

## SECOND DIVISION

[ G.R. No. 193670, December 03, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VENERANDO DELA CRUZ Y SEBASTIAN, ACCUSED-APPELLANT.**

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

**DEL CASTILLO, J.:**

Assailed in this appeal is the June 25, 2010 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01025 that affirmed the March 15, 2005 Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Naga City, Branch 28, in Criminal Case No. RTC'03-0289 convicting Venerando Dela Cruz y Sebastian (appellant) of Violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

#### **Factual Antecedents**

On July 25, 2003, police asset Warren Ebio (Ebio) received information from another asset that he could purchase *shabu* by calling a certain person. He thus called the said person through cellular phone and agreed to meet with him in front of the *barangay* hall of Lerma, Naga City.

Accordingly, a pre-operation plan to entrap the alleged seller was immediately drawn up in coordination with the Philippine Drug Enforcement Agency. SPO1 Ruben Antonio (SPO1 Antonio), SPO1 Cornelio Morano (SPO1 Morano), PO3 Raul Bongon (PO3 Bongon) and SPO3 Julio Tuason (SPO3 Tuason) then formed themselves into a buy-bust team. Ebio was designated as the poseur-buyer and was given three P500.00 bills as buy-bust money, while PO3 Bongon was tasked to apprehend the seller after the consummation of the transaction.

Upon their arrival at the designated area, Ebio, SPO3 Tuason and SPO1 Morano alighted from their vehicle. Ebio proceeded towards the meeting place while the other two positioned themselves nearby. A few minutes later, a man riding a motorcycle arrived. The buy-bust team recognized him as the seller based on his attire as described by him to Ebio. Ebio introduced himself as the buyer. When the man asked for payment, he gave him the buy-bust money. The man then took out two transparent plastic sachets containing white crystalline substance from his right pocket and gave them to Ebio. Thereupon, Ebio took off his hat, the pre-arranged signal that the transaction was already consummated. Immediately, PO3 Bongon, SPO1 Morano and SPO1 Antonio rushed towards the man and apprehended him. They recovered from him the buy-bust money and another plastic sachet containing white crystalline substance. Immediately after Ebio turned over to him the two sachets subject of the sale, PO3 Bongon marked the same with "RSB-1" and "RSB-2." On the other hand, he marked the third sachet recovered from the seller after he conducted a search on him with "RSB-3." PO3 Bongon thereafter turned over these

seized items together with the marked money to SPO1 Antonio for proper disposition. A police investigation followed where the person arrested was identified as the appellant. Afterwards, SPO1 Antonio brought the sachets to the Philippine National Police Crime Laboratory for examination, during which Forensic Chemist Josephine Macura Clemen (Clemen) found their contents positive for *shabu*. Thus, an Information<sup>[3]</sup> for Violation of Section 5, Article II of RA 9165 was filed against appellant.

Appellant denied the accusation against him and claimed that he was merely a victim of frame-up. In his version of the incident, appellant alleged that he was riding his motorcycle towards the Panganiban Bridge near the *Barangay* Hall of Lerma, Naga City in the evening of July 25, 2003. He was going to his parents' house located in the boundary of Lerma and Triangulo Streets to inform them that he and his family would leave early morning of the next day for Camarines Sur to attend the wake of his father-in-law who died a few days earlier. As he was descending the bridge, however, two individuals grabbed his hands. A police officer then suddenly came out of a car and told him to get off his motorcycle. PO3 Bongon frisked him and took his cellphone and telephone directory that contained money. After that, he was made to board a mobile car and was brought to a police station. Thereat, police officers threatened to charge him if he would not cooperate in the arrest of a certain "Habagat," who engaged his services as a computer technician. He did not accede since he knew nothing about the case of "Habagat." Hence, the police officers instead filed a case against him.

In the RTC Judgment dated March 15, 2005, appellant was found guilty as charged and sentenced to suffer the penalty of life imprisonment with a fine of P500,000.00. On appeal, the CA rendered its Decision on June 25, 2010 affirming the said RTC Judgment.

Hence, this appeal.

### ***The Issue***

Appellant points out the following: (1) it was not made clear by the prosecution where the markings of the three sachets of *shabu* were made; and (2) the prosecution failed to show whether there was already a clear understanding between appellant and the poseur-buyer with respect to the quantity of *shabu* allegedly being purchased. In view of these, appellant asserts that the presumption of innocence in his favor must be upheld.

### ***The Court's Ruling***

The appeal lacks merit.

"In a prosecution for illegal sale of dangerous drugs, [such as *shabu*], the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration, and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction."<sup>[4]</sup> Here, the prosecution submitted evidence that duly established the elements of illegal sale of *shabu*. It positively identified appellant as the seller of the