

TWENTY-SECOND DIVISION

[CA-G.R. CEB-CR HC NO. 01692, January 09, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIONITO TAMAYO Y RAMIREZ AND BIBIAN YCONG Y SIDO,
ACCUSED-APPELLANTS.**

DECISION

HERNANDO, J:

Before Us is an Appeal from the Joint Judgment^[1] dated June 25, 2013 rendered by the Regional Trial Court (RTC), Branch 30 of Dumaguete City, finding accused-appellants Marionito Tamayo y Ramirez and Bibian Ycong y Sido guilty beyond reasonable doubt for Violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as "*The Comprehensive Dangerous Drugs Act of 2002*" in Crim. Case No. 20854 as well as for Violation of Sec. 11, Art. II of R.A. 9165 in Crim. Case Nos. 20855 and 20856, respectively. The dispositive portion of the assailed Joint Judgment reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 20854, the accused MARIONITO TAMAYO Y RAMIREZ and the accused BIBIAN YCONG Y SIDO are hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.05 gram of shabu in violation of Section 5, Article II of RA 9165 and are hereby sentenced each to suffer a penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings "BSY & MRT-BB-11/19/11" containing 0.05 gram of *shabu*, subject of this case, is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 20855, the accused MARIONITO TAMAYO Y RAMIREZ is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.01 gram of shabu in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The one (1) heat-sealed transparent plastic sachet with markings "MRT-P- 11/19/11" containing 0.01 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance

with law.

3. In Criminal Case No. 20856, the accused BIBIAN YCONG Y SIDO is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.18 gram of shabu in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

In the service of sentence, the accused Marionito Tamayo y Ramirez and Bibian Ycong y Sido shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.^[2]

The Antecedents:

Accused Marionito Tamayo y Ramirez and Bibian Ycong y Sido were charged with Violation of Section 5, Article II of R.A. No. 9165 in an Information^[3] dated November 21, 2011, the accusatory portion of which reads:

That on or about the 19st (sic) day of November, 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually aiding one another not being then authorized by law, did, then and there willfully, unlawfully and feloniously sell and deliver to a poseur buyer, One (1) heat sealed transparent plastic sachet containing an approximate weight of 0.05 gram of methamphetamine Hydrochloride commonly called "shabu" a dangerous drug.

Contrary to Sec. 5, Art. II of RA 9165.

On the other hand, accused Marianito Tamayo y Ramirez was also charged with Violation of Sec. 11, Art. II of R.A. No. 9165, in a separate Information^[4] which reads:

That on or about the 19th day of November, 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there, willfully, unlawfully and feloniously possess and keep one (1) heat-sealed transparent plastic sachet containing a total of 0.01 gram of white crystalline substance of Methamphetamine Hydrochloride commonly called shabu, a dangerous drug.

Contrary to Sec. 11, Art. II of RA 9165.

In like manner, accused Bibian Ycong y Sido was likewise separately charged with Violation^[5] of Section 11, Article II of R.A. No. 9165 in an Information which reads:

That on or about the 19th day of November, 2011 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess and keep five (5) heat-sealed transparent plastic sachet containing a total of 0.18 gram of white crystalline substance of Methamphetamine Hydrochloride commonly called shabu, a dangerous.

Contrary to Sec. 11, Art. II of RA 9165.

When arraigned^[6], the two accused, assisted by their counsel, pleaded not guilty to the respective crimes charged against them. The cases were then consolidated and tried jointly.^[7]

Version of the Prosecution

The prosecution presented Police Officer 3 Rex Oliver Tan as its sole witness. Police Chief Inspector Josephine Llena, *Barangay Kagawad* Dandy Catada of *Barangay* Looc, Ramonito Astillero of the Department of Justice, Police Officer 1 Roderick Maquinta and PDEA Intelligence Officer 1 Julieta Amatong were also supposedly presented for examination. However, the parties agreed to stipulate on facts with regards to the gist of their respective testimonies. The combined testimonies of all the prosecution witnesses, when woven together, established the following facts:

On November 19, 2011 at about 2:00 in the afternoon, PO3 Tan together with the confidential informant, local PDEA operative Jason Cabatania as well as police officers Dario Paquera, Roderick Maquinta, Ramsteadt Balbuena, Orlando Gonzaga and Florito Fajardo, were in Zone 3, *Barangay* Looc, Dumaguete City particularly near the basketball ball area of said place. The team was originally tasked to conduct an anti-illegal drugs operation against a certain Jerry Paculanang, who was reportedly engaged in illegal drug activities in said place.

When the rest of the team strategically positioned themselves around the area, PO3 Tan and the confidential informant, while locating the subject person, Jerry Paculanang, chanced upon a male person later identified as accused Marionito Tamayo. This Marionito Tamayo was with two female companions playing a card game locally known as "*tong-its*". According to PO3 Tan, when he and the confidential informant were approaching, said accused asked him if they were to buy *shabu* to which replied that he would only get Php500.00 worth.^[8] Subsequently, accused Tamayo ordered his companion, co-accused Bibian Ycong, to get a sachet of *shabu*.

As instructed, accused Ycong stood up and went to get the sachet of *shabu* which was partially hidden at the rooftop of a nearby hut, located about 1.5 meters away from the table where the three were playing *tong-its*. PO3 Tan followed her. Thereafter, PO3 Tan handed to accused Ycong the pre-marked Php500 bill originally intended for the operation against the original subject, Jerry Paculanang. In turn, accused Ycong gave to PO3 Tan a sachet of suspected *shabu*. Upon his receipt thereof, PO3 Tan immediately arrested accused Bibian Ycong. He also confiscated from accused Ycong a red Fortune brand cigarette pack where sachet of *shabu* earlier sold to PO3 Tan was taken, which also contained five more sachets of

suspected *shabu* and a red lighter. PO3 Tan then informed accused Ycong of the nature and cause of her arrest as well as her constitutional rights in the Visayan dialect, a language known to and understood by accused Ycong.

At that time, PO3 Tan also requested his other team members to hold accused Tamayo. Officers Fajardo and Pacquera held accused Tamayo while officers Maquinta and Balbuena held accused Ycong.

PO3 Tan declared that the recovered sachets of *shabu* from accused Ycong were all placed in his left hand. In order to segregate the sachet of suspected *shabu* subject of the sale from the others, he used the pre-marked Php500.00 bill to wrap it while the other sachets of *shabu* taken from accused Ycong remained in the Fortune cigarette pack. PO3 Tan then conducted a body search on accused Tamayo which yielded the recovery of one piece of sachet containing suspected *shabu* from the small pocket of his pants near the waistline. Thereafter, accused Tamayo was arrested and apprised of his constitutional rights. PO3 Tan held in his right hand said one piece of sachet containing suspected *shabu* confiscated from accused Tamayo.

After knowing the full names of the accused, PO3 Tan subsequently marked the confiscated items. The sachet of suspected *shabu* that was the subject of the sale was marked with "BSY & MRT-BB-11/19/11" and a signature. The initials "BSY" and "MRT" referred to the names of the two accused, Bibian Sido Ycong and Marionito Ramirez Tamayo; "BB" stood for buy-bust operation and "11/19/11", the date of the arrest. The Fortune brand cigarette pack recovered from the possession of accused Ycong was likewise marked with "BSY-P-11/19/11" and a signature and the five sachets of suspected *shabu* found inside it were marked with "BSY-P1-11/19/11" to "BSY-P5-11/19/11", all with signatures too. The letter "P" stood for the offense of possession of illegal drugs and the numbers immediately following differentiates the sachets from each other. The rest of the numbers referred to the date of the incident.

On the other hand, the sachet of suspected *shabu* that PO3 Tan recovered from accused Tamayo was also marked by him with "MRT-P-11/19/11" and a signature. The initials "MRT" represented the name of accused Marionito Ramirez Tamayo and the letter "P", the offense of possession of illegal drugs and the "11/19/11", the date of the arrest.

After the confiscated items were marked, an inventory thereof was conducted which was witnessed by *barangay kagawad* Dandy Katada, DOJ representative Ramonito Astillero, and media representative Neil Rio who had arrived by then. The witnesses all signed the Certificate of Inventory together with PO3 Tan, who signed it in his capacity as the seizing officer as well police officer Maquinta who prepared it. Photographs were likewise taken during the signing of the witnesses and the sealing of the envelope.

Thereafter, the two accused and the confiscated items were brought to the Dumaguete City Police Station for proper disposition and booking. From the area to the Dumaguete City Police Station, PO3 Tan had custody of all the items confiscated at all times, which were then placed in a tape-sealed brown envelope with the names of Bibian Ycong y Sido and Marionito Tamayo y Ramirez and PO3 Tan's signature.

In the station, PO3 Tan prepared the memorandum request for laboratory examination of the items confiscated and drug test for the two accused. Said memorandum request was signed by Police Superintendent Crisaleo Roleda Tolentino and was personally submitted by PO3 Tan to the Negros Oriental Provincial Crime Laboratory together with the all the items recovered and the two accused.

PCI Josephine Llena received from PO3 Tan at 4:28 in the afternoon of November 19, 2011 the one tape-sealed brown envelope with names Bibian Ycong y Sido and Marionito Tamayo y Ramirez and a signature containing seven (7) heat-sealed transparent plastic sachets with markings "BSY&MRT BB 11/19/11" with signature; "MRT P-11/19/11" with signature; and "BSY-PI-11/19/11 to BSY-P5-11/19/11" with signature, each sachet containing white crystalline substance.

PCI Llena re-marked the specimens as follows: Specimen "A D 215-11-JSL" for the brown envelope and Specimens "A-1 to A-7 D-215-11 JSL" for the seven heat-sealed transparent plastic sachets, respectively. When weighed, the corresponding net weights were determined and recorded as follows: A-1 (BSY&MRT-BB), 0.05 gram; A-2 (BSY-P1), 0.04 gram; A-3 (BSY-P2), 0.07 gram; and A-4 (BSY-P3), 0.05 gram; A-5 (BSY-P4), 0.01 gram; A-6 (BSY-P5), 0.01 gram; and A-7 (MRT-P), 0.01 gram.

Thereafter, PCI Llena conducted a qualitative examination on these specimens and all yielded positive to the tests of Methamphetamine Hydrochloride, a dangerous drug under R.A. 9165. The latter's findings and conclusions were all embodied in her Chemistry Report No. D-215-11. Subsequently, PCI Llena re-sealed the specimens she examined and stored them inside the steel cabinet in the evidence room of the crime laboratory prior to the submission to the Court on January 6, 2012 for the prosecution of all these three (3) cases.

PCI Josephine S. Llena also conducted screening and confirmatory tests on the urine samples taken from the living persons of the accused Bibian Ycong y Sido and Marionito Lamayo y Ramirez. The examination also yielded a positive result for the presence of Methamphetamine, a dangerous drug, as indicated in the Chemistry Report No. CDT-198/199-11.

Version of the Defense

The defense presented the two accused Bibian Ycong and Marionito Tamayo and the latter's wife, Jocelyn Tamayo, as its witnesses. Woven together, the testimonies of these witnesses established the following facts:

Accused Bibian Ycong is a resident of Tapon Norte B, San Jose, Negros Oriental and a fish vendor. She has a live-in partner named Herminildo Rapales who works at the Dumaguete pier. Accused Marionito Tamayo, on the other hand, is a construction worker and a resident of Zone 3, *Barangay* Looc, Dumaguete City Negros Oriental. He is married to Jocelyn Tamayo with two children.

In the early afternoon of November 19, 2011, accused Bibian Ycong was initially at the Dumaguete pier to accompany her live-in partner. Later, she went to the Looc basketball court located about 50 meters away in order to watch the preparation of the *Sandurot* Festival parade that was to start at 3:00 that afternoon.

Accused Ycong was surprised when a person, later known as police officer Opeña,