



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

**G.R. No. 229049**

Present:

- versus -

**BERSAMIN, C.J.,**  
**DEL CASTILLO,**  
**JARDELEZA,**  
**GESMUNDO, and**  
**CARANDANG,\* JJ.**

**ABELARDO SORIA y VILORIA,**  
**alias "George",**  
*Accused-Appellant.*

Promulgated:  
**JUN 05 2019**

X -----

**DECISION**

**DEL CASTILLO, J.:**

Assailed in this appeal is the August 5, 2016 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR. HC. [No.] 06535 which affirmed the November 13, 2013 Joint Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 32, Agoo, La Union, finding Abelardo Soria y Viloria (appellant) guilty beyond reasonable doubt of the illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act (RA) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

***The Antecedent Facts***

Appellant was charged with the illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165 in two Informations dated February 20, 2012 which read:

*Criminal Case No. A-6134*

That on or about the 17<sup>th</sup> day of February 2012, in the Municipality of Rosario, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there

\* On official leave.

<sup>1</sup> *Rollo*, pp. 2-18; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Jhosep Y. Lopez.

<sup>2</sup> *CA rollo*, pp. 44-65; penned by Acting Presiding Judge Rose Mary R. Molina-Alim.

willfully, unlawfully and knowingly sell and deliver to a “poseur[-]buyer” a heat[-]sealed plastic sachet containing 0.1639 [gram] of “shabu” or methamphetamine hydrochloride for and in consideration of ₱500.00, more or less, without any lawful authority.

CONTRARY TO LAW.<sup>3</sup>

*Criminal Case No. A-6135*

That on or about the 17<sup>th</sup> day of February 2012, in the Municipality of Rosario, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in his possession, control and custody three (3) heat[-]sealed plastic sachets containing 0.1246, 0.1470 and 0.0386 [gram] of “shabu” or methamphetamine hydrochloride, respectively, without any lawful authority.

CONTRARY TO LAW.<sup>4</sup>

During his arraignment for these two informations on March 13, 2012, appellant entered a plea of not guilty.<sup>5</sup> Trial thereafter ensued.

***Version of the Prosecution***

On February 17, 2012, at around 10:00 a.m., PO2 Eleuterio V. Esteves (PO2 Esteves) received information from a confidential informant (CI) that appellant was engaged in the sale of *shabu* in the Municipality of Rosario, Province of La Union. PO2 Esteves immediately notified Police Chief Inspector Erwin Dayag (PCI Dayag) who decided to conduct a buy-bust operation against appellant.<sup>6</sup>

In preparation for the buy-bust operation, PCI Dayag coordinated with the Philippine Drug Enforcement Agency (PDEA), as evidenced by the Pre-Operation Report,<sup>7</sup> the Coordination Form,<sup>8</sup> and the Certificate of Coordination<sup>9</sup> issued by PDEA Agent Elaine Grace C. Ordoño. Meanwhile, PO2 Esteves withdrew the amount of ₱500.00 from their finance officer to be used as marked money, upon which he placed the markings “EVE.”<sup>10</sup>

<sup>3</sup> Records (Crim. Case No. A-6134), p. 1.

<sup>4</sup> Records (Crim. Case No. A-6135), p. 1.

<sup>5</sup> See Records (Crim. Case No. A-6134), p. 27; and Records (Crim. Case No. A-6135), p. 28.

<sup>6</sup> CA *rollo*, p. 139.

<sup>7</sup> Records (Crim. Case No. A-6134), p. 92.

<sup>8</sup> Id. at 93.

<sup>9</sup> Id. at 94.

<sup>10</sup> CA *rollo*, p. 139.

PO2 Esteves then instructed the CI to arrange a meeting with appellant and to give a description of the latter's physical appearance prior to the meeting.<sup>11</sup>

Together with the PDEA agents, the buy-bust team proceeded to the meeting place beside the road near the Our Lady of Lourdes Church in Brgy. Damortis, Rosario, La Union. PO2 Esteves and the designated poseur-buyer waited for appellant at a waiting shed in front of the church while the other team members strategically positioned themselves around the perimeter.<sup>12</sup>

After a few minutes, PO2 Esteves saw appellant alight from a mini-bus. Appellant approached PO2 Esteves and asked, "*Ikaw ba yon?*" and the latter nodded his head in affirmation. When the appellant understood that PO2 Esteves was buying ₱500.00-worth of *shabu*, appellant took one heat-sealed, transparent plastic sachet containing a white crystalline substance from his right pocket and gave it to PO2 Esteves. PO2 Esteves, in turn, handed appellant the ₱500.00-marked money. Once the exchange was completed, PO2 Esteves scratched his head, the pre-arranged signal that the transaction had already been consummated.<sup>13</sup>

The other members of the buy-bust team immediately rushed to the scene. PO2 Rommel R. Dulay (PO2 Dulay) placed appellant under arrest and informed him of his constitutional rights.<sup>14</sup> PO2 Esteves then conducted a body search of appellant in the presence of Brgy. Captain Alberto Valdez and Brgy. Secretary Daniel Sison. From appellant's right pocket were taken three (3) transparent plastic sachets containing white crystalline substances. PO2 Esteves likewise recovered from appellant the ₱500.00-marked money, one ₱100.00-bill, two ₱50.00-bills, and a cellphone.<sup>15</sup>

Also in the presence of the *barangay* officials, PO2 Esteves marked the plastic sachet subject of the sale with "AS-1 02-17-2012" with his signature, and the three plastic sachets recovered from appellant with "AS-2 to AS-4 02-17-2012" with his signature.<sup>16</sup> He then recorded the same in the Receipt/Inventory of Property Seized<sup>17</sup> while PO2 Dulay took photographs<sup>18</sup> of the confiscated items. Afterwards, the buy-bust team proceeded to the

<sup>11</sup> Id.

<sup>12</sup> Id. at 139-140.

<sup>13</sup> Id. at 140. See also TSN, September 4, 2012, pp. 17-19.

<sup>14</sup> *Rollo*, p. 4. See also TSN, September 4, 2012, p. 20.

<sup>15</sup> Id. See also *CA rollo*, p. 140.

<sup>16</sup> *CA rollo*, p. 140.

<sup>17</sup> Records (Crim. Case No. A-6134), p. 96.

<sup>18</sup> Id. at 97-100.

Rosario Police Station with PO2 Esteves in possession of the seized items.<sup>19</sup> There, the incident was recorded in the police blotter.<sup>20</sup>

At around 9:15 p.m., PO2 Esteves personally turned over the seized plastic sachets to PO2 Marie June F. Milo of the Regional Crime Laboratory Office 1, along with the Request for Laboratory Examination,<sup>21</sup> as evidenced by the Chain of Custody Form<sup>22</sup> dated February 17, 2012. Per Chemistry Report No. D-011-2012<sup>23</sup> prepared by Police Senior Inspector Maria Theresa Amor C. Manuel (P/Sr. Insp. Manuel), the subject specimens tested positive for methamphetamine hydrochloride, more commonly known as *shabu*.

### ***Version of the Defense***

Appellant raised the defenses of *frame-up* and *denial*. He testified that:

On 17 February 2012, at around 8:30 o'clock in the evening, [appellant] was on his way home to Rosario, La Union. While waiting for a minibus in Damorits [sic], La Union, he was confronted by the policemen of Rosario saying in Ilocano[,] "*Shabu, adda shabum dita?*" (you have a [sic] shabu in your possession.) He told them that [there was nothing in his pockets or his hands]. The police officers[,] however[,] insisted on putting their hands in his pocket to see if there [was] something inside. When they did not get anything from his pocket[s], one policeman handed a crumpled piece of paper and put it inside his pocket. He was brought near the church of Damortis and in front of a store. They waited for barangay officials of the place. When they arrived, they brought out the crumpled piece of paper and opened it and saw money and a sachet of drugs. He told them to release him but to no avail, thus, he was brought to the Municipal Hall in Rosario.<sup>24</sup>

### ***Ruling of the Regional Trial Court***

In its Joint Decision dated November 13, 2013, the RTC found appellant guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.<sup>25</sup> It held that the prosecution was able to prove the elements of the illegal sale and illegal possession of dangerous drugs, *viz.*:

As the designated poseur-buyer, PO2 Esteves was unwavering in his positive identification of [appellant] during the trial as the person who sold the illegal drugs. He never faltered in his testimony when he said he used

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<sup>19</sup> CA *rollo*, p. 140.

<sup>20</sup> Id.

<sup>21</sup> Records (Crim. Case No. A-6134), p. 102.

<sup>22</sup> Id. at 105.

<sup>23</sup> Id. at 104.

<sup>24</sup> CA *rollo*, p. 92.

<sup>25</sup> Id. at 64-65.

the marked money as payment for the object of the crime, that is, the *shabu* which [appellant] handed to him.<sup>26</sup>

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Ostentatiously, the owner and possessor of the transparent plastic sachets [was] no other than [appellant] himself, “who [had] neither shown any proof of the absence of *animus possidendi* nor presented any evidence that would show that he was duly authorized by law to possess them during the buy-bust operation, thus leading to no other conclusion than that [appellant] [was] equally liable for illegal possession of dangerous drugs under Section 11, Article II of RA 9165.”<sup>27</sup>

Accordingly, the RTC sentenced appellant as follows: (a) to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 in Criminal Case No. A-6134; and (b) to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine of ₱300,000.00 in Criminal Case No. A-6135.<sup>28</sup>

### ***Ruling of the Court of Appeals***

The CA affirmed the RTC’s Joint Decision but it *modified* the period of imprisonment originally imposed by the trial court in **Criminal Case No. A-6135** to an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, considering that the total weight of the *shabu* found in appellant’s possession was only 0.3102 gram.<sup>29</sup>

Like the RTC, the CA found that all the elements of the illegal sale and illegal possession of dangerous drugs were satisfactorily established by the prosecution, *viz.*:

In the present case, all the elements of the crime have been sufficiently established. The prosecution’s evidence positively identified PO2 Esteves as the buyer and [appellant] as the seller of *shabu*. The prosecution established through testimony and evidence the object of the sale, one (1) heat-sealed plastic sachet containing white crystalline substance and one (1) marked Php500.00 bill, as the consideration thereof. Finally, the delivery of the *shabu* sold and its payment were clearly testified to by the prosecution witnesses.<sup>30</sup>

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<sup>26</sup> Id. at 61.

<sup>27</sup> Id. at 63.

<sup>28</sup> Id. at 64-65.

<sup>29</sup> *Rollo*, pp. 16-17.

<sup>30</sup> Id. at 9.

In the case at bench, the prosecution was able to establish with moral certainty the guilt of [appellant] for the crime of illegal possession of dangerous drugs. [Appellant] was apprehended, indicted, and convicted by way of a buy-bust operation, a form of entrapment to capture lawbreakers in the execution of their criminal plan. The arresting officer, PO2 Esteves, positively identified [appellant] as the person caught in actual possession of three (3) plastic sachets of *shabu* presented in court. He stated that the *shabu* were validly confiscated from the person of [appellant] during a body search conducted on him after the latter was arrested in *flagrante delicto* selling *shabu* to PO2 Esteves during the buy-bust operation.<sup>31</sup>

The CA rejected appellant's contention that the chain of custody over the seized items was broken as there were no representatives from the media and the Department of Justice (DOJ) when said items were inventoried and photographed. It explained that:

x x x Here, the records reveal that the police officers substantially complied with the process of preserving the integrity of the seized drugs. As explained by PO2 Esteves, despite their efforts to coordinate with the media and the DOJ, no representatives were able to appear during the inventory. Considering the possible perils that any delay might entail[,] coupled [with] the fact that there was a heavy downpour at that time, it would [have been] illogical to waste precious time waiting for other representatives to arrive at the scene of the operation[,] especially since there were already *barangay* officials present to witness the event. Indeed, the presence of these officials during the inventory was already substantial compliance with the requirements of R.A. No. 9165 and its IRR.<sup>32</sup>

Aggrieved, appellant filed the present appeal.

### The Issues

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

**First**, whether his guilt had been proven beyond reasonable doubt, given the "serious and inexplicable discrepancies" in the testimony of PO2 Esteves as regards the important details surrounding the buy-bust operation;<sup>33</sup>

**Second**, whether the chain of custody over the seized items had been sufficiently established despite the prosecution's failure to present the testimony of the duty officer who received the specimens at the Regional Crime Laboratory;<sup>34</sup>

<sup>31</sup> Id. at 15.

<sup>32</sup> Id. at 11.

<sup>33</sup> CA *rollo*, pp. 94-95.

<sup>34</sup> Id. at 96.

And *third*, whether the integrity and evidentiary value of the seized dangerous drugs had been compromised, considering the absence of representatives from the media and the DOJ during the conduct of inventory and taking of photographs of the confiscated items.<sup>35</sup>

### 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.”<sup>36</sup> In other words, the prosecution must not only adduce proof that the transaction or sale actually took place, but must also present the seized dangerous drugs as evidence in court.<sup>37</sup>

As regards the charge of illegal possession of dangerous drugs, the prosecution must prove the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>38</sup>

In this case, both the RTC and the CA correctly found that all the elements of the crimes charged were present, as the records clearly showed that: *first*, appellant was caught *in flagrante delicto* selling one (1) heat-sealed transparent plastic sachet containing *shabu* to PO2 Esteves, the poseur-buyer, for the amount of ₱500.00<sup>39</sup> during a legitimate buy-bust operation;<sup>40</sup> and *second*, three (3) other heat-sealed, plastic sachets containing *shabu* with an aggregate weight of 0.3102 gram<sup>41</sup> were recovered from appellant during the search made incidental to his arrest.<sup>42</sup> Absent any indication that both courts had *overlooked*, *misunderstood* or *misconstrued* the real import or significance of the facts and circumstances adduced in these cases, we find no reason to overturn their factual findings.<sup>43</sup> After all, “the trial court was in the

<sup>35</sup> Id. at 98-99.

<sup>36</sup> *People v. Cabiles*, G.R. No. 220758, June 7, 2017, 827 SCRA 89, 95.

<sup>37</sup> *People v. Dumlao*, 584 Phil. 732, 738 (2008)

<sup>38</sup> *People v. Dela Rosa*, 655 Phil. 630, 647 (2011).

<sup>39</sup> TSN, September 4, 2012, pp. 17-19.

<sup>40</sup> Id. at 6-7. See also Records (Crim. Case No. A-6134), pp. 92-94.

<sup>41</sup> Per Chemistry Report No. D-011-2012, the three (3) heat-sealed, transparent plastic sachets recovered from appellant contained 0.1246, 0.1470 and 0.0386 gram of *shabu*. See Records (Crim. Case No. A-6134), p. 104.

<sup>42</sup> TSN, September 4, 2012, p. 22.

<sup>43</sup> See *Reyes, Jr. v. Court of Appeals*, 424 Phil. 829, 836 (2002).

best position to assess and determine the credibility of the witnesses presented by both parties.”<sup>44</sup>

We further hold that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165.

The record shows that PO2 Esteves immediately placed the markings “AS-1 02-17-2012 to AS-4 02-17-2012” on the four (4) heat-sealed, transparent plastic sachets containing suspected *shabu* that were seized during the buy-bust operation against appellant.<sup>45</sup> The buy-bust team then conducted the physical inventory and photograph-taking of said items while still at the scene, in the presence of Brgy. Captain Alberto Valdez and Brgy. Secretary Daniel Sison.<sup>46</sup> The seized plastic sachets were then secured, taken to the police station, and thereafter, to the crime laboratory by PO2 Esteves where they tested positive for *shabu*.<sup>47</sup> Finally, the same specimens were duly identified in court.<sup>48</sup>

On this matter, we note that the prosecution had sufficiently accounted for each link in the chain of custody, from the moment the sachets of *shabu* were seized up to their presentation in court as evidence, given the testimonies of PO2 Esteves and P/Sr. Insp. Manuel, coupled with the Chain of Custody Form<sup>49</sup> on record.

With regard to the absence of representatives from the media and the DOJ during the conduct of the physical inventory and photograph-taking of the seized *shabu*, we are of the view that *earnest efforts* to secure the attendance of the necessary witnesses had been sufficiently proven by the prosecution.

In *People v. Sipin*,<sup>50</sup> we explained that in cases where the presence of the required witnesses was not obtained, the prosecution must allege and prove that their absence was due to reason/s such as:

x x x (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be

<sup>44</sup> *People v. Cuevas*, G.R. No. 238906, November 5, 2018.

<sup>45</sup> TSN, September 4, 2012, p. 23.

<sup>46</sup> Id. at 23-27.

<sup>47</sup> Id. at 36-38.

<sup>48</sup> Id. at 33-34. See also TSN, May 14, 2012, p. 12.

<sup>49</sup> Records (Crim. Case No. A-6134), p. 105.

<sup>50</sup> G.R. No. 224290, June 11, 2018



apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.<sup>51</sup>

In this case, PO2 Esteves testified that no representatives from the media and the DOJ were available despite their best efforts to contact them.<sup>52</sup> He further declared that there was heavy downpour at the time and they were only able to stay at the crime scene for an hour to quickly conduct the physical inventory and photograph-taking of the seized items before proceeding to the police station.<sup>53</sup> We find these explanations credible, as there appears to be a genuine and sufficient attempt to comply with the law.<sup>54</sup>

In conclusion, we affirm appellant's conviction for the crimes charged. The penalty for the unauthorized sale of *shabu* 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. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed by the court *a quo* in Criminal Case No. A-6134 is within the range provided by law.

However, we deem it proper to modify the penalty in Criminal Case No. A-6135 in accordance with prevailing jurisprudence. The penalty for the illegal possession of *shabu* with a quantity of less than five (5) grams, as in this case, is imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00.<sup>55</sup> Thus, we *reduce* the maximum period of imprisonment imposed on appellant from fourteen (14) years and eight (8) months to fourteen (14) years in Criminal Case No. A-6135.

**WHEREFORE**, the appeal is **DISMISSED**. The assailed Decision dated August 5, 2016 of the Court of Appeals in CA-G.R. CR. HC. [No.] 06535 convicting Abelardo Soria y Vilorio for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED** with **MODIFICATION** in that appellant is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00 in Criminal Case No. A-6135.

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<sup>51</sup> Id. Emphasis omitted.

<sup>52</sup> TSN, December 4, 2012, p. 29.

<sup>53</sup> Id. at 30.

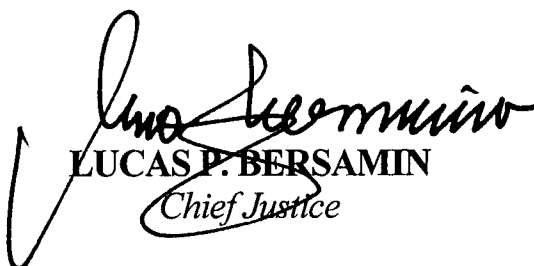
<sup>54</sup> See *People v. Lim*, G.R. No. 231989, September 4, 2018

<sup>55</sup> *Supra* note 44.


**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
*Chief Justice*

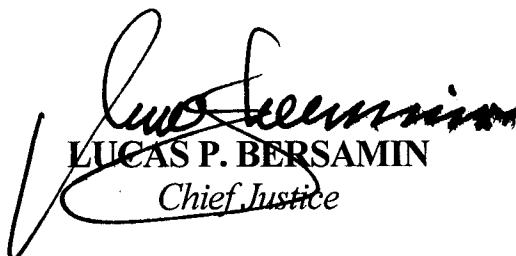
  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

(On official leave)  
**ROSMARI D. CARANDANG**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
**LUCAS P. BERSAMIN**  
*Chief Justice*