



Republic of the Philippines
Supreme Court
Manila

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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 23 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 213918

Present:

VELASCO, J.,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

- versus -

EVANGELINE ABELLA y SEDEGO
and MAE ANN SENDIONG,
Accused-Appellants.

Promulgated:

June 27, 2018

Wilfredo V. Lapitan

X ----- X

DECISION

MARTIRES, J.:

Accused-appellants Evangeline Abella y Sedego (*Abella*) and Mae Ann Sendiong (*Sendiong*) assail through this appeal the 17 June 2014 Decision¹ of the Court of Appeals (*CA*), in CA-G.R. CR-HC No. 01412 affirming *in toto* the 28 October 2011 Joint Judgment² of the Regional Trial Court (*RTC*), Branch 30, Dumaguete City, in Criminal Case Nos. 19359 and 19381.

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¹ *Rollo*, pp. 4-23; penned by Associate Justice Marie Christine Azcarraga-Jacob, and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.
² Records, pp. 260-277; penned by Judge Rafael Crescencio C. Tan, Jr.

THE FACTS

The accused-appellants were charged with violation of Section (*Sec.*) 5, Article (*Art.*) II of Republic Act (*R.A.*) No. 9165³ in an amended Information⁴ docketed as Criminal Case No. 19359, *viz*:

That on or about the 19th day of January, 2009, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually aiding one another not being then authorized by law, did then and there wilfully, unlawfully, and feloniously sell and deliver to a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing an approximate weight of 0.01 gram of Methamphetamine Hydrochloride, commonly called “shabu,” a dangerous drug.


Contrary to Sec. 5, Art. II of R.A. No. 9165.⁵

In Criminal Case No. 19381, Sendiong was charged with violation of Sec. 11, Art. II of R.A. No. 9165, *viz*:

That on or about the 19th day of January, 2009, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there wilfully, unlawfully, and feloniously possess one (1) heat-sealed plastic sachet containing 0.01 gram of Methamphetamine Hydrochloride, a dangerous drug.

Contrary to Sec. 11, Art. II of R.A. No. 9165.⁶

When arraigned, the accused-appellants pleaded not guilty in Criminal Case No. 19351.⁷ The same plea was entered by Sendiong when she was arraigned in Criminal Case No. 19381.⁸ Thereafter, a joint trial ensued.

To prove its charges, the prosecution presented the following: Police Chief Inspector Josephine S. Llana (*PCI Llana*); Police Officer 2 Glenn Corsame (*PO2 Corsame*); Senior Police Officer 1 Allen June Germodo (*SPO1 Germodo*); SPO2 Douglas Ferrer (*SPO2 Ferrer*); Special Investigator III Nicanor Ernesto Tagle (*SI Tagle*); and poseur-buyer Urseevi Tubio (*Tubio*). 

³ Entitled “An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as amended, Providing Funds Therefor, and for Other Purposes” dated 7 June 2002.

⁴ The Information was amended to reflect the identity of “Jane Doe” as Mae Anne Sendiong.

⁵ Records, p. 68.

⁶ Id. at 74.

⁷ Id. at 62, 70.

⁸ Id. at 116.

Ramonito Astellero (*Astellero*),⁹ Rodolfo Merced (*Merced*);¹⁰ and Juditho Fabillar (*Fabillar*);¹¹ an employee of the Department of Justice (*DOJ*), Dumaguete City; the barangay captain of Barangay 2, Upper Luke Wright, Dumaguete City (*Upper Luke Wright*); and a media practitioner, were no longer put on the witness stand after the parties agreed that their testimonies would be as follows: that they signed¹² as witnesses the inventory/receipt of drugs and other property seized (*receipt*) in the presence of the accused-appellants on 19 January 2009; that except for Fabillar¹³ who signed the receipt at the Philippine Drug Enforcement Agency (*PDEA*) office, both Astellero¹⁴ and Merced¹⁵ affixed their signature on the receipt at the place where the accused-appellants were arrested; and that their photographs¹⁶ were taken as they were signing the receipt.

The accused-appellants took the witness stand to fortify their respective defenses.

The Version of the Prosecution

On 18 January 2009, SPO1 Manuel Sanchez (*SPO1 Sanchez*), the PDEA team leader of Dumaguete City, received information from a confidential informant that the accused-appellants were engaged in selling dangerous drugs at Upper Luke Wright. Upon receipt of the information, a surveillance with the confidential informant was conducted which confirmed that the accused-appellants were indeed engaged in selling dangerous drugs.¹⁷

On 19 January 2009 at around 11:00 A.M., SPO1 Sanchez, SPO2 Ferrer, SPO1 Germodo, SI Tagle, PO2 Corsame, the confidential informant, and other voluntary informants planned an entrapment. It was agreed that Tubio, a PDEA asset, would act as the poseur-buyer while the rest of the team, who would position themselves at a distance near enough to see the whole transaction, would act as back-up. Tubio would remove his cap as the pre-arranged signal that the transaction had been consummated. SPO1 Germodo affixed his signature beside the Bangko Sentral ng Pilipinas logo on one ₱100.00 bill¹⁸ and one ₱200.00 bill¹⁹ which would be used as marked money during the entrapment.²⁰



⁹ Id. at 200.

¹⁰ Id. at 228.

¹¹ Id.

¹² Id. at 14; Exh. "E."

¹³ Id.; Exh. "E-5."

¹⁴ Id.; Exh. "E-1."

¹⁵ Id.; Exh. "E-6."

¹⁶ Id. at 193; Exhs. "F-1," to "F-4."

¹⁷ TSN, 30 May 2011, pp. 5-6.

¹⁸ Records, p. 23; Exh. "H-1."

¹⁹ Id., Exh. "H-2."

²⁰ TSN, 30 May 2011, pp. 7-9; TSN, 9 August 2011, pp. 5-6.

After the planning at the PDEA office, Tubio proceeded to Upper Luke Wright where he met the accused-appellants while the buy-bust team members were positioned about seven meters away. Tubio convinced the accused-appellants that he wanted to buy shabu. When Abella agreed to sell, Tubio handed her the buy-bust money which she gave to Sendiong. At this point, Sendiong gave a heat-sealed transparent sachet (*sachet*) to Abella who handed it to Tubio. The transaction consummated, Tubio took off his cap moving the team to effect the arrest of the accused-appellants. SPO1 Germodo informed the accused-appellants of their rights. After Tubio handed the sachet to PO2 Corsame, he immediately left the place in order to avoid revealing his cover as PDEA asset.²¹

PO2 Corsame marked "EM-BB" 1-19-09 on the sachet²² handed him by Tubio. The letters "EM" stood for Evangeline and Mae Ann; the letters "BB" for buy-bust; and "1-19-09" for the date of the incident. SPO2 Ferrer confiscated the marked money from Abella. SPO1 Germodo arrested Sendiong and confiscated from her a swiss knife key holder²³ which, when opened, revealed a sachet. SPO1 Germodo handed the sachet to PO2 Corsame who marked "MS-P" 1-19-09, the letters "MS" standing for the name of Sendiong; the letter "P" indicating that it was seized while in the possession of Sendiong; and "1-19-09" for the date of the incident. PO2 Corsame conducted an inventory²⁴ of the items seized at the place where the arrest was effected and in the presence of the accused-appellants, Astillero, and Merced. SPO1 Germodo took pictures²⁵ during the inventory. PO2 Corsame took possession of the seized items from the inventory to the PDEA office.²⁶

SPO1 Germodo took a picture²⁷ of Fabillar while he signed the receipt at the PDEA office in the presence of the accused-appellants, and thereafter entered the buy-bust operation report in the PDEA logbook.²⁸ A joint affidavit of arrest²⁹ was executed by PO2 Corsame, SPO1 Germodo, and SPO2 Ferrer.

On the same day at 4:00 P.M., PO2 Corsame submitted to the PDEA crime laboratory (*laboratory*) of Negros Oriental the request³⁰ for the examination of the two sachets marked "EM-BB" 01-19-09 and "MS-P" 01-19-09 and the drug testing of the accused-appellants. The request and the items for examination were received by PCI Llena, a forensic chemist, who,

²¹ TSN, 9 August 2011, pp. 6-9; TSN, 30 May 2011, p. 17.

²² Exh. "D;" (Criminal Case No. 19359).

²³ Exh. "D;" (Criminal Case No. 19381).

²⁴ Records, p. 14; Exh. "E."

²⁵ Id. at 26; Exhs. "F-1" to "F-3."

²⁶ TSN, 30 May 2011, pp. 12-19; TSN, 13 June 2011, pp. 14-15.

²⁷ Records, p. 193; Exh. "F-4."

²⁸ Id. at 30; Exh. "C."

²⁹ Id. at 8-9; Exh. "G."

³⁰ Id. at 32; Exh. "A."



after the examination, found each of the sachets to contain 0.01 gram of methamphetamine hydrochloride;³¹ while the urine sample of Abella³² was positive for methamphetamine and that of Sendiong³³ positive for methamphetamine and THC-metabolites, both dangerous drugs.³⁴

After the examination, PCI Llena personally resealed the two sachets and affixed the markings "A D-004-09" and "B-1 D-004-09" for "EM-BB" 1-19-09 and "MS-P" 1-19-09, respectively. Thereafter, she kept the seized items inside a steel cabinet in the evidence room to which only she had access. She delivered the seized items to the RTC on 30 January 2009.³⁵

The Version of the Defense

According to Abella, she was at the house of Bebie Quizon (*Quizon*) at Upper Luke Wright on 19 January 2009, at about 2:00 P.M., doing her work as a laundry woman. A person, whom she later came to know was the poseur-buyer, stopped in front of the house looking for somebody and calling out the name "Yenyen." As she was about to go out, the poseur-buyer entered Quizon's house and told her not to move. When she refused as the poseur-buyer was forcing her out of the house he waved his cap and a vehicle arrived with several people alighting from it. When Quizon still refused to leave the house, PO2 Corsame entered the house, handcuffed her, and forced her to go out.³⁶

Once outside, somebody interviewed Quizon while a policewoman searched her body. Although nothing was found on her, an inventory of drugs which she had not seen before was conducted. She was not informed of her constitutional rights. Also arrested at that time was Sendiong, whom she had not met.³⁷

Sendiong testified that on 19 January 2009 at about 2:00 P.M., she was at Upper Luke Wright to borrow money from an aunt for the medication of her daughter who had meningitis. As she was waiting for her aunt, she saw people running in her direction and who then arrested her for allegedly being a drug dealer. Two policewomen frisked her but they found nothing. She told them that she did not know anything about the items seized and that she did not have any idea what they were talking about.³⁸

³¹ Id. at 33; Exh. "B."

³² Id. at 34; Exh. "J."

³³ Id. at 35; Exh. "I."

³⁴ TSN, 20 April 2011, pp. 4-8.

³⁵ Id. at 8-11.

³⁶ TSN, 5 September 2011, pp. 3-6, and 9.

³⁷ Id. at 6-7.

³⁸ TSN, 5 October 2011, pp. 3-6.

The Ruling of the RTC

The RTC held that the prosecution had successfully proven all the elements necessary for the conviction of the accused-appellants. Moreover, the seized items had been properly examined and were found to contain methamphetamine hydrochloride.³⁹

On the one hand, the RTC found the defense of the accused-appellants inherently weak as compared to the credible testimonies of the prosecution witnesses. It upheld the presumption that the buy-bust team had regularly performed their duties in view of their consistent and straightforward narration of what transpired on 19 January 2009. In addition, the poseur-buyer testified and described in detail how the transaction took place, a testimony which only a trustworthy witness could have narrated with clarity and realism.⁴⁰

With these findings, the RTC resolved the cases as follows:

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

1. In Criminal Case No. 19359, the accused Evangeline Abella y Sedego and Mae Ann Sendiong are hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.01 gram of shabu in violation of Sec. 5, Art. II of R.A. No. 9165 and are hereby sentenced each to suffer the penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet containing 0.01 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. 19381, the accused Mae Ann Sendiong is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.01 gram of shabu in violation of Sec. 11, Art. 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 (P400,000.00).

The one (1) heat-sealed transparent plastic sachet containing 0.01 gram of shabu is 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 Evangeline Abella y Sedego and Mae Ann Sendiong shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree



³⁹ Records, pp. 265-271.

⁴⁰ Id. at 272-273.

voluntarily in writing to abide by the same disciplinary rules imposed on convicted prisoners.⁴¹

Believing that the RTC erred in its decision, the accused-appellants appealed to the CA.

The Ruling of the CA

The CA found no merit in the appeal. It held that the elements of the crimes charged had been established beyond moral certainty. On the contention that what took place on 19 January 2009 was instigation, the CA ruled that the arrest of the accused-appellants was the result of a legitimate entrapment which fact can be verified by the credible testimonies of the prosecution witnesses. The CA sustained the RTC's assessment on the credibility of the witnesses and found no indicium of ill motive or of any distorted sense of duty on the part of the buy-bust team.⁴²

The CA disposed the appeal of the accused-appellants as follows:

WHEREFORE, premises considered, the instant Appeal is **DENIED**.

Accordingly, the *28 October 2011 Joint Judgment* of the Regional Trial Court, Branch 30, Dumaguete City in *Criminal Case Nos. 19359 and 19381*, respectively, finding accused-appellants Evangeline Abella y Sedego and Mae Ann Sendiong guilty beyond reasonable doubt for the crime of illegal selling of 0.01 gram of shabu and accused-appellant Mae Ann Sendiong guilty beyond reasonable doubt for the crime of unlawful possession of 0.01 gram of shabu, is **AFFIRMED IN TOTO**.⁴³

ISSUES

Abella raised the following issues in her appeal:

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.



⁴¹ Id. at 276.

⁴² *Rollo*, pp. 12-14.

⁴³ Id. at 22.

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY.⁴⁴

On the one hand, Sendiong raised this sole issue in her brief, to wit:

The lower court erred in not holding that the irreconcilable conflict between the testimony of the PDEA asset Urseevi Tubio that he was the poseur-buyer and the testimony of the aforementioned police officers that it was the confidential agent who acted as poseur-buyer, and not Tubio, is fatal to the prosecution's burden of establishing the guilt of accused-appellant Mae Ann Sendiong by proof beyond reasonable doubt.⁴⁵

OUR RULING

There is no merit in the appeal of the accused-appellants.

The elements of the crimes charged against the accused-appellants were established beyond reasonable doubt by the prosecution.

Foremost, it must be stressed that accruing jurisprudence dictate that an appeal in criminal cases opens the entire case for review; thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.⁴⁶ The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.⁴⁷

In Criminal Case No. 19359, the accused-appellants were charged with violation of Sec. 5,⁴⁸ Art. II of R.A. No. 9165 which has the following

⁴⁴ CA rollo, p. 46.

⁴⁵ Id. at 122.

⁴⁶ *People v. Crispo*, G.R. No. 230065, 14 March 2018.

⁴⁷ *People v. Año*, G.R. No. 230070, 14 March 2018.

⁴⁸ Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

elements: (a) the identity of the buyer and the seller, the object of the sale, and its consideration; and (b) the delivery of the thing sold and the payment therefor.⁴⁹ In Criminal Case No. 19381, Sendiong was charged with violation of Sec. 11,⁵⁰ Art. II of R.A. No. 9165, the elements of which are as follows: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.⁵¹

In Criminal Case No. 19359, the prosecution was able to prove that it was Tubio who bought from the accused-appellants one transparent heat-sealed sachet which, when subjected to laboratory examination, was found to contain methamphetamine hydrochloride.

By statutory definition, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.⁵² From the established facts, it was clear that each of the accused-appellants performed an overt act in pursuance or furtherance of the complicity, i.e., both accused-appellants transacted with Tubio; Abella received the money from Tubio and handed it to Sendiong; and Sendiong handed the heat-sealed transparent sachet to Abella who in turn gave it to Tubio.

Abella averred that in all appearances, the police officers may have conducted a buy-bust operation but which, upon a closer look at the facts, revealed an instance of instigation. She claimed that by Tubio's testimony, he convinced the accused-appellants of his intent to buy shabu.⁵³

The Court is not persuaded.

For a better understanding of the difference between instigation and entrapment, the following jurisprudence is reiterated:

x x x Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him. On the other hand,

⁴⁹ *People v. Arposeple*, G.R. No. 205787, 22 November 2017.

⁵⁰ Sec. 11. *Possession of Dangerous Drugs*. – x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

⁵¹ *People v. Lumaya*, G.R. No. 231983, 7 March 2018.

⁵² *People v. Sandiganbayan*, 556 Phil. 596, 610 (2007).

⁵³ *CA rollo*, pp. 50-51.

entrapment is the employment of ways and means in order to trap or capture a lawbreaker. Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction.

To determine whether there is instigation or entrapment, we held in *People v. Doria* that the conduct of the apprehending officers and the predisposition of the accused to commit the crime must be examined:

[I]n buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the “buy-bust” money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost[s]. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused’s predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.⁵⁴

The records unmistakably prove that Tubio merely convinced the accused-appellants that he would be buying shabu⁵⁵ but never told them that he would be buying it from them. Apparently, the criminal intent or design to sell shabu originated in the mind of the accused-appellants because they voluntarily and knowingly transacted with Tubio to sell him a sachet of shabu at the price of ₱300.00. This conclusion is supported by the synchronized acts of the accused-appellants in receiving the payment and in handing the shabu to the poseur-buyer. Moreover, the fact that Sendiong already had in her possession two heat-sealed transparent sachets containing shabu confirmed the probability that in actuality both of them were engaged in selling shabu. In fact, during the verification operation on 18 January 2009, PO2 Corsame and Tubio were able to witness the accused-appellants

⁵⁴ *People v. Mendoza*, G.R. No. 220759, 24 July 2017 citing *People v. Dansico*, 659 Phil. 216, 225-226 (2011).

⁵⁵ TSN, 9 August 2011, p.7.

openly selling shabu. Obviously, the buy-bust team merely facilitated the apprehension of the criminals by employing ploys and schemes. The proof that the accused-appellants were engaged in the illegal trade of selling shabu was only fortified by the buy-bust operation which, in a series of cases, has been held as a form of entrapment used to apprehend drug peddlers.⁵⁶

Abella finds fault that no police officer stood beside Tubio during the sale transaction.⁵⁷

The fact is underscored that Tubio testified on what had actually transpired when he bought shabu from the accused-appellants. Notwithstanding that not one of the members of the buy-bust team was beside Tubio during the transaction, the record will confirm that the members were just seven meters away from him and the accused-appellants, thus, were able to witness the transaction. To stress, Tubio's narration before the RTC coincides with that of the buy-bust team. Additionally, the presence of a police officer beside the poseur-buyer is neither an element of Sec. 5, Art. II of R.A. No. 9165 nor a requirement to secure the conviction of the accused-appellants. More importantly, Sec. 5, Art. II of R.A. No. 9165 does not even prescribe that the poseur-buyer should be a police officer.

Accused-appellants claimed that there were material inconsistencies in the testimonies of the police officers with that of Tubio. They pointed out that according to the police officers, the poseur-buyer was the same person as the confidential informant. In contrast, Tubio testified that he was neither the confidential informant nor was present during the surveillance but was only shown the pictures of the accused-appellants during the briefing.⁵⁸

Notwithstanding the inadvertent use by the police officers of the terms "confidential informant" and "poseur-buyer" when they took the witness stand, a review, however, of their respective testimonies easily disproves the claim of the accused-appellants.

Tubio, who had acted as poseur-buyer on several PDEA operations, admitted that, on 19 January 2009, he attended the briefing at the PDEA office relative to the buy-bust operation on the accused-appellants. Because the confidential informant was afraid to act as the poseur-buyer, Tubio was designated to act as the buyer and was shown pictures of the accused-appellants so he could identify them.⁵⁹



⁵⁶ *People v. Dumagay*, G.R. No. 216753, 7 February 2018.

⁵⁷ *CA rollo*, p. 55.

⁵⁸ *Id.* at 56 and 123-126.

⁵⁹ TSN, 9 August 2011, pp. 4-5 and 23.

According to SPO1 Germodo, the agreed plan was that another person, and not the confidential informant, would act as the poseur-buyer, viz:

Q. And what was the agreed plan?

A. The agreed plan, Sir, is that the **others will act as the poseur-buyer**, and we were supposed to pass through the bridge and our civilian informant will be riding on the motorcycle and pass through the Upper Luke Wright.⁶⁰ (emphasis supplied)

PO2 Corsame testified that the pre-operation briefing held on 19 January 2009 was attended not only by SPO1 Sanchez, the buy-bust team, and the confidential informant, but also by other informant volunteers. Notably, PO2 Corsame likewise inadvertently referred to the informant volunteer as the civilian informant, viz:

Q. Where did you plan the entrapment?

A. At the PDEA office, sir.

Q. And who were present at the pre-operation briefing?

A. Present, sir, were the team leader SPO1 Manuel Sanchez, Douglas Ferrer, Allen June Germodo, I myself, the informant, **and the other informant volunteers, sir.**⁶¹

x x x x

Q. Okay, and what about the confidential informant, did he also arrive at the target area?

A. Yes, sir, as I have said earlier, sir, almost simultaneously we arrived at the area.

Q. The target area, I am referring to the place that you are describing that is through the upholstery shop towards the dike and towards the interior of that particular area, am I correct?

A. The backup team, sir, but **the informant volunteers**, ah, the civilian informant immediately went down because there was another way, sir, going to, directly to the target area, sir.⁶² (emphases supplied)

Abella asserted that because she and Sendiong did not know Tubio, they could not have trusted him when he allegedly bought the shabu from them.⁶³

The catena of cases brought before this Court will confirm that in most instances the poseur-buyer and the sellers of dangerous drugs would hardly know each other; yet, the absence of such acquaintance was never a

⁶⁰ TSN, 13 June 2011, p. 32.

⁶¹ TSN, 30 May 2011, p. 7.

⁶² Id. at 10.

⁶³ CA rollo, p. 57.

reason for them not to proceed with their sale transaction. The accused-appellants, courage to sell shabu even to those they do not know bespeaks of their boldness to violate the law. This truth was easily confirmed by the surveillance operation held a day before the buy-bust operation where the accused-appellants were found to be engaged in selling drugs at Upper Luke Wright.

In Criminal Case No. 19381, the facts revealed that after the sale transaction, was consummated the buy-bust team approached the accused-appellants to search and arrest them. The buy-bust team were unanimous in their testimony that it was SPO1 Germodo who seized from Sendiong a key holder which yielded a heat-sealed transparent sachet and which, upon laboratory examination, was found to contain methamphetamine hydrochloride. Sendiong was not able to show, either during the arrest or when called to the witness stand, that she was authorized by law to possess the prohibited drug.

The Court finds no compelling reason to doubt the truth of the straightforward and plausible testimony of the prosecution witnesses who were consistent with each other on significant and material details. Indeed, a review of the prosecution witnesses' respective testimonies would prove that they never wavered despite the grueling cross-examination by the defense. In addition, the Court is cognizant of the presumption of regularity in the performance of duties of public officers.⁶⁴ The presumption is that unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit.⁶⁵ In these cases, the presumption became conclusive when the accused-appellants failed to refute it.

It is noteworthy that both the RTC and the CA found the testimony of the prosecution witnesses credible. Hence, the well-settled rule that finds its significance in these cases is that the findings of the trial court which are factual in nature and involve the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary, and unsupported conclusions are made from such findings.⁶⁶ This rule finds even more stringent application where the findings are sustained by the CA.⁶⁷



⁶⁴ *People v. Barte*, G.R. No. 179749, 1 March 2017.

⁶⁵ *People v. Cabiles*, G.R. No. 220758, 7 June 2017.

⁶⁶ *Belmonte v. People*, G.R. No. 224143, 28 June 2017.

⁶⁷ *People v. Flor*, G.R. No. 216017, 19 January 2018 citing *People v. Perondo*, 754 Phil. 205, 217 (2015).

There was an unbroken chain of custody of the seized items.

Equally important as proving the above elements of the crimes charged, is the need to ascertain the identity of the prohibited drug considering that in all prosecutions for violations of R.A No. 9165, the corpus delicti is the dangerous drug itself. The corpus delicti is established by proof that the identity and integrity of the subject matter of the sale, i.e., the prohibited or regulated drug, has been preserved; hence, the prosecution must show beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused.⁶⁸ The prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the corpus delicti.⁶⁹ The justification for this declaration is elucidated as follows:

Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.⁷⁰

The rigorous requirement as to the chain of custody of seized drugs and paraphernalia was given life in the provisions of R.A. No. 9165, viz:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. -The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;



⁶⁸ *People v. Calvelo*, G.R. No. 223526, 6 December 2017.

⁶⁹ *Belmonte v. People*, supra note 66.

⁷⁰ *People v. Arposeple*, supra note 49 citing *People v. Jaafar*, G.R. No. 219829, 18 January 2017.

2. Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

3. A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

The Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 specifies the proper procedure to be followed in Sec. 21(a) of the Act, viz:

a. The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

On the one hand, the Dangerous Drugs Board (*DDB*) – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy⁷¹ – has expressly defined chain of custody involving dangerous drugs and other substances in the following terms in Sec. 1(b) of *DDB Regulation No. 1, Series of 2002*,⁷² to wit:



⁷¹ R.A. No. 9165, Section 77.

⁷² Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the *IRR* of R.A. No. 9165 in relation to Section 81(b), Article IX of R.A. No. 9165.

b. “Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.⁷³ (emphasis omitted)

The legal teaching consistently upheld in our jurisprudence is that, as a general rule, there are four links in the chain of custody of the confiscated item that must be established by the prosecution, *viz: first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁷⁴

Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. It is the starting point in the custodial link.⁷⁵ The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, planting, or contamination of evidence.⁷⁶

In these cases, immediately after the transaction was consummated, the buy-bust team proceeded to the place where the sale transaction took place. After PO2 Corsame received the sachet from Tubio, he placed on it the marking ‘EM-BB’ 1-19-09. From the key holder of Sendiong, SPO1 Germodo was able to retrieve a sachet which he forthwith gave to PO2 Corsame, who in turn marked it “MS-P” 1-19-09. PO2 Corsame did not break the seal when he placed the markings on the sachets in the presence of the accused-appellants.⁷⁷

It was also at the scene of the crime that PO2 Corsame, in compliance with Sec. 21 of R.A. No. 9165, personally conducted an inventory of the items seized which was witnessed by Astillero and Merced, as DOJ and elected official representatives, respectively.⁷⁸ The receipt was signed by the

⁷³ *People v. Gonzales*, 708 Phil. 121, 129-130 (2013).

⁷⁴ *People v. Alboka*, G.R. No. 212195, 21 February 2018.

⁷⁵ *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

⁷⁶ *People v. Ismael*, G.R. No. 208093, 20 February 2017 citing *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

⁷⁷ TSN, 30 May 2011, pp. 11-16.

⁷⁸ *Id.* at 17-19.



accused-appellants, Astillero,⁷⁹ Merced,⁸⁰ PO2 Corsame,⁸¹ SI Tagle,⁸² and SPO1 Germodo.⁸³ Likewise, SPO1 Germodo took pictures⁸⁴ while Astillero and Merced were signing the receipt in the presence of the accused-appellants. Fabillar, the media representative, came to the PDEA office and affixed his signature on the receipt in the presence of the accused-appellants.⁸⁵ PO2 Corsame was in possession of the sachets from the time these were seized up to the time that he arrived at the PDEA office.⁸⁶

At the PDEA office, PO2 Corsame prepared the request⁸⁷ for the laboratory examination of the seized items. At 4:00 P.M. that same day, PO2 Corsame⁸⁸ turned over the request and the seized items to the PNP laboratory, thru PCI Llena.⁸⁹ It was also on that same day that PCI Llena released her report⁹⁰ finding that the seized items contained shabu.⁹¹ On 30 January 2009, PCI Llena turned over the seized items to the RTC thru its branch clerk of court.⁹²

Notwithstanding the unbroken chain in the custody of the seized items, Abella cited *People v. Habana*,⁹³ seeking to make an issue on PCI Llena's use of masking tape to reseal the sachets after the examination instead of adhesive tape.⁹⁴

It must be emphasized that the use of adhesive tape in order to maintain the integrity of the seized item is but one of the several means of preserving the identity and integrity of the confiscated items. Surely, the Court will neither limit to the use of adhesive tape nor to proscribe the resort by the concerned officials to any other means to effectively ensure the identity and integrity of the seized item.

In these cases PCI Llena testified that in order for her to conduct an examination on the contents of the sachets, she personally broke their seal. After the examination, she resealed the sachets with masking tape and placed the markings "A D-004-09" and "B-1 D-004-09" on the items earlier marked as "EM-BB" 1-19-09 and "MS-P" 1-19-09," respectively. To further guard the integrity of the seized items, she locked them inside a steel cabinet

⁷⁹ Records, p. 14; Exh. "E-1."

⁸⁰ Id.; Exh. "E-6."

⁸¹ Id.; Exh. "E-2."

⁸² Id.; Exh. "E-3."

⁸³ Id.; Exh. "E-4."

⁸⁴ Id. at 193; Exhs. "F," "F-1," "F-2," and "F-3."

⁸⁵ TSN, 30 May 2011, pp. 20-21.

⁸⁶ Id. at 20.

⁸⁷ Records, p. 32; Exh. "A."

⁸⁸ Id.; Exh. "A-1-b."

⁸⁹ Id.; Exh. "A-1-a."

⁹⁰ Id. at 33; Exh. "B."

⁹¹ TSN, 30 May 2011, pp. 20-22.

⁹² TSN, 20 April 2011, pp. 10-11.

⁹³ 628 Phil. 334 (2010).

⁹⁴ CA rollo, p. 55-56.

in the evidence room of which only she had access; and, for purposes of the trial of these cases, personally had the items received by the branch clerk of court. Unmistakably, several measures were undertaken in these cases to preserve the identity and integrity of the sachets seized during the buy-bust operation.

In stark contrast, in *Habana*⁹⁵ where the accused-appellant was acquitted by the Court, the prosecution failed to present evidence on how the sachets of shabu were transferred from the investigator on duty to the laboratory technician, and on the manner by which they were kept prior to their being adduced in evidence at the trial, thus, compromising the integrity and identity of the confiscated items.


Finally, considering that the penalties imposed upon the accused-appellants by the RTC, and sustained by the CA, were in accordance with R.A. No. 9165, the same are hereby affirmed.

WHEREFORE, the appeal is **DISMISSED**. The 17 June 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01412 is hereby **AFFIRMED** in toto.

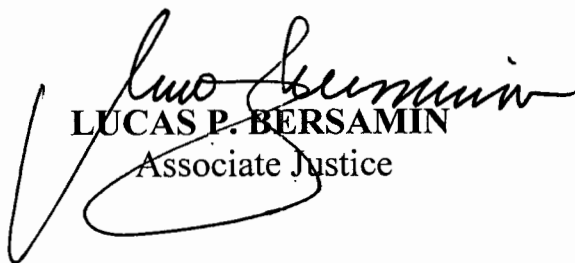
SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

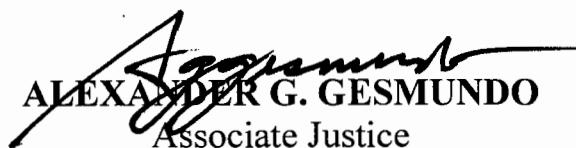
⁹⁵ *Supra* note 93.



LUCAS P. BERSAMIN
Associate Justice




MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

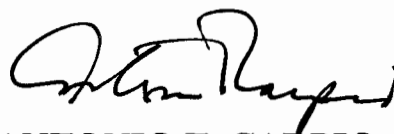
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



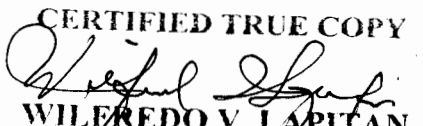
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

JUL 23 2018