

## FIRST DIVISION

[ G.R. No. 192188, April 11, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANDREW ROBLE, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This is an appeal from the July 14, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CEB CR-H.C. No. 00746, which affirmed the May 2, 2007 Decision<sup>[2]</sup> in Criminal Case No. DNO-2989 of the Regional Trial Court (RTC), Branch 25 in Danao City. The RTC found accused-appellant Andrew Roble (Roble) guilty of violating Section 5,<sup>[3]</sup> Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

#### **The Facts**

The charge against Roble stemmed from the following Information:

That on or about March 12, 2003 at 6:30 o'clock in the evening more or less, in Looc, Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in a buy-bust operation, did then and there willfully, unlawfully and feloniously sell and deliver two (2) plastic packets containing "shabu" powder/granule a regulated drug with a total weight of zero point zero six (0.06) gram to a poseur-buyer for a total consideration of Three Hundred (P300) pesos without any corresponding license or prescription from the proper authorities as provided by law; and the aforesaid packets of "shabu" was turned over by the poseur-buyer to the police as evidence.

Contrary to law.<sup>[4]</sup>

On April 9, 2003, the City Prosecutor Dalmacio D. Suralta (City Prosecutor Suralta) issued a Resolution<sup>[5]</sup> authorizing the filing of the foregoing information against Roble. Accordingly, a warrant of arrest was issued on April 21, 2003<sup>[6]</sup> and Roble was arrested on June 17, 2003. On the same date, Roble, through his counsel, filed a Motion for Reinvestigation<sup>[7]</sup> of the case. In the said motion, Roble intimated that when the case was filed against him, he was in the province of Leyte and, thus, was not able to refute the allegations against him. In an Order dated June 20, 2003, the RTC granted the motion.<sup>[8]</sup>

After reinvestigation, City Prosecutor Suralta, however, did not find any reason to withdraw the said information<sup>[9]</sup> and it was given due course by the RTC.<sup>[10]</sup> As a result, Roble filed a Motion for Reconsideration of the Reinvestigation Report before the Office of the City Prosecutor, which was subsequently denied on January 19, 2004.<sup>[11]</sup>

On February 4, 2004, Roble was arraigned and pleaded "not guilty" to the offense charged.<sup>[12]</sup>

During the trial, the prosecution presented witnesses Police Officer 2 Castor Laurel (PO2 Laurel) and Medical Technologist Jude Daniel Mendoza (Medical Technologist Mendoza). On the other hand, the defense presented accused Roble as its sole witness.

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

On March 12, 2003, at around 5:30 p.m., PO3 Matias Casas (PO3 Casas) received information through a telephone call regarding the illegal drug activities of a certain "Jojo" Roble in Looc, Danao City.<sup>[13]</sup> Coordination was then made with the Special Operations Group (SOG) and a buy-bust team was formed composed of PO3 Casas, PO2 Laurel, the SOG and the mayor of Danao City, Mayor Ramonito Durano (Mayor Durano).<sup>[14]</sup> A briefing was conducted where several pieces of marked 100-peso bills were handed to the poseur-buyer, Abner Banzon Cuizon (Cuizon), by PO3 Casas.<sup>[15]</sup>

At 6:30 p.m., the team proceeded to the reported area. PO3 Casas, PO2 Laurel and Cuizon were aboard a tricycle while the rest of the team were with Mayor Durano.<sup>[16]</sup> The tricycle was parked on the side of a road where Cuizon alighted and walked to a nearby store, leaving PO3 Casas and PO2 Laurel inside the tricycle. At this time, the tricycle was parked seven (7) meters away from the said store while the group of Mayor Durano was about thirty (30) meters away.<sup>[17]</sup>

PO2 Laurel saw Cuizon approach a person and hand him money in exchange for plastic sachets. Upon seeing Cuizon scratch his head, which was the pre-arranged signal, the policemen approached to arrest "Jojo" but he was able to flee from the scene.<sup>[18]</sup> PO3 Casas and PO2 Laurel signaled the rest of the team for assistance but all of them could not locate "Jojo."

Meanwhile, Cuizon gave the sachets to PO3 Casas when they approached to arrest "Jojo." PO3 Casas, in turn, gave them to the investigator, Senior Police Officer 3 Edgar Awe (SPO3 Awe). Thereafter, a request for laboratory examination was made and submitted to the Philippine National Police Crime Laboratory in Camp Sotero Cabahug, Gorordo Avenue, Cebu City.<sup>[19]</sup> After examination, Medical Technologist Mendoza issued Chemistry Report No. D-459-2003, which stated that the two (2) plastic sachets contained methyldamphetamine hydrochloride or *shabu*.<sup>[20]</sup>

### **Version of the Defense**

In contrast, Roble interposes the defenses of denial and alibi. He testified that from

March 11, 2003 to June 14, 2003, he was in Babatngon, Leyte working, to avoid a frame-up by his enemy.<sup>[21]</sup>

Specifically, on March 12, 2003 at around 2:00 p.m., he went to his cousin, Danilo Roble, to ask him to accompany him to Wantai Piggery, owned by Nicomedes Alde (Alde), where he would apply as a worker on the recommendation of his uncle, Atty. Santiago Maravilles (Atty. Maravilles).<sup>[22]</sup> Alde told him to come back and bring his bio-data with picture and that he would start working on March 17, 2003.<sup>[23]</sup> He worked there until May 31, 2003 and was not able to return home until June 14, 2003. <sup>[24]</sup> In support of his claim, he presented a *Barangay* Certification issued by the *Barangay* Captain, affidavits of Alde and Danilo Roble, vouchers signed by Alde, and the endorsement letter of Atty. Maravilles.

Roble further testified that the poseur-buyer, Cuizon, is his enemy in Danao City. Roble's girlfriend, Leny Tiango (Tiango), informed him that Cuizon would frame him in a buy-bust operation because Tiango is also the girlfriend of Cuizon.<sup>[25]</sup>

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

After trial, the RTC found Roble guilty of the crime charged. The dispositive portion of its Decision reads:

WHEREFORE, the Court finds the prosecution to have sufficiently established the guilt of the accused beyond reasonable doubt for violating Sec. 5, Art. 11, of R.A. 9165 and, therefore, sentences him to suffer the penalty of LIFE IMPRISONMENT and pay the fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00). The two (2) packets of "shabu" which are the evidence in this case shall be forfeited in favor of the government, and turn over to PDEA for disposition and destruction.

SO ORDERED.<sup>[26]</sup>

On appeal to the CA, Roble argued that the testimony of PO2 Laurel was replete with inconsistencies.

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

On July 14, 2009, the CA affirmed the judgment of the lower court based on the time-honored doctrine that the assessment by the trial court of the credibility of the witnesses and their testimonies deserves great respect. The dispositive portion of the CA Decision reads:

**WHEREFORE**, premises considered, the appealed decision dated May 2, 2007 rendered by the Regional Trial Court, Branch 25, in Danao City is hereby **AFFIRMED**.

**SO ORDERED.**<sup>[27]</sup>

Roble timely filed a notice of appeal of the decision of the CA. On October 13, 2010, he filed his supplemental brief with this Court.

### **The Issues**

Accused-appellant assigns the following errors:

#### **I.**

The trial court erred in convicting the accused-appellant of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.<sup>[28]</sup>

#### **II.**

Both the [RTC] and the [CA] erred in relying upon the weakness of the defense of the accused, instead of the strength of the evidence of the prosecution against him, to come up with Decisions finding him guilty as charged.<sup>[29]</sup>

#### **III.**

Corollarily, the [CA] erred in finding that the basic elements for the sale of illegal drugs are present in this case.<sup>[30]</sup>

#### **IV.**

The [CA] erred in finding that the inconsistency in the markings appearing in the letter request and chemistry report are not material enough to cast doubt that the substance subjected for examination was indeed shabu.<sup>[31]</sup>

#### **V.**

The [CA] erred in finding that the assessment by the trial court of the credibility of the witnesses and their testimonies deserves great respect and remaining unconvinced that the lower court overlooked any important fact or misapprehended any relevant information, which if properly weighed and considered, would negate or erode its assessment.<sup>[32]</sup>

### **Our Ruling**

The appeal is meritorious.

Accused-appellant argues that the trial and appellate courts erred in relying on the testimony of the prosecution witnesses. He points out several inconsistencies in the testimony of PO2 Laurel raising doubts as to its credibility. Further, he argues that the buy-bust operation was irregularly conducted resulting in a broken chain in the

custody of the drugs.

We agree with accused-appellant.

It is hornbook doctrine that the evaluation of the trial court of the credibility of the witnesses and their testimonies is entitled to great weight and is generally not disturbed upon appeal. However, such rule does not apply when the trial court has overlooked, misapprehended, or misapplied any fact of weight or substance.<sup>[33]</sup> In the instant case, circumstances are present that, when properly appreciated, would warrant the acquittal of accused-appellant.

In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following elements: "(1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."<sup>[34]</sup> Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti*.<sup>[35]</sup> *Corpus delicti* means the "actual commission by someone of the particular crime charged."<sup>[36]</sup>

In the instant case, the prosecution has failed to prove all the elements of the crime with moral certainty.

A careful perusal of the testimony of PO2 Laurel readily reveals that there is serious doubt as to the identity of the seller. In his testimony, PO2 Laurel stated that when the transaction took place at 6:30 p.m., he was inside a parked tricycle located seven (7) meters away from where the transaction took place. Significantly the transaction occurred behind a store and not along the road. Add to this the fact that it happened at dusk, making it harder to see. Considering all these, it is, therefore, highly improbable that PO2 Laurel actually saw accused-appellant. In fact, he testified that the poseur-buyer approached a "certain person" and that he only **assumed** it was accused-appellant to whom the poseur-buyer was talking, viz:

- Q It is therefore safe to say that there is a distance of ten (10) to 15 meters between you and the person approached by the poseur buyer?
- A Around seven (7) meters, mam.
- Q At the time of the approach of your poseur buyer, he was just standing there outside of the road?
- A Not at the side of the road, but behind the store.
- Q This store was beside at the National Highway?
- A Yes, mam.
- Q At that time, there was still some day light?
- A Yes, mam.
- Q Nevertheless, the day light that was available at that time was not so bright anymore?
- A No mam, but there was an electrical light in that area.
- Q You were inside the cab of the tricycle, is that correct?
- A Yes, mam.
- Q PO3 Casas was also inside the cab together with you?
- A Yes, mam.
- Q Who was on the side that was nearest the road?