

## **THIRD DIVISION**

**[ CA-G.R. CR-HC No. 05407, March 31, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROLANDO T. LABANDELO, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**CARANDANG, J.:**

This is an appeal from the Judgment rendered by the Regional Trial Court, Branch 75 of Olongapo City dated December 7, 2011 in the consolidated Criminal Case Nos. 231-08 and 228-08, the dispositive portion of which reads:

"WHEREFORE, the Court renders judgment as follows:

1) Criminal Case No. 228-08, accused Enrique Lim Ong and Rolando T. Labandelo are "ACQUITTED" of the charge, with costs de officio.

2) In Criminal Case No. 231-08, accused Rolando T. Labandelo is found GUILTY beyond reasonable doubt of violation of Section 5, RA 9165 and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 plus costs, and to suffer the accessory penalties under Section 35 thereof.

Accused Rolando T. Labandalo being under detention shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Article 29 of the Revised Penal Code, as amended.

The Olongapo District Jail Warden is ordered to release Enrique Lim Ong from detention unless he is being held for some other lawful crime.

SO DECIDED."<sup>[1]</sup>

Antecedents:

Enrique Lim Ong and Rolando T. Labandelo were charged for violation of Section 11, Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 in an Information dated June 20, 2008, the accusatory portion of which reads as follows:

"That on or about the 28<sup>th</sup> day of May, 2008, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their effective possession and control sixty (60) boxes with three hundred (300) plastic bags containing Metamphetamine Hydrochloride,

otherwise known as "shabu", a dangerous drug, with an approximate total weight of Six Hundred Twelve and Twenty Two (612.22) kilograms, said accused not having the corresponding license or prescription to possess said dangerous drug.

CONTRARY TO LAW."<sup>[2]</sup>

The case was docketed as Criminal Case No. 228-08 in the Regional Trial Court of Olongapo City, Branch 75.

Another Information dated June 20, 2008 charged Rolando T. Labandelo, Estrella Olino Ang and Manuel Olino aka "Bobot" of Violation of Section 5, Article II of RA 9165 otherwise known as the Dangerous Drugs Act of 2002, the accusatory portion of which reads as follows:

"That on or about the twenty-sixth (26th) day of May, 2008, in the City of Olongapo and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, without being lawfully authorized, did then and there willfully, unlawfully and feloniously transport, distribute and deliver to another person sixty (60) boxes with three hundred (300) plastic bags containing Metamphetamine Hydrochloride otherwise known as "shabu", a dangerous drug with an approximate total weight of Six Hundred Twelve and Twenty Two (612.22) kilograms.

CONTRARY TO LAW."<sup>[3]</sup>

The case was docketed as Criminal Case No. 231-08 with the Regional Trial Court of Olongapo City, Branch 75. The two cases were consolidated and heard together. The accused pleaded "NOT GUILTY" when arraigned on February 3, 2009.<sup>[4]</sup> The object of the two separate information is the same shabu.

*Evidence for the Prosecution:*

Culled from the testimonies of the prosecution witnesses:<sup>[5]</sup>

On May 25, 2008 at around 8:00PM, Diosdado Ednave, Security Officer at the Law Enforcement Department (LED) of the Subic Bay Freeport, together with Security Officer Edwin Pentecostes were on roving inspection at the Riviera Pier at Subic Repair Facility (SRF). They noticed a Chinese vessel docked inside the pier and a red Mitsubishi Outlander with Plate Number RAE-615 parked in front of the vessel. There were four persons loading boxes from the vessel and into the car. Suspicious of the proceedings, Ednave asked the guard on duty at SRF Gate, Wilfredo Agnasada to thoroughly check the red car.<sup>[6]</sup>

When Agnasada flagged down the red car, he turned his flashlight towards the back of the vehicle and saw eight boxes covered with pink trash bags. He asked the driver of the car who identified himself as Anton Ang, for the documents of the cargoes, but the latter could not show any. Agnasada then asked the driver to pull over and called for back-up. Security Officers Ednave, Pentecostes, Orlando Sepe and their supervisor, Marceliana responded to the call. Anton Ang and his passenger, later identified as Manuel Olino, were brought to their office for investigation and the

boxes were confiscated. The duty investigator asked Ang about the contents of the boxes and the latter told him that they were sensitive computer parts. Ang requested that he be allowed to get the documents from his office at Hualong International Incorporated. Officer of the day Ensepe granted the said request and let Ang go, however, Ang did not return anymore.<sup>[7]</sup>

Notified of the confiscated items, Major Manuel Hiadan, Jr. of the Presidential Anti-Smuggling Group (PASG) Task Force Subic proceeded to the LED office at around 11:00AM on May 27, 2008 to inspect the same. The first box was opened in the presence of a representative from Hualong and Major Tolentino of SBMA. The box contained a green leather bag which when opened contained white colored transparent plastic bags with crystalline substance, just like "shabu". The plastic bags totaled 40 in all. The items were inventoried at the LED office before being brought to the PASG office and there examined by the PDEA and witnessed by the media, SBMA officials and barangay officials.<sup>[8]</sup>

Around 7:00AM of May 28, 2008, two green leather bags were found floating near the dry dock area of SBMA. Upon inspection, said leather bags contained five packs similar to those found in the boxes inventoried at PASG. The items were brought to the office of PASG and examined.<sup>[9]</sup>

At around 11:00AM of the same day, May 28, 2008, Major Hiadan received another report that a van was parked at a warehouse near Hualong's warehouse. Major Hiadan and members of the SBMA proceeded to the warehouse which was managed by Enrique Ong. Asked how the van came to be parked inside, Ong replied that the van was sent by Hualong. Upon inspection, the van contained sixty boxes which yielded green leather bags with five packs of white crystalline substance suspected to be "shabu". The boxes were brought to the PASG office where an inventory was conducted in the presence of members of the DOJ, the media, SBMA and PDEA representatives. The driver of the van, Rolando T. Labandelo whose Identification Card was found hanging inside the van was also brought to the PASG office for investigation<sup>[10]</sup>. SPO3 Rodolfo Bayas of the PASG brought the specimens of the confiscated drugs to the NBI for forensic examination<sup>[11]</sup>. The NBI Forensic Chemist Felicisima Francisco subjected the specimens of the confiscated items to a preliminary examination which found them positive for Methamphetamine Hydrochloride<sup>[12]</sup>. The said findings were stated in a confirmatory examination<sup>[13]</sup>.

#### Version of the Defense:

Anthony Ang, the General Manager of Hualong International Corporation called up Enrique Lim Ong, a warehouseman of Anglo Asia Commodity at around 4:00PM on May 26, 2008. Ang told Ong that one of their vehicles will be parked in their vacant warehouse. Hualong, being a favored client of Anglo Asia, Ang's request was granted. The van arrived at around 5:00PM and Ong instructed the driver to park at warehouse N-2. He did not inspect the contents of the van nor asked the driver about the contents thereof. It was company policy to allow temporary parking of client's vehicles when the client's rented warehouse is full. On May 28, 2008, three men from the office of SBMA LED arrived at the warehouse and asked Ong about the van owned by Anthony Ang. Ong led the three men to the area where the van was parked. The three men opened the van and inspected the contents, then Ong was

brought to the PASG office at around 11:00 in the morning.<sup>[14]</sup>

Rolando T. Labandelo admitted that he is the driver of a Toyota van with Plate Number UKU- 699. As a member of the Maritime Crew Service Shuttle, he holds a Certificate of Accreditation authorizing him to service passengers and cargoes inside the SBMA area. Because of his occupation, he came to know Anthony Ang who was a locator/investor inside SBMA. Anthony was his frequent passenger until such a time that Anthony already rented his van to transport cigarettes and liquor. On May 26, 2008, Anthony called him up at around 4:00 in the morning and told him that he (Anthony) would rent his (Labandelo) van to transport boxes. Labandelo then went to Anthony's house and was instructed by the latter to bring the van to their garage. They went to SBMA where Anthony's brother-in-law Bobot loaded boxes from the warehouse into the van. They proceeded to a Petron gas station and waited for somebody. They stayed there until 5:00 in the afternoon, and when nobody came, Anthony instructed him to bring the van to the warehouse of Anglo Asia Commodity Corporation. Labandelo parked the van inside the warehouse and proceeded to Anthony's office and he was paid P21,000.00 for the use of the van from May 26 to June 1, 2008. Anthony told him to wait for his call and he went home. On May 28, 2008, personnel from SBMA went to his house and told him to go with them. They went to the warehouse where he was asked by the authorities about the contents of the van to which he replied that he was just the driver of the van and he did not know the contents thereof. After that he was brought to the office of Task Force Subic.<sup>[15]</sup>

#### *The RTC ruling:*

The trial court acquitted both Rolando Labandelo and Enrique Lim Ong of the crime of illegal possession of dangerous drugs under Section 11, RA 9165 in Criminal Case No. 228-08. The trial court ratiocinated that the prosecution failed to prove that both Labandelo and Ong had knowledge that the boxes inside the van contained dangerous drugs. Knowledge cannot be presumed. Thus, the court ruled: "One of the elements of drug possession is that the accused freely and consciously possessed the drug. In the present case, he must know or should have known that the van contains boxes of dangerous drugs. Xxx his possession becomes punishable only once it is proved that he knew or should have known that the boxes contained drugs. Knowledge cannot be presumed xxx."<sup>[16]</sup>

Accused Rolando T. Labandelo, however, was found Guilty of violation of Section 5, RA 9165 in Criminal Case No. 231-08. The court reasoned that "transport" as used under the Dangerous Drugs Act is defined to mean "to carry or convey from one place to another". *The essential element of the charge is the movement of the dangerous drug from one place to another.*<sup>[17]</sup>

On appeal, accused-appellant Rolando T. Labandelo asseverates that the court a quo gravely erred:

a) in disregarding his testimony that he was a legitimate transport contractor and had no knowledge of the contents of the boxes loaded in his van;

b) in not finding his warrantless arrest and search illegal; in the court's