

## SIXTEENTH DIVISION

[ CA-G.R. CR-HC NO. 06267, December 09, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALEXANDER UBATAN Y GALUDO @ "ALEX/PUKOL", ACCUSED-  
APPELLANT.**

### ***D E C I S I O N***

**BATO, JR., J.:**

This is an appeal from the Decision dated May 30, 2013 of the Regional Trial Court of Bangui, Ilocos Norte, Branch 19, in Criminal Case No. 2077-19, the dispositive portion of which reads:

"WHEREFORE, the court finds the accused Alexander Ubatan GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and hereby imposes upon him the penalty of life imprisonment plus a fine of Five hundred thousand pesos [P500,000.00], and to pay the costs.

The methamphetamine hydrochloride subject of this case is hereby declared forfeited in favour of the government, to be destroyed in accordance with the aforesaid law. The clerk of court is directed to coordinate with the Philippine Drug Enforcement Agency for this purpose

SO ORDERED."<sup>[1]</sup>

The factual antecedents:

Alexander Ubatan y Galudo, also known as "Alex/Pukol" [herein accused-appellant] was charged with Violation of Section 5, Article II, of Republic Act No. 9165<sup>[2]</sup> in the Information dated May 4, 2012, the accusatory portion of which reads:

"That on or about 2:00 o'clock in the morning of May 3, 2012 in Barangay Pragata, Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly sell one heat sealed transparent plastic sachet containing methamphetamine hydrochloride, commonly known as 'shabu', a dangerous drug, weighing 0.0354 grams to poseur-buyer, PO1 Larrymel P. Andres, without the necessary license or authority from the appropriate government agency.

Contrary to law.”<sup>[3]</sup>

Upon arraignment, accused-appellant pleaded not guilty. Trial on the merits ensued.

During the trial, the prosecution presented as witnesses Police Senior Inspector Joseph Baltazar, Police Inspector Amely Ann Navarro, SPO1 Ruben Patricio, PO1 Larrymel Andres, and Jessie Saniata Langgaman. The prosecution's testimonial evidence was summarized by the court *a quo*, as follows:

“x x x at around 10:00 o'clock in the morning of May 3, 2012 while Police Chief Joseph Baltazar of the PNP Pasuquin, Ilocos Norte was in his office at the police station, he received information from a confidential informant regarding the rampant selling of illegal drugs being conducted at Brgy. Pragata, particularly at the house of accused Alexander Ubatan. This report was specifically relayed by the informant to one of his men, PO1 Larrymel Andres. So, immediately they conducted a test buy at the house of the accused. SPO1 Caldito steered the test-buy. The result yielded positive as they were able to buy the stuff. For which reason, he coordinated with the PDEA, Ilocos Norte. With the police elements from the PDEA, they planned and conducted the buy-bust operation.

Police Officer Larrymel Andres will act as the poseur-buyer to be accompanied by the informant and the other police elements will position themselves strategically in the place of the transaction so they could give aid or assistance to PO1 Larrymel Andres in case he will relay to them the pre-arranged signal. The police poseur-buyer will buy P500.00 worth of shabu from the accused and thence marked the five pieces of one hundred peso bill wherein he placed his initial in the left collar on the picture of President Manuel Roxas. x x x The markings of the marked money were all done at the Police Station of Pasuquin.

After the briefing, the team on board two (2) vehicles and some motorcycles proceeded to the vicinity of the target area, which is near the house of the accused. The group arrived at the target area before 12:00 o'clock noon. PO1 Andres and the confidential agent who were on board a solo motorcycle proceeded to the house of the accused. Accused readily recognized the accused (sic) and he asked the informant why only at that time that he arrived. The informant replied, 'We came here to buy because my companion wanted to buy shabu.' They transacted for the price of P500.00. Accused asked for the payment, to which the police buyer gave the five (5) one hundred marked peso bills. He handed the consideration and accused placed the money in his pocket. In return, he brought out a cigarette pack wherein he picked a plastic sachet inside. He took the cigarette pack from the right pocket of his shorts and handed the same to the police poseur-buyer. After handling over the plastic sachet, PO1 Andres looked over it and noticed that it was a shabu, so he affected (sic) the pre-arranged signal. PO1 Andres relayed the pre-arranged signal, which is the grabbing of the hand of herein accused.

They rushed towards the parties and aided PO1 Andres in the apprehension of accused. PO1 Andres was holding the hand of the accused while the latter was resisting.

x x x            x x x            x x x

The recovered heat-sealed transparent plastic bag with the initial of PO1 Andres was referred to the PNP Crime Laboratory Office of the province based in Camp Juan, Laoag City for examination. Upon examination by Police Inspector Amiely Ann Navarro of the contents of the plastic bag marked specimen (LA3), she found that the same weighed 0.0354 gram and was tested positive for methamphetamine hydrochloride or 'shabu.'"

[4]

Meanwhile, accused-appellant maintained his innocence and denied the accusations against him. He testified that at the time of the incident he was in his house with his lived-in partner, Nenita Directo, and Gerald Deuz. He averred that he was at the back portion of his house and was about to feed his piglets when PSI Baltazar, PO1 Garan, PO1 Llamelo, PO1 Caldito and SPO1 Patricio arrived and ran towards him. PO1 Garan handcuffed him and he was frisked. SPO1 Patricio entered the house and went inside the room of his mother where he took some freshly laundered clothes and placed them at the place where accused-appellant's mother was sewing. Thereafter, SPO1 Patricio went out, talked to someone using his cellphone and uttered, "*you come now, we are already here.*"[5]

Accused-appellant denied that he was selling shabu and insisted that the plastic sachets were "planted" by the police. He also denied that the barangay officials were present during the incident as he was even calling for help. The defense likewise presented Nenita Directo who corroborated accused-appellant's testimony.

On May 30, 2013, the court *a quo* rendered the assailed Decision. Hence, this appeal by the accused-appellant raising the following assignment of errors:

"I.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY.

III.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

IV.

THE COURT A QUO GRAVELY ERRED IN NOT APPLYING THE 'FRUIT OF THE POISONOUS TREE' DOCTRINE WITH RESPECT TO THE ALLEGEDLY

CONFISCATED SHABU.

V.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT ACCUSED-APPELLANT'S RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.

VI.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

VII.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU."<sup>[6]</sup>

The accused-appellant argues in his brief that the prosecution failed to prove his guilt beyond reasonable doubt. He argues that the court *a quo* erred in according credence to the improbable and inconsistent testimonies of the prosecution witnesses as to the length of time that lapsed during the alleged transaction; the distance of the police back up from accused-appellant's house; and the person who had custody of the evidence. Moreover, accused-appellant contends that the prosecution failed to establish the elements of drug pushing, as well as the chain of custody that would have shown that the sachet [marked as "LA3"] presented in court as evidence was the very same specimen allegedly sold by the accused-appellant to PO1 Andres. The police officers failed to comply with the procedure under Section 21 of RA 9165 since they failed to conduct an inventory at the place of arrest and the marking of the sachet was done at the police station. Further, accused-appellant questions the legality of his arrest.

We have carefully reviewed the records of this case and found that the court *a quo* had overlooked cogent facts and circumstances that would entitle the accused-appellant to an acquittal.

The time-honored rule is that the presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt.<sup>[7]</sup> *Apropos*, to secure a conviction of the accused charged with the illegal sale of dangerous drugs as defined and punished by Section 5, Article II of RA 9165, the State must establish the concurrence of the following elements, namely: (a) that the transaction or sale took place between the accused and the poseur buyer; and (b) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.<sup>[8]</sup>