

## **TWENTY-FIRST DIVISION**

**[ CA-G.R. CR-HC NO. 00539-MIN, March 28, 2014 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GILBERT YBAÑEZ Y CLOMA ALIAS "BOBONG QUIDA", ACCUSED-  
APPELLANT.**

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

**FRANCISCO, J.:**

Appealed to Us is the Judgment<sup>[1]</sup> dated October 28, 2006 of the Regional Trial Court, Branch 25, Cagayan de Oro City, in Criminal Case No. 2004-287, finding accused-appellant Gilbert Ybañez y Cloma a.k.a. Bobong Quida guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was formally charged and pleaded "not guilty"<sup>[2]</sup> under an Information<sup>[3]</sup> that reads:

The undersigned Assistant City Prosecutor accuses BOBONG QUIDA of the crime of VIOLATION OF SECTION 5, ARTICLE II, of Republic Act 9165, as amended, committed as follows:

That on January 09, 2004, at about 5:30 in the afternoon more or less, at Balongis, Balulang, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, distribute and give away one (1) small heat sealed transparent plastic sachet containing 0.08 gram of methamphetamine hydrochloride (*shabu*), to a decoy/poseur buyer, in consideration of the amount of one (1) xxx hundred peso bill marked money with serial numbers CL445449, while the other members of the police unit were strategically located nearby, intently observing the consummation of the transaction, including the giving of marked money by the poseur buyer to the accused on a buy-bust operation, well knowing that it is a dangerous drug.

Contrary to and in violation of Section 5, paragraph 1, Article II of Republic Act 9165.

The evidence of the prosecution consisted of (1) the testimonies of PO2 Rustom Gines, PO2 Jimmy Vicente and PO2 Julius Saluta, and (2) Exhibits "A" to "E" with submarkings. The prosecution's version of events are as follows:

On January 9, 2004 in the morning, then Special Operation Unit of the Cagayan de Oro City Drug Enforcement Office (CDEU-SOU) received an information from a "confidential informant" that accused Gilbert Ybañez y Cloma a.k.a. Bobong Quida

was rampantly selling *shabu* at Balongis, Brgy. Balulang, Cagayan de Oro City. On the basis of said information, the CDEU-SOU immediately decided to form a composite team for the conduct of surveillance and a buy-bust operation against accused. Consequently, the composite team were PO1 Jimmy Vicente, PO2 Julius Saluta and PO2 Rustom Gines headed by SPO1 Mario Pelaez.<sup>[4]</sup> After confirming the veracity of the information provided by the confidential informant, the composite team with their confidential informant proceeded to the target area on board a tinted L-300 van and motorcycle.<sup>[5]</sup> The confidential informant was tasked as the poseur-buyer equipped with a P100.00 bill buy-bust money with serial number SN CL445449,<sup>[6]</sup> while the police officers acted as members and back-up.

Arriving thereat, the composite team discreetly positioned themselves near the target area. Afterwards, the confidential informant alighted from the car and approached the accused.<sup>[7]</sup> From a distance of 10 meters away from the accused, the composite team positively saw the transaction between the confidential informant and the accused. The confidential informant handed the P100.00 bill marked money to the accused who in turn gave the confidential informant a small heat-sealed transparent plastic sachet containing white crystalline substance suspected of "*shabu*".<sup>[8]</sup>

Upon consummation of the sale, the confidential informant left the place but as the composite team were set to apprehend accused, another person identified later as Russel Generalao, bought one sachet from the accused. Seeing this, the composite team rushed to the *locus criminis* and simultaneously introduced themselves as police officers. However, accused and Generalao immediately fled and flagged down a taxicab. The composite team chased them but they were able to apprehend Generalao, while accused was able to escape.<sup>[9]</sup> The buy bust money was not recovered.<sup>[10]</sup>

Subsequently, the one small heat-sealed transparent plastic sachet containing white crystalline substance sold by accused to the confidential informant was turned over by the latter to PO2 Rustom Gines at Cogon Police Station after the consummation of the sale transaction. The item seized was marked by PO2 Gines as Exhibit "X-1" and was subjected to a laboratory examination on the same day.<sup>[11]</sup> In her Chemistry Report No. D-21-2004,<sup>[12]</sup> forensic chemist PSI April Garcia Carbajal of the PNP Crime Laboratory found that the subject crystalline substance is positive for methamphetamine hydrochloride or "*shabu*." Consequently, accused was charged with violation of Section 5, Paragraph 1, Article II of RA 9165.

Accused was later arrested in another police operation.

The defense, on the other hand, presented Gilbert Ybañez y Cloma a.k.a. Bobong Quida, the accused himself. For his part, accused denied that he was caught selling *shabu* and claimed that the evidence against him was fabricated. Accused's version, as summarized by the RTC, is as follows:

"The accused admits he is Bobong Quida [and] reiterates his innocence. There was no buy-bust operation[.] [A]t the time of buy-bust operation[,], he was in Barangay 4, Cagayan de Oro City in their house with Sofia his live-in-partner. He was not selling any dangerous drugs.

The evidence against him is planted and is inadmissible for being the fruit of the poisonous tree. He does not know Russel Generalao."<sup>[13]</sup>

After thorough study of the records, the trial court concluded that all the elements of the offense charged against the accused were satisfactorily proven by the prosecution. Thus, in its Judgment<sup>[14]</sup> dated October 28, 2006, the trial court held accused guilty beyond reasonable doubt of violation of Sections 5, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

In the light of the foregoing, this Court hereby renders judgment finding accused Gilbert Ybañez y Cloma a.k.a. Bobong Quida guilty beyond reasonable [doubt] of the crime charged in the information for selling and delivering without license or authority from the law a dangerous drug and sentences the accused to life imprisonment and imposes a fine of **Three Hundred Thousand Pesos (P300,000.00) and to pay the cost.**

The accused Gilbert Ybañez y Cloma a.k.a. Bobong Quida who has undergone preventive imprisonment shall be credited in the service of his sentence consisting of deprivation of liberty, with the full time during which he has undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except those disqualified by law.

The one (1) small heat-sealed transparent plastic sachet containing white crystalline substance or *shabu* weighing 0.08 gram is hereby confiscated and forfeited in favor of the government to be disposed of in accordance with law.

SO ORDERED.<sup>[15]</sup>

Accused-appellant raised the following assignment of errors:

## **I**

**THE COURT A QUO GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT[.]**

## **II**

**THE FINDINGS OF THE COURT A QUO ARE CONTRARY TO EXISTING JURISPRUDENCE[.]**<sup>[16]</sup>

The appeal must fail.

After a painstaking review of the records, this Court affirms the conviction of the appellant.

In a prosecution for the illegal sale of a prohibited drug, like *shabu*, the prosecution must prove the following elements: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale

actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence.<sup>[17]</sup>

All these elements are present in the instant case. The testimony of PO2 Rustom Gines explicitly narrated how the sale transaction of *shabu* between the confidential informant and appellant occurred. The transaction started when the confidential informant, acting as poseur-buyer, approached the appellant. After the two conversed, the confidential informant handed over the P100.00 bill marked money to the appellant. Appellant received the buy-bust money, got and opened his wallet, took out therefrom one small heat-sealed transparent plastic sachet purporting to contain white crystalline substance, and handed it to the confidential informant who in turn accepted the same. The exchange of the buy-bust money and the small heat-sealed transparent plastic sachet containing white crystalline substance (which was later on confirmed as *shabu* per Chemistry Report No. D-21-2004) between the confidential informant and appellant indeed consummated the sale transaction. While on the witness stand, PO2 Gines positively identified appellant as the same person who sold the one small heat-sealed transparent plastic sachet of *shabu* to the confidential informant and to whom the confidential informant gave the marked money during the buy-bust operation.

PO2 Gines' testimony was candid, direct, spontaneous, and categorical that:

- Q: In that buy bust operation who was the team leader?  
A: It was SPO1 Mario Pelaez.  
Q: And who was the designated poseur[-]buyer?  
A: Our confidential informant, sir.  
Q: Who were the back up officers?  
A: PO2 Julius Saluta and PO3 Jimmy Vicente.  
Q: What mode of transportation did you take in going to Balongis?  
A: We used a[n] L-300 tinted van and a motorcycle.  
Q: What happened when you were already at Balongis?  
A: Our decoy disembarked the van and walked to the area and we continued riding in an strategic position.  
Q: And what happened while the poseur[-]buyer was walking towards the area?  
A: Gilbert Ybanez alias Bobong Yda made a transaction with our decoy.  
Q: What were they doing in that transaction?  
A: We saw our decoy handing the marked money P100.00 bill to Bobong Yda and I saw Bobong Yda pulled his wallet and got one small heat- sealed transparent plastic sachet containing white crystalline substance and gave it to our poseur-buyer/decoy.  
Q: And how about Gilbert Ybanez?  
A: Then we saw another person who transacted again to Bobong Yda. He bought also one sachet worth P100.00 from Bobong Yda.  
xxx  
  
Q: How far were you from the accused?  
A: Almost 10 meters.<sup>[18]</sup>  
xxx

Q: Now, if that Bobong Yda, which is the subject of your buy bust operation is in Court, will you be able to identify him?

A: Yes, sir.

Q: Will you please go down and identify Bobong Yda.

A: The first man on the first row, sir. (witness pointing to a person sitting inside the courtroom and who when asked of his name, answered Gilbert Ybañez)<sup>[19]</sup>

The testimony of PO2 Gines was fully corroborated by PO3 Jimmy Vicente, thus:

Q: What was the reason why you were there at Balongis, Balulang?

A: We conducted a buy-bust operation.

Q: Against whom?

A: Gilbert Ybañez a.k.a. "Bobong Quida"

Q: And, in that buy-bust operation, who was your Team Leader?

A: SPO1 Mario Pelaez.

Q: And, who was designated as poseur-buyer?

A: Our c.i..

Q: And, who were your back-up force?

A: PO2 Julius Saluta, PO2 Rustom Ginez and some others.

Q: And, how about you? What was your role in that operation?

A: I was the look out and back-up of our poseur- buyer.

Q: And, will you tell the Honorable Court how did you go there? What mode of transportation did you use in going to Balongis?

A: Some of my companions were riding our L-300 Van and PO2 Rustom Ginez and I rode on our motorcycle.

Q: And, you mentioned that Police Officer Rustom Ginez and you rode on one motorcycle, What happened when you already arrived at Balongis?

A: We observed our poseur-buyer transacting with "Bobong Quida" .

Q: And, what happened when your poseur-buyer transacted with "Bobong Quida"?

A: We saw our poseur-buyer handed the P100.00 bill to "Bobong Quida" and "Bobong Quida" gave one (1) sachet of *shabu*.

Q: To whom?

A: To our poseur-buyer.

Q: And, what happened after your poseur-buyer handed money to "Bobong Quida"?

A: "Bobong Quida" gave one (1) sachet of *shabu* to our poseur-buyer.<sup>[20]</sup>  
xxx

Q: Now, you said that "Bobong Quida" was arrested; Would you be able to identify him?

A: Yes, sir.