

## FIRST DIVISION

[ G.R. No. 177320, February 22, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR BAUTISTA Y SANTOS, ACCUSED-APPELLANT.**

### DECISION

**BERSAMIN, J.:**

Under review is the conviction of the accused for illegal sale and illegal possession of *shabu* respectively punished under Section 5 and Section 11 (3) of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*). He had been tried for and found guilty of the offenses by the Regional Trial Court (RTC), Branch 127, Caloocan City, and the Court of Appeals (CA) had affirmed the convictions through the decision promulgated on February 15, 2007.<sup>[1]</sup>

#### Antecedents

On April 28, 2003, the Office of the City Prosecutor of Caloocan City filed in the RTC two separate informations charging Cesar Bautista y Santos with a violation of Section 5 and a violation of Section 11 (3) of RA 9165, alleging thus:

Criminal Case No. C-67993

That on or about the 25th day of April 2003 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control six (6) pieces of plastic sachets containing METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.05 gram, 0.09 gram, 0.05 gram, 0.09 gram, 0.07 gram & 0.06 gram knowing the same to be dangerous drug under the provisions of the above-cited law.

CONTRARY TO LAW.<sup>[2]</sup>

Criminal Case No. C-67994

That on or about the 25th day of April 2003 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO2 AMADEO TAYAG who posed, as buyer METHAMPHETAMINE HYDROCHLORIDE (SHABU) weighing 0.05 gram, a dangerous drug, without the corresponding license or prescription therefore, knowing the same to be such.

CONTRARY TO LAW.<sup>[3]</sup>

### **Evidence of the Prosecution**

In the afternoon of April 25, 2003, an informant went to the Station Drug Enforcement Unit of the Caloocan Police Station to report the peddling of illegal drugs by Bautista on Kasama Street, Barangay 28, Caloocan City. Forthwith, Police Insp. Cesar Cruz formed a team consisting of SPO1 Rommel Ybañez, PO3 Rizalino Rangel, PO2 Jessie Caragdag, PO2 Juanito Rivera, and PO2 Amadeo L. Tayag to conduct a buy-bust operation against Bautista. PO2 Tayag, designated as the poseur-buyer, was given a P100.00 bill as buy-bust money, on which he placed his initials ALT. The rest of the buy-bust team would serve as back up for PO2 Tayag. The team proceeded to the target area with the informant.<sup>[4]</sup>

Upon arriving at the target area, the informant pointed out Bautista to the team. Bautista was then standing in front of a house. PO2 Tayag and the informant then approached Bautista even as the rest of the team took up positions nearby. The informant introduced PO2 Tayag to Bautista as *biyahero ng shabu*, after which the informant left PO2 Tayag and Bautista alone to themselves. PO2 Tayag told Bautista: *Cesar, pakuha ng piso*. Bautista drew a plastic sachet from his pocket and handed it to PO2 Tayag, who in turn handed the P100.00 bill buy-bust money to Bautista. PO2 Tayag then turned his cap backwards as the pre-arranged signal to the back-up members. The latter rushed forward and arrested Bautista. Upon informing Bautista of his constitutional rights, SPO1 Ybañez frisked him and found in his pocket six other plastic sachets, while PO2 Caragdag seized the buy-bust money from Bautista's hand. The team brought Bautista and the seized plastic sachets back to the police station.<sup>[5]</sup>

In the police station, the team recorded the buy-bust bill in the police blotter and turned over the plastic sachets to PO2 Hector Castillo, the investigator on duty.<sup>[6]</sup> PO2 Castillo marked the sachet handed by Bautista to PO2 Tayag as "CBS (Bautista's initials) Buy-bust," and the other six sachets recovered by SPO1 Ybañez from appellant's possession as "CBS-1," "CBS-2," "CBS-3," "CBS-4," "CBS-5," and "CBS-6."<sup>[7]</sup>

Based on the written request of Insp. Cruz, Forensic Chemist Albert S. Arturo conducted a laboratory examination on the contents of the marked sachets,<sup>[8]</sup> and stated in his Physical Science Report that the marked sachets contained methamphetamine hydrochloride or *shabu*, a dangerous substance. The Physical Science Report enumerated the marked sachets examined and gave the weight of the *shabu* in each as follows: "CBS (Bautista's initials) Buy-bust" – 0.05 gram; "CBS-1" – 0.05 gram; "CBS-2" – 0.09 gram; "CBS-3" – 0.05 gram; "CBS-4" – 0.09 gram; "CBS-5" – 0.07 gram; and "CBS-6" – 0.06 gram.<sup>[9]</sup>

### **Evidence of the Accused**

Bautista denied the charge. He claimed that on April 25, 2003, at around 6:00 p.m., he and his wife, Rosario, were in their house cutting cloth to be made into door mats when PO2 Tayag and two others barged in; that when he asked what they wanted,

they told him that it was none of his business; that the three introduced themselves as policemen and ordered him to go with them; that they forced him to go with them, with PO2 Tayag hitting him on the nape; that as they were walking on the road, they demanded money from him, but he told them that he had none; and that he was brought to and detained at the Caloocan City Jail.<sup>[10]</sup>

### **Decision of the RTC**

After trial, the RTC found Bautista guilty as charged through its joint decision dated September 5, 2005,<sup>[11]</sup> disposing:

WHEREFORE, premises considered and the prosecution having established to a moral certainty the guilt of Accused CESAR BAUTISTA y SANTOS @ CESAR TAGILID, this Court hereby renders judgment as follows:

1. In Criminal Case No. C-67993 for Violation of Sec. 11, Art. II of RA 9165, this Court in the absence of any aggravating circumstance hereby sentences same Accused to a prison term of twelve (12) years, eight (8) months and one day to seventeen (17) years and eight (8) months and to pay the fine of Three hundred thousand pesos (P300,000.00) with subsidiary imprisonment in case of insolvency; and

2. In Crim. Case No. C-67994 for Violation of Section 5, Art. II of R.A. 9165, this Court in the absence of any aggravating circumstance hereby sentences said Accused to LIFE IMPRISONMENT, and to pay the fine of Five hundred thousand pesos (P500,000.00) with subsidiary imprisonment in case of insolvency.

Subject drug in both cases are declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.

### **Decision of the CA**

On February 15, 2007, the CA affirmed the RTC judgment, pertinently holding:<sup>[12]</sup>

In sum, the prosecution was able to establish the guilt of herein appellant beyond reasonable doubt. The actual sale of prohibited or regulated drugs coupled with their presentation in court has been sufficiently proven by the testimonies of the prosecution witnesses. Their recount of the incident complement each other, giving a complete picture on how the illegal sale of shabu transpired and how the sale led to the apprehension of appellant *in flagrante delicto*. Their testimonies likewise established beyond doubt that appellant was found in actual possession of six (6) additional pieces of heat-sealed sachets containing white crystalline substance (shabu) when he was arrested.

Appellant's claim, therefore, that in convicting him, the trial court merely relied on the presumption that official duty has been regularly performed is without merit. Appellant's conviction was based on established facts and evidence on record.

WHEREFORE, in view of the foregoing, the Joint Decision of the Regional Trial Court of Caloocan City, Branch 127 in Criminal Cases Nos. C-67993 and C-67994 is AFFIRMED *in toto*.

SO ORDERED.

### **Issues**

Hence, this appeal, in which Bautista contends that the CA erred in affirming his conviction because: (a) there were inconsistencies in the testimonies of Prosecution witnesses as to who of them had actually received the tip from the informant; (b) PO2 Tayag's testimony that Bautista had handed him a sachet of *shabu* without inquiring about the former's identity ran counter to human experience; (c) the back-up members of the buy-bust team did not actually witness the transaction between PO2 Tayag and Bautista; and (d) the plastic sachets were not immediately marked after their seizure from Bautista.<sup>[13]</sup>

### **Ruling**

The appeal lacks merit.

#### **I**

#### **Illegal sale and illegal possession of *shabu* were established beyond reasonable doubt**

Section 5 and Section 11 of Republic Act No. 9165 pertinently provide as follows:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless, authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch, in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any such transactions.

X X X

Section 11. *Possession of Dangerous Drugs.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be

imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine, or cocaine hydrochloride marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>[14]</sup>

The requisites for illegal sale of *shabu* were competently and convincingly proven by the Prosecution. PO2 Tayag, as the poseur-buyer, attested that Bautista sold shabu to him during a legitimate buy-bust operation.<sup>[15]</sup> According to Forensic Chemist Arturo, the substance subject of the transaction, which weighed 0.05 gram, was examined and found to be methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[16]</sup> PO2 Caragdag declared that he recovered the buy-bust money from Bautista's hand right after the sale.<sup>[17]</sup> Further, the Prosecution later presented as evidence both the sachet of shabu subject of the sale and the buy-bust money used in the buy-bust operation.<sup>[18]</sup> Thereby, the Prosecution directly incriminated Bautista.

For illegal possession of a dangerous drug, like shabu, the elements are: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.<sup>[19]</sup>

The elements of illegal possession of a dangerous drug were similarly competently and convincingly established by the Prosecution. SPO1 Ybañez stated that upon seeing the pre-arranged signal given by PO2 Tayag, he and the other members of the team proceeded to arrest Bautista; and that he frisked Bautista and then