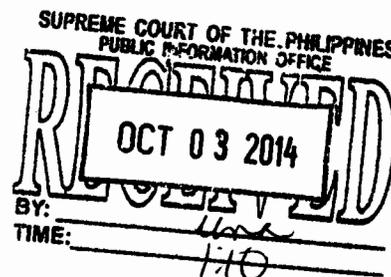




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **September 10, 2014** which reads as follows:

“G.R. NO. 189273 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. MARK ANTHONY SALMINGO, Accused-Appellant.

The accused was criminally charged with, and found guilty of the crimes of selling and possession of methamphetamine hydrochloride or *shabu*, punishable under Section 5 and Section 11 of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

According to the Prosecution, the Police Station in San Mateo, Rizal received information from a civilian informant in the first week of March 2003 to the effect that alias *Toto*, later identified as the accused, was engaged in selling illegal drugs at Langka Street, Tierra Monte Subdivision, Silangan, San Mateo, Rizal. The police thus conducted a surveillance operation. After the report proved positive, PO1 Rizalino Pontila (Pontila) and PO3 Juanito Tougan (Tougan) were tasked to conduct the buy-bust operation. On November 25, 2003, the buy-bust team went to the target area. Pontila, acting as the poseur-buyer, approached the accused and told the latter: *Brod, paiskor nga*, handing over a marked ₱100.00 bill to the latter. The accused took a lighter from his pocket, and removed from it a small plastic sachet, and gave the sachet to Pontila. Upon receiving the plastic sachet, Pontila signalled to his team. The police officers arrested the accused, and seized from him the lighter that he was still holding. They recovered seven plastic sachets of suspected *shabu* inside the lighter. When asked to empty his pocket, the accused pulled out the marked money. They brought the accused to the police station for investigation, together with the substances recovered from him that had been marked with initials “P,” “P1” to “P7”. The recovered substances tested positive for *shabu*.¹

¹ Rollo, pp. 3-4.

In his defense, the accused stated that he was walking in the AFP Housing Silangan, San Mateo, Rizal when an owner-type jeep stopped in front of him and Pontila alighted. Pontila held the accused by his collar, placed his hand inside the latter's pocket, and then showed the accused something that looked like *tawas* and asked, *Ano ito?* The accused was surprised and denied knowing anything about the thing being shown to him. Pontila just kicked him and forced him to board the jeep. They cruised around the AFP Housing Compound before proceeding to a secluded area, where the police officers asked him about one alias *Mata*, whom he did not know. They also asked him to identify some drug pushers, but he could not. Thereafter, they brought him to the police station and detained him there.²

Two criminal cases – Criminal Case No. 6697-03,³ for selling dangerous drugs; and Criminal Case No. 6696-03,⁴ for possession of dangerous drugs– were filed against the accused. At his arraignment on May 13, 2003, the accused pleaded not guilty in both cases. Trial and pre-trial ensued.

On July 31, 2006, the Regional Trial Court (RTC), Branch 77, in San Mateo, Rizal rendered its decision,⁵ disposing:

WHEREFORE, the guilt of the accused **MARK ANTHONY SALMINGO** having been proven beyond reasonable doubt as charged in the information for selling Dangerous Drug under Criminal Case No. 6697 is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay the fine of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)** and he was likewise found **GUILTY** beyond reasonable doubt as charged in the information for possession of Dangerous Drugs under Criminal Case No. 6696 and is hereby sentenced to suffer the penalty of **TWELVE (12) YEARS AND ONE (1) DAY to TWENTY (20) YEARS IMPRISONMENT** and to pay the **FINE OF THREE HUNDRED THOUSAND PESOS (₱300,000.00)**.

SO ORDERED.⁶

On appeal, the Court of Appeals (CA) affirmed the conviction, *viz*:

WHEREFORE, in the light of the foregoing, the Decision dated July 31, 2006 appealed from is hereby affirmed *in toto*.

SO ORDERED.⁷

² Id. at 4-5.

³ CA *rollo*, pp. 12-13.

⁴ Id. at 10-11.

⁵ Id. at 14-24.

⁶ Id. at 23-24.

⁷ *Rollo*, p. 17.

The accused now appeals the decision of the CA on questions of fact and law,⁸ reiterating the errors assigned in his appellant's brief, to wit:

- I. THE COURT A QUO GRAVELY ERRED IN GIVING UNDUE CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS PO1 RIZALINO PONTILA.
- II. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE IDENTITY OF THE *SHABU* CONSTITUTING THE *CORPUS DELICTI* OF THE OFFENSE CHARGED.⁹

The appeal has no merit.

To convict for illegal sale of *shabu*, the State must establish the following essential elements, namely: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation of the *corpus delicti* as evidence in court.¹⁰

To convict for illegal possession of a dangerous drug, like *shabu*, the State must prove the following elements, to wit: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.¹¹

The accused claims that Pontila's testimony on the conduct of the buy-bust operation was replete with material inconsistencies and flaws, which, if considered, would entail his acquittal.¹²

The Court is not convinced.

The testimony of Pontila to the effect that the accused sold him *shabu* during a buy-bust operation proved the identity of the accused as the seller of the *shabu*. The sale was consummated once the accused took the marked money and removed the small plastic sachet containing the suspected *shabu* from inside his lighter, and handed it to Pontila. On the other hand, the accused's illegal possession of *shabu* was established

⁸ CA rollo, p. 98.

⁹ Id. at 32.

¹⁰ *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 529-530, citing *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449.

¹¹ *People v. Bautista*, id. at 530.

¹² Appellant's Brief, CA rollo, pp. 36-37.

beyond reasonable doubt by Pontila's testimony regarding the discovery and confiscation of the seven other sachets found inside the lighter that he had been holding. The substance subject of the sale transaction, as well as the contents of the seven other sachets, were found when examined at the crime laboratory to be methamphetamine hydrochloride or *shabu*, a dangerous drug. Verily, the State proved all the elements of the offenses charged.

The inconsistencies in Pontila's direct testimony were sufficiently clarified and explained by him in his subsequent testimonies. At any rate, inconsistencies in the testimonies of the Prosecution's witnesses with respect to minor details and collateral matters did not affect the substance of their declarations, their veracity or their weight.¹³

On the allegation about the Prosecution's failure to prove the identity of the *shabu* constituting the *corpus delicti* of the offenses charged, which essentially challenged the chain of custody, we affirm and uphold the CA's following finding that:

[T]he confiscated drugs were forthrightly marked by PO1 Pontila in the presenc[c]e of the Chief of Police as "A(P)", "B(P1)", "C(P-2)", "D(P3)", "E (P4)", "F(P5)", "G(P6)" and "H(P7)" upon confiscation. The buy-bust money was likewise identified by PO1 Pontila, which had earlier marked of his initials "RHP". Immediately after the arrest, a written request was made for the said substance to be assayed by EPD Crime Laboratory (**Exh. "B", p.93, Records**). The testimony of the forensic chemist, Police Inspector Joseph M. Perdido, who conducted the qualitative examination on the confiscated drugs was dispensed with and therefore admitted (**Ibid**, p.47). Suffice it to state that the custody of the seized illegal drugs was properly accounted for, from the moment of confiscation until trial. That said, it could not be argued that the integrity of the evidence had been altered or jeopardized.¹⁴

The Court has always been inclined, with some exceptions, to defer to the findings of the trial court because it had the opportunity to observe the demeanor and conduct of the witnesses who testify during trials held in its presence. There being no cogent reason to veer away from the findings of the trial court, we conclude that the CA correctly affirmed the same.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals and **ORDERS** the accused to pay the costs of suit.

- over -

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¹³ *People v. Bis*, G.R. No. 191360, March 10, 2014, citing *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 34.

¹⁴ *Rollo*, p. 16.

SO ORDERED.” *SERENO, C.J.*, on leave; *VELASCO, JR., J.*, acting member per S.O. No. 1772 dated August 28, 2014.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court
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The Solicitor General (x)
Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR H.C. No. 03196)

The Director
Bureau of Corrections
1770 Muntinlupa City

The Hon. Presiding Judge
Regional Trial Court, Br. 77
1850 San Mateo, Rizal
(Crim. Case Nos. 6696-97)

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