

SECOND DIVISION

[G.R. NO. 172975, August 08, 2007]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROBERTO T. GARCIA, APPELLANT.

DECISION

CARPIO MORALES, J.:

On appeal is the Court of Appeals Decision^[1] of April 24, 2006 affirming the September 23, 2004 Judgment^[2] of the Regional Trial Court (RTC) of Makati City, Branch 140, finding Roberto T. Garcia (appellant), along with his girlfriend, then a minor, Melissa B. Cruz (Melissa), guilty beyond reasonable doubt of violation of Sections 5^[3] and 11,^[4] Article II of Republic Act No. 9165 (RA 9165), otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portion of the Information filed against appellant and Melissa for violation of Section 5, RA 9165, which was docketed as Criminal Case No. 02-2323, reads:

That on or about the 17th day of August, 2002, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero nine (0.09) gram of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in violation of the above-cited law.

CONTRARY TO LAW.^[5]

The accusatory portion of the Information against appellant for violation of Section 11, Article II, RA 9165, which was docketed as Criminal Case No. 02-2324, provides:

That on or about the 17th day of August, 2002, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control zero point thirteen (0.13) gram of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in violation of the above-cited law.

CONTRARY TO LAW.^[6]

The accusatory portion of the separate Information against Melissa for violation of Section 11, Article II, RA 9165, which was docketed as Criminal Case No. 02-2325, reads:

That on or about the 17th day of August, 2002, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession, direct custody and control zero point zero six (0.06) gram, zero point zero six (0.06) gram and zero point zero nine (0.09) gram of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in violation of the above-cited law.

CONTRARY TO LAW.^[7]

The following is the version of the prosecution:

On August 16, 2002, the Drug Enforcement Unit (DEU) of the Makati Police received a report from an informant detailing the rampant selling of methamphetamine hydrochloride or *shabu*, a prohibited drug, along 5th Street, West Rembo, Makati City.^[8] The informant specifically named "Bobby" and "Isa," who turned out to be appellant and Melissa, respectively, as being engaged in the illegal sale.^[9]

The DEU of the Makati Police immediately formed a team to conduct a buy-bust operation. The team was composed of SPO2 Wilmer Antonio (SPO2 Antonio) as team leader, and SPO1 Antonio Fulleros, PO2 Virgilio Acosta, PO2 Vicente Barrameda (PO2 Barrameda) and PO2 Rodrigo Igno (PO2 Igno) as members.^[10]

The team, together with the informant, immediately proceeded to the target area which they reached at around 10:30 p.m. of the same day, August 16, 2002. As appellant and Melissa were seen standing along 5th Street at around 12:30 in the morning of August 17, 2002, the informant, together with PO2 Barrameda who acted as poseur-buyer, approached the two. The informant thereupon introduced PO2 Barrameda as a buyer of *shabu*, and appellant immediately asked the former how much he needed. Replying, PO2 Barrameda said that he wanted to buy P100 worth of the drug, he simultaneously handing to appellant a P100 bill marked with "LMA,"^[11] acronym for Leandro Mendoza Abel, Chief of the DEU.

As soon as appellant received the P100 bill, he secured from Melissa a small plastic sachet containing white granules which he handed over to PO2 Barrameda.^[12]

PO2 Barrameda at once lighted his cigarette as a pre-arranged signal for the team members to arrest appellant and Melissa. PO2 Igno immediately approached the group, introduced himself as a policeman, and apprehended Melissa from whom he confiscated a small tin box which, when opened, yielded three (3) plastic sachets containing suspected *shabu*.^[13] He gave the items to team leader SPO2 Antonio who marked the tin box with "MBC-4" and the three sachets with "MBC-1," "MBC-2," and "MBC-3" in front of appellant and Melissa.^[14]

PO2 Barrameda thereupon arrested appellant after introducing himself as a police officer and apprising him and Melissa of their constitutional rights. The team recovered the marked P100 bill, together with another plastic sachet, from appellant's pocket.^[15] Team leader SPO2 Antonio immediately marked the plastic sachet taken from appellant's pocket with "RTG-1" and the plastic sachet sold to poseur-buyer PO2 Barrameda with "RTG."^[16]

The team thereafter brought appellant and Melissa to the police station for investigation. SPO2 Antonio turned over the marked money and the five (5) plastic sachets to investigator PO2 Leo Gabrang who prepared an investigation report as well as a request for laboratory examination of the contents of the sachets.

The contents of the sachets which were subjected to qualitative examination by Police Inspector Lourdeliza Gural-Cejas, Forensic Chemist of the Eastern Police District, were positive for *shabu*.^[17]

At the witness stand, appellant gave the following version:

At around ten o'clock in the evening of August 16, 2002, he was engaged in a drinking spree inside the house of his friend Manny Buncab (Buncab) which is adjacent to his mother's at 11-J, 5th Street, West Rembo, Makati City.^[18] He was then with his girlfriend-co-accused Melissa.

When Buncab went out to urinate, three persons entered the house, asked the name of appellant and told him to raise his hands.^[19] The three frisked him from whom they recovered a knife. And they recovered from Melissa a cellphone and wallet.^[20] They were then brought to the DEU office where they were informed that they were arrested for violation of Sections 5 and 11 of RA 9165.

While in the DEU office, appellant saw for the first time a marked P100 bill and plastic sachets of *shabu* which were taken out from a drawer of the table of PO2 Igno.^[21] The police officers then asked him to settle the case for the amount of Forty Thousand (P40,000) Pesos, but he failed to produce the same.^[22]

His co-accused Melissa, who likewise took the witness stand, corroborated appellant's version of their arrest and the confiscation of their personal belongings, as well as appellant's claim about seeing the marked P100 bill being taken from a policeman's table.^[23]

Melissa added that on appellant's arrest, she insisted to go with him to the DEU office to ensure that he would not be hurt by the policemen.^[24]

Melissa likewise corroborated appellant's claim that they were asked to settle the case by producing some amount of money.

Finally, Melissa claimed that despite her information that she has an uncle who is a police officer, she was also indicted because "*nayayabangan daw sila sakin*."

Buncab, another witness for the defense, narrated as follows: At around ten o'clock

in the evening of August 16, 2002, appellant and Melissa were in his (Buncab's) house having dinner.^[25] He later went out of his house to answer the call of nature but when he was about to open the gate, several policemen arrived and asked him to open it. One of the policemen was Police Officer Fulleros who had previously arrested him for selling *shabu*.^[26] He then escaped for fear that he might get involved in the trouble.^[27]

Branch 140 of the RTC of Makati City, by Judgment^[28] of September 23, 2004, found appellant and Melissa guilty beyond reasonable doubt of the crimes charged. The decretal text of the judgment reads:

WHEREFORE, finding the accused ROBERTO GARCIA @ BOBBY guilty beyond reasonable doubt of Violation of Section 5 of Art. II of R.A. 9165, in Criminal Case No. 02-2323 judgment is hereby rendered sentencing ROBERTO GARCIA **to suffer the penalty of life imprisonment and a fine of P500,000.00.**

Further finding the accused ROBERTO GARCIA Y TALOSIG @ BOBBY in Criminal Case No. 02-2324 in Violation of Section 11 Art. II of R.A. 9165 judgment is hereby rendered sentencing ROBERTO GARCIA **to suffer the penalty of imprisonment of 12 years and 1 day to twenty years of reclusion temporal and a fine of P300,000.00.**

Finding the accused MELISSA CRUZ Y BACARRO @ ISA guilty beyond reasonable doubt of Violation of Section 5 of Art. II of R.A. 9165, in Criminal Case No. 02-2323 being a minor, who was 16 years old at the time of the commission of the offense, she is entitled to the mitigating circumstance of minority thus reducing the penalty to 1 degree lower than that imposed by law. Accused is therefore sentenced to suffer the penalty of imprisonment of **12 years and 1 day to 20 years of reclusion temporal and to pay a fine of P300,000.00.**

Further finding Accused MELLISA CRUZ BACARRO @ ISA guilty beyond reasonable doubt of Violation of Section 11 Art. II of R.A. 9165 in Criminal Case No. 02-2325, being a minor, who was 16 years old at the time of the commission of the offense, she is entitled to the mitigating circumstance of minority thus reducing the penalty to 1 degree lower than that imposed by law. Accused is therefore sentenced to suffer the penalty of imprisonment of **6 years and 1 day to 12 years of prision mayor and to pay a fine of P300,000.00.**

However, pursuant to Art. 192 of P.D. 603, judgment is hereby suspended and said minor [Melissa Cruz Bacarro @ ISA] is committed to the Department of Social Welfare, or any training institution operated by the government, or duly licensed agencies or any other responsible person, until she shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or agency or responsible individual under whose care she has been committed.

Cost against the accused.

SO ORDERED.^[29] (Emphasis in the original; underscoring supplied)

By Manifestation^[30] filed on January 10, 2005, Melissa, through counsel, informed the trial court that she was withdrawing her Motion for Reconsideration of its decision. The trial court noted the Manifestation by Order of January 20, 2005.^[31]

Only appellant thus appealed the trial court's judgment to the Court of Appeals which, as priorly stated, affirmed the same by Decision of April 24, 2006.

Hence, appellant's present appeal.

Appellant, by Manifestation^[32] dated September 22, 2006, informed that he was no longer filing a supplemental brief.

In his Appellant's Brief filed before the appellate court, appellant faulted the trial court in not finding that he was illegally arrested.^[33] He insisted that none of the circumstances justifying a warrantless arrest under Section 5 of Rule 113 of the Revised Rules on Criminal Procedure^[34] was present. He faulted too the trial court in finding him guilty beyond reasonable doubt of the offenses charged,^[35] given, so he claimed, the incredible testimonies of the prosecution witnesses.^[36]

The appeal fails.

Appellant was caught *in flagrante delicto* - in the act of selling a sachet containing substances which turned out to be positive for *shabu* to poseur-buyer PO2 Barrameda. And as soon as he was arrested, he was frisked by the arresting officers in the course of which a sachet also containing substances which too turned out to be positive for *shabu* was found in his pocket.

Section 5(a) of Rule 113 of the Revised Rules on Criminal Procedure provides that a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. Having committed the crime of selling *shabu* in the presence of the buy-bust operation team, and having been found to be in possession of another sachet of *shabu* immediately thereafter, appellant's arrest without warrant is, unquestionably, justified.

For a successful prosecution of a charge for illegal sale of a prohibited drug, the following elements must concur: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.^[37] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the object evidence.^[38] Such requirements are present in this case.

The illegal sale of *shabu* is established by the clear testimony of PO2 Barrameda who acted as the poseur-buyer in the standard police buy-bust operation.

PO2 Barrameda's testimony was corroborated on material points by PO2 Igno who