

SECOND DIVISION

[G.R. No. 188707, July 30, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUELITA AMPATUAN Y GONZALES, ET AL., ACCUSED,
MASTOR SARIP Y MARUHOM AND WARREN TUMOG Y
SAMPARADO, ACCUSED-APPELLANTS.**

D E C I S I O N

PEREZ, J.:

Under review is the conviction of the accused-appellants for illegal sale of *shabu*, illegal possession of *shabu* and *shabu* paraphernalia, punishable under Sections 5, 11 (3), and 12, Article II of Republic Act No. 9165 (R.A. No. 9165), otherwise known as the "Comprehensive Dangerous Drugs Act of 2002". The challenged decision is the Decision^[1] of the Court of Appeals (CA), dated 9 October 2007 in CA-G.R. CR HC No. 00356 MIN, which affirmed with modifications the Decision of the Regional Trial Court (RTC) dated 18 August 2003, in Criminal Case No. 51,765-2003, 51,766-2003, 51,767-2003 and 51,768-2003.^[2]

The present case involves four (4) separate Amended Information charging accused-appellants Manuelita Ampatuan (Manuelita), Warren Tumog (Warren) and Mastor Maruhom (Mastor), with violation of R.A. No. 9165. The first Information, docketed as Criminal Case No. 51,765-2003, charged accused-appellants Manuelita, Warren and Mastor with violation of Section 5, Article II of R.A. No. 9165 or illegal sale of *shabu*.

The second Information, docketed as Criminal Case No. 51,766-2003, charged accused-appellant Warren with violation of Section 12, Article II of R.A. No. 9165 or illegal possession of drug paraphernalia.

The third Information, docketed as Criminal Case No. 51,767-2003, charged accused-appellant Manuelita also with violation of Section 12, Article II of R.A. No. 9165 or illegal possession of drug paraphernalia.

The last Information, docketed as Criminal Case No. 51,768-2003, charged accused-appellant Manuelita with violation of Section 11 (3), Article II of R.A. No. 9165 or illegal possession of prohibited drugs.

These four cases were tried jointly.

The facts as culled from the records are as follows:

Version of the Prosecution

On 29 January 2003, police officers apprehended Edward Dujon (Dujon) for violation

of R.A. No. 9165, which resulted to his detention at the Philippine Drug Enforcement Authority (PDEA) in Davao City pending prosecution of his case.

While in detention, on 8 February 2003, Dujon approached Police Chief Inspector Wilkins Villanueva (Chief P/Insp. Villanueva), Regional Director of the PDEA to give information on the alleged drug activity of accused-appellant Manuelita and her group who are based in Cotabato City, as one of his suppliers of *shabu*.

To verify Dujon's claim, Chief P/Insp. Villanueva ordered Dujon to contact Manuelita. When Dujon was able to talk to Manuelita, he ordered three (3) jumbo packs of *shabu*, consisting of 50 grams per packet, and asked that it be delivered the following day. Manuelita agreed.

The following day, 9 February 2003, Manuelita called Dujon, informing him that she could not deliver the three (3) jumbo packs of *shabu* due to lack of supply and that she only had one (1) jumbo sachet in her possession. Manuelita asked Dujon to postpone the delivery for another day.

When Manuelita again failed to deliver on 10 February 2003, Dujon called Manuelita and asked that she deliver the one jumbo sachet of *shabu*, worth P70,000.00, in Davao City. Manuelita agreed.

At around six o'clock in the morning of 11 February 2003, Manuelita texted Dujon that she and her men, accused-appellants Mastor and Warren, were already waiting for him inside a white pick-up truck with plate number LBP 648 near Dimsum Diner on Guerrero Street, Davao City.

Dujon informed the PDEA about the arrival of Manuelita and her group. They immediately commenced the entrapment operation. Dujon, driving his own car, proceeded to the Dimsum Diner, discreetly followed by the PDEA operatives.

At the Dimsum Diner, Dujon and Manuelita's group agreed to conduct the delivery at Jogue's Apartelle ("Jogue's") in Juna Subd., Matina, Davao. The PDEA operatives went ahead to Jogue's to secure the area.

At around nine o'clock in the morning, Dujon and Manuelita's convoy arrived at Jogue's. Dujon, after getting a room, went to Room No. 3 together with Manuelita's group. After a few minutes in Room No. 3, they were informed to move to Room No. 2 as Room No. 3 had already been reserved.

In Room No. 2, the group tasted the sample *shabu* to test its quality. Satisfied with the quality, Dujon asked Manuelita to wait for his assistant, who was already on his way to withdraw his money from the bank. Manuelita then took out the headscarf she was clasping, opened it, and handed the jumbo sachet with crystalline substance over to Dujon.

Meanwhile, when Dujon failed to update the PDEA as previously planned, PO1 Anthony Alpiz (PO1 Alpiz) peered through a window of Room No. 2. According to PO1 Alpiz, he clearly saw Manuelita hand Dujon the jumbo sachet with crystalline substance. Upon seeing that the jumbo sachet with crystalline substance was in Dujon's possession, PO1 Alpiz, followed by other PDEA operatives, rushed into Room No. 2.

After reading accused-appellants their constitutional rights, the PDEA operatives handcuffed them. PO1 Alpiz confiscated the jumbo sachet with crystalline substance then proceeded to frisk accused-appellants and saw a black canister with kettle tube inside hanging from Warren's neck, which upon examination, turned out to be a drug paraphernalia for sniffing shabu. On top of the table was Manuelita's headscarf. Upon inspection, PO1 Alpiz discovered four pieces of aluminum foil, a lighter, and a small sachet containing a crystalline substance, which later tested positive for *shabu*. After seizure of the illegal drugs and paraphernalia, the PDEA operatives brought the accused-appellants to the PDEA headquarters for investigation.

According to the Forensic Report^[3] executed by Chief P/Insp. Noemi Austero, Head of the Chemistry Section:

SPECIMEN SUBMITTED:

"A"- White crystalline substance weighing 46.4490 grams contained in a transparent plastic.

"B"- White crystalline substance weighing 0.2284 gram[s] contained in a plastic sachet.

"C"- Three (3) pieces aluminum foil marked "C1" to "C3", each suspected to contain shabu residue.

"D"- One (1) black keyholder with test tube inside suspected to contain shabu residue. xxxx

FINDINGS:

Qualitative examination conducted on the above-mentioned specimens have POSITIVE result to the test for Methamphetamine hydrochloride (shabu).

CONCLUSION

Specimens "A", "B", "C1" to "C3" and "D" contain Methamphetamine hydrochloride (shabu), a dangerous drug.

Version of the Defense

Accused-appellants deny the charges against them. They narrate as facts the following:

At around one o'clock in the morning of 11 February 2003, Warren and Mastor set out for Davao City, on board the pick-up truck of Warren's mother, to get the cellular phone of Warren's uncle. While in Cotabato City, they passed by Manuelita, who was waiting for a ride to go to the bus terminal going to Davao City for a medical check-up. Manuelita flagged down Warren and Mastor and requested if she could ride with them to Davao City, to which the two acceded.

When they arrived in Davao City at around six o'clock in the morning, Manuelita invited Warren and Mastor to have breakfast at Chowking near Victoria Plaza Mall.

After having breakfast, they proceeded to see Warren's brother-in-law on Malvar Street to get his uncle's cellular phone. However, upon arrival, Warren discovered that the cellular phone has already been sent to Cotabato City. Warren and Mastor then decided to go back to Cotabato City. When they were about to drop-off Manuelita, Manuelita received a call from Dujon. Manuelita then asked Warren and Mastor if they could drive her to Dimsum Diner to meet Dujon.

At the Dimsum Diner, Dujon invited the accused-appellants to his place at Jogue's Apartelle to get rest. When they arrived, they stayed in Room No. 3. Dujon told them to rest while he went outside to get drinks. While they were making themselves comfortable, Warren noticed cigarettes, plastic sachets and aluminum foils on top of the table and inquired about it. Manuelita informed Warren that Dujon was a big time drug pusher in Davao City. When Dujon arrived, he placed the drinks on top of the table and called somebody in his phone. After making a call, Dujon told the accused-appellants to transfer to Room No. 2 because Room No. 3 was already reserved. Dujon then borrowed Manuelita's headscarf, wrapped it over the *shabu* and drug paraphernalia, brought the headscarf to Room No. 2, and placed it on top of the table.

Inside Room No. 2, Dujon asked accused-appellants to taste the *shabu*, boasting its fine quality. The accused-appellants initially declined, but Dujon was very insistent. Because of '*pakikisama*', the accused-appellants all sniffed the *shabu*. Feeling nervous, Warren and Mastor decided to go out of the room. However, before opening the door, somebody knocked. When Dujon opened the door, the police barged inside and arrested them.

Upon entering a not guilty plea to all the four sets of Information and after trial, the trial court ruled in the following:

Wherefore, the Court finds and so rules that:

(1) In Criminal Case No. 51,765-2003, the three (3) accused Manuelita Gonzales y Ampatuan, 47 years old, married, Filipino, a resident of 111 Sinsuat Avenue, Cotabato City, Warren Samparado Tumog, 30 years old, married, Filipino, a resident of 18 Salisa Street, Cotabato City, and Mastor Sarip Maruhom, 36 years old, married, Filipino, a resident of Macapagal Street, Cotabato City, are hereby all found GUILTY beyond reasonable doubt, and are CONVICTED of the crime for Violation of Section 5, Article II of Republic Act No. 9165. Each of them is hereby imposed a penalty of DEATH and a fine of SEVEN MILLION PESOS (P7,000,000.00) EACH with all the accessory penalties corresponding thereto including absolute perpetual disqualification from any public office for Mastor Sarip Maruhom and Warren Samparado Tumog;

(2) In Criminal Case No. 51,766-2003 Warren Samparado y Tumog, 30 years old, married, Filipino, a resident of 18 Salisa Street, Cotabato City, is hereby found GUILTY beyond reasonable doubt, and is CONVICTED for