

## FIRST DIVISION

[ G.R. No. 198794, February 06, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICTOR DE JESUS Y GARCIA, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

For review is the March 24, 2011 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR.-H.C. No. 03671, which affirmed the Regional Trial Court's (RTC) November 4, 2008 Joint Judgment<sup>[2]</sup> in Criminal Case Nos. 1091-M-2003 and 1092-M-2003, wherein accused-appellant Victor de Jesus y Garcia (De Jesus) was found guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165.

On April 1, 2003, De Jesus was charged before the Malolos, Bulacan RTC, Branch 76 for violating Sections 5 and 11, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The pertinent portions of the respective Informations are quoted as follows:

Criminal Case No. 1091-M-2003:

That on or about the 31<sup>st</sup> day of March, 2003, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug (sic) consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine Hydrochloride weighing 0.022 gram.<sup>[3]</sup>

Criminal Case No. 1092-M-2003:

That on or about the 31<sup>st</sup> day of March, 2003, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in [his] possession and control dangerous drug (sic) consisting of [e]ight (8) heat-sealed transparent plastic sachets of Methamphetamine Hydrochloride weighing 0.027 gram, 0.019 gram, 0.020 gram, 0.017 gram, 0.021 gram, 0.018 gram, 0.020 gram and 0.146 gram respectively.<sup>[4]</sup>

De Jesus pleaded not guilty to both charges upon his arraignment<sup>[5]</sup> on June 16, 2003. During the pre-trial conference<sup>[6]</sup> held on August 5, 2003, counsel for De Jesus admitted "the qualification and competence of Forensic Chemical Officer Nellson C. Sta. Maria as an expert witness; the existence of the request for laboratory examination, the affidavit of the Police Officers, Chemistry Report No. D-241-2003 and the attached specimen subject of these cases with qualification that said specimen were not taken from the possession of the accused." After the prosecution marked its exhibits, the pre-trial conference was terminated and the testimony of the Forensic Chemical Officer was thereby dispensed with.

The testimonies of Police Officer (PO) 3 Tomas Nachor, Jr.,<sup>[7]</sup> the police investigator stationed at the Provincial Drug Enforcement Group, Bulacan (Bulacan PDEG) at that time and PO1 Joven Quizon,<sup>[8]</sup> a member of the Bulacan PDEG, were also dispensed with by the parties in view of the following stipulations:

*With respect to PO3 Tomas Nachor, Jr. the parties stipulated:*

1. That PO3 Tomas Nachor, Jr. was the police investigator at the time of the commission of the alleged offenses;
2. That being the investigator in these cases, PO2 Carlito Bernardo and the other police operatives who conducted the drug operation turned over to him the specimen subject of these cases, which consisted of eight (8) pieces of heat-sealed transparent plastic sachets with markings B-P-1 "CB" to B-P-8 "CB";
3. That as an investigator, he prepared the documentation of these cases including the request for laboratory examination and the request for drug test examination; and
4. That he was the one who turned over the specimen as well as the person of the accused to the Crime Laboratory Office for laboratory examination of the specimen as well as for the urine drug test of the accused.<sup>[9]</sup>

*With respect to PO1 Joven Quizon:*

1. That PO1 Joven Quizon was a member of the Bulacan PDEG during the subject incident;
2. That he only served as back-up to the poseur-buyer, PO[2] Carlito Bernardo, during the buy-bust operation; and
3. That he can identify the accused as well as the joint affidavit of arrest he executed in relation to these charges.<sup>[10]</sup>

The trial ensued with the presentation of PO2 Carlito Bernardo as the lone witness for the prosecution, while De Jesus himself and his daughter, Victoria Angelica de Jesus, testified for the defense.

The events, as put forward by the prosecution, through PO2 Bernardo's testimony, were summarized by the Office of the Solicitor General (OSG) in its brief<sup>[11]</sup> as follows:

On March 28, 2003, a report reached the office of the [Bulacan PDEG] about the alleged drug selling activities of one alias Vic, herein appellant Victor De Jesus y Garcia, along Mabini St., Barangay Poblacion, Baliuag, Bulacan. Upon instructions of the chief of the PDEG, a surveillance was conducted in the area by SPO2 Violago, as the team leader, together with PO1 Quizon, PO1 Dimla, and PO2 Carlito Bernardo[, ] as members.

The surveillance team proceeded to Barangay Poblacion, particularly observing the perimeter of [De Jesus'] abode along Mabini Street from 1:30 p.m. to 5:00 p.m. Various persons were noticed to have been coming in and out of the said house.

A buy bust operation was instructed by the PDEG chief with the assistance of a confidential agent, known as alias "Erap". PO2 Carlito Bernardo was designated as the poseur buyer with SPO2 Violago, PO1 Jacinto, and PO1 Quizon as back up. The former was given two (2) pieces of marked one hundred peso bills of which he placed his initials CB on the center of the seal of the Bangko Sentral ng Pilipinas of each bill.

At around 12:15 p.m. of March 31[, ] 2002, the buy-bust team proceeded to the house of their confidential agent at Barangay Poblacion, merely 70 meters away from the house of [De Jesus]. The team conducted a briefing on the procedure of their operation at their confidential agent's house.

Around 1:00 p.m., PO2 Carlito Bernardo and the confidential agent proceeded to the house of [De Jesus] in the guise of buying sachets of shabu. Upon arrival thereat, the confidential agent introduced PO2 Carlito Bernardo to [De Jesus]. [De Jesus] then asked about the money. PO2 Carlito Bernardo handed the money to [De Jesus] consisting of two (2) pieces of marked one hundred peso bills. [De Jesus], in turn, received the money and took out a white colored cylindrical plastic film case. From the film case, [De Jesus] took out a medium sized transparent plastic sachet and gave it to PO2 Carlito Bernardo. After receiving the sachet, the latter held [De Jesus] and introduced himself as a police officer. PO2 Carlito Bernardo recovered the film case from the right hand of [De Jesus]. The film case contained two (2) medium sized and six (6) small sized transparent plastic sachets. The marked money was recovered from the pocket of [De Jesus]. After asking [De Jesus] to bring out the contents of his pocket, a sachet of marijuana was likewise recovered. [De Jesus] was then informed of his constitutional rights.

While still at the scene of the incident, PO2 Carlito Bernardo marked the medium sized transparent plastic sachet handed by [De Jesus] to him as A-BB and CB. The other sachets found inside the film case [were] marked and initialed as follows: two (2) medium sized sachets were

marked as B-P1-CB and B-P8-CB[,] while the six (6) small sachets were marked BP2-CB to BP7-CB. The sachet of marijuana recovered from [De Jesus'] pocket was marked as C-P9-CB.

[De Jesus] was immediately taken to the police station for proper investigation. The incident was logged and the evidence were turned over to the station's investigator, PO2 Tomas Nachor. PO2 Tomas Nachor, in turn prepared the request for the laboratory examination of the recovered specimen and personally submitted the same to the crime laboratory office, which were later found positive for shabu and marijuana.<sup>[12]</sup> (Citations omitted.)

On the other hand, De Jesus, in his brief,<sup>[13]</sup> denied the charges and claimed that he was framed by the confidential agent for personal reasons, to wit:

On 28 March 2003, at around 12:00 o'clock in the afternoon, VICTOR DE JESUS was sleeping inside his house, while his children were watching television, when seven (7) persons suddenly entered and woke him up. The trespassers were a police asset named Marvin Crisostomo, police officers Quizon, Bernardo, Magona, Jacinto, and Chan. He knew the police officers because Crisostomo, a police asset, used to stay in his house. Whenever there would be a police operation, the group [would] usually gather inside his house. Crisostomo was formerly his friend but their relationship turned sour, because of the former's illicit relationship with his sister-in-law, Sweet. Since then, Crisostomo held a grudge against him. When the group entered his house, they searched his room and his person but nothing illegal was found. The police officers merely planted the evidence against him and no buy-bust operation took place.

VICTORIA ANGELICA DE JESUS corroborated her father's account. She was watching television when [the] police officers suddenly barged inside their house. The police officers were with Marvin Crisostomo, a police asset. [Her] father was handcuffed and they conducted a search in his room. The police officers then brought her father to the comfort room where he was bodily searched. When the police officers entered the children's room, they suddenly declared that they have found something.<sup>[14]</sup> (Citations omitted.)

On November 4, 2008, the RTC convicted De Jesus in a Joint Judgment on Criminal Case Nos. 1091-M-2003 and 1092-M-2003, the *fallo* of which reads:

WHEREFORE, finding the accused **GUILTY** beyond reasonable doubt, accused **VICTOR DE JESUS y GARCIA @ Vic** is hereby **CONVICTED**:

**[A]** in Criminal Case No. 1091-M-2003, which charges accused with sale of dangerous drug consisting of one (1) heat sealed transparent plastic sachet of methylamphetamine hydrochloride commonly known as *shabu*, weighing 0.022 gram and a dangerous drug, in violation of Section 5,

Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", and is **SENTENCED** to suffer **LIFE IMPRISONMENT**, and to pay the FINE of Five Hundred Thousand Pesos (P500,000.00);

**[B]** in Criminal Case No. 1092-M-2003, which charges accused for possession and control of dangerous drug consisting of eight (8) heat sealed transparent plastic sachets of methamphetamine hydrochloride commonly known as *shabu*, weighing 0.027, 0.019, 0.020, 0.017, 0.021, 0.018, 0.020, and 0.146 gram and are all dangerous drugs, in violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", and is **SENTENCED** to suffer the imprisonment of, applying the Indeterminate Sentence Law, **TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO THIRTEEN (13) YEARS, AS THE MAXIMUM TERM**, and to pay the **FINE** of Three Hundred Thousand Pesos (P300,000.00);

As to the specimen subject of these cases and which are listed in Chemistry Report No. D-241-2003, the same are hereby confiscated in favor of the government. The Clerk of Court is directed to dispose of the said specimen in accordance with the existing procedure, rules and regulations.

Furnish both parties of this joint judgment and the Provincial Jail Warden.  
**[15]** (Citation omitted.)

On appeal,<sup>**[16]**</sup> the Court of Appeals, in its March 24, 2011 Decision, affirmed the RTC, to wit:

**WHEREFORE**, in view of the foregoing, the instant appeal is **DISMISSED**. The Joint Decision of the Regional Trial Court of Malolos City, Branch 76 dated 4 November 2008 finding accused-appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED**.<sup>**[17]**</sup>

The Court of Appeals ruled that the prosecution was able to establish the chain of custody and preserve the integrity and identity of the confiscated drugs. It found De Jesus' testimony as self-serving, and his daughter's as biased, since there was no evidence presented to substantiate their claims. Moreover, the Court of Appeals noted that the improper motive imputed by De Jesus was against the confidential informant and not the police officers who apprehended him.<sup>**[18]**</sup>

Anent the discrepancy on the date the buy-bust operation took place, the Court of Appeals held that there was no discrepancy as March 29, 2003 was the date the operation was "supposed" to be carried out as opposed to the categorical statement from PO2 Bernardo that the actual buy-bust operation occurred on March 31, 2003.  
**[19]**