerous Drugs Act of 2002."

The Information against Pasion is docketed as Criminal Case No. 14074, to wit:

The undersigned Assistant Provincial Prosecutor of Ilocos Norte accuses NATHANIEL PASION Y DELA CRUZ a.k.a. "ATHAN" a resident of Brgy. 3, San Nicolas, Ilocos Norte, for VIOLATION of SECTION 5, ARTICLE II OF REPUBLIC ACT 9165 (Illegal Sale of Dangerous Drugs), committed as follows:

That on or about 10:40 in the evening of June 10, 2009, in the municipality of San Nicolas, province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) small heat-sealed plastic sachet containing methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, weighing 0.0987 gram worth One Thousand Pesos (P1,000.00) to an agent poseur-buyer in the person of IO1 MERTON FESWAY of the PDEA-INSET, Laoag City, without the necessary authority or license from the appropriate government agency or authority to do so.

CONTRARY TO LAW.^[3]

The Informations against Paz for delivering and possessing "*shabu*" and "*marijuana*" read:

Criminal Case No. 14075
(Violation of Section 5 [Delivery], Article II of R.A 9165)

The undersigned Assistant Prosecutor of Ilocos Norte, accuses DENNIS MICHAEL PAZ y SIBAYAN, a resident of Brgy. 13, Laoag City, for VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165 (Illegal Delivery of Dangerous Drugs) committed as follows:

That on or about 11:10 in the evening of June 10, 2009, in the municipality of San Nicolas, province of Ilocos Norte, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously deliver and give away to NATHANIEL PASION y DELA CRUZ a.k.a. "ATHAN" one (1) small heated-sealed plastic sachet containing methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, weighing 0.0741 gram, without the necessary authority or license from the appropriate government agency in violation of the aforesaid law.

CONTRARY TO LAW.

Criminal Case No. 14076
(Violation of Section 11 [Possession], Article II of RA 9165)

The undersigned Assistant Provincial Prosecutor of Ilocos Norte, accuses DENNIS MICHAEL PAZ y SIBAYAN, a resident of Brgy. 13, Laoag City, of the crime for VIOLATION OF SECTION 11, ARTICLE II OF R.A. 9165 (Illegal Possession of Dangerous Drugs), committed as follows:

That on or about 11:10 o'clock in the evening of June 10, 2009, in the Municipality of San Nicolas, Province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess, did then and there willfully, unlawfully and knowingly have in his possession, control and custody one (1) small heat sealed plastic sachet containing dried marijuana leaves, weighing 2.9921g, without having the authority or license to possess the same from the appropriate government agency or authority, in violation of the afore-cited law.

CONTRARY TO LAW.^[4]

The foregoing charges were consolidated and tried jointly having arisen from related anti-narcotics operations conducted on the same day of 10 June 2009 by the Ilocos Norte Special Enforcement Team (INSET) of the PDEA, Regional Office I.

Immediately, during arraignment, Pasion pleaded not guilty; Paz, on the other hand, refused to enter a plea arguing that his arrest was illegal. Pursuant to the Rules^[5] the trial court ordered the entry of a plea of "not guilty" on Paz's behalf.

Thereafter, trial ensued where the following facts were presented by the prosecution:

Around 4:00 o'clock in the afternoon of June 10, 2009, a confidential informant came to the INSET office of the PNP Police Station in Laoag City to inform Intelligence Officer 1 (IO1) Merton P. Fesway about the illegal activities of a certain Nathaniel Pasion at Barangay 1, San Nicolas, Ilocos Norte. Upon receiving said information, PO1 Armando Bautista, INSET's team leader, made a phone call to IO2 Charlton Caramé of the Intelligence and Investigation Section of the PDEA, Regional Office, to verify if the suspect is included in the Order of Battle or watch list of drug personalities. As said inquiry yielded positive result, PO1 Bautista instructed IO1 Efren Esmin and IO1 Fesway to further validate and investigate on the intelligence report. In the presence of the confidential informant, PO1 Bautista conducted a briefing for their projected surveillance operation.

Around 4:30 p.m. of the same day, IO1 Fesway, IO1 Esmin and the informant arrived at their drop site in Big Mak, Brgy. 1, San Nicolas, Ilocos Norte. From across the highway, which was about twenty-five (25) meters away from where they stood, the confidential informant saw appellant Pasion standing near the waiting shed. The informant immediately confirmed to IO1 Esmin and IO1 Fesway the identity and exact location of appellant Pasion and left afterwards.

IO1 Fesway and IO1 Esmin strategically positioned themselves about ten (10) meters away from appellant Pasion and pretended to be waiting for a passenger jeepney. For about twenty (20) minutes, they closely monitored the actions of appellant Pasion. x x x. It was also observed that in each transaction, appellant Pasion and the other person would engage in a brief conversation and afterwards, the other person would hand a monetary bill which appears to be five hundred pesos (Php500.00) in exchange for suspected shabu.

Around 5:30 o'clock in the afternoon of even date, IO1 Fesway and IO1 Esmin went back to INSET's office to report to PO1 Bautista the result of their investigation surveillance operation. PO1 Bautista immediately made a phone call to Regional Director Robert Ofenia of PDEA Region 1 to secure a permit to conduct anti-narcotic operation. PO1 Bautista sought the assistance of the team leader of the PDEA's Special Operations Group in Vigan, Ilocos Sur.

A team was constituted, composed of IO1 Fesway, IO1 Esmin, IO1 Dumatog Leander, IO2 Ricky Ramos and SPO2 Annabelle Cabarles. PO1 Bautista designated IO1 Fesway as the poseur-buyer, while IO1 Esmin was tasked as the latter's immediate back-up. The other members of the team were assigned as the perimeter defense. The PDEA agents agreed that the pre-arranged signal to indicate that the sale has been consummated would be for IO1 Fesway to place his white handkerchief on his shoulder. IO1 Fesway marked two pieces of fake P500.00 bill with

the initials "MF1" and "MF2", respectively, for identification purposes.

Soon thereafter, PO1 Bautista and his team proceeded to their safe house in San Nicolas, Ilocos Norte and around 9:00 o'clock in the evening of June 10, 2009, the members of Vigan's Special Operations Group composed of PO3 Abang Allan, IO2 Jojo Gayuma, IO2 Apiit Aaron, IO2 Delia Inay and IO2 Daniel Discaya arrived. PO1 Bautista conducted another briefing to discuss the strategies to be undertaken in the buy-bust operation. IO1 Leander Dumatog, IO2 Ricky Ramos and SO2 [sic] Annabelle Cabarles, together with the members of the Special Operations Group of Vigan were designated as part of the back-up force.

Around 10:00 p.m. of June 10, 2009, the informant, through a text message, reported to IO1 Fesway that he spotted appellant Pasion at the house of the latter's sister in Brgy. 3, San Nicolas, Ilocos Norte. At once, the police operatives proceeded to the target area and parked their service vehicle at the corner of Bumanglang Street and Cleveland Street to meet the confidential informant.

On their way to the house of appellant Pasion's sister, IO1 Fesway and the confidential informant chanced upon appellant Pasion who was then standing near a lamp post located at the entrance of a pathway leading to his sister's house. The confidential informant approached appellant Pasion and introduced IO1 Fesway as an interested buyer. Shortly thereafter, IO1 Fesway handed the marked P500.00 bills to appellant Pasion, in exchange, appellant Pasion gave one plastic sachet containing white crystalline substance. Subsequently, IO1 Fesway placed his white handkerchief on his shoulder, the pre-arranged signal to alert the police team that the transaction was consummated.

Sensing the speeding vehicle of the PDEA agents, appellant Pasion ran towards his sister's house. IO1 Fesway chased him and IO1 Esmin immediately followed until they caught him at the gate of his sister's house.

Right there, IO1 Fesway apprised appellant Pasion of his constitutional rights and informed him that they were apprehending him for the crime of selling shabu. IO1 Esmin frisked him and recovered from his right front pocket the marked money. IO1 Fesway took custody of the items confiscated from appellant Pasion until it was turned over to the police station. In the meantime, other members of the back-up team were deployed to prevent people from coming in to cause any commotion.

On board the PDEA service vehicle, appellant Pasion offered to divulge his supplier in his attempt to enter into an agreement with the arresting team. PO1 Bautista allowed him to call his supplier and order shabu worth One Thousand Pesos (Php1,000.00). Appellant Pasion told his supplier to meet him in front of Red Ribbon at 365 Plaza, Barangay 1, San Nicolas for the delivery of the shabu to which his supplier agreed. Inside the service vehicle, PO1 Bautista conducted another briefing and tasked IO1 Esmin to accompany appellant Pasion with IO1 Fesway as his immediate back-up.

Upon arrival at the agreed place, the PDEA team waited for the supplier who was later identified as appellant Paz. After twenty (20) minutes, appellant [Paz] arrived in his black Honda Wave Motorcycle. Right there and then, IO1 Esmin and appellant Pasion approached him and asked for the item that he ordered. While appellant Paz was in the process of handing over the suspected shabu to appellant Pasion, IO1 Esmin declared that he is a PDEA agent and immediately took hold of him. The back-up team rushed towards appellant [Paz] and, at this instance, IO1 Esmin confiscated the shabu in his hand and frisked him. As a result, another plastic sachet containing marijuana, an Ipod, a wallet and a cellphone were recovered from him. Subsequently, appellant Paz was apprised of his rights and together with appellant Pasion, they were brought to the PNP San Nicolas Municipal Station. IO1 Esmin kept the items seized from appellant Paz until they were finally brought to the police station.

At the police station, appellants were booked and IO1 Fesway and IO1 Esmin marked and inventoried the items confiscated from appellants. In the process, photographs were taken in the presence of appellants as well as Venerando Ute of Bombo Radyo and Barangay Kagawad Albert de Guzman who stood as witness. Certificates of inventory were executed in the presence of appellants and the witnesses. Separate letters requesting for laboratory examination of the seized items were prepared by IO1 Annabelle Cabarles. At 11:30 p.m. of June 11, 2009, IO1 Fesway and IO1 Esmin personally brought the letter requests, the plastic sachets of shabu and marijuana including appellants to the Provincial Crime Laboratory Office at Camp Juan.

SPO2 Diosdado C. Mamotos received the subject items which were placed in two (2) separate plastic sachets and marked them with his initials "DCM". Immediately thereafter, SPO1 Mamotos turned over the object evidence to Police Senior Inspector Anamelisa S. Bacani, the Forensic Chemist of the said crime laboratory for laboratory examination. After conducting tests on the submitted specimen, PSI Bacani found them to be positive for methamphetamine hydrochloride, a dangerous drug."^[6] (Citations omitted)

For their defense, both accused-appellants Pasion and Paz denied liability and maintained that on the evening in question they were just having a drinking spree to unwind at Pasion's house, Pasion being a regular student who had just come from the enrollment registration of his school, the Northern Christian College (NCC), for the upcoming semester. Paz, on the other hand, was supposed to go to Pasion's house later that night when he received a text message from Pasion to instead meet at 365 Plaza. Upon his arrival at 365 Plaza, he was suddenly manhandled, searched and arrested by unknown men who turned out to be PDEA officers conducting a purported buy-bust operation. In the main, appellants claimed that they were framed up in a buy-bust operation by the police for no apparent reason.

After trial, the RTC found that the prosecution had fulfilled the required burden of proof and that the prosecution disproved and overcame the presumption of