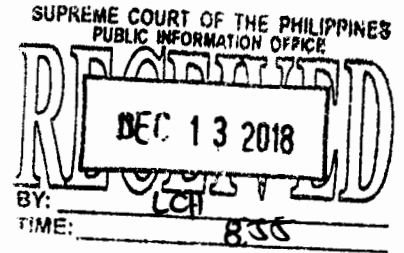




Republic of the Philippines
 Supreme Court
 Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 227313

- versus -

Present:

BERSAMIN,
*Acting Chairperson,**
 DEL CASTILLO,
 JARDELEZA,
 TIJAM, *and*
 GESMUNDO,** JJ.

JOSEPH ESPERA y BANÑANO
 @ "JOJO,
Accused-Appellant.

Promulgated:
 NOV 21 2018

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DECISION

DEL CASTILLO, J.:

Assailed in this appeal is the September 15, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 06621 which affirmed with modification the December 13, 2013 Judgment² of the Regional Trial Court (RTC), Branch 3, Tuguegarao City, finding Joseph Espera y Banñano (appellant) guilty beyond reasonable doubt for the illegal sale of dangerous drugs under Section 5, Article II of Republic Act No. 9165 (RA 9165), or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

Appellant was charged with the illegal sale of dangerous drugs under Section 5, Article II of RA 9165 in an Information³ dated September 3, 2010 which reads:

* Per Special Order No. 2606 dated October 10, 2018.

** Per Special Order No. 2607 dated October 10, 2018; on official leave.

¹ *Rollo*, pp. 2-18; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Danton Q. Bueser and Victoria Isabel A. Paredes.

² *CA rollo*, pp. 45-53; penned by Judge Marivic A. Cacatian-Beltran.

³ Records, p. 1.

That on September 02, 2010, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused JOSEPH ESPERA y BANÑANO alias "JOJO", without authority of law and without any permit to sell, transport, deliver, and distribute dangerous drugs, did then and there, willfully, unlawfully, and feloniously, sell, and distribute one (1) piece of heat-sealed transparent plastic sachet containing 0.17 gram of METHAMPHETAMINE HYDROCHLORIDE, commonly known as "shabu", a dangerous drug, to IO1 JOHNNY A. SUMALAG, who acted as a poseur buyer; that when the accused received the total amount of ₱3,000.00 consisting of two (2) pcs. of genuine ₱500.00 peso-bills bearing Serial Nos. MA127213 and ZF114638 marked buy bust money which were placed on top of Two Thousand Pesos (₱2000.00) Boodle Money consisting of four (4) pcs. ₱500.00 peso-bills which was the agreed purchase price of the dangerous drug from the said poseur buyer, he in turn handed the heat-sealed plastic sachet containing the dangerous drug to the said poseur buyer and this led to the apprehension and arrest of the accused and the recovery of the genuine two (2) ₱500.00 buy-bust money and the four (4) pcs of ₱500.00 peso-bill boodle money from his possession and control, and the confiscation of the dangerous drug at an alley at the back of the Barangay Gymnasium of Atulayan Norte, Tuguegarao City, by members of the Philippine Drug Enforcement Agency (PDEA), Regional Office N[o]. 02, Camp Adduru, this city, who formed the buy-bust team.

CONTRARY TO LAW.

During his arraignment on October 6, 2010, appellant entered a plea of not guilty.⁴ Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incidents is, as follows:

On September 2, 2010, at around 10:00 a.m., IO2 Joseph Sacolles (IO2 Sacolles), an agent of the Philippine Drug Enforcement Agency (PDEA), received information from a confidential informant (CI) that appellant was distributing *shabu* in Atulayan Norte, Tuguegarao City, and was currently looking for a buyer of said dangerous drug.⁵

On the basis of the CI's information, a buy-bust team was formed with IO2 Sacolles as team leader, IO1 Johnny Sumalag (IO1 Sumalag) as poseur-buyer, IO1 Jun Clyde Cabanilla (IO1 Cabanilla) as arresting officer, IO1 Mark Anthony Ventura (IO1 Ventura) as investigating officer, and the other team members as back-up.⁶

⁴ See Certificate of Arraignment, id. at 34.

⁵ CA *rollo*, p. 64.

⁶ Id. at 64-65.

Upon reaching the target area, the CI introduced IO1 Sumalag to appellant saying, "*Pre, ka tropa.*"⁷ Appellant told IO1 Sumalag, "*Dala ko na yung item,*" and the latter replied, "*Dala ko na yung pera.*"⁸ Appellant then took out a heat-sealed transparent plastic sachet containing white crystalline substance from his right pocket and gave it to IO1 Sumalag. In return, IO1 Sumalag handed appellant the marked money consisting of two pieces of genuine ₱500.00 bills over the ₱2,000.00 "boodle money." Once the exchange was completed, IO1 Sumalag removed his bull cap which served as the pre-arranged signal that the transaction had already been consummated.⁹

The other members of the buy-bust team immediately rushed to the scene. IO1 Cabanilla frisked appellant and recovered the buy-bust money. IO1 Socalles informed appellant of his constitutional rights while he was being handcuffed by IO1 Cabanilla. Meanwhile, IO1 Sumalag marked the confiscated plastic sachet with his own initials "JAS 09-02-10" and his signature while still at the scene.¹⁰

The buy-bust team then returned to the PDEA Regional Office with appellant on board the PDEA Toyota Revo service vehicle. IO1 Sumalag had custody over the seized plastic sachet while en route to their office while IO1 Cabanilla held on to the marked money.¹¹

At the PDEA Regional Office, IO1 Ventura prepared the Inventory of Seized Properties/Items¹² and other documents in the presence of appellant. The incidents in the PDEA office were all duly documented by photographs.¹³ The inventory-taking of the seized items was witnessed by appellant, media representatives Dina Tuddao,¹⁴ Cayetano Tuddao and Edmund Pancha, *Barangay* Captain Jimmy Pagulayan, and Department of Justice (DOJ) representative Ferdinand Gangan.¹⁵

Afterwards, IO1 Sumalag personally brought the seized plastic sachet to the PNP Regional Crime Laboratory together with the letter-requests¹⁶ for laboratory examination and physical examination.¹⁷ IO1 Sumalag turned over said plastic sachet to PSI Glenn Ly Tuazon (PSI Tuazon) who conducted a qualitative examination on the subject specimen to determine the presence of

⁷ TSN, February 25, 2011, p. 10.

⁸ *Id.*

⁹ *CA rollo*, p. 65.

¹⁰ *Id.* at 65-66.

¹¹ *Id.* at 66.

¹² Records, pp. 12-13.

¹³ *Id.* at 21-25.

¹⁴ Referred to as Tina Tudao-Villacampa in some parts of the records.

¹⁵ *CA rollo*, p. 66.

¹⁶ Records, pp. 14 and 15.

¹⁷ *CA rollo*, p. 66.

dangerous drugs.¹⁸ Based on Chemistry Report No. D-37-2010,¹⁹ the seized item tested positive for the presence of methamphetamine hydrochloride, a dangerous drug.

PSI Tuazon thereafter sealed the subject specimen, placed his own marking, "D-37-2010 9-02-10 GLT," and turned it over to the evidence custodian.²⁰

Version of the Defense

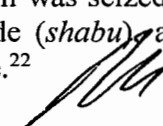
Appellant raised the defenses of *denial* and *alibi*. He testified that:

14) On September 2, 2010, [appellant] was arrested in the house of Engineer Butch Iquin in Atulayan, Tuguegarao City. He came from his house in Pengue-Ruyu, Tuguegarao City. He was about to ask Engineer Iquin about the construction work that he mentioned to him in Quezon. x x x x At the time of his arrest, he was with his two (2) year old son, Junice. When he entered the gate of Iquin[']s [house] and reached the receiving area, male persons suddenly came from a vacant lot and handcuffed him. They brought out evidence and they took pictures in front of the house of Iquin. He denied involvement in illegal drugs and maintained that his source of income is from his occupation as a construction worker.²¹

Ruling of the Regional Trial Court

In its Judgment dated December 13, 2013, the RTC found appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. It held that the prosecution was able to prove the elements of the illegal sale of dangerous drugs, *viz.* :

x x x The records show that [appellant] sold and delivered the *shabu* to PDEA agent Sumalag posing as poseur-buyer. The plastic sachet containing white crystalline substance, which was seized and was found positive for [methamphetamine] hydrochloride (*shabu*), a dangerous drug, was duly identified and offered in evidence.²²



¹⁸ Id.

¹⁹ Records, p. 16.

²⁰ CA rollo, p. 67.

²¹ Id. at 30.

²² Id. at 51.

Accordingly, the RTC sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00, without subsidiary imprisonment in case of insolvency.²³

Appellant thereafter appealed the RTC's Judgment before the CA.²⁴

Ruling of the Court of Appeals

The CA affirmed the RTC's Judgment with modification in that appellant shall not be eligible for parole under Act No. 4180, or the Indeterminate Sentence Law, in accordance with Section 3 of Republic Act No. 9346²⁵ (RA 9346).²⁶

Like the RTC, the CA found that the prosecution had successfully established all the elements of the illegal sale of *shabu*.²⁷ It also held that appellant had "failed to destroy the credibility of the members of the buy-bust team who testified with respect to the buy-bust operation,"²⁸ and "to show a plausible reason for any ill motive on the part of the arresting officers to falsely impute to him such a serious charge."²⁹

The CA further rejected appellant's defenses of denial and alibi given the positive testimonies of the police officers who were presumed to have performed their duties in a regular manner, and in the absence of proof to the contrary.³⁰

Finally, the CA held that the prosecution, too, had sufficiently shown that the chain of custody requirements over the seized *shabu* was complied with,³¹ viz.:

x x x The *first* link was proven by the testimony of IO1 Sumalag. The specifics on how, where and when IO1 Sumalag marked the seized heat-sealed plastic sachet from the sale transaction as "JAS 09-02-10" was proven by the prosecution. The prosecution was however relieved of proving the *second* link x x x because it was established during the testimony of IO1 Sumalag, which was corroborated by IO1 Cabanilla, that

²³ Id. at 52-53.

²⁴ Records, pp. 242-243.

²⁵ An Act Prohibiting the Imposition of the Death Penalty in the Philippines.

²⁶ *Rollo*, p. 18.

²⁷ Id. at 11-12.

²⁸ Id. at 12.

²⁹ Id.

³⁰ Id. at 12-14.

³¹ Id. at 15.

from the time of the seizure of the *shabu* item until the inventory of the same in the PDEA office, it was IO1 Sumalag who had full and continuous custody of the confiscated drug. PSI Tuazon, the forensic chemist, who conducted the test on the seized item even testified that it was IO1 Sumalag who personally turned over to him the subject one (1) piece, heat-sealed, plastic sachet containing the white crystalline substance together with the letter request for laboratory examination. Hence, the *third* link was likewise established. The *fourth* link in the chain of custody was proven with the testimony of PSI Tuazon that after he had conducted the test on the drug specimen, he turned it over to the evidence custodian of the court. Likewise, the presentation and identification in court of the heat-sealed, plastic sachet containing *shabu* by the prosecution witnesses, to be the same item which was seized from [appellant] and examined by the forensic chemist, reinforced the conclusion that the chain of custody requirement had been complied with.³²

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether the prosecution was able to prove the integrity and identity of the seized *shabu* pursuant to Section 21, Article II of RA 9165,³³ and,

And *second*, whether the prosecution's witnesses were credible, considering the inconsistencies in their testimonies.³⁴

The Court's Ruling

The appeal is unmeritorious.

"In a prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."³⁵ In other words, the prosecution must prove that the transaction or sale actually took place, coupled with the presentation of the seized dangerous drugs as evidence in court.³⁶

³² Id. at 15-16.

³³ CA *rollo*, pp. 31-34.

³⁴ Id. at 38-40.

³⁵ *People v. Cabiles*, G.R. No. 220758, June 7, 2017, 827 SCRA 89, 95.

³⁶ *People v. Dumlao*, 584 Phil. 732, 738 (2008)

In *People v. Dumlao*,³⁷ we explained that the illegal sale of dangerous drugs is consummated upon the completion of the sale transaction between the buyer and seller, viz.:

x x x The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.³⁸

In this case, the prosecution positively identified appellant as the seller of the white crystalline substance which was later found to be methamphetamine hydrochloride, commonly known as *shabu*, a dangerous drug.³⁹ It was also shown that appellant had sold the *shabu* to IO1 Sumalag, who acted as poseur-buyer, for a sum of ₱3,000.00.⁴⁰

The heat-sealed, transparent plastic sachet containing said white crystalline substance presented before the trial court was likewise positively identified by IO1 Sumalag as the *shabu* sold and delivered to him by appellant.⁴¹ Per the Chemistry Report No. D-37-2010 dated September 2, 2010, the white crystalline substance found inside the same plastic sachet indeed tested positive for *shabu*.⁴²

There is no question that appellant was caught in *flagrante delicto* in a legitimate entrapment operation, and positively identified by the members of the buy-bust team in court. Appellant's defenses of denial and alibi, therefore, must necessarily fail.⁴³ After all, "[d]enial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses who testif[ied] on affirmative matters. Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical,"⁴⁴ as in this case.

As regards the inconsistencies in the testimonies of the prosecution witnesses, we find that these refer to *minor details* and *collateral matters*, i.e., the color of the garment worn by appellant,⁴⁵ the alleged missing pieces of the

³⁷ Id.

³⁸ Id.

³⁹ TSN, February 25, 2011, pp. 11-12 and 16.

⁴⁰ Id. at 29.

⁴¹ Id. at 16-18.

⁴² Records, p. 16.

⁴³ See *People v. Ogarte*, 664 Phil. 642, 663 (2011).

⁴⁴ *People v. Bandin*, 604 Phil. 522, 528 (2009).

⁴⁵ CA rollo, p. 38-39.

marked money,⁴⁶ and the actual date when the marked money was turned over to the evidence custodian,⁴⁷ that do not affect the veracity or detract from the essential credibility of the witnesses' declarations.⁴⁸

We likewise uphold the CA's conclusion that the integrity and evidentiary value of the seized *shabu* had been preserved.

The record shows that IO1 Sumalag immediately put the markings "JAS 09-02-10" on the seized heat-sealed, transparent plastic sachet at the scene and in the presence of appellant.⁴⁹ Appellant was thereafter brought to the PDEA office for the taking of inventory and photographs of the seized items, which were witnessed by representatives from the media and the DOJ and an elected public official. IO1 Sumalag, who had retained custody over the heat-sealed, transparent plastic sachet from the time of confiscation,⁵⁰ personally delivered said plastic sachet together with the letter-request for laboratory examination to PSI Tuazon at the PNP Regional Crime Laboratory.⁵¹ After the laboratory examination, PSI Tuazon marked and sealed the subject specimen and turned it over to the evidence custodian.⁵²

Clearly, the prosecution's evidence sufficiently established an *unbroken* chain of custody over the seized sachet of *shabu* from the entrapment team to the crime laboratory, to the evidence custodian for safe-keeping, up to the time it was offered in evidence before the court.

All told, we affirm appellant's conviction of the offense charged. The penalty for the unauthorized sale of dangerous drugs under Section 5, Article II of RA 9165, regardless of the quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. However, given the enactment of RA 9346, only life imprisonment and a fine may be imposed upon appellant. Thus, we find that the penalty of life imprisonment and payment of fine in the amount of ₱500,000.00 is within the range provided by law.

WHEREFORE, the appeal is **DISMISSED**. The assailed September 15, 2015 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 06621 convicting Joseph Espera y Baniñano for violation of Section 5, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

⁴⁶ Id. at 39-40.

⁴⁷ Id. at 40.

⁴⁸ See *People v. Reyes*, G.R. No. 207946, September 27, 2017.

⁴⁹ TSN, February 25, 2011, pp. 12 and 16-17.

⁵⁰ Id. at 45.

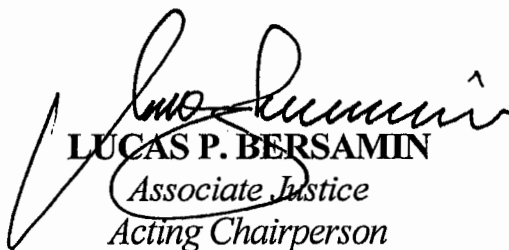
⁵¹ Id. at 15.

⁵² TSN, February 14, 2011, pp. 13-14.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson



FRANCIS H. JARDELEZA
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice

(On official leave)
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.


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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

Senior Associate Justice

(Per Section 12, Republic Act No. 296
The Judiciary Act of 1948, as amended)

