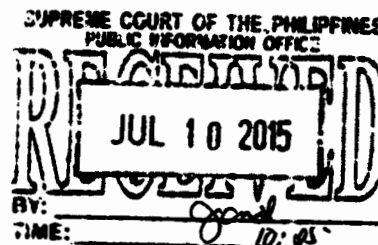




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 15, 2015** which reads as follows:*

**“G.R. No. 208752 (People of the Philippines v. Rosalinda Dumo y Pulido, Bella Marzan y Calica, Jun Monton y Dolores).** – This is an appeal assailing the 24 May 2013 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04985, which affirmed the 24 January 2011 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 66, San Fernando City, La Union, in Criminal Case No. 8183, finding accused-appellants guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165.

Accused-appellants were charged with violation of Section 5, Article II of R.A. 9165, under the following Information:

That on or about the 4<sup>th</sup> day of September 2008, in the City of San Fernando, La Union, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously distribute, sell and deliver two (2) heat sealed transparent plastic sachets containing methamphetamine hydrochloride otherwise known as “shabu,” with an individual weight of zero point zero sixty two (0.062) gram and zero point zero thirty two (0.032) gram or a total weight of zero point zero ninety four (0.094) gram to one IO3 Juvenal Azurin who posed as poseur buyer, and in consideration of said shabu, used marked money, consisting of five pieces of one hundred Philippine Currency bill amounting to five hundred pesos (P500) with serial numbers F 144570, QD 491368, DA 248745, CV 537002, and EW 781588 without first securing the necessary permit or license or authority from the proper government agency.

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<sup>1</sup> *Rollo*, pp. 2-11. Penned by Associate Justice Samuel H. Gaerlan, and concurred in by Associate Justices Apolinario D. Bruselas, Jr., and Priscilla J. Baltazar-Padilla.

<sup>2</sup> *CA Rollo*, pp. 57-67.

Contrary to law.<sup>3</sup>

When arraigned, accused-appellants, assisted by their respective counsels, pleaded not guilty to the offense charged.<sup>4</sup> Hence, trial ensued.

### THE RTC RULING

In its Decision<sup>5</sup> dated 24 January 2011, the RTC gave credence to the testimonies of prosecution witnesses Intelligence Officer 3 (IO3) Juvenal Azurin, the designated poseur-buyer in the buy bust operation; and Police Senior Inspector (PS/Insp.) Anamelisa Bacani, a forensic chemist of the Philippine National Police (PNP).

IO3 Azurin testified that on 4 September 2008, a confidential informant reported to their office that a certain "Linda" was engaged in selling illegal drugs. He reported the matter to his regional director, who then instructed him to assemble a team and conduct a surveillance to verify the veracity of the report. Concluding that the information was reliable, the team decided to conduct a buy-bust operation.<sup>6</sup>

During the operation, IO3 Azurin and the confidential informant proceeded to the Don Gabriel Store in *Barangay* Pagdalan Norte, San Fernando City, La Union, while the rest of the team members positioned themselves strategically in the vicinity. There the informant introduced Monton to IO3 Azurin, who offered to buy *shabu* worth ₱500. The sale was consummated after IO3 Azurin handed the marked money to Marzan, who then obtained from Dumo two plastic sachets containing *shabu* and handed them to IO3 Azurin.<sup>7</sup>

The RTC also concluded that while the police officers had failed to take photographs and make an inventory of the plastic sachets of illegal drugs, the chain of custody of the seized items was not broken. IO3 Azurin testified that he was able to mark the sachets immediately after the consummation of the sale, and that he personally delivered them to PS/Insp. Bacani in the PNP Crime Laboratory for forensic examination. In that examination, the substance inside the sachets was positively identified as *shabu*.<sup>8</sup>

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<sup>3</sup> Id. at 57.

<sup>4</sup> Id.

<sup>5</sup> Id. at 57-67.

<sup>6</sup> Id. at 58; 61-64.

<sup>7</sup> Id.

<sup>8</sup> Id. at 65-66.

Moreover, the RTC viewed with disfavor appellants' defense of denial: that Dumo and Marzan were merely in front of the store with their soft drinks, and that Monton was only walking home along the alley, when they were suddenly arrested by armed men. Their defense was deemed unavailing, as it was not substantiated by clear and convincing evidence. Although the defense identified several Affidavits of supposed witnesses corroborating its story, these witnesses were never presented in court. Besides, the trial court found no ulterior motive on the part of IO3 Azurin to falsely charge appellants with such a serious offense.<sup>9</sup>

As regards the participation of each of the accused, the RTC concluded that conspiracy existed, because all three appellants were of one mind in selling *shabu* to the poseur-buyer, as shown by a series of overt acts during the transaction.<sup>10</sup>

Hence, appellants were sentenced to life imprisonment and ordered to pay a fine of ₱500,000 each, in accordance with Section 5, Article II of R.A. 9165.<sup>11</sup>

#### THE CA RULING

On intermediate appellate review, the CA affirmed the Decision of the RTC<sup>12</sup> disregarding the defense's contention that the prosecution's version of events was "highly incredible." The appellate court took into consideration the contention that the buy-bust team did not verify the report of the confidential informant,<sup>13</sup> and that the requirements of Section 21 of R.A. 9165 were not complied with.<sup>14</sup>

Upon a thorough review of the records on hand, the CA found that contrary to appellants' contentions, the prosecution witnesses specifically testified that they first verified the report of the informant before pushing through with the buy-bust operation.<sup>15</sup> Also, the failure of the police officers to comply with the requirements of Section 21 was not fatal to their case. They were able to prove that the chain of custody of the seized sachets of *shabu* was never broken; and that every link in the chain attested to how they had seized, marked, received and examined the sachets. Thus, the integrity and evidentiary value of the evidence have been preserved.<sup>16</sup>

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<sup>9</sup> Id. at 65.

<sup>10</sup> Id. at 66-67.

<sup>11</sup> Id. at 67.

<sup>12</sup> *Rollo*, pp. 2-13.

<sup>13</sup> Id. at 6.

<sup>14</sup> Id. at 8.

<sup>15</sup> Id. at 7.

<sup>16</sup> Id. at 9.

We now resolve the appeal.

### OUR RULING

#### **We deny the appeal.**

At the outset, we would like to state that the findings of the lower courts must be given great weight and credence, especially those that are “factual in nature and x x x involve credibility x x x when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings.”<sup>17</sup>

In this case, we see no reason to overturn the findings of the lower courts, especially when the issues raised by appellants herein have been fully threshed out by both the RTC and the CA.

Appellants allege that it was unusual for the police officers to immediately proceed with the buy-bust operation without verifying the report of the informant by conducting a test-buy. However, we agree with the CA that the records clearly disclose that IO3 Azurin and his team complied with the instruction of their regional director to first verify the information. Only after they had confirmed the veracity of the report did they proceed to conduct the buy-bust.<sup>18</sup> Besides, prior surveillance or test-buy is not necessary for a valid buy-bust operation; it is sufficient that the operatives be accompanied by their informant during the operation.<sup>19</sup> These requirements having been complied with, appellants’ averment on the matter can be dispensed with.

As regards the contention of appellants that it was highly improbable for them to casually sell illegal drugs to the poseur-buyer who was unknown to them, we agree with the CA’s observation that the sale of prohibited drugs is so prevalent that it is no longer improbable to conduct drug trading without regard for the place and time of transaction.<sup>20</sup> It is thus not impossible for appellants to sell *shabu* to IO3 Azurin, especially since he had been introduced to them by the informant prior to the transaction.

On the other hand, we deem the prosecution’s failure to observe the requirements under Section 21, Article II of R.A. 9165 excusable, because the police were able to preserve the integrity and evidentiary value of the

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<sup>17</sup> *People v. Castro*, G.R. No. 195777, 19 June 2013, 699 SCRA 252, citing *People v. Presas*, 659 Phil. 503 (2011).

<sup>18</sup> *Rollo*, p. 7.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

seized items. IO3 Azurin testified that he seized the two heat-sealed plastic sachets from appellant Marzan and immediately marked them with his initials "JA." On the same day, he submitted the sachets to the crime laboratory for examination. PSI Bacani testified that she personally received the specimens from IO3 Azurin because she was on duty that time, and that she personally tested these items. The laboratory examination yielded a positive result for methamphetamine hydrochloride or *shabu*. Indeed, the prosecution was able to prove that the chain of custody of the seized sachets of *shabu* was never broken, and that every link in the chain testified as to how they had seized, marked, received and tested the substance.<sup>21</sup> We thus find no reason to depart from the findings of the lower courts that the case herein falls under the exempting proviso in Section 2(a), Article II of the Implementing Rules and Regulations of R.A. 9165.<sup>22</sup>

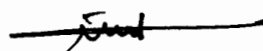
Consequently, we cannot give credence to the alibi of the appellants. Their defense has been viewed as inherently weak, as it is easy to concoct but difficult to prove. For it to prosper, it must be supported by clear and convincing evidence.<sup>23</sup> Unfortunately for appellants, they failed to do that in this case.

Finally, we are in accord with the penalty and fines imposed by the RTC and affirmed by the CA. Section 5, Article II of R.A. 9165 states that the penalty for the unauthorized sale of *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000 to ₱10 million.<sup>24</sup> Accordingly, we affirm the life imprisonment and fine of ₱500,000 on each of the appellants, for their conviction of illegal sale of dangerous drugs.<sup>25</sup>

**WHEREFORE**, the Court of Appeals Decision dated 24 May 2013 is hereby **AFFIRMED**.

**SO ORDERED.**"

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court

  
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<sup>21</sup> Id. at 8-9.

<sup>22</sup> (a) x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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.

<sup>23</sup> *People v. Sibunga*, 616 Phil. 854 (2009), citing *People v. Nicolas*, 311 Phil. 79 (1995).

<sup>24</sup> *People v. Montevirgen*, G.R. No. 189840, 11 December 2013, 712 SCRA 459.

<sup>25</sup> CA Rollo, p. 67.

The Solicitor General (x)  
Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR H.C. No. 04985)

The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City.

The Hon. Presiding Judge  
Regional Trial Court, Br. 66  
San Fernando City 2500 La Union  
(Crim. Case No. 8183)

Public Information Office (x)  
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No. 12-7-1-SC)

PUBLIC ATTORNEY'S OFFICE  
Counsel for Accused-Appellants  
DOJ Agencies Bldg.  
Diliman 1128 Quezon City

Judgment Division (x)  
Supreme Court

Mr. Jun D. Monton  
Accused-Appellant  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

Ms. Rosalinda P. Dumo and  
Ms. Bella Marzan y Calica  
Accused-Appellants  
c/o The Superintendent  
Correctional Institution for Women  
1550Mandaluyong City

The Director  
Bureau of Corrections  
1770 Muntinlupa City

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