

THIRD DIVISION

[G.R. No. 186138, September 11, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LORETO DARIA, JR. Y CRUZ, ACCUSED-APPELLANT.**

DECISION

CHICO-NAZARIO, J.:

The instant appeal assails the Decision^[1] of the Court of Appeals dated 25 October 2007 in CA-G.R. CR H.C. No. 02544 which affirmed the 14 June 2006 Decision^[2] of the Regional Trial Court (RTC) of Pasig City, Branch 267, in Criminal Cases No. 12832-D and No. 12833-D, finding accused-appellant Loreto C. Daria, Jr., a.k.a *Tayap* (Loreto), guilty of illegal sale and illegal possession of methamphetamine hydrochloride more popularly known as "*shabu*."

On 1 September 2003, two separate Informations were filed against Loreto before the RTC of Pasig City for violation of Sections 5 and 11, Article II, Republic Act No. 9165, as amended, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for allegedly (a) selling 0.46 gram of *shabu* and (b) being in illegal possession of 1.11 grams of *shabu*.

The offense involved in Criminal Case No. 12832-D for violation of Section 5,^[3] Article II of Republic Act No. 9165, was allegedly committed as follows:

On or about August 18, 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 PO1 Victor S. Bantog, Jr., a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing forty-six decigrams (0.46 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.^[4]

The accusatory portion of the second Information pertaining to Criminal Case No. 12833-D for violation of Section 11,^[5] Article II of the same law, reads:

On or about August 18, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control ten (10) heat sealed transparent plastic sachets

containing the following weights, to wit:

- a. five centigrams (0.05 gram)
- b. twenty decigrams (0.20gram)
- c. sixteen decigrams (0.16 gram)
- d. thirteen decigrams (0.13 gram)
- e. thirteen decigrams (0.13 gram)
- f. ten decigrams (0.10 gram)
- g. three centigrams (0.03 gram)
- h. three centigrams (0.03 gram)
- i. ten decigrams (0.10 gram)
- j. eighteen decigrams (0.18)

or a total weight of one (1) gram and eleven (11) decigrams (1.11 gram) of white crystalline substance were found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.^[6]

When arraigned on 3 February 2004, Loreto pleaded not guilty to the two charges. Thereafter, joint trial ensued.

The prosecution presented the oral testimony of its lone witness, Police Officer (PO) 1 Victor S. Bantog, Jr. (PO1 Bantog), of the District Anti-Illegal Drugs Special Operations Task Force (DAID-SOTF), Eastern Police District, Pasig City. It also offered documentary evidence, which consists of the following: Exhibit "A"- Affidavit of Arrest signed by PO1 Bantog, and a certain Police Inspector Hoover SM Pascual (Inspector Pascual); Exhibit "B" - Request for Laboratory Examination of the specimen suspected to be *shabu* allegedly confiscated from Loreto; Exhibit "C" - Chemistry Report stating that the confiscated specimen tested positive for *shabu*; Exhibit "D" - envelope containing the specimens; and Exhibit "E" - the Buy-Bust Money.

From the foregoing evidence adduced by the prosecution, it appears that at around 7:30 p.m. on 18 August 2003, a confidential informant showed up at the DAID-SOTF of the Eastern Police District, Pasig City reporting that Loreto was peddling *shabu* at Sitio Bolante, Barangay Pinagbuhatan, Pasig City.^[7] Inspector Pascual immediately briefed the narcotics operatives present composed of Senior Police Officer (SPO) 1 Bernardo, PO1 Jocelyn Samson, PO1 Martinez, PO1 Genove, PO1 Orig, PO1 Damasco, PO1 Ramos, PO1 Montefalcon and PO1 Bantog and ordered them to conduct a buy-bust operation.^[8] PO1 Bantog was tasked to act as the poseur-buyer.

[9] The buy-bust money, a P500-peso bill, which came from Inspector Pascual, was marked by PO1 Bantog with his initials "VSB." At around 8:30 p.m., the team went to the target area and arrived there at around 9:30 p.m. Inspector Pascual instructed the asset to verify the location of Loreto in the vicinity. As soon as the asset came back and confirmed the presence of Loreto in the area, the former, together with PO1 Bantog, approached the target.[10] Behind them was PO1 Montefalcon, who acted as back-up. The confidential informant introduced PO1 Bantog to Loreto and told the latter that the former wanted to buy *shabu*. [11] After a brief negotiation, PO1 Bantog handed the buy-bust money to Loreto who, in turn, gave one plastic sachet containing crystalline substance.[12] At once, PO1 Bantog held Loreto and introduced himself as a police officer. PO1 Montefalcon also rushed in and held Loreto.[13] PO1 Bantog retrieved the marked money from Loreto's hand and ten more plastic sachets from the pocket of the latter's pants. PO1 Bantog marked the sachet subject of the buy-bust as "A" and the ten confiscated plastic sachets as "A-1" to "A-10." [14] PO1 Bantog informed Loreto of his constitutional rights. Without delay, the latter was brought to the police station.[15] The recovered plastic sachets were sent to the Philippine National Police (PNP) Crime Laboratory, Eastern Police District Crime Laboratory Office.[16] Per the chemistry report, it was found that the 11 sachets were positive for the presence of methamphetamine hydrochloride or *shabu*. [17] The chemistry report states:

SPECIMEN SUBMITTED:

1. Eleven (11) heat-sealed transparent plastic sachets with markings "EXH-A LCD/180803 through EXH-A10 LCD/180803" marked as A through K respectively, each containing white crystalline substance having the following recorded net weights:

A = 0.46 gram E = 0.13 gram I = 0.03 gram
B = 0.05 gram F = 0.13 gram J = 0.10 gram
C = 0.20 gram G = 0.10 gram K = 0.18 gram
D = 0.16 gram H = 0.03 gram

PURPOSE LABORATORY EXAMINATION:

To determine the presence of any dangerous drug.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for **Methamphetamine Hydrochloride**, a dangerous drug.

CONCLUSION:

Specimens A through K contain Methamphetamine Hydrochloride, a dangerous drug.

The defense, on the other hand, put up the defense of denial and frame-up through the testimonies of Loreto and Rosana de Guzman Daria (Rosana), Loreto's sister-in-law.

According to Loreto, a market vendor, it was on 16 August 2003, and not on 18 August 2003, in the house of his sister-in-law, Rosana, that he was illegally arrested by police officers Orig, Damasco and Montefalcon. He said that at around 10:30 in the evening of 16 June 2003, while he was visiting his sister-in-law and his nephew and niece, said police officers barged inside the living room and pointed guns at him. One of them kicked him in the chest as PO1 Orig sprayed tear gas on his eyes. Despite his protestations, he was forcibly dragged downstairs and loaded into a car and brought to the police district office of Pasig City. Rosana was also accosted and brought to the police station. There, the said police officers demanded P50,000.00 in exchange for his release. Rosana was released later having been tasked to raise and produce the said amount, while Loreto remained incarcerated. He also testified that the P500.00 buy-bust money and the sachets of *shabu* came from PO1 Orig's pocket and were only shown to him in the police station. He declared that he saw PO1 Bantog for the first time at the police station. He further claimed that the police officers implicated him because he and Melinda, one of his three wives, filed a complaint against Inspector Pascual, PO1 Ramos, PO1 Orig and PO3 Bernardo for the illegal arrest, planting of evidence and robbery in relation to Loreto's first arrest on 22 July 2003, but the complaint was eventually dismissed for insufficiency of evidence. Loreto admitted that his first arrest on 22 July 2003 led to his conviction and imprisonment.

Rosana testified that on 16 August 2003, at around 10:00 to 10:30 p.m., while she was on the second floor of her house, she heard a commotion coming from the ground floor where her children and Loreto were. Thereafter, she saw Loreto and one of her children go upstairs escorted by three police officers with their guns pointed at Loreto. The same police officers ordered him to surrender his gun and the *shabu*. He denied possession of said items. He was then handcuffed and frisked by the police officers. They confiscated his wallet and cellular phone. After a while, he and Rosana were brought by said police officers to the police station. There, both were shown several plastic sachets containing *shabu*, the ownership of which were imputed to them. PO1 Orig and PO1 Damasco told Rosana that she would be released, so she could produce P50,000 to settle the charge against her and Loreto. She did not return to the police station and instead went to the National Bureau of Investigation (NBI) to file a complaint against said police officers. The case did not progress since she failed to follow it up, as she had gone abroad.

In a Joint Decision dated 14 June 2006, the RTC found Loreto guilty of the two charges. In the illegal sale, Criminal Case No. 12832-D, the RTC imposed upon him the penalty of life imprisonment and a fine of P500,000.00; while for illegal possession, Criminal Case No. 12833-D, he was sentenced to suffer imprisonment ranging from 12 years and 1 day to 14 years and to pay a fine of P300,000.00.

Loreto filed a motion for reconsideration, which was denied by the RTC.

Dissatisfied, he elevated his convictions to the Court of Appeals.

The Court of Appeals, however, affirmed his convictions.

Hence, the instant appeal.

Loreto faults the RTC and the Court of Appeals for convicting him despite the fact that the apprehending officers failed to follow the procedures for making a pre-operation report, coordinating with the Philippine Drug Enforcement Agency (PDEA), taking photographs and a physical inventory of the confiscated items, and subjecting the accused to the mandatory drug test provided for by Republic Act No. 9165 and its Implementing Rules and Regulations. He implies that failure to follow these procedures makes the apprehension irregular and unauthorized, thereby destroying the presumption of regularity given to police authorities in the performance of their official duties.

Loreto's arguments are unconvincing.

Section 86(a) of the Implementing Rules and Regulations of Republic Act No. 9165 encourages other enforcement agencies to coordinate with the PDEA prior to anti-drug operations, to wit:

The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA; Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations. x x x.

Section 21(a), paragraph 1, Article II of the Implementing Rules and Regulations of Republic Act No. 9165 states:

(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 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.

Section 36(f) of the same statute provides:

(f) All persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day shall have to undergo a mandatory drug test.

This is not the first time that the Court is confronted with this same issue. In *People v. Agulay*,^[18] therein accused-appellant contended that the non-compliance with the procedure in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, created an irregularity that overcame the presumption of