

## ELEVENTH DIVISION

[ CA-G.R. CR-HC No. 05833, May 30, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JHONNY SILVA Y ANTONIO, ACCUSED-APPELLANT.**

### D E C I S I O N

**LANTION, J.A.C., J.:**

This is an appeal from the *Decision*<sup>[1]</sup> dated 3 May 2012 of the Regional Trial Court of Masbate City, Branch 45, in Criminal Case No. 13748 finding accused-appellant Jhonny A. Silva **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165<sup>[2]</sup> (sale of prohibited drugs). The decretal portion of the said *Decision* reads:

"WHEREFORE, in view of the foregoing, the Court finds herein accused JHONNY SILVA Y ANTONIO GUILTY beyond reasonable doubt of Violation of Section 5 of Republic Act No. 9165 (Illegal Sale of Dangerous Drug[s]) and accordingly sentences him to suffer the penalty of life imprisonment.

The accused is likewise ordered to pay a fine of P500,000.00.

Conformably to Article 5 of the Revised Penal Code, it is requested to the Chief Executive thru the Department of Justice that after the accused shall have served eleven-(11) year period of detention, he shall be granted a parole.

The Bureau of Jail Management and Penology (BJMP) of Masbate City is directed to immediately bring and turn-over said Jhonny Silva to the custody of the National Penitentiary at Muntinlupa City.

Cost against the accused.

SO ORDERED."<sup>[3]</sup>

### THE ANTECEDENTS

The indictment of Accused-Appellant Jhonny Silva (hereafter Appellant) stemmed from the *Information*<sup>[4]</sup> filed against him which pertinently reads:

#### CRIMINAL CASE NO. 13748

(Information dated 17 March 2009 for Violation of  
Sec. 5, Article II, of RA 9165)

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That on or about march 13, 2009 at 11:00 'clock in the morning at Crossing, Brgy. Bacolod, Municipality of Milagros, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-

named accused did then and there willfully, unlawfully and feloniously sell Dangerous Drugs Methamphetamine Hydrochloride locally known as "SHABU" placed in nine (9) transparent plastic container[s] with the following markings, to wit:

A(AZC-1)	F(AZC-6)
= 0.01	= 0.01
gram	gram
B(AZC-2)	G(AZC-7)
= 0.02	= 0.01
gram	gram
C(AZC-3)	H(AZC-8)
= 0.01	= 0.01
gram	gram
D(AZC-4)	I(AZC-9)
= 0.01	= 0.01
gram	gram
E(AZC-5)	equivalent
= 0.01	to 0.23
gram	gram

valued at P8,000.00  
and two (2) pieces of  
P1,000.00 as marked  
money

CONTRARY TO LAW.

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When arraigned, Appellant pleaded "**not guilty**" to the charge against him.<sup>[5]</sup> Both the Prosecution and the Defense made the following stipulations and admissions: 1.) the identity of Appellant and; 2.) the jurisdiction of the court *a quo*.<sup>[6]</sup> Thus, on 21 October 2009, pre-trial was deemed terminated.

Trial ensued thereafter, with the Prosecution presenting 1.) Special Police Officer (SPO) 1 Antonio Z. Clemente; 2.) Police Officer (PO) 3 Jose Almero, Jr., (police officers who arrested Appellant) and; 3.) Police Senior Inspector (PSI) Vernon Rey Santiago (Forensic Chemist who examined the plastic sachets taken from Appellant which allegedly contain *shabu*).

On the other hand, the Defense presented Appellant himself.

### **THE FACTS** **(As culled from the Records)**

The Prosecution's version is synthesized by the Office of the Solicitor General as follows:<sup>[7]</sup>

"At 9:00 A.M. on March 13, 2009, the Milagros, Masbate Police Station received information from asset Ricky Verano, Sr., that appellant contacted him to sell or deliver *shabu* to Verano. The police officers of the station then formed a buy-bust team composed of PSI Eliot Vasquez as team leader and PO3 (sic) Clemente, Senior Police Officer 1 (SPO1)

Richard Cortes, PO3 Reymond Laurio, PO3 Jose Almero, PO1 Tyron King Ether [as members]. Verano acted as poseur-buyer and received a one thousand peso bill and two (2) five hundred peso bills for use as marked money.

The buy-bust team and Verano then proceeded at 10:45 P.M. of the same day to the target area in Brgy. Crossing, Milagros where they immediately saw appellant and a certain Henry Dalinog. The asset approached the two while the rest of the buy-bust team watched from a distance. The asset gave the marked money to appellant who then handed him plastic sachets containing substance suspected to be *shabu*. At this juncture, the police officers approached them, with PO3 (sic) Clemente and PO1 Almero arresting appellant. In the ensuing body search, they recovered from his right pocket the P2,000.00 marked money. Likewise, nine (9) sachets containing suspected *shabu* were recovered from the poseur-buyer.

The buy-bust team then brought appellant and the recovered plastic sachets to their office for investigation and documentation. The recovered sachets, marked as "ACC-1 to ACC-9," were then brought to the Philippine National Police (PNP) Crime Laboratory in Masbate City for qualitative examination, with the sale yielding positive results for methamphetamine hydrochloride."<sup>[8]</sup>

In his *Brief*,<sup>[9]</sup> Appellant's version of the facts is as follows:

"On 13 March 2009, at around 9:00 o'clock in the morning, **JHONNY SILVA** rented Henry Dalinog's "habal-habal" so he could fetch his student in Masbate City. At around 11:00 o'clock in the morning, he and Henry stopped over at Crossing, Milagros, because the latter invited him to have breakfast in a carenderia. After eating, they rested for a while, when suddenly, two (2) men in civilian clothes approached and pointed a gun at them then they ordered them to raise their hands. They were also handcuffed and searched and when nothing illegal was found in their possession, they were brought to the Milagros Police Station. Jhonny asked the reason for his arrest and was told that a person complained about him. At the police station, he and Henry were again searched and were further ordered to dismantle the motorcycle because the police were searching for something. When nothing was found, the motorcycle was reassembled then the two (2) men were brought inside a room and were again searched but nothing was found. Jhonny finally said that they should be allowed to go home because his family was waiting for him but he was told that he cannot leave the place. The police pointed a folded bond paper on top of the table and said that it was recovered from him. The police ordered him to unfold the paper but Jhonny refused so the former opened the same, showed the contents and forced him to hold it. Jhonny, however, refused to do the same so he was brought inside a cell.

At around 6:00 o'clock in the evening, Jhonny was told that he will be brought to [the] Capitol Building in Masbate City. They arrived thereat at around 9:00 o'clock in the evening and went to the Provincial Prosecutor's Office, where he was told to get a lawyer if he knew one. Jhonny said he knew Atty. Tambago, so he was accompanied to the

latter's house. Upon their arrival, he told Atty. Tambago that he was needed at the Provincial Prosecutor's Office, and the latter followed. Thereafter, Jhonny signed some papers and was brought to the Masbate City Police Station. the police station, however, refused to hold him in prison because he was not yet arrested, so he was brought to Milagros Police Station." (TSN, 14 September 2011, pp. 1-9)<sup>[10]</sup>

On 3 May 2012, the court *a quo* rendered the assailed *Decision*.

Aggrieved, Appellant appealed the *Decision* of the court *a quo* raising the following assignment of errors:

#### I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

#### II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES.

#### III

THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.<sup>[11]</sup>

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

Appellant principally argues that the court *a quo* erred in convicting him despite the Prosecution's alleged failure to prove his guilt beyond reasonable doubt. In contending that he should be acquitted, Appellant banks on the alleged procedural lapses committed by the police officers who failed to mark the seized drugs at the scene of the crime and to conduct a physical inventory of the same in the presence of the accused or his counsel, a representative from the media, the Department of Justice and any elected public official, resulting in the failure of the Prosecution to establish the *corpus delicti* of the crime charged. Appellant further insists that his acquittal at bar is justified since the Prosecution failed to prove that the integrity and evidentiary value of the drugs had been adequately preserved through an unbroken chain of custody.

The appeal fails.

It bears stressing that criminal prosecutions involving violations of Sections 5 and 11, Article II of R.A. No. 9165 depend largely on the credibility of the police officers who conducted the buy-bust operation. We likewise take note of the well-entrenched rule that the findings of fact of the trial court as well as its calibration of the evidence of the parties, its assessment of the credibility and probative weight of the witnesses, and its conclusion based on its findings are accorded by the appellate court high respect, if not conclusive effect.<sup>[12]</sup> Given the opportunity to observe the witness on the stand, the trial judge is in a vantage position to assess the demeanor