

## THIRD DIVISION

[ G.R. No. 180511, July 28, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARILYN NAQUITA Y CIBULO, ACCUSED-APPELLANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Assailed before Us is the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 01344 dated 29 December 2006 which affirmed with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Caloocan City, Branch 120, in Criminal Cases Nos. C-69156 and C-69157, finding accused-appellant Marilyn C. Naquita guilty of violation of Sections 5<sup>[3]</sup> and 11,<sup>[4]</sup> Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

On 19 September 2003, appellant was charged in two informations with Violation of Sections 5 and 11, Article II of Republic Act No. 9165. The accusatory portion of the informations reads:

Crim. Case No. C-69156

That on or about the 17<sup>th</sup> day of September, 2003 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to PO1 JOEL C. COSME, who posed as poseur buyer, one (1) heat sealed transparent plastic sachet containing 2.05 grams, knowing the same to be a dangerous drug.<sup>[5]</sup>

Crim. Case No. C-69157

That on or about the 17<sup>th</sup> day of September, 2003 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there wilfully, unlawfully and feloniously have in her possession, custody and control two (2) pcs. of transparent plastic sachets containing Methylamphetamine Hydrochloride with a total weight of 3.90 grams, knowing the same to be a dangerous drug.<sup>[6]</sup>

When arraigned on 2 October 2003, appellant, with the assistance of counsel *de officio*, pleaded "Not guilty" to the crimes charged.

In the pre-trial conference conducted on 18 November 2003, counsel for appellant admitted the jurisdiction of the trial court and the identity of the appellant as the

person named and charged in the informations filed. With the termination of the pre-trial conference, joint trial of the cases ensued.

The following witnesses took the stand for the prosecution: (1) Police Officer 1 (PO1) Joel Cosme<sup>[7]</sup> and (2) PO1 Randy Llanderal,<sup>[8]</sup> both police officers assigned at the District Anti-Illegal Drugs Special Operations Group (DAID-SOG), Northern Police District Command, Tanigue St., Kaunlaran Village, Caloocan City.

From the collective testimonies of the witnesses, the version of the prosecution is as follows:

On 17 September 2003, at around 3:00 o'clock in the afternoon, a confidential informant went to the office of the DAID-SOG, Northern Police District Command in Caloocan City and reported to PO3 Joel Borda that one alias Inday (appellant) was selling *shabu* at Binangonan, Maypajo, Caloocan City. The information was relayed to Police Chief Inspector (P/Chief Insp.) Rafael Santiago, Jr. who then instructed PO3 Borda to organize a team and to conduct surveillance for a possible buy-bust operation. A buy-bust team was formed which was composed of PO3 Borda as team leader; PO1 Joel Cosme as the poseur-buyer; and PO2 Mananghaya, PO2 Amoyo, PO2 Lagmay, PO2 Velasco, PO2 Dela Cruz, PO1 Reyes and PO1 Randy Llanderal as members. The buy-bust money, which consisted of six P500.00 bills,<sup>[9]</sup> was given by P/Chief Insp. Santiago to PO1 Cosme who placed his initials<sup>[10]</sup> thereon. The serial numbers of the buy-bust money were then recorded by the desk officer on duty. During the briefing, it was agreed upon that the pre-arranged signal to be made by the poseur-buyer, signifying that the *shabu* had been bought from alias Inday, was the scratching of the left ear.

At around 4:00 p.m., the team, together with the confidential informant, proceeded to Maypajo, Caloocan City. Arriving thereat at around 4:30 p.m., the team conducted a surveillance of Binangonan Street. At around 8:00 p.m., team leader PO3 Borda decided to start the buy-bust operation against appellant. The confidential informant and PO1 Cosme approached the appellant who was standing along Binangonan Street. PO1 Llanderal was about five meters away, while the rest of the team members stayed at the van. The confidential informant introduced PO1 Cosme to appellant as someone who was looking for a person who was selling *shabu*. Appellant asked PO1 Cosme how much he intended to buy. The latter answered, "*KALAHATING BULTO. HALAGANG TATLONG LIBO.*" PO1 Cosme gave the money to appellant who, in turn, took out plastic sachets from her pocket and gave one to PO1 Cosme. Appellant returned the other plastic sachets to her pocket. After receiving the plastic sachet, PO1 Cosme examined the same and, as a pre-arranged signal, scratched his left ear. Noticing that PO1 Llanderal was already near, PO1 Cosme held appellant and introduced himself as a police officer. He retrieved the buy-bust money which appellant was still holding. PO1 Llanderal arrived from behind appellant and ordered her to empty her pockets. PO1 Llanderal recovered two plastic sachets.

With the arrest of appellant, the team immediately returned to their office. The marked money used and the three plastic sachets allegedly containing *shabu* were turned over to PO1 Ariosto Rana, the investigator of the case. The plastic sachet<sup>[11]</sup> sold to PO1 Cosme was marked "JCC," while the two plastic sachets<sup>[12]</sup> recovered by PO1 Llanderal were marked "RML-1" and "RML-2," respectively. It was in their

office that the police officers came to know the complete name of appellant.

The white crystalline substance in the three plastic sachets recovered from appellant were forwarded to the Philippine National Police Crime Laboratory, Northern Police District Crime Laboratory Office, Caloocan City, for laboratory examination to determine the presence of any dangerous drug. The request for laboratory examination was signed by P/Chief Insp. Rafael Santiago, Jr.<sup>[13]</sup> Per Physical Sciences Report No. D-1217-03, the specimens<sup>[14]</sup> submitted contain methylamphetamine hydrochloride, a dangerous drug.

The testimony of Police Inspector Jesse Abadilla dela Rosa, Forensic Chemical Officer who examined the specimens recovered from appellant, was dispensed with, after counsel for the appellant admitted that the witness was an expert witness and that, upon request by police officers, he conducted qualitative examination on the specimens. His findings are contained in Physical Sciences Report No. D-1217-03.<sup>[15]</sup> Counsel for the appellant also admitted that PO2 Ariosto Rana was the investigator in the case, that it was he who prepared the Referral Letter addressed to the City Prosecutor, the Affidavit of Arrest and the Request for Laboratory Examination; and that he could identify the appellant and the specimens marked. With said admission, the testimony of PO2 Rana was likewise dispensed with.<sup>[16]</sup>

For the defense, Reynaldo Reyes,<sup>[17]</sup> Antonio San Pedro,<sup>[18]</sup> Maricris Manoles<sup>[19]</sup> and the appellant<sup>[20]</sup> took the witness stand.

Reynaldo Reyes, *barangay kagawad* and resident of 199 Pateros St., Maypajo, Caloocan City, testified that at around 6:00 p.m. of 17 September 2003, while he was on duty at the *barangay* hall located at Binangonan St., Maypajo, Caloocan City, Antonio San Pedro arrived and asked for assistance. At that time, he was with *barangay tanods* Abdul Mina and Dolly Evangelista. They responded and proceeded to the house of *Aling* Inday (appellant) at Bagong Sibol. Arriving thereat at around 7:00 p.m., he saw more or less ten policemen. The policemen who were inside appellant's house searched the ground floor and the second floor. He asked two policemen who were outside what the problem was. He was told that appellant was a dealer of *shabu*.

Reyes narrated that appellant was with her daughter and a little girl inside the house. He added that when he asked the policemen if they had a search warrant to search the house, he was told that the *barangay* hall knew of the operation. When appellant was arrested, he said the policemen showed them the *shabu* contained in a plastic sachet which weighed more or less half a kilo. Thereafter, the policemen brought the appellant with them.

Reyes disclosed that he executed a *Pinagsamang Sinumpaang Salaysay*<sup>[21]</sup> on 21 September 2003 which he subscribed before the Assistant City Prosecutor of Caloocan City on 26 September 2003.

Antonio San Pedro, tricycle driver and resident of 103 Binangonan St., Maypajo, Caloocan City recounted that at about 5:30 p.m. of 17 September 2003, he was in Benitez Elementary School at Gagalangin, Tondo, Manila waiting for Angela Naquita, the niece of appellant, whom he was going to fetch. He fetched Angela and they

proceeded to her house in Bagong Sibol, Caloocan City. They arrived at the house at around 6:30 p.m., and appellant, who was then washing clothes, opened the gate. After Angela entered the gate and after appellant gave her P100.00, a group of policemen, numbering more or less ten, suddenly entered the gate. Appellant closed the gate and the policemen entered the house. Some of the policemen went upstairs while the others held the appellant, forcing her to sit down. Appellant shouted, "*BAKIT NINYO AKO HUHULIHIN? BAKIT KAYO NAGSIPASOK SA BAHAY? SINO BA KAYO?*" San Pedro looked inside the house and saw appellant resisting. When appellant saw him, appellant asked him to seek assistance from the *barangay*. He went to the *barangay* hall at Binangonan Street where he saw *Kagawad* Reyes, Abdul Mina and Danny Evangelista. He asked for help and told them to go to the house of appellant. They proceeded to the house and arrived around 7:00 p.m. They introduced themselves as *barangay* officials and were allowed to enter the house. Aside from appellant, Angela Naquita and Maricris Naquita were also in the house when the policemen entered.

Mr. San Pedro testified that he executed a *Sinumpaang Salaysay*<sup>[22]</sup> dated 19 September 2003 which he subscribed before the Assistant City Prosecutor on 26 September 2003.

Next to testify for the defense was Maricris Manoles,<sup>[23]</sup> student and daughter of the appellant. She testified that on 17 September 2003, she was in school at the Centro Escolar University by 7:00 a.m. By 3:00 p.m., she was already in her house at 67 Binangonan St., Maypajo, Caloocan City. It was her mother, the appellant, who was sleeping when she arrived, who opened the gate for her. Thereafter, her mother did the laundry. After changing clothes, Maricris bought *merienda* and ate the same in her house with her boyfriend. By 5:00 p.m. her boyfriend left and she then watched television. While watching television, her ten-year-old niece, Angela Naquita, arrived riding a tricycle. When appellant opened the gate, more or less nine policemen also entered their residence. Appellant was surprised and became hysterical. Both Maricris and her mother were crying. The policemen proceeded upstairs to appellant's room and searched the same. Appellant sat in the sofa and was prevented from going upstairs. Maricris was able to go upstairs after she was instructed by appellant to check the latter's money that was kept there. After around thirty minutes, three *barangay* officials arrived and were able to enter the house. However, after a while, the policemen told the three to leave. At past 7:00 p.m., appellant was taken by the policemen to Larangay Police Station in Caloocan City. The policemen, as well as appellant, did not allow Maricris to go with them. Maricris informed her friends and relatives about the incident. She took pictures<sup>[24]</sup> of appellant's room and their gate. She added that when she proceeded to the police station, a police officer demanded P200,000.00 for the release of appellant.

Maricris executed a sworn statement<sup>[25]</sup> dated 6 October 2003 which she subscribed before the Assistant City Prosecutor of Caloocan City on 24 October 2003. She alleged therein that the police officers took several pieces of jewelry, a Nokia cell phone and P72,000.00. The sworn statement, she said, will be used for cases filed by appellant.

Appellant testified for her defense. She testified that she was separated, a businesswoman engaged in buy and sell, and a resident of 67 Bagong Sibol St., Maypajo, Caloocan City.

Appellant narrated that at around 6:30 p.m. of 17 September 2003, she was in her house washing clothes. Her daughter, Maricris, was inside watching television. While doing the laundry, her niece, Angela, arrived and called her and told her that the tricycle driver, Antonio San Pedro, wanted to get a P100.00 *vale*. After her niece entered the gate, she was surprised that nine to ten persons entered the gate. It was the first time she saw these persons who were in civilian clothes and were armed with a long firearm. Appellant tried to prevent them from entering the house but to no avail. Seeing that five to six men went upstairs, she told Mr. San Pedro to call *barangay* officials. She had no idea what the armed men did but she asked her daughter to go upstairs because her money was in the second floor. Her daughter informed her that her cell phone worth P15,000.00, several pieces of jewelry worth P15,000.00, and cash amounting to P72,000.00 were missing from her room.

*Barangay* officials arrived and she asked them to go inside but they were prevented by these men. It was at this moment that the armed men introduced themselves as policemen to the *barangay* officials. After searching her residence and taking several of her belongings, the policemen brought her to Larangay Police Station. At the police station, appellant was informed that she was being charged with violation of Section 5 of Republic Act No. 9165. A certain Gilbert Velasco told her that if she did not give money, she could not go home. Another police officer named Toto, she claimed, also talked to her and relayed the same message. She alleged that the policemen told her that someone pointed to her as one involved in drugs. Appellant denied that she was peddling *shabu* at 8:00 p.m. of 17 September 2003 when she was arrested by policemen.

Appellant revealed that she executed a *Sinumpaang Salaysay*<sup>[26]</sup> dated 6 October 2003, and filed cases of robbery, illegal arrest and violation of Section 29 of Republic Act No. 9165 against the policemen named therein. She added that prior to the incident, she did not know PO1 Joel Cosme, PO1 Llanderal, and the members of the DAID-SOG.

The testimony of Abdul Mina, member of the *Lupong Tagapamayapa*, was dispensed with after the public prosecutor admitted that said witness would corroborate the testimony Reynaldo Reyes.<sup>[27]</sup>

On 28 June 2005, the trial court rendered its decision convicting appellant of violation of Sections 5 and 11 of Republic Act No. 9165. The decretal portion of the decision reads:

WHEREFORE, premises considered, the Court finds and so holds that accused MARILYN NAQUITA y CIBULO is GUILTY beyond reasonable doubt [of] Violation of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposes upon her the following:

1. In Criminal Case No. C-69156 for Violation of Section 5, Article II, the penalty of LIFE IMPRISONMENT and a fine of P500,000.00; and
2. In Criminal Case No. C-69157 for Violation of Section 11, Article II, the penalty of imprisonment of Twelve (12) years and One (1) day to Twenty (20) years and a fine of P300,000.00.