

## SECOND DIVISION

[ G.R. No. 191260, November 24, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MELCHOR D. BRITA, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**DEL CASTILLO, J.:**

This is an appeal from the November 18, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03561 that denied the appeal filed therewith and affirmed the April 15, 2008 Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 70, Taguig City finding appellant Melchor D. Brita alias "Boboy" (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

#### ***Factual Antecedents***

On October 24, 2002, two separate Informations<sup>[3]</sup> were filed against appellant before the RTC of Pasig City. One was for selling 0.19 gram of *shabu*, in violation of Section 5, Article II of RA 9165, as amended, and the other for illegal possession of 1.56 grams of *shabu*, in violation of Section 11, Article II the same law. The cases were raffled to Branch 165 of the said RTC (RTC-Pasig, Branch 165).

Immediately after his arraignment on February 11, 2003 wherein he pleaded not guilty to both charges, appellant filed a Petition for Bail.<sup>[4]</sup> During the bail hearing, the prosecution presented PO2 Archibald Tejero (PO2 Tejero) and PO3 Edgar Orias (PO3 Orias). Their testimonies<sup>[5]</sup> revealed that in the afternoon of October 23, 2002, upon being told by a confidential informant that a certain "Boboy" (later identified as the appellant) was engaged in rampant selling of illegal drugs in Western Bicutan, Taguig, Police Inspector Eduardo Paningbatan (P/Insp. Paningbatan), Chief of the Taguig Police Station, Drug Enforcement Unit, set up a buy-bust team. PO2 Tejero was designated as the poseur-buyer and was given P500.00 as buy-bust money marked with "AT."

At about 4:30 p.m. of the same day, the buy-bust team went to the house of appellant. The informant, together with PO2 Tejero, called appellant who thereupon came out of his house and approached them. After having been introduced by the informant to the appellant as a potential buyer of *shabu* worth P500.00, PO2 Tejero gave appellant the marked money. In return, appellant took from his right pocket a plastic sachet containing white crystalline substance and handed the same to PO2 Tejero. PO2 Tejero then executed the pre-arranged signal by lighting a cigarette. Thereupon, PO3 Orias and the rest of the team rushed to the scene. Alarmed, appellant went inside his house but was caught by the police officers. After he was

placed under arrest, PO2 Tejero recovered from appellant the buy-bust money. Anent the white crystalline substance he bought from appellant, PO2 Tejero marked the plastic sachet thereof with "MDB-1."

Meanwhile, PO3 Orias frisked appellant and found in his possession two plastic sachets containing suspected *shabu*. PO3 Orias marked the recovered plastic sachets with "MDB-2" and "MDB-3."

Thereafter, the team brought appellant and the confiscated items to the Taguig Police Station. The seized items were turned over to P/Insp. Paningbatan, who in turn gave the same to the investigator/evidence custodian. After preparing the request for laboratory examination of the specimen, PO2 Tejero and the investigator brought the specimen to the PNP Crime Laboratory. Per Physical Science Report No. D-1542-02,<sup>[6]</sup> the substance tested positive for methamphetamine hydrochloride or *shabu*.

In support of his Petition for Bail, appellant offered the testimonies of Maygene Fernandez (Fernandez), the daughter-in-law of appellant's wife, and Olivia Duhaylongsod (Duhaylongsod), a neighbor. Their testimonies aimed to establish that when appellant was arrested, no buy-bust operation was actually conducted and that no *shabu* was recovered from him.

Fernandez testified that at the time of the alleged buy-bust operation, appellant was actually sleeping in a room at the second floor of their house. Suddenly, police officers entered their house. When appellant emerged from the room and saw them, he asked for a search warrant. The police officers, however, did not respond and instead immediately handcuffed appellant. Fernandez further testified that appellant was not frisked and that she did not see any sachet of drugs at the time of the incident.<sup>[7]</sup>

For her part, Duhaylongsod testified that she saw two men enter an opening in the back portion of appellant's house. She did not see appellant or his common-law wife when the men made their entry.<sup>[8]</sup>

The RTC-Pasig, Branch 165, however, did not resolve the Petition for Bail until after the prosecution rested its case<sup>[9]</sup> and appellant filed a Demurrer to Evidence<sup>[10]</sup> with prior leave.<sup>[11]</sup> In an Omnibus Order<sup>[12]</sup> dated December 28, 2004, RTC-Pasig, Branch 165 denied both appellant's Petition for Bail and Demurrer to Evidence as it found the evidence against appellant for the charge of violation of Section 5, Article II of RA 9165 strong. However, it dismissed the case for violation of Section 11, Article II of the same law as it found that the guilt of the accused was not proven beyond reasonable doubt.

Subsequently, the parties filed a Joint Motion for Transfer/Re-Raffle<sup>[13]</sup> which was granted by RTC-Pasig, Branch 165 in an Order<sup>[14]</sup> dated October 12, 2005. Accordingly, the case was re-raffled to RTC-Taguig, Branch 70. RTC-Taguig, Branch 70, after finding that the evidence of the prosecution was not that strong, reconsidered and set aside the RTC-Pasig, Branch 165's Omnibus Order of December 28, 2004 and allowed appellant to post bail in an Order<sup>[15]</sup> dated October

Meanwhile, appellant, for his defense, proffered denial. He claimed that there was no buy-bust operation and that he was — merely a victim of frame-up.

In a Decision<sup>[16]</sup> dated April 15, 2008, RTC-Taguig, Branch 70 adjudged appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and sentenced him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00. It gave credence to the testimonies of the police officers who were presumed to have performed their duties in a regular manner. RTC-Taguig, Branch 70 ruled that the positive testimonies of the prosecution witnesses, coupled with the object evidence consisting of the seized substance that tested positive for *shabu*, sufficiently established the elements of illegal sale of dangerous drugs.

On appeal, the CA affirmed the said RTC Decision through a Decision<sup>[17]</sup> dated November 18, 2009.

Hence, the present appeal.

Appellant claims that the presumption of innocence cannot be overcome by the disputable presumption of regularity in the performance of official duty. Besides, there is reason to doubt the credibility of the police officers as prosecution witnesses since there were inconsistencies in their testimonies. He further argues that the grant of bail in his favor means that the evidence of guilt is not strong. He also questions the chain of custody of the seized specimen.

The contentions of appellant deserve scant consideration.

The Court agrees with the CA that the testimonies of PO2 Tejero and PO3 Orias established beyond reasonable doubt appellant's culpability. Their narrations of what really transpired in the afternoon of October 23, 2002, from the moment the confidential informant disclosed to their chief the illegal activities of appellant up to the time of his arrest, deserve great respect and credence as the same emanated from the direct account of law enforcement officers who enjoy the presumption of regularity in the performance of their duties. It should be noted that "[u]nless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or [did] not properly [perform] their duty, their testimonies on the operation deserve full faith and credit."<sup>[18]</sup> Moreover, while appellant is correct that the presumption of regularity should not by itself prevail over the presumption of innocence, still, he must be able to present a viable defense. Here, what appellant interposed is merely denial and a claim of frame-up. "[F]or the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome [the] presumption of regularity,"<sup>[19]</sup> which it failed to do. Hence, the Court finds no error on the part of the courts below in upholding the presumption of regularity in the performance of duty of the police officers who conducted the buy-bust operation.

Anent the alleged inconsistencies<sup>[20]</sup> pointed out by appellant, the same were too trivial and inconsequential. They did not deal with the central fact of the crime. It has been repeatedly held that "a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not actually touching upon the central fact of the crime do not impair their credibility."<sup>[21]</sup>