

## FIRST DIVISION

[ G.R. No. 180505, June 29, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO MIGUEL Y BERNABE, AND AMALIA DIZON Y REGACHELO, DEFENDANT-APPELLANTS.**

### D E C I S I O N

**PEREZ, J.:**

Assailed in this appeal *via* Notice of Appeal is the 9 May 2007 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR H.C. No. 02115 which affirmed the 16 January 2006 Decision<sup>[2]</sup> promulgated by the Regional Trial Court (RTC) of Pasig City, Branch 70, in Criminal Case Nos. 12364-D and 12365-D, finding accused-appellants Mario Miguel y Bernabe (Miguel) and Amalia Dizon y Regachelo (Dizon), guilty beyond reasonable doubt of violating Sections 5 and 11, Article II, of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.<sup>[3]</sup>

Accused-appellants were arrested and charged following a buy-bust operation conducted by the drug enforcement operatives of the Pasig City Police.

On 25 April 2003, two separate Informations were filed against accused-appellants charging them with violating Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The first Information, docketed as Criminal Case No. 12364-D, was filed against Miguel for violation of Section 5 (illegal sale of *shabu*), Article II, Republic Act No. 9165, the accusatory portions thereof reading:

Criminal Case No. 12364-D

x x x x

On or about April 24, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO3 Amilassan M. Salissa, a police *poseur-buyer*, one (1) heat-sealed transparent plastic sachet containing sixteen (16) decigrams (0.16 gram) of white crystalline substance, which was found positive to the test for *methamphetamine hydrochloride*, a dangerous drug, in violation of the said law.<sup>[4]</sup>

The second Information, docketed as Criminal Case No. 12365-D, accused Dizon of violating Section 11 (illegal possession of *shabu*), Article II, of the same law,

charging her as follows:

Criminal Case No. 12365-D

x x x x

On or about April 24, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in her possession and under her custody and control one (1) heat-sealed transparent plastic sachet containing twenty six (26) decigrams (0.26 gram), of white crystalline substance, which was found positive to the test for *methamphetamine hydrochloride*, a dangerous drug, in violation of the said law.<sup>[5]</sup>

The two cases were raffled to Branch 70 of the RTC of Pasig City. When arraigned, albeit on separate dates, accused-appellants, with the assistance of counsel, both entered 'NOT GUILTY' pleas to the charges.<sup>[6]</sup>

During the pre-trial conference, the defense and the prosecution entered into a stipulation of facts mutually agreeing to dispense with the testimony of Forensic Chemist Inspector Joseph Perdido.<sup>[7]</sup>

On trial proper, the prosecution presented the following witnesses to adduce evidence against accused-appellants: PO3 Amilassan Salisa (PO3 Salisa), PO1 Janet Sabo (PO1 Sabo) and PO2 Arturo San Andres (PO2 San Andres), all police officers from the Pasig City Police Station.

Observing the demeanor of the witnesses during the hearings for the two criminal cases, the trial court summarized the evidence adduced by the prosecution in this manner:

PO3 AMILASSAN SALISA testified that on April 24, 2003, at about 5:00 o'clock in the afternoon, a confidential informant arrived in their office at the Pasig City Mayor's Special Action Team, City Hall Detachment, Pasig City Police Station, where he was then detailed and reported that one, alias 'Moluk,' was engaged in the sale of illegal drugs in Floodway, Purok 4, Barangay Sta. Lucia, Pasig City. Following his receipt of the report, he informed their Chief, Police Senior Inspector Rodrigo Villaruel who immediately caused the formation of a team to conduct a buy-bust operation composed of himself, who was designated as the *poseur-buyer*, PO1 Janet Sabo, PO2 Arturo San Andres and PO1 Aldrin Mariano. As the *poseur-buyer*, he was provided with two (2) pieces of One Hundred Peso (P100.00) bills (Exhs. 'D' and 'E') upon which he placed the markings 'AMS' representing his initials (Exhs. 'D-1' and 'E-1,' respectively) for identification purposes. After a briefing, the team, together with the informant, proceeded to the target area, as abovementioned, arriving there at about 6:00 o'clock in the evening of the aforementioned date. Upon arrival at the target area, and after parking their vehicle, he and

the informant alighted first and proceeded by walking to the house of alias 'Moluk' while the other team members positioned themselves nearby to observe the projected buy-bust operation. After he and the informant saw Moluk, they approached him and thereafter, the informant introduced his companion (herein witness) as one who wanted to buy *shabu*. After a brief conversation, he handed to 'Moluk' the two (2) PHP 100.00 bills and in turn, the latter handed to him one (1) heat-sealed transparent plastic sachet containing white crystalline substance (Exh. 'C-1') upon which, he later placed the markings 'AMS-4/24/03' representing his initials and the date of the buy-bust operation. The buy-bust transaction having been consummated, he immediately gave the pre-arranged signal for his teammates to approach and assist him in the operation. PO1 Janet Sabo who was the first to arrive at the scene of the buy-bust operation, apprehended a female person to whom 'Moluk' also handed a sachet of suspected *shabu* earlier. PO1 Sabo allegedly recovered from the woman the plastic sachet (Exh. 'C-2') after she opened her hand upon instructions of PO1 Sabo. As to the two (2) One Hundred Peso bills (Exhs. 'D' and 'E'), he was able to recover the same from 'Moluk' right after the buy-bust operation. Both 'Moluk' and the female person who turned out to be Mario Miguel y Bernabe (accused in Criminal Case No. 12364-D), and Amalia Dizon y Regachelo (accused in Criminal Case No. 12365-D), respectively, were subsequently brought to the Pasig Police Station for investigation and filing of the appropriate charge/charges. As part of the investigation, both herein witness as well as PO1 Janet Sabo, executed a '*Pinagsamang Salaysay*' consisting of two (2) pages (Exhs. 'F' and 'F-1') narrating the circumstances leading to the arrest of the accused.

PO1 JANET SABO corroborated the above testimony of PO3 Salisa. In addition, PO1 Sabo testified that while PO3 Salisa, the *poseur-buyer*, was talking with a male person, who was with a female companion, at the place of the buy-bust operation, PO1 Sabo saw PO3 Salisa hand something to the male person and in turn, the latter handed something to Salisa. At this point, Salisa scratched his nape which was the pre-arranged signal indicating the completion of the buy-bust transaction. Upon seeing the signal, she, together with the other team members, immediately rushed to where PO3 Salisa was situated to give him assistance. Upon instructions of PO3 Salisa, she immediately held the female companion of the male person and after introducing herself as a police officer told the female person to bring out the sachet of suspected *shabu* which according to PO3 Salisa the male person had earlier handed the female person. At first, the female person refused, but eventually gave in to the demand and brought a plastic sachet containing suspected *shabu* (Exh. 'C-2'). Thereafter, she placed the markings 'JAS-4/24/03' on the plastic sachet representing her initials and the date of the buy-bust operation (Exhibit "C-2-A"), for identification purposes. Later, they brought the male and female persons, who turned out to be the accused Mario Miguel (in Criminal Case No. 12364-D) and accused Amalia Dizon (in Criminal Case No. 12365-D), respectively, first to the Rizal Medical Center for medical examination and then to the Pasig Police Station. In the course of the investigation conducted, she and PO3 Salisa executed a Joint Affidavit entitled '*Pinagsamang Salaysay*' (Exh. 'F' and 'F-1').

For his part, PO2 ARTURO SAN ANDRES testified that being a member of the team which was formed to conduct a buy-bust operation against a suspected drug trafficker at Purok 4, East Bank Road, Floodway, Pasig City, on April 24, 2003, he was with the team when they proceeded to the area on said date. Aside from being a back-up which was his assigned role, he was the one who delivered the request for Laboratory examination (Exh. 'A') together with the specimen subject matter of these cases, to the PNP Crime Laboratory, St. Francis Street, Mandaluyong City, on 24 April 2003, as shown by the Rubber Stamp (Exh. 'A-1') appearing at the bottom left-hand corner of the Request.<sup>[8]</sup>

Expectedly, accused-appellants Miguel and Dizon presented an entirely different version as they were testifying on the witness stand. Nida Miguel, wife of accused-appellant Miguel, was also presented to corroborate his testimony. After careful observation, the trial court summarized the evidence for the defense as follows:

The first defense witness, accused AMALIA DIZON testified that on April 24, 2003, at about 2:00 o'clock in the afternoon, while she was then outside her house (691 Purok 4, Floodway, Sta. Lucia, Pasig City) sweeping, a male person approached her asking for the whereabouts of one by the name of 'Lyn.' In response, she told the male person that she did not know the person he was looking for. After a while, three (3) male persons in civilian clothes arrived in a vehicle and held the male person who was looking for Lyn. One of the three (3) male persons also held her and when she asked why, she was told to just go with them telling her that they were policemen. Thereafter, she and the male person who was handcuffed were forcibly brought to a vehicle. Once inside the vehicle, one of the three (3) male persons allegedly asked her for PHP5,000.00 in order that she can be released, but she told him that she did not have that amount. While still inside the vehicle, she also told them that she did not know the male person who was taken together with her and when asked by the three (3) male persons, why she was talking with the male person, she told them that at that time, the male person was just looking for somebody. They were brought to the Pasig City Hall where she was detained. After twelve (12) days, she posted bail and was released.

The next defense witness, accused MARIO MIGUEL, testified that on April 23, 2003, at about 3:00 o'clock in the afternoon, while he and his wife were on board a jeepney being then driven by his '*compadre*,' a lady by the name of 'Lyn,' who happened to be riding also (in) the same jeepney, asked him if he knows somebody who has a vehicle which can be rented. He answered in the affirmative and then asked the lady where she lived because he will see her the following day and the lady said that she lived along Floodway where, according to her, she is well known. The following day, April 24, 2003, at about 3:00 o'clock in the afternoon, he went to the said place where he met one Amalia Dizon and asked her if she knew Lyn, but Amalia told him she did not know Lyn. It was at this point that he was suddenly arrested by persons whom he concluded were policemen because they had guns. He was frisked, but nothing was

recovered from him. Thereafter, he was brought to the vehicle used by the policemen and after a while, Amalia Dizon was likewise brought there. He said he did not know Amalia Dizon personally prior to the above incident. Then, he and Amalia were brought to the Pasig Police Station and detained.

The third and last defense witness, NIDA MIGUEL, wife of accused Mario Miguel, testified that on April 23, 2003, at about 3:00 in the afternoon, they were on board a jeepney driven by their *compadre* on their way home. While they were seated at the back of the driver's seat, her husband and the driver were talking about their lives as drivers. Along the way, a female person hailed the jeepney and seated herself in front of them. Having heard the conversation between her husband and the driver, the female passenger asked them if they knew of someone who has a vehicle that can be rented. Her husband Mario then asked the lady passenger, '*Bakit po kayo aarkila ng sasakyan?*' and the lady replied, '*For purposes of transferring residence.*' (T.S.N., August 9, 2005, p.4) Then her husband asked the lady where she was transferring. In reply, the lady told Mario that she will discuss it first with her husband and asked Mario to visit her in her house. Before alighting from the jeepney, the lady told Mario to '*Go to my house tomorrow and my name is Lyn.*' x x x. Accordingly, the following day, after lunch, her husband went to the place mentioned by the lady passenger to look for her which is in front of the MMDA station. Before her husband left, he told her that he will return immediately after she talked with the lady. She waited until evening that day, but her husband never returned. Later, she learned from her husband's aunt that Mario Miguel had been detained at the Pasig Police Station.<sup>[9]</sup>

On 16 January 2006, the RTC rendered a Decision convicting accused-appellants for illegal sale and illegal possession of *shabu* under Republic Act No. 9165, the dispositive portion of which reads:

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

In **Criminal Case No. 12364-D** filed against accused **Mario Miguel y Bernabe** for Violation of Section 5, Article II, Republic Act 9165 (Illegal Sale of *Shabu*), he is hereby sentenced to LIFE IMPRISONMENT and to pay a FINE of Five Hundred Thousand Pesos (PHP 500,000.00).

In **Criminal Case No. 12365-D** filed against accused **Amalia Dizon y Regachelo** 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 (PHP300,000.00).

Considering the penalty imposed upon accused Mario Miguel, his immediate commitment to the National Penitentiary, New Bilibid Prison, Muntinlupa City, is hereby ordered.