

## SECOND DIVISION

[ CA-G.R. CR-HC No. 05463, May 30, 2014 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHELLE BAUTISTA Y GEMATERO @ "MICHELLE BAUTISTA Y YADAO," "MICHELLE," "CAROL," ACCUSED-APPELLANT.**

### D E C I S I O N

**GAERLAN, S.H., J.:**

Before this Court is an appeal<sup>[1]</sup> from a Joint Decision<sup>[2]</sup> dated 29 October 2010 by the Regional Trial Court, City of Valenzuela, Branch 171 in Criminal Case No. 112-V-07 for Violation of Section 5 and Criminal Case No. 113-V-07 for Violation of Section 11, both of Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of which reads:

*"WHEREFORE, premises considered, in Criminal Case No. 113-V-07, the accused **MICHELLE BAUTISTA y YADAO** is found **GUILTY** beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165. Consequently, she is hereby ordered to suffer the penalty of life imprisonment plus a FINE of Five Hundred Thousand Pesos (Php500,000.00) each. (sic)*

*Further, in Criminal Case No. 112-V-07, the accused **MICHELLE BAUTISTA y YADAO** is also found **GUILTY** beyond reasonable doubt for violation of Section 11, Article II of R.A. No. 9165. The said accused is further ordered to suffer the penalty of imprisonment of twelve years (12) and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum. In addition thereto, the said accused is ordered to pay a FINE of Three Hundred Thousand pesos (Php300,000.00).*

x x x

**SO ORDERED."**

Accused-appellant was apprehended at the same time with Henson Pun Chen alias "Nobo," however, the parties were charged in separate Informations. The Information in Criminal Case No. 114-V-07 charging Nobo for violating Section 11 of Article II of R.A. No. 9165 was resolved acquitting him of the offense charged due to insufficiency of evidence. Meanwhile, the Information in Criminal Cases Nos. 113-V-07 charging accused-appellant for violation of Section 5 and 112-V-07 for violation of Section 11, both of Article II of R.A. No. 9165 read:

Criminal Case No. 113-V-07<sup>[3]</sup>

"That on or about January 25, 2007 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 sell to PO3 Ronald C. Sanchez, who posed as buyer of zero point zero three (0.03) grams of Methylamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drug.

Contrary to law.”

Criminal Case No. 112-V-07<sup>[4]</sup>

“That on or about January 25, 2007, 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 her possession and control, one (1) pc. heat-sealed transparent plastic sachet containing zero-point zero five (0.05) grams of Methylamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drug.

Contrary to law.”

After several postponements<sup>[5]</sup>, herein accused-appellant, assisted by a counsel *de officio*, was finally arraigned and pleaded not guilty to the violations charged.

Soon, a pre-trial was conducted and terminated on December 10, 2007. Thereafter, trial ensued where the prosecution presented three (3) witnesses, namely: 1) SPO1 Ronald Sanchez, who was tasked to act as the poseur buyer; 2) SPO3 Marife Malinao, who was part of the team in the buy bust operation and acted as the back up and, lastly; 3) PO3 Arnel Soriano who was at the Station at the time the confidential informant came to their office and reported the sale and use of drugs for which the buy bust operation was directed.

The prosecution also offered as part of their evidence, documents, among others, corroborating the testimonial evidence given to prove the violation of R.A. No. 9165: 1) Laboratory Examination<sup>[6]</sup> of the specimen recovered from the buy bust operation; 2) Physical Science Report<sup>[7]</sup> of the specimen; 3) Police Blotter and its submarkings<sup>[8]</sup>; 4) Drug Inventory Report<sup>[9]</sup>; 5) Certificate of Coordination<sup>[10]</sup>; and 5) Pre-operation Report<sup>[11]</sup> showing proof of coordination with Police officers and PDEA.

## **THE FACTS**

### **The version of the Prosecution**<sup>[12]</sup>

On 25 January 2007, SPO1 Ronald Sanchez, P/Insp. Juan, PO3 Cunanan, PO3 Martinez, PO3 Britana, PO2 Lim, PO1 Pael and PO1 Aranas conducted a buy bust operation at Lagdameo Street, Barangay Parada, Valenzuela City upon report by a Confidential Informant at Station Anti-Illegal Drugs- Special Operations Unit (SAID SOU), Valenzuela City Police Station that accused-appellant Michelle/Carol and her lived-in partner Henson Pun Chuen, also known as “Nobo,” were involved in the sale of illegal drugs. After having learned of this information, they immediately reported the same to their action officer P/C. INSP. Danilo Bugay who relayed the same to P/Insp. Juan and who was thereafter directed to form a team for the buy bust operation. SPO1 Sanchez was assigned as

the poseur buyer and the other teams were assigned as back up. Immediately thereafter, SPO1 Sanchez requested for the dusting of the buy bust money consisting of ten (10) pieces of 100 peso bill and consequently, coordinated with the PDEA to which a Certificate of Coordination was issued and after which, proceeded to the target area.

At the informed location, SPO1 Sanchez together with the Informant knocked on the "yellow gate" and they were greeted by Michelle. Upon introduction of SPO1 Sanchez by Informant to Michelle, the former said the magic word "bibyahe ng bato." Michelle on the other hand, asked as to the amount SPO1 Sanchez wanted to buy, to which the latter replied that he would be buying Five Pesos (Php5.00) worth of *shabu*. Michelle went inside the house, leaving the gate partially opened, giving SPO1 Sanchez the chance to see Nobo, thereafter, the former returned with the illegal items. Michelle gave the illegal items to SPO1 Sanchez, and in exchanged handed out the dusted money consisting of five (5) pieces of one hundred pesos (100.00Php) or five (5) hundred pesos (500.00Php). After confirming that the transparent plastic sachet was indeed *shabu*, SPO1 Sanchez gave the pre-arranged signal and introduced himself as a police officer. SPO1 Sanchez held and handcuffed Michelle despite the latter's resistance and thereafter recovered another small heat- sealed transparent plastic sachet containing small white crystalline from her back pocket. When Nobo came to rescue, PO2 Malinao and PO3 Soriano arrived and held Nobo. The team then proceeded to the Barangay Hall of Parada for the necessary identification and drug inventory wherein SPO1 Sanchez marked the recovered illegal item subject of buy bust "MYB-1" while PO3 Malinao marked the other illegal item as "MYB-2, and instituted the Inventory Form which was signed by the apprehending officers and the Barangay officials. Subsequently, the team together with accused appellant and Nobo went to the SAID-SOU, blotted the incident and prepared the necessary documents for the filing of the case against accused appellant and Nobo.

After which, PO3 Malinao, SPO1 Sanchez and PO3 Soriano turned over the seized illegal items to SOCO, Kalookan City for laboratory examination where a Physical Science Report was issued finding positive presence of methylamphetamine hydrochloride, otherwise known as "shabu" while Michelle and Nobo were brought for drug testing.

### **The version of the Defense**<sup>[13]</sup>

For the defense, the testimonies of the accused appellant and Nobo were offered, countering the allegations of the prosecution. Accused appellant testified that she has no nickname and knows Henson Pun Chen, being his lived-in partner for seven (7) years already.<sup>[14]</sup> She further averred that she was arrested for alleged possession and selling of illegal drugs<sup>[15]</sup> on the evening of January 26, 2007 in their residence at Lagdameo Street, Fortune 4 Parada, Valenzuela City.<sup>[16]</sup> On the other hand, Henson Pun Chen alias "Nobo" testified that he was arrested together with accused-appellant upon attempt to aid Michelle whom he heard to be in the middle of a confrontation with five (5) persons who were looking for a certain Carol, whom Nobo did not know. The defense's version of the events is as follows:

On January 26, 2007, accused appellant was coming from Malabon for the "padasal" for her mother's death anniversary. In the evening thereof, while she was attending to their clothes, dried from the sun, she was arrested for the alleged possession and selling of illegal drugs. Five (5) persons whom she does not recognize came to her home addressing her as "Carol" and directing her to come with them for questioning. She only came to know of the identity of the persons arresting her to be police officers Marife and Sanchez upon the latter's testimonies in open court.

Accused appellants together with Nobo were residents for almost five (5) months already at Lagdameo Street, Fortune 4 Parada, Valenzuela City. Accused appellant and Nobo were renting a room in a compound consisting of more than five (5) rooms with two (2) gates, painted in red and yellow, respectively, located at the subject address. Both gates were accessible to accused-appellant's house. SPO1 Sanchez frisked accused-appellant at the "red gate" of her house and upon inquiry on why the latter was being arrested, the persons who held her failed to give an explanation. After which, accused appellant was brought to the detention cell where she came to know of her charge for which she vehemently denied.

The following morning of her arrest, accused appellant was brought to the Barangay Hall. Subsequently, accused appellant was brought to the crime laboratory where she was made to urinate for which result she was not informed of.

Aggrieved by the unfavorable decision of the trial court, the accused-appellant comes to this Honorable Court by Notice of Appeal on 30 January 2013 praying for her innocence on the lone assigned error<sup>[17]</sup>:

**THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE VIOLATIONS CHARGED.**

#### **THIS COURT'S RULING**

The defense claims that the prosecution failed to prove beyond reasonable doubt the guilt of the accused-appellant for the violations charged apparently for failing to comply with the procedure mandated by Section 21, Article II of Republic Act No. 9165 on the custody and disposition, seized, or surrendered dangerous drugs, particularly on the inventory and photographing of the retrieved subject illegal drugs alleged to have been recovered from the accused-appellant, in effect casting doubt on the identity thereof.

Further, the defense maintains that although the prosecution established through the testimony of the witnesses that markings in the retrieved specimen were made, such were not done in the presence of the accused-appellant or his representatives. Furthermore, the defense challenges the decision convicting the accused-appellant for failure of the prosecution to establish in evidence the chain of custody as defined in Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

**We are not persuaded.**