

## FIRST DIVISION

[ G.R. No. 185163, January 17, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLO MAGNO AURE Y ARNALDO AND MELCHOR AUSTRIACO Y AGUILA, ACCUSED-APPELLANTS.**

### D E C I S I O N

**VELASCO JR., J.:**

#### The Case

This is an appeal from the May 12, 2008 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 02600 entitled *People of the Philippines v. Carlo Magno Aure and Melchor Austriaco*, which affirmed the September 1, 2006 Decision<sup>[2]</sup> in Criminal Case Nos. 03-3296, 03-3297, and 03-4210 of the Regional Trial Court (RTC), Branch 64 in Makati City. The RTC found accused Carlo Magno Aure (Aure) and Melchor Austriaco (Austriaco) guilty of violating Sections 5, 11, and 15, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

#### The Facts

The Information in Criminal Case No. 03-3296 charged Aure and Austriaco with violation of Sec. 5, Art. II of RA 9165. The Information reads:

That on or about the 26<sup>th</sup> day of August, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and both of them mutually helping and aiding with one another, without the necessary license or prescription and without being authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver, and give away P6,000.00 worth of Methylamphetamine Hydrochloride (Shabu) weighing three point ninety-one (3.91) grams, a dangerous drug.

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

In Criminal Case No. 03-3297, the Information charged Aure with violation of Sec. 11, Art. II of RA 9165, as follows:

That on or about the 26<sup>th</sup> day of August, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to

possess and/or use regulated drugs and without any license or proper prescription, did then and there willingly, unlawfully, feloniously have in his possession, custody and control Methylamphetamine Hydrochloride (Shabu) weighing eighty six point twenty-three (86.23) grams, which is a dangerous drug, in violation of the aforesaid law.

CONTRARY TO LAW.<sup>[4]</sup>

And the Information in Criminal Case No. 03-4210 charged Austriaco with violation of Sec. 15, Art. II of RA 9165, as follows:

That on or about the 26<sup>th</sup> day of August, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to use any dangerous drug, and having been arrested and found positive for the use of Methylamphetamine after a confirmatory test, did then and there willfully, unlawfully and feloniously use Methylamphetamine, a dangerous drug, in violation of the said law.

CONTRARY TO LAW.<sup>[5]</sup>

When arraigned in Criminal Case Nos. 03-3296 and 03-3297 on September 9, 2003, Aure and Austriaco entered their negative pleas.<sup>[6]</sup>

Meanwhile, during the arraignment on February 19, 2004, Austriaco pleaded guilty in Criminal Case No. 03-4210. The promulgation of the decision in this case was deferred pending submission by the defense counsel of a certification that he had not been convicted of the same offense.<sup>[7]</sup>

Thereafter, a consolidated trial of Criminal Case Nos. 03-3296 and 03-3297 ensued.

During trial, the prosecution presented three (3) witnesses, to wit: (1) Makati Anti-Drug Abuse Council (MADAC) operative Norman Bilason (Bilason), the designated poseur-buyer; (2) Police Officer 3 Jay Lagasca (PO3 Lagasca), the buy-bust team leader; and (3) MADAC operative Rogelio Flores (Flores), one of the back-up operatives. On the other hand, the defense presented Aure and Austriaco as its witnesses.<sup>[8]</sup>

### **The Prosecution's Version of Facts**

At around 4:00 in the afternoon of August 26, 2003, an informant came to the Office of MADAC Cluster 2 and reported that a certain Carlo, later identified as Carlo Magno Aure, was rampantly selling illegal drugs along F. Nazario Street, *Barangay Singkamas*, Makati City.<sup>[9]</sup> Aure was reportedly armed with a handgun and was using his car in his illegal transactions.<sup>[10]</sup>

Upon being apprised of the ongoing drug peddling, the Chief of the Drug Enforcement Unit of the Makati City Police Station immediately created a group of

officers which would conduct a buy-bust operation.<sup>[11]</sup> Composing this team was PO3 Lagasca, as the team leader, with operatives from both the police station's Anti-Illegal Drug Special Operation Task Force (AIDSOTF) and MADAC's Clusters 2 and 3 as members.

When a briefing was conducted, MADAC operative Bilason was assigned as the poseur-buyer to be provided with 12 marked five hundred peso (PhP 500) bills, amounting to six thousand pesos (PhP 6,000).

After marking the 12 PhP 500 bills, the team, with the informant, went to the place where Aure was reported to be conducting his trade. When they reached a point along Primo Rivera Street, about 30 meters away from F. Nazario Street, they alighted from their vehicles. MADAC operative Bilason and the informant walked towards F. Nazario Street, while the rest of the team members followed them.

Thereafter, when Bilason and the informant saw Aure and a certain "Buboy," who turned out to be Austriaco, seating inside a car parked along F. Nazario Street, they approached the latter. In the meantime, the other team members strategically positioned themselves within the area to monitor the transaction.

Bilason was introduced by the informant as a buyer of *shabu*. Aure initially expressed his apprehension that Bilason could be an operative. Nevertheless, when the informant assured him that Bilason is his friend from the province, Aure asked Bilason how much he needed. To this, Bilason replied "*Isang bolto, pare*,"<sup>[12]</sup> which meant six thousand pesos (PhP 6,000) worth of *shabu*. When demanded by Aure, Bilason handed the previously marked money to him. The latter then placed the marked money inside his right front pocket.

Afterwards, Aure secured from Austriaco a small brown bag and a plastic sachet containing white crystalline substance, suspected as *shabu*, taken from the same bag. Aure then handed over the same plastic sachet with its contents to Bilason.

After ascertaining that what Aure gave him was *shabu*, Bilason lighted his cigarette to signal to his team members that the transaction with Aure was already consummated. Immediately, PO3 Lagasca and MADAC operative Flores closed in.<sup>[13]</sup> After introducing themselves as AIDSOTF and MADAC operatives, Bilason and his team members placed Aure and Austriaco under arrest, and ordered them to get out of the car.<sup>[14]</sup>

Subsequently, Bilason seized the small brown bag from Aure. When inspected, said bag yielded another plastic sachet containing substantial amount of suspected *shabu* wrapped in red wrapping paper, empty plastic sachets, and glass pipe tooter. Also seized was a .45 caliber pistol with one magazine and five live bullets found inside the car near the place where Aure was seated. Flores also recovered the marked money from Aure. The recovered items were marked by Bilason in the presence of Aure and Austriaco. PO3 Lagasca likewise explained to the two suspects the cause of their arrest and apprised them of their constitutional rights.

Eventually, Aure and Austriaco were brought to the AIDSOTF office. The examinations conducted by the Philippine National Police Crime Laboratory on the plastic sachets of suspected *shabu* and the glass pipe tooter yielded positive results

for Methamphetamine Hydrochloride.<sup>[15]</sup> This was indicated in Chemistry Report No. D-1068-03<sup>[16]</sup> issued by Police Inspector Alejandro C. de Guzman.

### **Version of the Defense**

Aure and Austriaco interposed the defense of denial.

Aure testified that on August 26, 2003, at around 8:00 in the evening, he fetched Austriaco in Pasay City.<sup>[17]</sup> The latter was referred to him by his *compadre*<sup>[18]</sup> to repair the cabinet in the house he intended to lease on F. Nazario Street, *Barangay* Singkamas, Makati City. They proceeded to the said house in Makati City on board Aure's Toyota Celica.

At around 8:30 in the evening, while Austriaco was estimating the cost of materials to be used for the repair of the cabinet, Aure heard knocks on the door. When he opened the door, he saw 10 men in civilian clothes who immediately grabbed him and made him lie face down for about three minutes.

This group of men allegedly began to search the house and seized the money amounting to PhP 200,000 which Aure intended to use for purchasing a taxi cab, among other things. During this time, Austriaco was standing beside the cabinet near the lavatory when someone ordered, "*Kunin niyo na rin yung isa.*"<sup>[19]</sup>

Thereafter, Aure was handcuffed and was subsequently brought to the office of the Drug Enforcement Unit.<sup>[20]</sup> After about five to 10 minutes, he saw Austriaco, who was also handcuffed, being brought inside the said office.<sup>[21]</sup>

Aure further testified that a plastic sachet of *shabu* was shown to him, and when he denied that the item came from him despite the arresting men's insistence that this was in his possession, he was punched by a police officer. He also averred that a certain Rogelio Flores tried to extort money from him. His wallet and license were allegedly taken from him by the persons who arrested him.

For his part, Austriaco recounted that in the evening of August 26, 2003, he was fetched by a certain Benjamin Zaide from his house in Pasay City to repair the cabinet of Aure. Together, they proceeded to the house of Benjamin Zaide, also in Pasay City, where Aure was waiting. Thereafter, they proceeded to Aure's house in Makati City.

Upon arriving at Aure's house, Austriaco immediately attended to the cabinet he was supposed to repair. A few minutes later, he heard some noise coming from the direction of the stairs of the house. Nonetheless, he went on with his work and just focused his attention on the cabinet he was estimating.<sup>[22]</sup>

Austriaco further narrated that when Aure opened the door, he saw several men wearing civilian clothes enter the house and forcibly grab Aure. The latter stumbled and fell to the floor with his face down. The group of men began to search the house. Eventually, Austriaco saw Aure being brought outside of Aure's house. After two to three minutes, he was also taken out of the house and was brought to the

### **Ruling of the Trial Court**

After trial, the RTC convicted Aure and Austriaco. The dispositive portion of its Decision reads:

WHEREFORE, in view of the foregoing judgment is rendered as follows:

1. In Criminal Case No. 03-3296, for Violation of Section 5, Article II of Republic Act No. 9165, the accused CARLO MAGNO AURE y ARNALDO and MELCHOR AUSTRIACO y AGUILA are found GUILTY beyond reasonable doubt of the offense charged and both are sentenced to suffer the penalty of LIFE IMPRISONMENT and each one to pay a fine of FIVE HUNDRED THOUSAND (PHP 500,000.00) PESOS.

2. In Criminal Case No. 03-3297 for Violation of Section 11, Article II Republic Act No. 9165, the accused CARLO MAGNO AURE y ARNALDO is found GUILTY beyond reasonable doubt of the offense charged and considering the quantity of shabu recovered from his possession which is 86.23 grams, is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand (Php 500,000.00) [Pesos].

3. In Criminal Case No. 03-4210, for Violation of Section 15 Article II, Republic Act No. 9165, the accused MELCHOR AUSTRIACO y AGUILA having pleaded GUILTY to the charge is sentenced to undergo drug rehabilitation for at least six (6) months in a government rehabilitation center under the auspices of the Bureau of Corrections subject to the provisions of Article VIII of Republic Act No. 9165.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA), the two (2) plastic sachets of shabu with a combined weight of 90.14 grams subject matter of Criminal Cases Nos. 03-3296 and 03-3297 for said agency's appropriate disposition.

SO ORDERED.<sup>[24]</sup>

On appeal to the CA, Aure and Austriaco questioned the trial court's decision in convicting them despite their claim that the prosecution failed to prove their guilt beyond reasonable doubt.<sup>[25]</sup>

### **Ruling of the Appellate Court**

On May 12, 2008, the CA affirmed the judgment of the RTC. It ruled that all the elements necessary to establish the fact of sale or delivery of illegal drugs were aptly established by the prosecution, to wit:

In the present controversy, the elements of the crimes charged were amply proven not only by the categorical and materially consistent