

## THIRD DIVISION

[ G.R. No. 187737, July 05, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALIODING SULTAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Assailed before this Honorable Court is the October 17, 2008 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02646. The CA affirmed the August 28, 2006 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Laoag City, Branch 13 finding appellant Alioding Sultan guilty beyond reasonable doubt of violation of Section 5,<sup>[3]</sup> Article II of Republic Act No. 9165<sup>[4]</sup> or the "Comprehensive Dangerous Drugs Act of 2002."

The prosecution charged appellant with violation of Section 5, Article II of Rep. Act No. 9165 in two (2) Informations which read:

Criminal Case No. 11867 for illegal delivery of *shabu*

That on or about the 19<sup>th</sup> day of August 2005 in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the herein accused, did then and there wilfully, unlawfully and feloniously give away and deliver to a police officer who acted as a poseur buyer one plastic bag containing metamphetamine hydrochloride (popularly known as shabu) a dangerous drug with a weight of .1211 gram. without any license or authority, in violation of the aforecited law.

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

Criminal Case No. 11868 for illegal sale of *shabu*

That on or about the 19<sup>th</sup> day of August 2005 in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the herein accused, did then and there wilfully, unlawfully and feloniously sell and deliver to a police officer who acted as a poseur buyer two plastic bags containing metamphetamine hydrochloride (popularly known as shabu) a dangerous drug with a weight of .4931 grams and 0.5334 grams respectively without any license or authority, in violation of the aforecited law.

CONTRARY TO LAW.<sup>[6]</sup>

Upon arraignment on August 25, 2005, the appellant, assisted by counsel *de parte*, pleaded not guilty to both charges.<sup>[7]</sup> Thereafter, trial ensued.

The prosecution evidence established the following facts:

At around noon of August 19, 2005, SPO3 Rovimmanuel Balolong, Chief, Intelligence Division of the Laoag City Police Station, was in his house with two (2) colleagues, SPO3 Allan Tunac and PO2 Sherwin Cabigas. While about to have lunch, SPO3 Balolong received a call in his cellular phone from a female police informant telling him that a certain "Dax" was selling *shabu* at his residence at Brgy. 1, Muslim Compound, Laoag City, and that she could access *shabu* from him. SPO3 Balolong advised the informant to see him at his residence to discuss the information further. When the informant arrived, SPO3 Balolong, together with SPO3 Tunac and PO2 Cabigas, conducted a briefing with the informant and not long after, devised a buy-bust plan to catch the appellant in *flagrante delicto*. SPO3 Balolong produced four (4) pieces of 500-peso bills<sup>[8]</sup> and marked them with his initials on the lower right hand corner of the face of the bills. He then handed the marked bills to PO2 Cabigas to use in the operation.<sup>[9]</sup> Then they proceeded as planned.

PO2 Cabigas, who was the poseur-buyer, went with the informant and took a tricycle to the Muslim Compound where the appellant's residence was located. Upon reaching an abandoned school located near the compound, PO2 Cabigas and the informant alighted from the tricycle and proceeded on foot to the appellant's residence. However, even before reaching the said residence, the informant spotted the appellant walking towards them at a distance of around fifteen (15) meters. She discreetly informed PO2 Cabigas that the person in yellow was the person they were after. PO2 Cabigas and the informant met with the appellant and received two (2) plastic sachets of *shabu*<sup>[10]</sup> in exchange for P2,000 and a smaller sachet of *shabu* as "bonus."<sup>[11]</sup>

Upon receiving the three (3) sachets of *shabu* from the appellant, PO2 Cabigas inserted them in his right side pocket and simultaneously pressed the "call button" on his cellular phone inside his pocket. This raised the signal to SPO3 Balolong and SPO3 Tunac, who were waiting nearby inside their vehicle, that the illegal sale of *shabu* has been consummated and for them to assist PO2 Cabigas in arresting the appellant. After pressing the call button, PO2 Cabigas held the appellant's arm and informed him that he was a police officer and that he was arresting him for violation of Rep. Act No. 9165. According to PO2 Cabigas, "[the appellant] put up a strong resistance."<sup>[12]</sup> Around fifteen (15) seconds after the signal was sent, SPO3 Balolong and Tunac arrived at the scene. They saw PO2 Cabigas and the appellant grappling and immediately assisted PO2 Cabigas in arresting the appellant.

After the arrest, SPO3 Balolong confiscated the buy-bust money from the appellant's wallet and asked him whether he had authority to sell *shabu*, to which the appellant could not present any. The police officers then brought the appellant to the Laoag City Police Station together with the confiscated *shabu* and buy-bust money and turned over the evidence to the evidence custodian, SPO2 Loreto Ancheta, who marked<sup>[13]</sup> the items appropriately. Thereafter they filed the appropriate charges.<sup>[14]</sup>

On the other hand, the evidence of the appellant is basically a denial of all the allegations. According to the defense, that morning at around 11:00 a.m., Chona Martin was then at their store located in Brgy. 11, Lagasca Street, Laoag City. Later on, Ariel Palaganas, who was her neighbor, gave her P1,000 and sent her to the Muslim Compound to buy *shabu*. He did not tell her from whom to buy but she was nonetheless able to buy the *shabu*. She handed the *shabu* to Ariel Palaganas and then proceeded to Vintar Road on a tricycle as she was headed for the town of Vintar. While on the tricycle, she was flagged down by three (3) men who were riding in a red car. The men were identified as SPO3 Balolong, SPO3 Tunac and PO2 Cabigas. According to her, she was frisked by the policemen and they found one (1) sachet of *shabu*. They told her to come with them to a *carinderia* which was owned by SPO3 Balolong and there she was interrogated as to where and from whom she got the *shabu*. She merely told them that she got it from a small child in the Muslim Compound. Unsatisfied, the policemen brought her along to the Muslim Compound and made her search for the small child who delivered the *shabu* to her. Being unable to spot the child, she pointed to a man who was walking and whom she identified in open court as the appellant Alioding Sultan.<sup>[15]</sup>

The appellant, for his part, testified that on that day, he was walking on the street beside the house of his siblings as he was looking for his children when suddenly he was arrested. He asked why he was being arrested and the police responded by saying that he should come with them peacefully if he did not want to get harmed. He was brought to the headquarters where the policemen took off his clothes and kept telling him to just bring "it" out. He, however, did not know what it was that they wanted him to bring out. This went on for around fifteen (15) minutes but still the police did not find anything on him.<sup>[16]</sup>

After trial, the RTC of Laoag City, Branch 13, gave credence to the testimonies and evidence presented by the prosecution and found the appellant guilty beyond reasonable doubt of the offense charged. The dispositive portion of the Decision dated August 28, 2006 reads:

**WHEREFORE**, the Court hereby renders judgment finding the accused Alioding Sultan **GUILTY** beyond reasonable doubt as charged of illegal sale and delivery of shabu in Criminal Case No. 11868 and is therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of P2,000,000.00, with no costs.

For lack of factual basis, the accused is found **NOT GUILTY** and is therefore **ACQUITTED** of the separate case of illegal delivery of shabu as charged in Criminal Case No. 11867.

The shabu subject of these cases are forfeited, the same to be disposed of as the law prescribes.

**SO ORDERED.**<sup>[17]</sup>

On appeal, the CA affirmed the RTC in its October 17, 2008 Decision stating that:

It is settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. Prescinding from the foregoing, this Court is convinced that the guilt of appellant has been sufficiently proven beyond reasonable doubt by the evidence on record.

The sale of *shabu* is penalized under Section 5, Article II of Republic Act No. 9165. Said section reads:

*SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Hence, the penalty of life imprisonment and a fine of P2,000,000.00 were properly imposed on the appellant.

**WHEREFORE**, premises considered, the instant appeal is **DISMISSED**.

**SO ORDERED.**<sup>[18]</sup>

Hence, this appeal.

The main issue in this case is whether or not the appellant is guilty beyond reasonable doubt for violation of Section 5, Article II of Rep. Act No. 9165 for selling and delivering 0.4931 grams and 0.5334 grams of *shabu*, respectively.

The appellant contends that the prosecution failed to prove the *corpus delicti*. According to him, there was no showing of any attempt or effort by the arresting officers to comply with the requirements of Section 21 of Rep. Act No. 9165 and the prosecution failed to present evidence on post-examination custody as the chemist who examined the specimens did not testify in open court. Hence, there is doubt as to the identity of the specimen submitted in court.

The State, for its part, through the Solicitor General maintains that the prosecution sufficiently established the unbroken chain of custody of the seized drugs and that the trial court correctly gave credence to the prosecution witnesses' testimonies as against those of the defense.

We affirm the appellant's conviction.

Section 21 of Rep. Act No. 9165 was originally envisioned by the legislature to serve as a protection for the accused from malicious imputations of guilt by abusive police officers. The illegal drugs being the *corpus delicti*, it is essential for the prosecution to prove and show to the court beyond reasonable doubt that the illegal drugs presented to the trial court as evidence of the crime are indeed the illegal drugs seized from the accused.

Section 21, paragraph No. 1, prescribes the *method* by which law enforcement agents/personnel are to go about in handling the *corpus delicti* at the time of seizure in order to ensure full protection to the accused. It reads:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of 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;

x x x x

However, Section 21 was not meant to thwart the legitimate efforts of law enforcement agents. Slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant.<sup>[19]</sup> In fact, the Implementing Rules and Regulations of Rep. Act No. 9165 adequately reflects the desire of the law to excuse from the rigid tenor of Section 21 situations wherein slight infractions in methodology are present but the integrity and identity of the specimen remains intact. It reads:

Section 21. x x x

(a) xxx Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;