

EIGHTEENTH DIVISION

[CA-G.R CR. HC. NO. 01210, August 29, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND TUTOP Y MABASKOG, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

The Case

This is an appeal from the Decision^[1] dated June 1, 2010 of the Regional Trial Court of Bacolod City, Branch 47, in Criminal case No. 03-25378, which found herein appellant Ferdinand Tutop y Mabaskog, guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Factual and Procedural Antecedents

The accusatory part of the Information^[2] with which appellant was charged reads as follows:

“That on or about the 18th day of September 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, did, then and there willfully, unlawfully and feloniously sell, deliver and give away to a police poseur buyer, PO2 Ramil Ramos Dellomes in a buy-bust operation, four (4) elongated heat-sealed transparent plastic bag containing methylamphetamine hydrochloride or shabu, a dangerous drug, with a total weight of 0.59 gram in exchange of two (2) fake one thousand pesos bills in violation of the aforementioned law.

Act contrary to law.”

On his arraignment^[3], appellant pleaded “NOT GUILTY” to the offense charged. Trial thereafter ensued.

Evidence for the Prosecution

PO3 Ramil Dellomes testified that he was assigned to the Philippine Drug Enforcement Agency (PDEA) as operative under Commanding Officer PI Joemarie Occeno in September 18, 2003. At 4:00 o'clock in the afternoon of said date, PDEA office through PI Occeno received a personal report from an asset that alias "Binand" was selling shabu in Purok Cereza South, Brgy 3, Bacolod City.

Occeno thus conducted a briefing attended by SPO1 Arnold Yunsay, PO2 Norman Guillergan, SPO1 Hernan Ecal, Dellomes and the asset for an entrapment operation against the subject and designated PO3 Dellomes to act as Poseur-buyer. SPO1 Yunsay and SPO1 Ecal were to act as security and PO2 Guillergan as back-up. Two (2) fake P1,000.00 bills bearing the same serial number (No. Q620313) (Exhibits "C" and "C-2") were marked "C" (Exh. "C-1") between the letters "n" and "g" (Exh. "C-2-A) in the words Sanlibong Piso in both bills. The marked money and the marking were recorded in the blotter of Police Station 2 at 5:45 PM of September 18, 2003^[4].

At 6:15 PM, PO3 Dellomes and the asset, who was to identify alias "Binand", rode a 'trisikad' in going to the area of operation – Purok Cereza South – and waited for the suspect who was set by the asset to meet them there. The rest of the team took a L-300 van. A couple of minutes later, "Binand" (later known as accused Ferdinand Tutop y Mabaskog) arrived by foot and was introduced by the asset to PO3 Dellomes, who was not in uniform as buyer of shabu. Dellomes then gave the two marked P1,000.00 bills to "Binand" who in turn handed four (4) elongated sachets of suspected shabu to Dellomes. The police officer then made a pre-arranged signal – right thumb up – to indicate the consummation of the sale and identified himself as a PDEA operative. Guillergan, Ecal and Yunsay came, followed by PI Occeno, and helped in the arrest of accused who was then informed of his constitutional rights to remain silent and to counsel, and of his violation, i.e., sale of shabu. The marked money was recovered from accused and the four (4) sold elongated plastic sachets of suspected shabu were marked individually by Insp. Occeno as "FT-1", "FT-2", "FT-3", and "FT-4", respectively (FT stands for Ferdinand Tutop), right after the arrest of the accused and in his presence.^[5]

The buy-bust operation was recorded in the police blotter^[6]. Inspector Occeno, who was in custody of the recovered items, prepared the letter-request for laboratory test^[7] the following morning, September 19 and personally delivered it, together with the specimens, to the PNP crime laboratory at "0925 H 19 Sept 03"^[8].

P/SI Agustina Laranang Opoy, forensic chemical officer of PNP Regional Crime Laboratory 6, testified that she received a letter-request dated September 19, 2003^[9] signed by P/I Joemarie Occeno^[10] for laboratory examination of four elongated plastic sachets of suspected shabu with corresponding markings "FT-1", "FT-2", "FT-3", and "FT-4", allegedly recovered from suspect Ferdinand M. Tutop at Purok Cereza South, Brgy. 3, Bacolod City at 7:30 PM of September 18, 2003. The letter-request with actual specimens was personally delivered by PI Occeno and received by the Crime Laboratory at "0925H 19 Sept 03 by POI Magbanua". The actual four (4) elongated heat-sealed transparent plastic bag contained white crystalline substance with the following recorded weights and descriptions: FT1-0.15 gram; FT2-0.14 gram; FT3-0.14 gram; and FT4-0.16 gram, with total weight of 0.59 gram. After conducting qualitative examination on these specimens, the

forensic chemical officer filed Chemistry Report No. D-534-2003^[11] finding and concluding that said specimens gave positive results to the test for and contained methamphetamine hydrochloride (shabu), a dangerous drug^[12].

Evidence for the Defense

Testifying in his defense, accused-appellant Ferdinand Tutop declared that he was going to his parked trisikad at the foot-walk of Purok Cereza South, Brgy. 3, Bacolod City at 7:15 PM of September 18, 2003 when he met two persons, one being known to him as Jimmy, a resident of Purok Kamuncil of the same barangay. He saw them earlier standing at the back of Andres Bonifacio Elementary School (ABES) while plying his trisikad. Ferdinand knew Jimmy to be a thief, and was reportedly an asset of the police; he had a quarrel with Jimmy two years before. Jimmy pointed a finger to Ferdinand saying to his companions "arrest him", and the companions drew near and handcuffed Ferdinand. Then they proceeded to the provincial Lagoon where they boarded a white car and brought Ferdinand to an office in Kamingawan and investigated him. Thereafter, Ferdinand was brought to Police Station 2; he was not shown the four plastic sachets and the two fake P1,000.00 bills they claimed to have recovered from him. He was asked to point to the persons selling shabu but he did not know any. Ferdinand denied having sold 4 sachets of shabu in exchange for 2 fake P1,000.00 bills to a poseur buyer.

Witness Joemarie Laspag, a bet-crier in cockfights, claimed that, at 7:00 PM of September 18, 2003 he was at Purok Ceresa South, Brgy. 3 to meet a friend "Boboy", but the latter's wife told him that her husband was at a store beside the road. Proceeding to the store and while drinking softdrink, witness Lapag saw a young man buy something from the store. Suddenly, a person approached the young fellow, searched him bodily, telling him not to move as he was a police officer. Nothing was recovered, but the young man was brought to Gatuslao street. Witness Alapag claims that he did not know the young man, but the latter's mother came to his house on December 4, 2003 and begged him to testify for the defense as there was no other witness at the time of accused Tutop's arrest.

RTC Ruling

After evaluation of the evidence, the trial court rendered a Decision finding appellant guilty of the offense charged, the dispositive portion of which, reads:

"WHEREFORE, finding accused Ferdinand Tutop y Mabaskog guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 (Sale, Delivery, etc. of Dangerous Drugs) as herein charged, judgment is hereby rendered sentencing him to suffer Life Imprisonment and to pay a fine of P500,000.00. He is also to bear the accessory penalty prescribed by law. Costs against accused.

The subject four (4) sachets of shabu (Exh. "B-3-A": - "FT-1" - 0.15 gram, "FT-2" - 0.14 gram; "FT-3" - 0.14 gram; and "FT-4" - 0.16 gram) all being dangerous drugs are hereby ordered confiscated and/or forfeited in favor of the government and to be forthwith delivered or turned over to the Philippine Drug Enforcement Agency (PDEA) provincial