

## FIRST DIVISION

[ G.R. No. 174097, July 21, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SONNY PADUA Y REYES, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

For review is the Decision<sup>[1]</sup> dated May 25, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00553 which affirmed the Decision<sup>[2]</sup> dated October 5, 2004 of the Regional Trial Court (RTC), Branch 157, Pasig City, in Criminal Case Nos. 11595-96-D, finding accused-appellant Sonny Padua y Reyes guilty of illegal sale and possession of *methamphetamine hydrochloride*, popularly known as *shabu*, under Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts gathered from the records are as follows:

Two separate informations dated August 19, 2002 were filed before the RTC against appellant for illegal sale and possession of *shabu* under Sections 5<sup>[3]</sup> and 11,<sup>[4]</sup> Article II of Republic Act No. 9165. The accusatory portion of the informations read:

#### Criminal Case No. 11595-D

The undersigned Assistant Provincial Prosecutor accuses SONNY PADUA y REYES of the crime of violation of Section 5, Article II of Republic Act 9165, committed as follows:

That, on or about the 18<sup>th</sup> day of August 2002, in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another one (1) heat sealed transparent plastic sachet containing 0.20 gram of white crystalline substance, which substance was found positive to the test for "shabu", which is a dangerous drug, in consideration of the amount of P200.00 in violation of the above-cited law.<sup>[5]</sup>

#### Criminal Case No. 11596-D

The undersigned Assistant Provincial Prosecutor accuses SONNY PADUA y REYES of the crime of violation of Section 11, 2<sup>nd</sup> Par., No. 3, Article II of

Republic Act 9165, committed as follows:

That, on or about the 18<sup>th</sup> day of August 2002 in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law did, then and there willfully, unlawfully and knowingly have in his possession, custody and control four (4) heat sealed transparent plastic sachets, each sachet containing 0.20 gram, 0.10 gram, 0.20 gram and 0.20 gram, respectively, or in the aggregate total weight of 0.70 gram, of white crystalline substance, which substance were found positive to the test for "shabu," which is a dangerous drug, in violation of the above-cited law.<sup>[6]</sup>

Subsequently, these cases were consolidated. When arraigned on September 18, 2002, appellant, assisted by counsel *de officio*, pleaded "Not guilty" to each of the charges.<sup>[7]</sup>

During the pre-trial conference, the public prosecutor marked their evidence but the defense did not mark any evidence. The prosecution decided to present four witnesses, namely: Senior Police Officer (SPO) 2 Nilo Banzuela, Police Officer (PO) 3 Felix Mayuga, PO3 Cirilo Zamora and PO2 Roberto Jovenir. The parties dispensed with the testimony of Forensic Chemist Maria Ana Rivera-Dagasdas on the stipulation that she received the request for laboratory examination and the specimen allegedly confiscated from the accused on August 18, 2002 and upon her examination, the specimen proved positive for methamphetamine hydrochloride as appearing in Chemistry Report No. D-1237-02. The defense agreed to present three witnesses, the accused, Alicia Padua and Christopher Griego.<sup>[8]</sup>

Trial on the merits thereafter followed.

Evidence for the prosecution adduced before the RTC consisted of the sole testimony of witness PO2 Dante Aguilar of the District Drug Enforcement Unit (DDEU), Southern Police District (SPD), Taguig City. He established that in the morning of August 18, 2002, when he arrived at their office at the Police Station of SPD, District Drug Enforcement Group in Taguig City, his team leader, Police Inspector (P/Insp.) Rodolfo Anicoche, upon the tip of an informant, ordered him and the rest of his teammates, namely, SPO2 Banzuela, PO3 Cirilo Zamora, PO3 Felix Mayuga, PO2 Roberto Jovenir and PO1 Michael Esparagoza to conduct a buy-bust operation against accused-appellant, who was allegedly selling illegal drugs in Taguig City.<sup>[9]</sup> Per instructions, PO2 Aguilar was tasked to pose as the poseur-buyer. Following the briefing, his team leader handed him P200.00 marked money.<sup>[10]</sup>

On the same day, at around 10:30 a.m., the group proceeded to the residence of accused-appellant at No. 216 Mozo St., Purok 2, Napindan, Taguig City. PO2 Aguilar, SPO2 Banzuela, the asset, and P/Insp. Anicoche parked their car about 50 to 75 meters away from the residence of accused-appellant, conducted a surveillance, and observed that there were persons coming in and out of Padua's house talking to the latter. They then went back to the other police officers and told them the place where accused-appellant was. Thereafter, PO2 Aguilar and the asset proceeded to the house of accused-appellant. The asset called Sonny, and when the latter went

out of his house, the asset introduced PO2 Aguilar to him as a delivery truck driver who had just arrived from a provincial trip and in dire need of *shabu* for his personal consumption. Aguilar handed the P200.00 marked money to the accused-appellant, who folded and placed it on his left pocket. Accused-appellant then took something from his right pocket and handed an aluminum sachet to PO2 Aguilar. Subsequently, PO2 Aguilar removed his cap, the pre-arranged signal to the rest of the buy-bust team that he had already bought the *shabu*. When PO1 Esparagoza arrived, PO2 Aguilar frisked and arrested the accused-appellant. He recovered the buy-bust money in the left pocket and four sachets in the right pocket of the accused-appellant. He informed accused-appellant of his right to remain silent, and of the fact that he would be charged with violation of Republic Act No. 9165. They brought him to the police station. Later, PO2 Aguilar turned over the seized drugs to the investigator, who thereafter brought the evidence to the SPD Crime Laboratory Office, Fort Bonifacio, Taguig City.

For failure of PO3 Cirilo Zamora to appear on the April 3, 2003 hearing,<sup>[11]</sup> PO1 Michael Esparagoza to appear on the July 24, 2003 hearing,<sup>[12]</sup> and PO2 Robert Jovenir to appear at the November 12, 2003 hearing,<sup>[13]</sup> despite notices, their testimonies were deemed waived.

The prosecution also adduced documentary and object evidence to buttress the testimony of its witness, to wit: (1) joint affidavit of the arresting officers signed by SPO2 Nilo Banzuela, PO3 Cirilo Zamora, PO2 Dante Aguilar, PO3 Felix Mayuga, PO2 Roberto Jovenir and PO1 Michael Esparagoza;<sup>[14]</sup> (2) request for laboratory examination dated August 18, 2002;<sup>[15]</sup> (3) Physical Science Report No. D-1237-02 dated August 18, 2002, signed by Forensic Chemist Maria Ana Rivera-Dagasdas;<sup>[16]</sup> (4) one heat-sealed transparent plastic sachet containing 0.20 gram of *shabu*; (5) four heat-sealed transparent plastic sachets each containing 0.20 gram, 0.10 gram, 0.20 gram and 0.20 gram respectively, of *shabu*; and (6) photocopy of two one-hundred-peso bills with serial numbers FW840532 and YR684136.<sup>[17]</sup>

The defense, on the other hand, had an entirely different version of what transpired that morning. It presented two witnesses: accused-appellant Sonny Padua and Miranda Estanislao. The testimony of Alice Padua, the wife of the accused was dispensed with, on the stipulation that if presented she will just corroborate the testimony of the accused.

Accused-appellant testified that there was no buy-bust operation on August 18, 2002. On direct examination, accused-appellant asserted that at around 8:00 to 9:00 o'clock in the morning of August 18, 2002, he was awakened by the operatives who went to his house located at No. 216, Mozo Street, Purok 2, Barangay Napindan, Taguig City. When he opened his eyes, a gun was poked at him. He was handcuffed by the police officers and was brought to DDEU at Fort Bonifacio, where he was detained. While inside the vehicle on their way to Fort Bonifacio, accused-appellant alleged that the police officers asked him to give them money in the amount of P120,000.00 otherwise a case will be filed against him.

The following day, accused-appellant was allegedly brought to the Capitol Compound for inquest and was thereafter brought to the Taguig Municipal Jail. He was not aware of any violation he committed. It was only during the inquest proceedings in

court that accused-appellant learned of the charges filed against him.

The defense also offered the testimony of Miranda Estanislao, cousin of the wife of accused-appellant. Per her statement, on August 18, 2002 in front of the house of her mother and beside the house of accused-appellant located at No. 216 Mozo St., Purok 2, Napindan, Taguig City, five men arrived. The three entered the gate of the premises of accused-appellant, one was left outside of the gate while the other approached her and asked her of the address of the place. Ten minutes after they entered the house of accused-appellant, they came out together with accused-appellant who was then handcuffed and half-naked.<sup>[18]</sup>

After trial, the court *a quo* found accused-appellant guilty as charged. The dispositive portion of the trial court's decision reads:

WHEREFORE, the court finds accused SONNY PADUA Y REYES guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165, and hereby sentences him to suffer life imprisonment and to pay a fine of P500,000.00.

The Court also finds accused GUILTY beyond reasonable doubt of violation of Section 11, Article II of the same law and sentences him to suffer a prison term ranging from TWELVE (12) YEARS and ONE (1) DAY, AS MINIMUM, to TWENTY (20) YEARS, as maximum, and to pay a fine of P300.000.00

The confiscated evidence are forfeited in favor of the Government and the Branch Clerk of Court is directed to cause their immediate transmittal to the Philippine Drug Enforcement Agency (PDEA) for immediate disposal in accordance with law.<sup>[19]</sup>

On May 25, 2006, the Court of Appeals affirmed the findings and conclusion of the RTC. The appellate court ruled that the buy-bust operation conducted by the police officers was proper and there was no irregularity in the conduct of the same. Accused-appellant was caught *in flagrante delicto*, thus, his arrest was lawful and the sachets of *shabu* confiscated from him were admissible in evidence, being the fruits of the crime. The Court of Appeals also ruled that there was no evidence of any improper motive on the part of prosecution witness PO2 Aguilar, who was a member of the team who conducted the buy-bust operation.

The records of this case were thereby forwarded by the Court of Appeals to this Court pursuant to its Resolution dated July 20, 2006, giving due course to accused-appellant's Notice of Appeal.

In our Resolution<sup>[20]</sup> dated October 16, 2006, the parties were notified that they may file their respective supplemental briefs, if they so desired, within 30 days from notice. People<sup>[21]</sup> opted not to file a supplemental brief on the ground that it had exhaustively argued all the relevant issues in its brief, and the filing of a supplemental brief would only entail a repetition of the arguments already discussed therein. Accused-appellant submitted his supplemental brief on December 20, 2006.

In his Supplemental Brief,<sup>[22]</sup> accused-appellant assigned the following errors:

I.

THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT FOR FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE SPECIMEN.

II.

THE APPELLATE COURT, WITH DUE RESPECT, GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PRESENT THE ALLEGED INFORMANT.

Accused-appellant asserts that the police officers failed to account for the chain of custody of the seized items alleged to be *shabu*. He questions the non-presentation as witness of the alleged investigator, the officer on duty who received the specimen together with the request for laboratory examination from PO2 Aguilar. He maintains that the specimen, which PO2 Aguilar turned over to Forensic Chemist Rivera-Dagasdas, may no longer be the same specimen taken from him by PO2 Aguilar.

Contrary to accused-appellant's claim, there is no broken chain in the custody of the seized items, found to be *shabu*, from the time PO2 Aguilar got the *shabu*, to the time it was turned over to the investigating officer, and up to the time it was brought to the forensic chemist at the PNP Crime Laboratory for laboratory examination.

The procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, among others, is provided under paragraph 1, Section 21, Article II of Republic Act No. 9165, as follows:

(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.

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in