

## TWELFTH DIVISION

[ CA-G.R. CR-HC No. 05973, October 22, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVE  
CLAUDEL Y LUCAS ACCUSED-APPELLANT.**

### DECISION

**SALANDANAN-MANAHAN, J.:**

Under consideration in this appeal is the Judgment<sup>[1]</sup> dated 31 October 2012 of the Regional Trial Court of Muntinlupa City Branch 204 in Criminal Case No. 09-149 finding accused-appellant Dave Claudel y Lucas guilty beyond reasonable doubt for Violation of Section 5, Article II of RA No. 9165 otherwise known as "Comprehensive Dangerous Drugs Act of 2002". The dispositive portion of which reads:

"WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of the crime herein charged, DAVE CLAUDEL y LUCAS is sentenced to LIFE IMPRISONMENT and to pay a FINE of P500,000.00.

The preventive imprisonment undergone by the accused shall be credited in his favor.

The drug evidence is ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Issue a MITTIMUS committing accused DAVE CLAUDEL y LUCAS to the New Bilibid Prison (NBP) for the service of his sentence pending any appeal that he may file in this case.

SO ORDERED."

In an Information<sup>[2]</sup> dated 3 March 2009 accused-appellant Dave Claudel y Lucas was indicted for Violation of Section 5, Article II of RA 9165 allegedly committed as follows:

"That on or about the 26<sup>th</sup> day of February, 2009, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another a Methamphetamine hydrochloride, a dangerous drug, contained in one (1) heat-sealed transparent plastic sachet weighing 0.04 gram, in violation of the above-cite law.

Contrary law."

Upon arraignment, accused-appellant with assistance of counsel de officio, pleaded not guilty to the offense as charged.<sup>[3]</sup>

During pre-trial, the presentation of prosecution witness, Forensic Chemist PS/Insp. Abraham Verde Tecson was dispensed with after the parties stipulated on the following:

(1) That PS/Insp. Abraham Verde Tecson is a Forensic Chemist connected with the PNP Crime Laboratory, Makati City as of February 27, 2009 and that he is an expert in Forensic Chemistry;

(2) That pursuant to the Request For Laboratory Examination, he conducted the laboratory examination on the specimen which consist of: One (1) heat sealed transparent plastic sachet with markings "DC" containing 0.04 gram of white crystalline substance;

(3) That qualitative examination was conducted on the submitted specimen which yielded a positive result to the test of Methylamphetamine [sic] Hydrochloride or dangerous drug;

(4) The existence and due execution for the Request for Laboratory Examination and of the Physical Science Report No. D-122-09S<sup>[4]</sup>

After pre-trial, trial on the merits forthwith ensued.

### **Evidence for the Prosecution**

The prosecution presented its witnesses, PO1 Rondivar Hernaez ("PO1 Hernaez") and PO2 Bob Yangson (PO2 Yangson), a member of the buy-bust team. Their combined testimonies established the following facts:

On 26 February 2009, a buy-bust operation was conducted by the operatives of Station Anti-Illegal Drugs- Special Operation Task Group (SAID-SOTG) Muntinlupa Police following a report that a certain Dave Claudel ("Dave") is engaged in illegal drug activities. Prior to the buy-bust operation, Dave was also previously arrested for Violation of RA 9165 involving illegal drugs.<sup>[5]</sup>

In preparation for the buy-bust-operation, the buy-bust team prepared the Pre-Operational Sheet<sup>[6]</sup> and Coordination Sheet<sup>[7]</sup> which they faxed to the Philippine Drug Enforcement Agency (PDEA). In turn, the buy-bust team received a Certificate of Coordination<sup>[8]</sup> from PDEA. <sup>[9]</sup>

Team Leader, Chief Inspector Paningbatan assigned PO1 Hernaez as the poseur buyer while PO1 Yangson was designated as the immediate back up.<sup>[10]</sup> C/Insp. Paningbatan handed PO1 Hernaez a Five Hundred Peso Bill buy-bust money on which the latter wrote his initials "RH" on the lower right portion of the bill.<sup>[11]</sup> It was agreed upon that PO1 Hernaez will light a cigarette as a pre-arranged signal that the sale of illegal drugs was consummated.<sup>[12]</sup>

PO1 Hernaez admitted that he was already familiar with Dave as he used to see him

in court hearings.<sup>[13]</sup> However, he was not aware whether Dave could also remember him. At any rate, to prevent being recognized, PO1 Hernaez wore a disguise by changing his clothes. He wore a gray polo shirt, maong pants, leather shoes and a cap to cover his face.<sup>[14]</sup> He also needed an asset to accompany him as Dave would not sell drugs to anyone except those known to him.<sup>[15]</sup>

At around 9:30 o'clock in the evening, the team proceeded to the target place in Tuazon Street, Barangay Poblacion.<sup>[16]</sup> As planned, PO1 Hernaez together with the asset walked towards Tuazon Street corner Rizal Street<sup>[17]</sup> where it was dark and there was no light.<sup>[18]</sup> The asset pointed alias Dave as the person selling illegal drugs.<sup>[19]</sup> Upon seeing each other, the asset nodded to Dave. The asset then introduced PO1 Hernaez to Dave as his kumpare from Parañaque who is interested in buying shabu as there was scarcity of shabu in Parañaque. Dave asked them how much would they buy from him to which PO1 Hernaez replied "Php500.00, pare".<sup>[20]</sup> Dave reached into the secret pocket of his maong pants and told PO1 Hernaez , "*Tamang-tama pare huling kasa ko na lang 'to pauwi na rin ako*". PO1 Hernaez handed Dave the buy-bust money while Dave handed him a transparent plastic sachet containing white crystalline substance. After examining the plastic sachet, PO1 Hernaez lit his cigarette.<sup>[21]</sup> PO2 Yangson, the assigned back-up of PO1 Hernaez immediately rushed to the scene and assisted in arresting Dave.<sup>[22]</sup>

After informing Dave of his rights, PO1 Hernaez and the rest of the buy-bust team brought Dave to their office where they recovered from him the buy-bust money. The plastic sachet remained in PO1 Hernaez's custody until they reached their office.<sup>[23]</sup> Upon arriving thereat, PO1 Hernaez placed the marking "DC" on the seized plastic sachet.<sup>[24]</sup> They conducted an Inventory of the seized item in the presence of Dave and Rodolfo Baldobino, a DAPCO representative.

PO1 Hernaez explained that they contacted a representative from the media and the barangay but they received a negative reply as it was already around 10:00 or 11:00 o'clock in the evening.<sup>[25]</sup> Photographs of Dave, the buy-bust money, and the confiscated item were also taken.<sup>[26]</sup> They also prepared a Request for Laboratory Examination which PO1 Hernaez and PO2 Yangson submitted to the Crime Laboratory.<sup>[27]</sup> PO1 Hernaez also took custody of the seized item and submitted the same to the Custodian in the Crime Laboratory.<sup>[28]</sup>

Afterwards, PO1 Hernaez came to know that the result of the Laboratory Examination yielded positive for methamphetamine hydrochloride.<sup>[29]</sup> Thereafter, they executed a Joint Affidavit<sup>[30]</sup>, a Booking Sheet<sup>[31]</sup> and Spot Report<sup>[32]</sup> of the incident.<sup>[33]</sup>

The prosecution formally offered Exhibits "A" to "M" and its sub-markings, which were admitted per Order dated 16 February 2011.<sup>[34]</sup>

### **Evidence for the Defense**

The defense presented as its witnesses, the accused himself, Dave Claudel, Ligaya Santos and Emmerlyn Arellano. Their combined testimonies narrate the following

facts:

On 26 February 2009 at about 6:00 o'clock in the evening in P. Tuazon Street, Poblacion, Muntinlupa City, Dave Claudel was fetching water near the store of his sister, Ligaya Santos ("Ligaya").<sup>[35]</sup> Ligaya was manning her store with her employee, Emmerlyn Arellano, when more or less six (6) armed men with guns and handcuffs arrived.<sup>[36]</sup> Dave eventually came to know that the two (2) of these men were police officers Yangson and Hernaez. Dave was surprised when instructed by the police officers to follow them. He was ordered to raise his hands and then he was handcuffed.<sup>[37]</sup> The police officers were looking for a can as they bodily searched him. Unaware as to what they were talking about, Dave failed to give an answer. Consequently, one of the men hit him on his face. Dave insisted that nothing was recovered from him. Her sister, on the other hand, was crying and trembling with fear as the police officers threatened them saying, "nagbebenta kayo ng drugs kaya ikukulong namin kayo". Dave and Ligaya were taken aboard the police vehicle and were brought to Muntinlupa police station.<sup>[38]</sup>

Upon arrival at the police station, one of the arresting officers spoke to Ligaya. The police officer informed her that she is suspected of being involved in her brother's illegal drug activities. Ligaya denied the said allegation and insisted that her brother is not selling drugs. Thereafter, the police officers turned their attention to Dave sitting next to her. The police officers questioned Dave about his illegal drug activities and forced him to admit as to the location of some cash. Dave denied having knowledge of what they were talking about.

Afterwards, another police officer talked to Ligaya and told her that she could go home but before she could leave the precinct she must give One Hundred Thousand Pesos (Php100,000.00) for Dave's release. Ligaya responded that they did not have that amount of money to which the police officer answered "tutuluyan nila si Dave". The police officer then showed her a sachet which they will use as evidence against Dave. Thereafter, she was release from the precinct while Dave remained incarcerated.<sup>[39]</sup>

After Ligaya left, PO1 Hernaez spoke to Dave and showed him one (1) plastic sachet and one (1) Five Hundred Peso bill that will be used as evidence against him. Dave questioned the evidence as the same was not his and was not recovered from him. However, PO1 Hernaez remained silent. Instead, he was put in jail. Dave only became aware of the charge against him when he was taken and presented before the Fiscal.<sup>[40]</sup>

There was no formal offer of exhibits from the defense.<sup>[41]</sup>

After hearing both sides, the trial court rendered the assailed Judgment<sup>[42]</sup> finding the accused guilty beyond reasonable doubt for the crime as charged and sentenced him accordingly.

In seeking reversal of his conviction, accused-appellant interposed this present appeal anchored on this lone assignment of error<sup>[43]</sup>, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

After a painstaking review and examination of the evidentiary records, the Court finds no compelling reason to reverse the findings of the trial court.

Jurisprudence has identified the elements that must be established for the successful prosecution of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, to wit: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for the same. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. In other words, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.<sup>[44]</sup>

In the case at bar, the foregoing elements has been amply proven by the prosecution to affirm the conviction of accused-appellant. The detailed testimony of PO1 Hernaez established that there was a consummated sale of shabu by Dave to PO1 Hernaez during the buy-bust-operation. The testimony of PO1 Hernaez reveal that the buy-bust operation was planned and conducted following a report from an asset that Dave is engaged in the sale of illegal drugs.<sup>[45]</sup> This asset accompanied PO1 Hernaez to Dave at Tuazon Street, Barangay Poblacion. The asset introduced PO1 Hernaez to Dave as his kumpare from Parañaque who is interested in buying shabu. Dave asked them the amount of shabu they wish to buy to which PO1 Hernaez replied, "*Php500.00 pare*". Dave reached the secret pocket of his maong pants. PO1 Hernaez then gave Dave the buy-bust money while Dave handed to him one (1) transparent plastic sachet containing white crystalline substance. After examining the plastic sachet, PO1 Hernaez lit his cigarette as a pre-arranged signal that sale was consummated.<sup>[46]</sup> Thereafter, PO2 Bob Yangson and other members of the buy-bust operation came forward and assisted in arresting Dave.<sup>[47]</sup> PO1 Hernaez recovered the buy-bust money from Dave. Forensic testing would subsequently confirm that the contents of the sachet handed to PO1 Hernaez was indeed methamphetamine hydrochloride or shabu.<sup>[48]</sup>

In an attempt, however, to taint the credibility of the police officers, the defense avers that prior to the buy-bust operation, the arresting officers and accused-appellant were already familiar with each other as they have seen each other several times in court when accused-appellant was previously apprehended and imprisoned for violation of RA 9165. Given the familiarity between them, the defense submits that is highly unlikely for accused-appellant not to recognize the arresting officers and to sell illegal drugs to PO1 Hernaez.<sup>[49]</sup>

The Court is not swayed. A perusal of the records show that accused-appellant was not familiar with PO1 Hernaez as he only became familiar with PO1 Hernaez' face after his second arrest. There was also no categorical statement from accused-appellant that he could not have sold illegal drugs to PO1 Hernaez because of their familiarity. Pertinent portion of his testimony<sup>[50]</sup> is quoted as follows: