

## FOURTH DIVISION

[ CA-G.R. CR No. 34481, January 30, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICENTE LAGO Y PEREZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**CARANDANG, J.:**

The appeal assails the Decision<sup>[1]</sup> dated September 26, 2011 of the Regional Trial Court of Valenzuela City, Branch 269, finding accused-appellant Vicente Lago y Perez ("accused-appellant") guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) No. 9165, the dispositive portion of which states:

"**WHEREFORE**, accused VICENTE LAGO y PEREZ is hereby found GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 and accordingly imposed an indeterminate prison sentence of 12 years and one day, as minimum to 17 years, as maximum, and to pay a fine of P300,000.00

The accused may be credited with the period that he has served under preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended, and applicable rules.

The Clerk of Court is hereby directed to turn over with dispatch the confiscated evidence to the Philippine Drug Enforcement Agency (PDEA) for proper disposition in accordance with law.

SO ORDERED."

#### **The Antecedent facts:**

Accused-appellant was charged for illegal possession of drugs under Section 11, Article II of R.A. No. 9165, docketed as Criminal Case No. 860-V-10, under the following Information:<sup>[2]</sup>

"That on or about September 30, 2010 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control two (2) pcs. of heat sealed transparent plastic sachet, containing zero point zero one (0.01) and zero point zero one (0.01) for a total of zero point zero two (0.02), grams of Methylamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drug.

Contrary to law."

Duly assisted by counsel *de officio*, accused-appellant entered a plea of "not guilty" during the arraignment.<sup>[3]</sup> Trial on the merits thereafter ensued.

The prosecution established that on September 25, 2010, at around 6:00 in the afternoon, officer-in-charge SPO2 Rajean Apolinar Mirando ("SPO2 Mirando") received forwarded text messages from their team leader, P/Insp. Dexter Perez, regarding the illegal activities of alias Tisoy in Little Tagaytay, Marulas, Valenzuela City. SPO2 Mirando instructed his team to contact their confidential informant.<sup>[4]</sup>

On September 28, 2010, at around 4:00 in the afternoon, PO2 Catherine S. Rame ("PO2 Rame") met with the confidential informant at Serrano Elementary School.<sup>[5]</sup> At around 7:00 in the evening, PO2 Rame and company were discharged from the Office to conduct surveillance at Little Tagaytay against alias Tisoy, but they were not able to locate him. They gathered more information from the neighbors and concerned citizens who informed them that Tisoy sells and uses shabu, conducting pot session in his house.<sup>[6]</sup> They relayed the positive confirmation to their team leader who instructed them to conduct an operation.<sup>[7]</sup>

On September 30, 2010, at around 6:00 in the evening, their confidential informant again called their office and informed them that Tisoy was waiting for buyers and users of shabu.<sup>[8]</sup> SPO2 Mirando then instructed PO2 Rame to meet the confidential informant at Serrano Elementary School in Marulas, which is near Little Tagaytay. PO2 Rame gave money to the confidential informant for cellphone load and transportation, and for buying shabu so the confidential informant can use the shabu to confirm the illegal activities of the target. Thereafter, PO2 Rame went back to their office. PO2 Freddie Lim prepared the coordination form<sup>[9]</sup> and pre-operation report<sup>[10]</sup> then sent it to the District Anti-Illegal Drugs Aid (DAID) office.<sup>[11]</sup>

At around 10:20 that same evening, the team composed of PO2 Rame, SPO2 Mirando, SPO2 Armin Garcia, SPO2 Ronald Sanchez, PO3 Dait, PO2 Malinao, and PO2 Lim were dispatched to Serrano Elementary School to again meet with the confidential informant and reconfirm the whereabouts of Tisoy. They agreed that PO2 Rame and the confidential informant will proceed first to the target area. A "missed call" from PO2 Rame was their pre-arranged signal. PO2 Rame and the confidential informant proceeded to Little Tagaytay on board a tricycle. Some of the police officers were walking and following them, while the other police officers were on board their mobile, a Toyota Revo.<sup>[12]</sup>

While PO2 Rame and the confidential informant were walking at the target area, they saw four (4) male persons drinking beer. The confidential informant whispered to PO2 Rame that the male person without a shirt and in black shorts was Tisoy. At around five (5) meters away and while approaching the group of Tisoy, PO2 Rame heard Tisoy tell his drinking buddies, "Maghanap na kayo ng foil para makagamit na tayo," while showing them a plastic sachet with white crystalline substance. PO2 Rame then made a "missed call" to PO2 Lim. When PO2 Rame saw PO2 Lim and the other police officers approaching, she slowly moved toward Tisoy, held him, and introduced herself as a police officer. Tisoy was taken aback and not able to utter a word. PO2 Lim helped PO2 Rame handcuff Tisoy, but the latter's son, Red, blocked them and tried to pull his father away. At this instance, PO2 Rame got the plastic sachet from Tisoy's hand, while SPO2 Ronald Sanchez held the son of Tisoy. PO2

Rame was able to recover from Tisoy two (2) plastic sachets containing white crystalline substance and a plastic case of playing cards containing ten pieces of empty plastic sachets. The three (3) males who were drinking with Tisoy were not arrested because they were not doing anything illegal. They proceeded to the barangay hall of Marulas for drug inventory. PO2 Rame presented the recovered specimen to barangay kagawad Danilo Alonzo. SPO2 Miranda prepared the Inventory of Seized Properties/Items<sup>[13]</sup> which was signed by Alonzo. PO2 Rame also affixed her signature thereon as the "seizing officer". PO2 Lim took photographs during the inventory.<sup>[14]</sup> At the barangay hall, Tisoy was identified as the herein accused-appellant Vicente P. Lago. PO2 Rame marked the evidence with accused-appellant's initials, "VPL", the date "09-30-10" and her signature. After the inventory, they proceeded to their office and prepared the necessary documents for filing of charges against accused-appellant. The latter's son was charged with obstruction of justice under PD 1829.<sup>[15]</sup>

On October 1, 2010, PO2 Rame turned over the evidence placed in a brown envelop to the SOCO duty officer. A drug test was likewise conducted on accused-appellant and his urine was found positive for the presence of methylamphetamine hydrochloride or shabu.<sup>[16]</sup> The laboratory examination of the contents of the two plastic sachets also yielded positive result for the presence of shabu.<sup>[17]</sup>

Accused-appellant denied the charge. He testified<sup>[18]</sup> that in the late evening of September 30, 2010, he was having a drinking session with his son when three (3) male persons suddenly arrived, looking for a certain Vicente. When he identified himself as Vicente, one of them put his arm over his shoulder (*inakbayan*) and whispered, "*Vicente, pasensiya ka na. May tumawag sa amin na magulo ka daw dito.*" Accused-appellant denied such claim and retorted that they were merely having a drinking session and were not doing anything wrong. Accused-appellant and his son were forced to board a van and were brought to the police station. The police officers demanded money but when accused-appellant's son stated that they will file charges against them, they were suddenly brought to the barangay hall. While inside the barangay hall, one of the police officers took out from his pocket a small plastic sachet and showed it to the kagawad. Accused-appellant's son vehemently reacted by saying, "Ano yan? Wala naman kayong nakuha sa amin ah?" Thereafter, they were brought back to the police station where accused-appellant was forced to drink the water given by the police officers. Then they went to the SOCO and accused-appellant was given a small bottle and told to urinate there. He only learned that he is being charged of possession of illegal drugs during his arraignment.

Victoria Cardenas, the live-in partner of accused-appellant, testified<sup>[19]</sup> that accused-appellant and his son were merely having a drinking session during the late evening of September 30, 2010 when three (3) male persons arrived looking for accused-appellant. Victoria heard one of them accusing her live-in-partner of creating trouble in their area. Despite denying the accusation, her live-in-partner and son were arrested and forced to board a van. Victoria knows the three (3) male persons as police officers, for she once saw them in the act of mauling a person who was already handcuffed.

On September 26, 2011, the trial court rendered a Decision convicting accused-