

## FIRST DIVISION

**[ G.R. No. 196966, October 23, 2013 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MICHAEL MAONGCO Y YUMONDA AND PHANS BANDALI Y  
SIMPAL, ACCUSED-APPELLANTS.**

### D E C I S I O N

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

On appeal is the Decision<sup>[1]</sup> dated September 6, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03505, which affirmed *in toto* the Decision<sup>[2]</sup> dated June 11, 2008 of the Regional Trial Court (RTC), Branch 82, Quezon City, in Criminal Case Nos. Q-04-127731-32, finding accused-appellants Michael Y. Maongco (Maongco) and Phans S. Bandali (Bandali) guilty beyond reasonable doubt of violating Article II, Section 5 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

Accused-appellants were separately charged for illegally dispensing, delivering, transporting, distributing, or acting as brokers of dangerous drugs under the following amended Informations:

**[Criminal Case No. Q-04-127731]**

The undersigned accuses MICHAEL MAONGCO y YUMONDA for Violation of Section 5, Article II, R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002), committed as follows:

That on or about the 19th day of June, 2004 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully dispense, deliver, transport, distribute or act as broker in the said transaction, four point fifty (4.50) grams of Methylamphetamine hydrochloride, a dangerous drug.<sup>[3]</sup>

**[Criminal Case No. Q-04-127732]**

The undersigned accuses PHANS BANDALI y SIMPAL for Violation of Section 5, Article II, R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002), committed as follows:

That on or about the 19<sup>th</sup> day of June, 2004 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully dispense, deliver, transport, distribute or act as broker in

the said transaction, four point forty[-]five (4.45) grams of Methylamphetamine hydrochloride, a dangerous drug.<sup>[4]</sup>

When arraigned on September 13, 2004, both accused-appellants pleaded not guilty.<sup>[5]</sup>

During trial, the prosecution presented the testimonies of Police Officer (PO) 1 Dominador Arugay (Arugay)<sup>[6]</sup> and PO2 Vener Ong (Ong),<sup>[7]</sup> who arrested accused-appellants. The testimonies of Police Inspector (P/Insp.) Erickson Calabocal (Calabocal),<sup>[8]</sup> the forensic chemist, and Senior Police Officer (SPO) 1 Adonis Sugui (Sugui),<sup>[9]</sup> the post investigating officer, were dispensed with after the defense agreed to a stipulation of the substance of the two witnesses' testimonies, but with the qualification that said witnesses had no personal knowledge of the circumstances surrounding accused-appellants' arrest and the source of the plastic sachets of shabu.

The object and documentary evidence of the prosecution, all admitted by the RTC,<sup>[10]</sup> consisted of the Request for Laboratory Examination;<sup>[11]</sup> an Improvised Envelope containing the plastic sachets of suspected methamphetamine hydrochloride, more popularly known as *shabu*;<sup>[12]</sup> P/Insp. Calabocal's Chemistry Report No. D-360-04;<sup>[13]</sup> P/Insp. Calabocal's Certification<sup>[14]</sup> stating that the contents of the plastic sachets tested positive for methamphetamine hydrochloride; PO1 Arugay's *Sinumpaang Salaysay*;<sup>[15]</sup> PO2 Ong's *Sinumpaang Salaysay*;<sup>[16]</sup> and the Referral of the case to the Prosecutor's Office of Quezon City.<sup>[17]</sup>

The prosecution's evidence presented the following version of the events leading to accused-appellants' arrests.

Based on a tip from a confidential informant, the Station Anti-Illegal Drugs of the Navotas City Police conducted a special operation on June 18, 2004, which resulted in the arrest of a certain Alvin Carpio (Carpio) for illegal possession of dangerous drugs and seizure from Carpio's possession of 15 heat-sealed plastic sachets containing *shabu*. When questioned by the police, Carpio admitted that the *shabu* came from accused-appellant Maongco. Consequently, the police planned an operation to apprehend accused-appellant Maongco and formed a team for this purpose, composed of PO1 Arugay, PO2 Ong, PO2 Geoffrey Huertas (Huertas), and PO1 Jesus del Fierro (Del Fierro).

On June 19, 2004, after coordination with the Philippine Drug Enforcement Agency (PDEA), the police team was briefed about the operation. The police team allowed Carpio to talk to accused-appellant Maongco on the cellphone to arrange for a sale transaction of *shabu*. At around 10:30 in the morning, the police team, accompanied and guided by Carpio, proceeded to the vicinity of Quezon corner Roces Avenues in Quezon City frequented by accused-appellant Maongco. PO1 Arugay, PO2 Ong, and Carpio rode a taxi, while PO1 Del Fierro and PO2 Huertas followed in an owner-type jeep. Carpio spotted accused-appellant Maongco at a waiting shed and pointed out the latter to the police. PO2 Arugay alighted from the taxi and approached accused-appellant Maongco. PO2 Arugay introduced himself to accused-appellant Maongco as Carpio's cousin, and claimed that Carpio was sick and

could not be there personally. PO2 Arugay then asked from accused-appellant Maongco for Carpio's order of "*dalawang bulto*." Accused-appellant Maongco drew out from his pocket a sachet of *shabu* and showed it to PO2 Arugay. When PO2 Arugay got hold of the sachet of *shabu*, he immediately revealed that he was a police officer, arrested accused-appellant Maongco, and apprised the latter of his constitutional rights.

When the police team questioned accused-appellant Maongco as to the other "*bulto*" of *shabu* Carpio had ordered, accused-appellant disclosed that the same was in the possession of accused-appellant Bandali, who was then at Jollibee Pantranco branch along Quezon Avenue. The police team, with Carpio and accused-appellant Maongco, went to the said restaurant where accused-appellant Maongco identified accused-appellant Bandali to the police team as the one wearing a blue shirt. PO2 Ong approached accused-appellant Bandali and demanded from the latter the other half of the drugs ordered. Accused-appellant Bandali voluntarily handed over a sachet of *shabu* to PO2 Ong. Thereafter, PO2 Ong apprised accused-appellant Bandali of his constitutional rights and arrested him.

The police team first brought accused-appellants to the East Avenue Medical Center for medical examination to prove that accused-appellants sustained no physical injuries during their apprehension. Afterwards, the police team brought accused-appellants to the police station in Navotas City. At the police station, PO1 Arugay marked the sachet of *shabu* from accused-appellant Maongco with the initials "MMY," while PO2 Ong marked the sachet of *shabu* from accused-appellant Bandali with the initials "PBS." PO1 Arugay and PO2 Ong turned over the two sachets of *shabu* to the custody of PO1 Del Fierro and SPO1 Sugui. The sachets of *shabu* were then inventoried, photographed in the presence of accused-appellants, and submitted for laboratory examination.

P/Insp. Calabocal received the sachets of *shabu* for chemical analysis. P/Insp. Calabocal's examination revealed that the contents of the sachets marked "MMY" and "PBS" weighed 4.50 grams and 4.45 grams, respectively, and both tested positive for methamphetamine hydrochloride.

When the defense's turn to present evidence came, the accused-appellants took the witness stand.<sup>[18]</sup> Accused-appellants asserted that they did not know each other prior to their arrests and they were illegally arrested, extorted for money, physically beaten, and framed-up by the police.

On June 11, 2008, the RTC promulgated its Decision finding accused-appellants guilty beyond reasonable doubt of illegally selling *shabu*, penalized under Article II, Section 5 of Republic Act No. 9165, to wit:

**WHEREFORE**, premises considered, judgment is hereby rendered finding accused **MICHAEL MAONGCO y YUMONDA**, accused in Ciminal Case No. Q-04-127731 and **PHANS BANDALI y SIMPAL**, accused in Ciminal Case No. Q-04-127732, both **guilty** beyond reasonable doubt of violations of Section 5, Article II of R.A. No. 9165. Accordingly, they are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and each to pay a fine in the amount of **Five Hundred Thousand (P500,000.00) Pesos**.<sup>[19]</sup>

Accused-appellants appealed to the Court of Appeals. In their Brief,<sup>[20]</sup> accused-appellants imputed the following errors on the part of the RTC:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE SHABU ALLEGEDLY SEIZED.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT[S] DESPITE THE FAILURE TO COMPLY WITH THE "OBJECTIVE TEST" IN BUY-BUST OPERATIONS.

III

THE TRIAL COURT ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY THE POLICE OFFICERS DESPITE THE PATENT IRREGULARITIES IN THE BUY-BUST OPERATION.

IV

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT[S] DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.<sup>[21]</sup>

Plaintiff-appellee countered in its Brief<sup>[22]</sup> that:

I.

THE COURT *A QUO* PROPERLY ADMITTED THE SHABU IN EVIDENCE.

II.

THERE WAS A LEGITIMATE "BUY-BUST" OPERATION IN THE CASE AT BAR WHICH RESULTED IN THE LAWFUL ARREST, PROSECUTION AND CONVICTION OF APPELLANTS.

III.

THE COURT *A QUO* PROPERLY FOUND APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.<sup>[23]</sup>

In its Decision dated September 6, 2010, the Court of Appeals found no palpable

error in the judgment of conviction rendered by the RTC against accused-appellants and rejected accused-appellants' argument that the prosecution failed to establish the factual details constituting the essential elements of an illegal sale of dangerous drugs. According to the appellate court, Article II, Section 5 of Republic Act No. 9165 penalizes not only those who sell dangerous drugs, but also those who "trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug," without being authorized by law. In this case, the prosecution was able to prove with moral certainty that accused-appellants were caught in the act of illegally delivering, giving away to another, or distributing sachets of *shabu*. In the end, the Court of Appeals decreed:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed decision of the Regional Trial Court of Quezon City, Branch 82 dated June 11, 2008 convicting appellants for violation of Section 5, Article II of Republic Act No. 9165 is hereby **AFFIRMED**. No costs.<sup>[24]</sup>

Hence, this appeal.

Since accused-appellants had opted not to file any supplemental briefs, the Court considers the same issues and arguments raised by accused-appellants before the Court of Appeals.

Accused-appellants stress that for a judgment of conviction for the illegal sale of dangerous drugs, the identities of the buyer and seller, the delivery of the drugs, and the payment in consideration thereof, must all be duly proven. However, accused-appellants lament that in their case, the prosecution failed to establish by evidence these essential elements of the alleged sale of *shabu*. Accused-appellants add that the prosecution was also unable to show that the integrity and evidentiary value of the seized *shabu* had been preserved in accordance with Section 21(a) of the Implementing Rules of Republic Act No. 9165. Accused-appellants point out that PO1 Arugay did not mention the time and place of the marking of the sachet of *shabu* purportedly sold to him by accused-appellant Maongco; while PO2 Ong admitted that he marked the sachet of *shabu* he received from accused-appellant Bandali only at the police station. Both PO1 Arugay and PO2 Ong merely provided an obscure account of the marking of the sachets of *shabu*, falling short of the statutory requirement that the marking of the seized drugs be made immediately after seizure and confiscation.

The appeal is partly meritorious.

In the case of accused-appellant Maongco, the Court finds that the RTC and the Court of Appeals both erred in convicting him in **Criminal Case No. Q-04-127731** for the **illegal sale of shabu** under Article II, Section 5 of Republic Act No. 9165. The evidence on record does not support accused-appellant Maongco's conviction for said crime, especially considering the following answers of prosecution witness PO1 Arugay during the latter's cross-examination, practically admitting the lack of consideration/payment for the sachet of *shabu*:

Q. What did you tell Michael Maongco?