

TWENTY-THIRD DIVISION

[CA-G.R. CR HC NO. 01139, January 29, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MILA DUMLAS, ACCUSED-APPELLANT.

D E C I S I O N

LLOREN, J.:

This is an Appeal from the Decision^[1] dated April 29, 2012 of the Regional Trial Court of Iligan City, 12th Judicial Region, Branch 3, convicting the accused-appellant Mila Dumlas for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, the dispositive portion of which is quoted as follows:

WHEREFORE, premises considered, the court finds the accused MILA DUMLAS guilty beyond reasonable doubt for Violation of Sec. 5 Article II of RA 9165 and hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 in Crim Case No. 1436 (sic).

Similarly, the court finds the accused MILA DUMLAS guilty beyond reasonable doubt for Violation of Sec. 11 Article II of RA 9165 and hereby sentenced the accused to suffer the indeterminate penalty of 12 years and 1 day to 14 years and 8 months imprisonment and P300,000.00 fine in Crim. Case No. 14137.

SO ORDERED.^[2]

On January 28, 2009, accused-appellant Mila Dumlas was charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165, the Informations,^[3] docketed as Criminal Case No. 14136 and Criminal Case No. 14137, reads as follow:

Criminal Case No. 14136^[4]

That on or about January 27, 2009, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and give to her buyer one (1) plastic sachet containing Methamphetamine Hydrochloride or Shabu in consideration of the sum of P200.00, Philippines Currency.

Contrary to and in violation of Sec. 5, Article II of Republic Act 9165.

Criminal Case No. 14136^[5]

That on or about January 27, 2009, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without

authority of law, did then and there willfully, unlawfully and feloniously have in his (sic) possession, custody and control one (1) plastic sachet containing Methamphetamine Hydrochloride or Shabu weighing more or less 0.5 grams, a dangerous drug.

Contrary to and in violation of Sec. 5, Article II of Republic Act 9165.

When arraigned on both Informations, the accused-appellant, assisted by counsel, [6] pleaded "NOT GUILTY". Thereafter, trial on the merits followed.

The facts as culled from the records:

The version of the prosecution is summarized by the Office of the Solicitor General [7] as follows:

On January 27, 2009, NUP Ong, a member of the Philippine Drug Enforcement Agency (PDEA), SPO2 Cabahug and SPO2 Edgardo Englatiera, after confirming appellant's illegal activities in selling *shabu*, planned a buy-bust operation. NUP Ong was designated as the poseur-buyer and tasked to buy *shabu* from appellant worth P200.00, with the team of SPO2 Cabahug as custodian and the team of SPO2 Englatiera as back up. SPO2 Englatiera also prepared marked money that will be used for buy-bust operation.

At 12:00 P.M. of the same day, the team proceeded to Purok 5, Brgy. Tambacan, Iligan City. Upon arrival at the target area, NUP Ong approached appellant, then sitting in the terrace of her house, and asked her if she has a stock of *shabu* that he can buy. Appellant brought out one (1) piece of sachet of *shabu* from her wallet while NUP Ong removed his cap as a pre-arranged signal for the arrest. SPO2 Cabahug and SPO2 Englatiera immediately approached them and arrested appellant, who was also apprised of her constitutional rights. SPO2 Cabahug was able to recover from her the buy-bust money and one (1) plastic sachet of *shabu*, which were marked "MLD-2" (subject of possession) and "MLD-1" (subject of the sale) and later turned them over to the Philippine National Police (PNP) Crime Laboratory at Camp Evangelista, Patag, Cagayan de Oro City for examination of the confiscated specimens, with an accompanying request for the drug testing of appellant.

The Chemistry Report prepared by the PNP Crime Laboratory yielded positive results for the drug test conducted on the *shabu* seized from appellant.

[Citations omitted]

Evidence for the Defense

Appellant testified that on January 27, 2009 at around 11:00 in the morning to 12:00 noon, she was looking for her son in her neighbor, Jehan Andang, house. She asked Jehan if she knew where her son was. Jehan replied that she did not see her son. Appellant then went to the house of another neighbor, Alimodin, and sat on the bench located in the terrace, hoping that she will see her son if ever he passes by the said house. That was when she saw the two (2) PDEA members namely: SPO2 Diosdado Cabahug and SPO2 Englatiera. SPO2 Cabahug approached the appellant

and asked "*Mila, what are you doing here, are you selling shabu again?*". The appellant opened her wallet to show that nothing was inside it. SPO2 Cabahug told the appellant to go with him to Precinct 5 where the appellant was investigated. She was then brought to PDEA Office.^[8]

Jehan Andang corroborated the testimony of the appellant that on January 27, 2009 between 11:30 in the morning to 12:00 noon, appellant came to her and asked her as to the whereabouts of her son but she replied that she did not see her son. Then she saw appellant sat in the terrace. After a few minutes, two (2) armed men passed by carrying armalites. They approached appellant and asked her is she was selling again, to which the appellant answered, "no Sir". After which Cabahug told the appellant to explain in their office.^[9]

After trial, the court *a quo* rendered its Decision finding the appellant guilty beyond reasonable doubt of the crime of violation of Sections 5 and 11, Art. II of Republic Act No. 9165. On appeal,^[10] the appellant assigns the following as errors of the court *a quo*, to wit:

I

WHETHER OR NOT THE HONORABLE COURT ERRED IN FINDING FULL CREDENCE AND WEIGHT TO THE TESTIMONIES AND EVIDENCE PRESENTED BY THE ARRESTING TEAM;

II

WHETHER OR NOT THE HONORABLE COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE NONCOMPLIANCE OF THE ARRESTING TEAM WITH THE PROCEDURES OUTLINED IN SEC. 21 OF R.A. NO. 9165 AND SEC. 21(a) OF THE IMPLEMENTING RULES AND REGULATIONS OF R.A. NO. 9165 IN PRESERVING THE CHAIN OF CUSTODY OF THE DANGEROUS DRUG.^[11]

The Ruling of this Court

Section 5 and Section 11 of Republic Act No. 9165 pertinently provide as follows:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless, authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch, in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any such transactions.

x x x

Section 11. *Possession of Dangerous Drugs.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess

any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine, or cocaine hydrochloride marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.^[12]

The prosecution succeeded in proving all the aforementioned elements. NUP Carlito Ong, as the poseur-buyer, attested that appellant sold *shabu* to him during a buy-bust operation^[13] and that after the consummation of the sale, he gave the pre-arranged signal which prompted other members of the team to rush to the area and arrest the appellant.^[14] SPO2 Diosdado Cabahug conducted a body search on the person of the appellant. He recovered from the appellant one (1) sachet of *shabu* and the marked money which was found on the wallet of the appellant.^[15] According to Forensic Chemical Officer, P/SUPT. Mary Leocy Jabonillo-Mag-Abo, the two (2) sachets of white crystalline substances, subjects of the transaction, were all examined and found to be methamphetamine hydrochloride or *shabu*, a dangerous drug.^[16]

For illegal possession of a dangerous drug, like *shabu*, the elements are: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.^[17] All these elements were also proven and duly established in this case.

NUP Ong stated that upon seeing the consummation of the sale between him and appellant, he gave the pre-arranged signal and the other members of the team proceeded to arrest the appellant; SPO2 Cabahug searched the appellant and yielded another one (1) sachet of *shabu* and the buy-bust money in the wallet of the appellant.^[18] Undoubtedly, the frisking was legally authorized as a search incidental to the lawful arrest of appellant for evidence in the commission of illegal drug