

## SECOND DIVISION

[ G.R. No. 198024, March 16, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL CUNANAN Y DAVID ALIAS "PAENG PUTOL", ACCUSED-APPELLANT.**

### RESOLUTION

**DEL CASTILLO, J.:**

On appeal is the January 27, 2011 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04062, which affirmed the July 1, 2009 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Pasig City, Branch 164 in Criminal Case No. 15143-D finding appellant Rafael Cunanan y David *alias* "Paeng Putol" (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 and the costs.

#### ***Antecedent Facts***

On October 19, 2006, an Information<sup>[3]</sup> was filed charging appellant with the crime of illegal sale of dangerous drugs, the accusatory portion of which reads:

On or about October 14, 2006, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Dario Gunda, Jr., a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing two centigrams (0.02gram), of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[4]</sup>

Appellant pleaded not guilty upon his arraignment on April 30, 2007. Trial on the merits immediately followed. In the course thereof, the testimony of prosecution witness P/Sr. Insp. Lourdeliza G. Cejes (PSI Cejes), the Forensic Chemist of the Eastern Police District (EPD) Crime Laboratory Office, was dispensed with after the prosecution and the defense stipulated on the following:

1. That in relation to the arrest of appellant, a request for laboratory examination was made on October 14, 2006 by P/Sr. Insp. Bernouli D. Abalos (PSI Abalos) of the EPD Anti-Illegal Drugs Special Operation Task Force to the Chief of the

EPD Crime Laboratory Service;

2. That attached to the request is one heat-sealed transparent plastic sachet containing an undetermined amount of white crystalline substance suspected to be *shabu* with markings Exh-A RCD/DG dated October 13, 2006, but not as to the source of the specimen;
3. That the request together with the specimen were delivered by PO2 Michael Familara (PO2 Familara), recorded by PO1 Menese and received by PSI Cejes;
4. That a qualitative examination on the specimen was conducted by PSI Cejes which gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug, as shown in Physical Sciences Report No. D-452-2006E; and
5. The regularity and due execution of the Physical Sciences Report.<sup>[5]</sup>

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

The prosecution's version of the event as derived from the combined testimonies of PO1 Dario Gunda, Jr. (PO1 Gunda) and PO2 Familara is summarized as follows:

At about 6:00 p.m. on October 13, 2006, a confidential informant (CI) went to the EPD-District Intelligence Investigation Division (EPD-DIID) Headquarters of Pasig City and informed PSI Abalos that a certain "Paeng Putol," later identified as the appellant, was engaged in selling illegal drugs in *Purok 4, Barangay Pineda, Pasig City*. Acting on the information, PSI Abalos organized a buy-bust team composed of himself, PO1 Gunda, PO1 Daniel Robiene, PO2 Familara, SPO1 Jessie Bautista, and PO1 Ambrosio Gam, among others, to entrap appellant. PO1 Gunda was designated as the poseur-buyer and was thus given two 100-peso bills<sup>[6]</sup> which he marked with his initials "DG," while the rest of the team would act as back-ups. After a short briefing, PSI Abalos prepared a Pre-Operation Report/Coordination Sheet<sup>[7]</sup> and coordinated the buy-bust operation with the Pasig City Police Station and the Philippine Drug Enforcement Agency (PDEA). Thereafter, the team proceeded to and arrived at the target area at 9:20 p.m. PO1 Gunda and the CI walked towards a store along an alley while the others strategically positioned themselves some five to seven meters away. The CI saw a man wearing gloves standing beside the store and informed PO1 Gunda that the man was the appellant. Together, they approached appellant who is familiar to the CI. PO1 Gunda was introduced to appellant as a drug user who wanted to buy *shabu* worth P200.00. After receiving the marked money from PO1 Gunda, appellant entered a narrow alley and came back with a small plastic sachet containing white crystalline substance which he handed to PO1 Gunda. Thereupon, PO1 Gunda gave the pre-arranged signal to inform the buy-bust team of the consummated transaction and arrested appellant. When asked to empty his pocket, recovered from appellant were the two marked 100-peso bills used as buy-bust money. Appellant was then informed of his constitutional rights and the nature of the accusation against him and brought to the EPD Headquarters. PO1 Gunda stapled the marked money on a bond paper and wrote thereon "recovered pre-marked buy-bust money dated October 13, 2006." He also marked the plastic sachet with "Exh-A RCD/DG 10/13/06." The said items were

likewise brought to the EPD Headquarters and turned over to PO2 Familiara for further investigation. Later, the seized substance were inventoried and photographed. After this, PO1 Gunda and PO2 Familiara brought appellant, together with a request for his drug testing,<sup>[8]</sup> and the seized substance, as well as a request for its laboratory examination,<sup>[9]</sup> to the EPD Crime Laboratory. The substance with the corresponding marking "Exh-A RCD/DG 10/13/06" on its plastic sachet was received by PSI Cejes in the morning of October 14, 2006. Per Physical Sciences Report No. D-452-2006E issued by PSI Cejes,<sup>[10]</sup> the substance weighing 0.02 gram was found positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.

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

Appellant denied the charge and interposed the defenses of denial and frame-up/extortion. He alleged that after eating dinner on October 13, 2006, he was watching a bingo game when three men arrived and held him by both hands. They introduced themselves as policemen and told him that they have a warrant for his arrest. They then handcuffed and frisked him and took away his wallet and cellphone. The men brought him to a police station where PO2 Familiara threatened to file a case against him unless he gives the police P50,000.00 as settlement. He failed to give the said amount.

Another witness for the defense, Genedina Guevarra Ignacio, testified that she was outside her house between 7:00 p.m. and 8:00 p.m. of October 13, 2006 when she noticed three men passed by her in haste. The men approached appellant who was then watching a bingo game across the street and suddenly handcuffed him. She heard appellant asking the reason for his arrest. She did not know what happened next since she already went inside her house.

### ***Ruling of the Regional Trial Court***

In its July 1, 2009 Decision,<sup>[11]</sup> the trial court adjudged appellant guilty of the crime charged, thus:

WHEREFORE, the Court finds accused Rafael Cunanan y David alias "Paeng Putol" GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00) with the accessory penalties provided for under Section 35 of said R.A. 9165.

The plastic sachet containing shabu (Exhibit "I") is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.

With costs against the accused.

SO ORDERED.<sup>[12]</sup>

### ***Ruling of the Court of Appeals***

On appeal, the CA affirmed appellant's conviction in its January 27, 2011 Decision, [13] viz:

WHEREFORE, there being no reversible error committed by the trial court, the appeal is dismissed. The assailed Decision dated July 1, 2009 of the RTC, Branch 164, Pasig City, in Criminal Case No. 15143-D, is AFFIRMED.

SO ORDERED.[14]

Hence, this appeal where appellant points out that: (1) there was no *in flagrante delicto* arrest as he was not committing any crime at the time he was apprehended but was merely watching a bingo game; (2) it was inconceivable for him to openly sell illegal drugs as PO1 Gunda himself testified that at the time of the alleged sale transaction there were many people around the target area; (3) the apprehending officers failed to comply with the guidelines on the proper custody of the seized dangerous drug, specifically with respect to its inventory and taking of photograph, and this casts doubt on whether the plastic sachet with white crystalline substance identified in court was the same item allegedly seized and confiscated from him; and (4) the testimonies of PO1 Gunda and PO2 Familiar as to who was in possession of the seized item from the target area up to the police station were conflicting.

### **Our Ruling**

The appeal is without merit.

*Appellant was lawfully arrested after he was caught in flagrante delicto selling an illegal drug in a buy-bust operation; contrary to his contention, it was not inconceivable that he would openly sell an illegal drug in public.*

Appellant assails the legality of his arrest contending that he was not caught *in flagrante delicto*. Appellant's contention fails to convince. The testimony of PO1 Gunda who acted as the poseur-buyer in the buy-bust operation clearly recounts how the sale transaction between him and appellant transpired, viz:

Q- After you were introduced by this confidential informant to Paeng Putol that you are user of illegal drugs, what was the reaction of the target person, this Paeng Putol?

A-

The confidential [informant] asked him, "Paeng, halagang dos, meron ka ba[?], kukuha kami.

Q- What was the reply of this alias Paeng Putol?

A- Akina iyong pera, sabi niya.

Q- What did you do?

A- I gave to him the two pieces of one[-]hundred peso bill[s].

Q- What happened?