

## TWENTIETH DIVISION

[ CA-G.R. CEB-CR H.C. NO. 01550, August 29, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUDITH COLALJO CALONGCONG, ACCUSED-APPELLANT.**

### DECISION

**HERNANDO, J.:**

Before Us is an Appeal<sup>[1]</sup> from the Joint Judgment<sup>[2]</sup> dated August 31, 2012 rendered by the Regional Trial Court (RTC), Branch 30 of Dumaguete City, Negros Oriental in Crim. Case Nos. 20566 and 20565, finding accused-appellant Judith Colaljo Calongcong guilty beyond reasonable doubt for Violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as "*The Comprehensive Dangerous Drugs Act of 2002*". The dispositive portion of the assailed Joint Judgment reads:

**WHEREFORE,** in the light of the foregoing, the Court hereby renders judgment as follows:

**1.** In Criminal Case No. 20566, the accused Judith Colaljo Calongcong is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.09 gram of *shabu* in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00).

The one (1) heat-sealed transparent plastic sachet containing 0.09 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

**2.** In Criminal Case No. 20565, the accused Judith Colaljo Calongcong is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.6 gram of *shabu* in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (Php400,000.00).

The four (4) heat-sealed transparent plastic sachets containing an aggregate total of 0.6 gram of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Judith Colaljo Calongcong shall be credited with the full time during which she has undergone preventive

imprisonment, provided she agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

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

### **The Antecedents:**

Accused-appellant Judith Colaljo Calongcong was charged with Violation of Sections 5 and 11, Article II of R.A No. 9165 in two separate Informations<sup>[4]</sup> both dated July 2, 2011, the accusatory portions of which respectively read as follows:

Criminal Case No. 20566:

That on or about the 1<sup>st</sup> day of July, 2011 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, JUDITH COLALJO CALONGCONG, without authority of law and legal justification, did, then and there willfully, unlawfully and feloniously sell, deliver and give to a poseur buyer one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.09 gram which substance after examination conducted on specimen was found positive to the test of Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of Republic Act No. 9165.

Contrary to Sec. 5, Article II of Republic Act No. 9165.

x x x

x x x

x x x

Criminal Case No. 20565:

That on or about the 1<sup>st</sup> day of July, 2011 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, JUDITH COLALJO CALONGCONG without authority of law and legal justification, did, then and there willfully, unlawfully and feloniously possess or have under her custody and control four (4) pieces of transparent plastic sachets containing white crystalline substances weighing 0.33 grams, which substances after examination conducted on specimen were found positive to the test of Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of Republic Act No. 9165.

Contrary to Sec. 11 Article II of Republic Act No. 9165.

x x x

x x x

x x x

When arraigned<sup>[5]</sup> on September 30, 2011 in a language known to her and duly assisted by her counsel, accused pleaded not guilty to the crimes charged against

her. Thereafter, joint preliminary conference was conducted.<sup>[6]</sup> After the pre-trial stage was terminated, joint trial on the merits ensued.<sup>[7]</sup>

### **Version of the Prosecution**

The prosecution presented Department of Justice (DOJ) representative Anthony Chilius Benlot, Police Chief Inspector Josephine Llana (PCI Llana), Intelligence Officer I Julieta Amatong (IOI Amatong), Police Officer I Archimedes Olasiman (PO1 Olasiman), media representative Steve Gabriel, Police Officer 2 Jason Tompong (PO2 Tompong) and Police Senior Inspector Alvin Futalan (PSI Futalan) as its witnesses. The supposed testimony of *Barangay Kagawad* Jasper Michael Cuevas was the subject of stipulations of facts upon agreement of the parties. The combined testimonies of all these witnesses established the following:

In the morning of June 30, 2011, the police operatives of Provincial Intelligence Branch of Negros Oriental, Police Provincial Office received a tip from a confidential informant regarding the alleged involvement of accused Judith Colaljo Calongcong in the illegal drugs trade at her residence in *Barangay* Calindagan, Dumaguete City. Pursuant thereto, the chief of the Provincial Intelligence Bureau of Negros Oriental, PSI Futalan, instructed PO2 Tompong and PO1 Olasiman to conduct surveillance to verify the given information and for them to personally familiarize themselves with the area and the subject itself. In the afternoon of the same day, the two police officers went to the target area along South Road, National Highway, *Barangay* Calindangan, specifically about 10 to 15 meters from the intersection of City High School. After confirming the illicit activities of the subject, accused Judith Colaljo Calongcong, PO2 Tompong and PO1 Olasiman returned to their office and reported their findings to PSI Futalan.

The following morning of July 1, 2011, PSI Futalan convened a team of police officers to conduct an entrapment operation on subject accused. Present therein for initial operational briefing on said entrapment operation included PSI Futalan, PO1 Olasiman, PO2 Tompong and certain police officers, namely, Alcoran, Abucayon, Calugcugan, Gajetos. As instructed by PSI Futalan, PO2 Tompong prepared and marked the five hundred (Php500.00) peso bill with serial number SY 085758 with his initials "JCT" to be used as buy-bust money. Afterwards, PO2 Tompong contacted via text message IO1 Julieta Amatong of the local office of the Philippine Drug Enforcement Agency (PDEA) in order to coordinate their planned entrapment operation.

Since the target personality was a female person, the team sought the help of IO1 Amatong for their operation. As a consequence, the full operational briefing was held at the local PDEA Office that same morning. During the briefing, PO2 Tompong was designated to act as poseur-buyer while PO1 Olasiman and IO1 Amatong were to act as PO2 Tompong's immediate back up.

Subsequently, the group proceeded to the target area at around 10:30 in same morning of July 1, 2011. PSI Futalan, IO1 Amatong and PO1 Abucayon rode the service vehicle while the rest of the team led by PO2 Tompong were on their respective individual motorcycles. Upon arrival at the area, PO2 Tompong proceeded to the front portion of accused's house. After about ten to fifteen minutes of waiting, the accused arrived. PO2 Tompong then asked accused in the Visayan dialect if he

could score "*bunga*" (local term for *shabu*) and how much would a sachet cost. The accused replied that it would cost Php500.00 and further said: "*Adto ta mag-daog sa kilid sa Hypermart*" (we will continue our transaction at the side of Lee Plaza Hypermart). And so, PO2 Tompong boarded his motorcycle and proceeded to the area.

On his way to Hypermart, PO2 Tompong contacted PO1 Olasiman to inform the team about the change of plans. Upon arrival at the area, PO2 Tompong parked his motorcycle at the side of Lee Plaza Hypermart and waited for the accused for nearly an hour. Meanwhile, the rest of the team positioned themselves strategically about fifteen to twenty meters away.

When the accused finally arrived, she parked her own motorcycle near PO2 Tompong and asked for the money. PO2 Tompong then handed to the accused the marked five hundred peso (Php500.00) bill which the latter received. In turn, the accused dipped her hand in her right pocket and took out five (5) transparent, heat-sealed sachets of suspected *shabu*. The accused asked PO2 Tompong to choose one from among the five sachets. PO2 Tompong chose one and examined its contents. On the basis of his training and experience, he believed that the sachet contained *shabu*, a dangerous drug. Thereafter, he placed the sachet that he just bought inside his pocket. Almost simultaneously, PO2 Tompong also grabbed the right hand of the accused and seized the remaining four sachets. He arrested accused and informed her of the nature of her arrest, that is for illegal sale and possession of dangerous drugs. PO2 Tompong further apprised the accused of her constitutional right in the Visayan dialect, known and understood by the latter. At that point, PO1 Olasiman and the rest of the team swooped in to assist PO2 Tompong.

IO1 Amatong then conducted a body search on the person of the accused and recovered the marked five hundred (Php500.00) peso bill, another five hundred (Php500.00) peso bill and the key of the motorcycle that accused used.

At the crime scene, PO2 Tompong marked the heat-sealed transparent plastic sachet containing suspected *shabu* that he earlier bought from accused with "JCC-BB-7/1/11" and the four (4) other sachets that he seized from the right hand of the accused with "JCC-P1-7/1/11" to "JCC-P4-7/1/11", respectively. The initials "JCC" represented the name of accused Judith Colaljo Calongcong, the letter "BB" referred to buy-bust operation, the letter-number combination of "P1" to "P4" stood for the offense of possession of illegal drugs and the corresponding numbers of sachets confiscated, while 7/1/11 referred to the date of the incident. PO2 Tompong further placed his signatures on said markings.

After the markings, PO2 Tompong conducted the inventory of the seized items along a pathway beside the main road at the side of Lee Plaza Hypermart. The conduct of the inventory was made and witnessed by accused Judith Colaljo Calongcong, DOJ representative Anthony Chilius Benlot, media practitioner Steve Gabriel and *barangay* official Jasper Michael Cuevas, who were called and had arrived by then. These witnesses along with IO1 Amatong of the PDEA, PO2 Tompong as the seizing officer, PSI Futana as the team leader signed the Inventory/Receipt of the Property Seized. During the entire inventory process, PO1 Olasiman took photographs to document the same.

Thereafter, the team brought the accused and the confiscated items to the provincial

police office at Agan-an Sibulan, Negros Oriental for the usual booking procedures. The seized contrabands were in the custody of PO2 Tompong at all times. The latter then placed the same inside his personal locker of which only he had the key to it. Meanwhile, PO2 Tompong prepared a Memorandum Request for Crime Laboratory Examination and Drug Test addressed to the Provincial Chief of the crime laboratory which was signed by PSI Futralan.

At the local PDEA office, IO1 Amatong also recorded the incident in the PDEA Negros Oriental blotter.

PO2 Tompong then brought the seized items to the Negros Oriental Provincial Crime Laboratory at Dumaguete City for examination. These contraband items were received personally by PCI Llena, the forensic chemist of said Crime Laboratory, at 2:45 in the afternoon of the same day.

Upon receipt thereof, PCI Llena re-marked as Specimen A-1 the one (1) heat-sealed transparent sachet with markings "JCC-BB-7/1/11" and Specimens B-1, B-2, B-3 and B-4 the other four (4) heat-sealed transparent sachets with markings "JCC-P1-7/1/11" to "JCC-P4-7/1/11", respectively. When weighed, Specimen A-1 as well as the Specimens B-1 to B-4 were all found to contain 0.09 gram, 0.33 gram, 0.10gram, 0.08 gram and 0.9 gram, respectively, of white crystalline substance. PCI Llena's qualitative examination of the specimens showed that all of the five (5) sachets yielded positive to contain Methamphetamine Hydrochloride, a dangerous drug under R.A. 9165. Subsequently, PCI Llena prepared and issued Chemistry Report No. D-122-11 containing her findings and conclusion. The specimen were re-sealed after the examination and were kept and stored in the steel cabinet inside the evidence room of the crime laboratory. Thereafter, PCI Llena submitted the drug specimens to the trial court on August 12, 2011 as well as her report thereto for the joint trial of the instant cases.

### **Version of the Defense**

The defense presented accused Judith Colaljo Calongcong and one Leah Calooy Valencia as its witnesses.

Accused Judith Colaljo Calongcong testified that she is married, a housekeeper and a resident of *Barangay* Calindagan, Dumaguete City. Accused declared that on July 1, 2011 past ten in the morning, she was inside her house watching television when a certain Allan Chan, an ex-convict, came to see her. Allan Chan requested her to help him sell a welding machine so that they can earn extra money. Accused acceded to his request but said that she could only do so at a later time since she still has to collect the amount of Php1,000.00 from her friend who borrowed from her, so she could use it for her husband's birthday celebration.

After accused collected the money from Leah at his house located at the back of (Bishop's) Palace in *Barangay* Bagacay, Dumaguete City, she proceeded to Lee Plaza Hypermart as earlier agreed with Allan Chan to meet the owner of the welding machine, who lives at the nearby place. When accused arrived there, she asked Allan Chan where the seller was but Allan told her to wait since he already texted him. However, while accused and Allan were conversing, somebody suddenly approached them and held accused's hands. Thereafter, plenty of people came near and Allan Chan was able to flee. Accused was later informed that she was arrested.