

## SECOND DIVISION

[ G.R. No. 198452, February 19, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICENTE ROM, ACCUSED-APPELLANT.**

### DECISION

**PEREZ, J.:**

On appeal is the Decision<sup>[1]</sup> dated 9 August 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 00579 affirming with modification the Decision<sup>[2]</sup> dated 24 June 2002 of the Regional Trial Court (RTC) of Cebu City, Branch 10, in Criminal Case Nos. CBU-55062, CBU-55063 and CBU-55067, finding herein appellant Vicente Rom guilty beyond reasonable doubt of violating Sections 15<sup>[3]</sup> (illegal sale of *shabu*), 15-A<sup>[4]</sup> (maintenance of a drug den) and 16<sup>[5]</sup> (illegal possession of *shabu*), Article III of Republic Act No. 6425, also known as the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659.<sup>[6]</sup> In Criminal Case Nos. CBU-55062 and CBU-55063, for respectively violating Sections 15 and 16, Article III of Republic Act No. 6425, as amended, the trial court imposed on the appellant the penalty of *prision correccional* in its medium period ranging between two (2) years, four (4) months and one (1) day, as minimum, to four (4) years and two (2) months, as maximum. While in Criminal Case No. CBU-55067, that is for violating Section 15-A, Article III of Republic Act No. 6425, as amended, the trial court sentenced the appellant to *reclusion perpetua* and he was likewise ordered to pay a fine of P500,000.00. The Court of Appeals, however, modified and reduced the penalty in Criminal Case Nos. CBU-55062 and CBU-55063 to an imprisonment of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, after applying the Indeterminate Sentence Law.

In three separate Informations<sup>[7]</sup> all dated 1 September 2000, the appellant was charged with violation of Sections 15, 15-A and 16, Article III of Republic Act No. 6425, as amended. The three Informations read:

#### **Criminal Case No. CBU-55062**

That on or about the 31st day of August 2000, at about 10:30 P.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, [herein appellant], **with deliberate intent and without being authorized by law**, did then and there **sell, deliver or give away** to a poseur buyer **one (1) heat sealed plastic packet of white crystalline substance weighing 0.03 gram locally known as “shabu”**, containing Methylamphetamine Hydrochloride, a regulated drug.<sup>[8]</sup> (Emphasis and italics supplied).

#### **Criminal Case No. CBU-55063**

That on or about the 31st day of August 2000, at about 10:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, [appellant], **with deliberate intent and without being authorized by law**, did then and there **have in [his] possession and control or use** the following:

Four (4) heat sealed plastic packets of white crystalline substance weighing 0.15 gram

**locally known as “shabu”,** containing Methylamphetamine Hydrochloride, a regulated drug, **without the corresponding license or prescription.**<sup>[9]</sup> (Emphasis and italics supplied).

### **Criminal Case No. CBU-55067**

That on the 31s[t] day of August, 2000, at about 10:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, [appellant], **with deliberate intent**, did then and there **knowingly maintain a den for regulated users** along the interior portion of Barangay T. Padilla in violation to (sic) the provision of Sec. 15-A of Art. III of RA 6425.<sup>[10]</sup> (Emphasis supplied).

On arraignment, the appellant, with the assistance of counsel de parte, pleaded NOT GUILTY<sup>[11]</sup> to all the charges. A pre-trial conference was conducted on 2 April 2001, but no stipulation or agreement was arrived at.<sup>[12]</sup> The pre-trial conference was then terminated and trial on the merits thereafter ensued.

The prosecution presented as witnesses Police Officer 2 Marvin Martinez (PO2 Martinez), the designated *poseur*-buyer; PO3 Franco Mateo Yanson (PO3 Yanson); and Police Senior Inspector Marvin Sanchez (P/Sr. Insp. Sanchez), the team leader of the buy-bust operation against the appellant. They were all assigned at the Vice Control Section of the Cebu City Police Office (VCS-CCPO). The testimony, however, of P/Sr. Insp. Mutchit G. Salinas (P/Sr. Insp. Salinas), the forensic analyst, was dispensed<sup>[13]</sup> with in view of the admission made by the defense as to the authenticity and due existence of Chemistry Report No. D-1782-2000<sup>[14]</sup> dated 1 September 2000 and the expertise of the forensic analyst.

The prosecution’s evidence established the following facts:

Two weeks prior to 31 August 2000, the VCS-CCPO received confidential information from their informant that *alias* Dodong, who turned out later to be the appellant, whose real name is Vicente Rom, was engaged in the illegal sale of *shabu* and also maintained a drug den at his residence in *Barangay* T. Padilla, Cebu City. Thus, the VCS-CCPO, particularly PO2 Martinez, conducted surveillance and monitoring operation.<sup>[15]</sup>

On 31 August 2000, at around 10:15 p.m., P/Sr. Insp. Sanchez, Chief of VCS-CCPO, formed a team to conduct a buy-bust operation against the appellant. The buy-bust team was composed of PO2 Martinez (*poseur*-buyer), Senior Police Officer 1 Jesus Elmer Fernandez (SPO1 Fernandez), PO3 Yanson, PO3 Benicer Tamboboy (PO3 Tamboboy), PO3 Jaime Otadoy (PO3 Otadoy) and P/Sr. Insp. Sanchez (team leader).

Being the designated *poseur*-buyer, PO2 Martinez was provided with a P100.00 peso bill and a P10.00 peso bill buy-bust money bearing Serial Nos. AD336230 and AM740786, respectively, and both were marked with the initials of PO2 Martinez, *i.e.* "MM." The former amount would be used to buy *shabu* while the latter amount would serve as payment for the use of the drug den.<sup>[16]</sup>

After the briefing, the buy-bust team proceeded to the target area and upon arrival there at around 10:20 p.m., PO2 Martinez proceeded directly to the appellant's house, which was earlier pointed to by their informant, who was also with them during the buy-bust operation. The rest of the buy-bust team strategically positioned themselves nearby. Once PO2 Martinez reached the appellant's house, he knocked on the door, which the appellant opened. PO2 Martinez subsequently told the appellant that he wanted to buy *shabu* worth P100.00. The appellant looked around to check if PO2 Martinez had a companion. Seeing none, the appellant took out his wallet from his pocket and got one heat-sealed plastic packet containing white crystalline substance, later confirmed to be *shabu*, and gave it to PO2 Martinez. The latter, in turn, gave the P100.00 peso bill marked money to the appellant. While this sale transaction was going on, PO3 Yanson and P/Sr. Insp. Sanchez were only five to eight meters away from PO2 Martinez and the appellant. P/Sr. Insp. Sanchez clearly witnessed the sale transaction as it happened right outside the door of the appellant's house.<sup>[17]</sup>

Afterwards, PO2 Martinez told the appellant that he wanted to sniff the *shabu*, so the latter required the former to pay an additional amount of P10.00 as rental fee for the use of his place. After paying the said amount, the appellant allowed PO2 Martinez to enter his house. Once inside the house, PO2 Martinez was directed by the appellant to proceed to the room located at the right side of the *sala*. Upon entering the said room, PO2 Martinez saw three persons, later identified to be Jose Delloso (Delloso), Danilo Empuerto (Empuerto) and Arnie Ogong (Ogong), already sniffing *shabu*.<sup>[18]</sup>

Thereupon, PO2 Martinez made a missed call to P/Sr. Insp. Sanchez, which was their pre-arranged signal, to signify that the whole transaction was consummated. After the lapsed of about 10 to 15 seconds, the rest of the team, who were just few meters away from the appellant's house, barged in and identified themselves as police officers. PO2 Martinez then told PO3 Yanson to hold the appellant. PO3 Yanson grabbed the appellant and made a body search on the latter that led to the recovery of four heat-sealed transparent plastic packets containing white crystalline substance, which were inside the appellant's brown wallet that was tucked in his pocket; the buy-bust money consisting of P100.00 peso bill and P10.00 peso bill; and P280.00 consisting of two P100.00 peso bills, one P50.00 peso bill and three P10.00 peso bills believed to be the proceeds of the appellant's illegal activities. The one heat-sealed plastic packet of *shabu* bought by PO2 Martinez from the appellant remained in the possession of the former.<sup>[19]</sup>

The appellant, Delloso, Empuerto and Ogong were informed of their constitutional rights and were later brought by the buy-bust team to their office, together with the confiscated items, for documentation. At the office of the buy-bust team, the confiscated items were given to their investigator, SPO1 Fernandez, who marked the one heat-sealed plastic packet containing white crystalline substance, which was the subject of the sale transaction, with VRR-8-31-2000-01 (buy-bust) while the other

four heat-sealed plastic packets containing white crystalline substance, which were recovered from the appellant, were similarly marked with VRR-8-31-2000-02 to VRR-8-31-2000-05. The "VRR" in the markings are the initials of the appellant, i.e., Vicente Ramonida Rom.<sup>[20]</sup>

Thereafter, all the five heat-sealed plastic packets containing white crystalline substance, together with the Request for Laboratory Examination, were brought by PO3 Yanson to the Philippine National Police (PNP) Crime Laboratory for chemical analysis, which examination yielded positive results for the presence of *methylamphetamine hydrochloride* or "*shabu*,"<sup>[21]</sup> as evidenced by Chemistry Report No. D-1782-2000.<sup>[22]</sup>

For its part, the defense presented the appellant and Teresita Bitos, whose testimonies consist of sheer denials. Their version of the 31 August 2000 incident is as follows:

At around 10:15 p.m. to 10:30 p.m. of 31 August 2000, the appellant was at the house of his daughter, Lorena Cochera (Lorena), in *Barangay* T. Padilla, Cebu City, as Lorena had asked her father to get the monthly house rental fee from Teresita Bitos, whose nickname is "Nene." While the appellant and Nene were talking, the police officers suddenly barged in. The appellant noticed that PO2 Martinez proceeded to the inner portion of the house and opened the door of the rooms. Nene stopped them but the police officers told her to just keep quiet. The police officers went on opening the door of the two rooms, where they saw three male persons. The police officers frisked the appellant and the three other men. The police officers likewise took appellant's wallet containing P360.00. The appellant then requested Nene to tell his daughter that he was arrested. Thereafter, the police officers brought the appellant and the three other men to the police station.<sup>[23]</sup>

The appellant denied that he sold *shabu* to PO2 Martinez. He also denied that he was maintaining a drug den and that he allowed persons to sniff *shabu* inside the house in *Barangay* T. Padilla, Cebu City, in exchange for a sum of money. The appellant likewise denied that he knew the three other men who were arrested inside the room in the said house. The appellant claimed instead that he knew PO2 Martinez prior to 31 August 2000 because the latter usually stayed at the house to apprehend snatchers. Also, a week before 31 August 2000, he and PO2 Martinez had a conversation and he was asked to pinpoint the "fat fish," which is the code for the big time pusher. When he said that he does not know of such pusher, PO2 Martinez got angry. The appellant maintained that on 31 August 2000, he was no longer living in the house in *Barangay* T. Padilla, Cebu City, as his daughter had already brought him to Minglanilla, Cebu, as early as July 1999. On the said date, Nene was already occupying the house and had subleased one of its rooms as his daughter Maya told him so. The appellant admitted that a year prior to 31 August 2000, and before he transferred to Minglanilla, he was apprehended for illegal possession of *shabu*.<sup>[24]</sup>

The narration of the appellant was corroborated by Nene on all material points.

Testifying on rebuttal, PO2 Martinez denied that he knew the appellant prior to 31 August 2000. PO2 Martinez clarified that he came to know the appellant only on the night that they conducted the buy-bust operation.<sup>[25]</sup>

Finding the testimonies of the prosecution witnesses to be credible, competent and convincing as they were able to satisfactorily prove all the elements of the offenses charged against the appellant, the trial court, in its Decision dated 24 June 2002, held the appellant guilty beyond reasonable doubt of violation of Sections 15, 15-A and 16, Article III of Republic Act No. 6425, as amended. The trial court disposed of the case as follows:

IN THE LIGHT OF THE FOREGOING CIRCUMSTANCES, the Court finds the [herein appellant] for –

- 1) **Criminal Case No. CBU-55062, for violating Section 15, Article III, Republic Act No. 6425, as amended, GUILTY.** There being no mitigating nor any aggravating circumstance proven, the Court hereby **imposes the penalty of *PRISION CORRECCIONAL* in the MEDIUM PERIOD ranging between TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY, as minimum[,]** to **FOUR (4) YEARS and TWO (2) MONTHS, as maximum;**
- 2) **Criminal Case No. CBU-55063, for violating Section 16, Article III, Republic Act No. 6425, as amended, GUILTY.** In the absence of any mitigating or aggravating circumstance, the Court **imposes the penalty of *PRISION CORRECCIONAL* in the MEDIUM PERIOD ranging between TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY, as minimum to FOUR (4) YEARS and TWO (2) MONTHS, as maximum;** and
- 3) **Criminal Case No. CBU-55067, for violating Section 15-A, Article III, Republic Act No. 6425, as amended, GUILTY.** The court hereby **imposes upon the [appellant] the penalty of *RECLUSION PERPETUA* and a FINE of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.**

The five (5) heat-sealed plastic packets of white crystalline substance containing methylamphetamine hydrochloride, locally known as *shabu*, are hereby **CONFISCATED** in favor of the government and shall be destroyed in accordance with the law prohibiting said drug.<sup>[26]</sup> (Emphasis, italics and underscoring supplied).

The appellant appealed the trial court's Decision to this Court via Notice of Appeal.<sup>[27]</sup> However, pursuant to this Court's decision in *People v. Mateo*,<sup>[28]</sup> the case was transferred to the Court of Appeals for intermediate review.

On 9 August 2010, the Court of Appeals rendered the now assailed Decision affirming with modification the ruling of the trial court. Its decretal portion reads, thus:

**WHEREFORE**, in view of all the foregoing, the Decision of the RTC, Branch 10, Cebu City in Criminal Cases No. CBU-55062, CBU-55063 and CBU-55067 is hereby **AFFIRMED WITH MODIFICATION** concerning Criminal Cases No. CBU-55062 and CBU-55063, for which [the herein appellant] is sentenced to suffer the penalty of imprisonment from six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum of the Indeterminate Sentence Law.<sup>[29]</sup>