

FIRST DIVISION

[G.R. No. 181831, March 29, 2010]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODNIE ALMORFE
Y SEDENTE AND RYAN ALMORFE Y ALLESTER, APPELLANTS.**

D E C I S I O N

CARPIO MORALES, J.:

Appellants Rodnie Almorfe y Sedente (Rodnie) and Ryan Almorfe y Vallester (Ryan) were convicted of violation of Section 5, Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act) by the Regional Trial Court of Pasig, Branch 70. Appellant Rodnie was further convicted of violation of Section 11 of the same law.

The Information against appellants for violation of Section 5 (Crim. Case No. 13116-D) reads:^[1]

X X X X

On or about November 27, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Janet Sabo y Ampuhan, a police *poseur*-buyer, one (1) heat sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of said law.

X X X X

The Information against appellant Rodnie for violation of Section 11 of the same law (Crim. Case No. 13117-D) reads:^[2]

X X X X

On or about November 27, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control two (2) heat-sealed transparent plastic sachet containing two (2) centigrams (0.02 gram) each, of white crystalline substance, which were found positive to the test for methylamphetamine hydrochloride, a

dangerous drug, in violation of said law.

X X X X

Culled from the records of the case is the following version of the prosecution:

At about 7:00 o'clock in the evening of November 27, 2003, an informant personally reported to the Pasig Police Station about the rampant selling of "*shabu*" in Callejon 64, Purok 6, Villa Antonio, Brgy. Bambang, Pasig by a certain "Taga," prompting a team belonging to the Mayor's Special Action Team of Pasig City to conduct a buy-bust operation at the target area.

The team was composed of PO1 Aldrin Mariano, PO1 Roland Panis, PO2 San Andres, PO3 Salisa and PO1 Janet Sabo (Janet).

Together with the informant, the team members, in coordination with the Philippine Drug Enforcement Agency, repaired to and arrived at the target area at around 8:30 p.m. of the same day, November 27, 2003. After the service vehicle bearing the team members parked "along Akasya St., in a vacant lot,"^[3] a "lengthy street [with many alleys intersecting it],"^[4] Janet, together with the informant, at once proceeded to the target address about 50 meters away, leaving behind the other team members inside the vehicle.

On reaching the target address, the informant nodded at one of two men standing in front thereof who turned out to be Rodnie a.k.a. "Taga". Rodnie at once asked the informant what their purpose was, to which the informant replied "*Iiskor kami.*" Rodnie then asked "*Magkano?*," and the informant answered "*Dos, pare*" which means P200 in the drug trade.

Janet, who was designated as poseur-buyer, gave the pre-marked P200 (in five P20 and two P50 bills) to Rodnie who placed them inside his pocket. Rodnie thereupon took out a "black plastic container"^[5] from his pant's back pocket from which container he drew two plastic sachets which he, however, returned to the container.

Rodnie thereafter parted with some of the money bills to his companion who turned out to be his co-appellant Ryan, whom he asked "*Akina yung binigay ko sa yo kanina.*" Ryan at once gave Rodnie a sachet of *shabu* which Rodnie in turn gave to Janet. At that instant, Janet executed the pre-arranged signal to the other members of the team who swooped down on appellants and arrested them. Janet then and there seized the money and the two plastic sachets inside the black plastic container in Rodnie's possession, and affixed her signature thereon, as well as on the plastic sachet subject of the sale.

The contents of the three sachets were found positive for *methamphetamine hydrochloride* by the Eastern Police District Crime Laboratory Office,^[6] hence, the indictment of appellants.

During the pre-trial, the parties stipulated on, *inter alia*, the "existence but not the source" of the three plastic sachets; and the due execution and genuineness of the result of the examination of the specimens to thus dispense with the testimony of

the Forensic Chemist P/Insp. Lourdeliza Gural-Cejas^[7] who examined and found the contents of the sachets to be positive for "*methyamphetamine hydrochloride*."^[8]

Upon the other hand, appellants gave the following version:

On November 27, 2003, as he was assisting his wife who was about to give birth, Rodnie saw his cousin Ryan being pushed by Janet and four other companions towards his house. Once inside the house, Janet frisked Ryan and Rodnie. The members of the team soon took money inside Rodnie's pocket and searched his house which yielded nothing. Appellants were, however, handcuffed and brought to the police station.^[9]

Appellants' neighbor, Aida Soriano (Aida), corroborated appellants' version.^[10]

By Decision of July 29, 2005,^[11] Branch 70 of the Regional Trial Court of Pasig convicted both appellants in the first case and appellant Rodnie in the second case, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 13116-D filed against Rodnie Almorfe and Ryan Almorfe for violation of Section 5, Article II, Republic Act 9165 (Illegal Sale of Shabu), they are hereby sentenced to LIFE IMPRISONMENT and to solidarily pay a Fine of Five Hundred Thousand Pesos (P500,000.00).

In Criminal Case No. 13117-D filed only against Rodnie Almorfe for violation of Section 11, Article II, Republic Act 9165 (Illegal Possession of Shabu), said accused is hereby sentenced to Twelve (12) Years and One (1) Day to Twenty (20) Years and to pay a Fine of Three Hundred Thousand Pesos (P300,000.00). (underscoring supplied)

On appeal, the appellate court, by Decision of August 30, 2007,^[12] affirmed that of the trial court's. It discredited appellants' claim of frame-up in the absence of proof of ill-motive on the part of the arresting officers to falsely accuse them, aside from the fact that the officers are presumed to have regularly performed their official duty.

The appellate court discredited too the testimony of Aida which it found to be laced with several inconsistencies *vis-à-vis* those of appellants'.

Hence, the present appeal, appellants assigning as sole error of the appellate court their conviction despite the failure of the prosecution "to prove that the *shabu* submitted for laboratory examination is the same one allegedly taken from them.

Section 21 of R.A. No. 9165 charts the procedure on the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, given the severity of the penalties imposed for violations of said law, *viz*:

Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments, paraphernalia and/or laboratory equipment so confiscated, seized and or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

During the cross-examination of Janet, appellants' counsel elicited the following testimony:^[13]

Q: Now, madam witness, these two (2) accused were being charged of violating Section 5 and Section 11, of Republic Act 9165. And it is presumed that you know R.A. 9165?

A: Section 5 is the only case we filed against them, sir.

Q: During the inventory, did you secure the presence of the media team?

A: We did not conduct an inventory, sir.

Q: You did not conduct an inventory with regard to this case?

A: We just marked the sachets right then and there for purposes of not alternating the sachets we recovered from them, sir.

[Defense counsel]

Atty. Sorongon:

But the law provides, your Honor, that it should be inventoried.

COURT:

Let the Court decide on that matter. You have already established that there was no inventory.

x x x x (italics and underscoring supplied)

Oddly, from the above-quoted testimony of alleged poseur buyer Janet, she clarified that they filed a case against appellants only for violation of Section 5 of R.A. No. 9165. Appellant Rodnie was, however, additionally indicted for violation of Section 11.

Respecting the team's non-compliance with the inventory, not to mention the