



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated December 2, 2020 which reads as follows:*

“G.R. No. 234020 (People of the Philippines, Plaintiff-Appellee, v. Susan Lampago y Silva, Accused-Appellant). – This appeal<sup>1</sup> seeks to reverse and set aside the Decision<sup>2</sup> dated 31 March 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08239, which affirmed the Decision<sup>3</sup> dated 02 February 2016 of Branch 45, Regional Trial Court (RTC) of Masbate City in Criminal Case No. 15442, finding accused-appellant Susan Lampago y Silva (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165.<sup>4</sup>”

**Antecedents**

Accused-appellant was charged in an Information, the accusatory portion of which reads:

That on or about the 30<sup>th</sup> day of June 2012, in the evening thereof, at Redrocks Hotel, Brgy. Kinamaligan, Masbate City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell to a government asset one (1) piece heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride known as “shabu,” a prohibited dangerous drug weighing a total of 2.078 grams, without the corresponding license or authority to do so.<sup>5</sup>

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<sup>1</sup> Rollo, pp. 17-18, see Notice of Appeal dated 24 April 2017.

<sup>2</sup> *Id.* at 2-16; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Socorro B. Inting and Maria Filomena D. Singh of the Court of Appeals, Manila.

<sup>3</sup> CA rollo, pp.12-27; penned by Judge Manuel L. Sese.

<sup>4</sup> Comprehensive Dangerous Drugs Act of 2002.

<sup>5</sup> CA rollo, p. 12.

Upon arraignment, accused-appellant pleaded not guilty to the charge. After termination of pre-trial, trial on the merits ensued.<sup>6</sup>

### **Version of the Prosecution**

On 30 June 2012, the Intelligence Section of the Masbate Police Station received information from a confidential informant (CI) that accused-appellant was engaged in the sale of illegal drugs.<sup>7</sup> They immediately formed a team to conduct a buy bust operation at Redrocks Hotel in *Brgy. Kinamaligan, Masbate City*.

The team proceeded to the target hotel and checked into a room. Inside the room, PO1 Alex Mojados (PO1 Mojados) hid under one of the beds, while PO1 Wilbur Villaflores (PO1 Villaflores), the designated poseur buyer, and the CI waited for accused-appellant's arrival. Apparently, the CI earlier arranged for his "buyer," PO1 Villaflores, to purchase Php5,000.00 worth of *shabu* from accused-appellant. When accused-appellant arrived, the CI led her inside the room and asked if she brought the *shabu*. Accused-appellant replied in the affirmative and inquired if they had the complete payment. PO1 Villaflores then handed the buy bust money to accused-appellant in exchange for a plastic sachet with suspected *shabu*. After consummation of sale, PO1 Mojado came out from hiding and saw accused-appellant still holding the buy bust money and a digital weighing scale, while PO1 Villaflores was holding the sachet with suspected *shabu*. PO1 Mojados and PO1 Villaflores then placed accused-appellant under arrest.<sup>8</sup>

Soon thereafter, PO2 Bonny Abella (PO2 Abella), the assigned investigator, marked and conducted inventory of the seized items in the presence of *Barangay Captain Cresenciano Ferolino, Barangay Kagawad Elmer Bongala* and media representative Eller S. Narciso while PO1 Villaflores took pictures. They proceeded to the police station for documentation and the seized items were brought to the crime laboratory after. Upon examination by Forensic Chemist Police Senior Inspector Wilfredo Idian Abustan (PSI Abustan), the seized item was found to contain *shabu*.<sup>9</sup>

### **Version of the Defense**

Accused-appellant denied the charge against her. She maintained that on 30 June 2012, a certain Reneboy Deladia (Deladia)

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

<sup>7</sup> *Rollo*, p. 03.

<sup>8</sup> *Id.* at 03-04.

<sup>9</sup> *Id.* at 04-05.



called to invite her to have a drink at *Brgy. Kinamaligan*, which she accepted. They met at the Redrocks Hotel and went inside one of the hotel rooms. Deladia introduced her to his girlfriend, Mary Ann, and they had a drinking spree. Thereafter, Mary Ann stood up to get a peeling knife for the mangoes she brought. Deladia then asked her to pick up the plastic bag with mangoes. As she was about to get the plastic bag, a man, who turned out to be a police officer, came out from under the bed and handcuffed her. Allegedly, upon opening the plastic bag with mangoes, police officers found a plastic sachet with white crystalline substance and a digital weighing scale inside. The police officers searched the room, found cash under the bed, and made an inventory of the items they found.<sup>10</sup>

### Ruling of the RTC

On 02 February 2016, the RTC rendered its Decision, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the Court finds accused SUSAN LAMPAGO y SILVA OR SUSAN SILVA y ANTONIO @ "MANANG" **GUILTY** beyond reasonable doubt of violating paragraph 1 of Section 5, Article II, Republic Act 9165, the Court sentences her to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND (Php500,000.00) PESOS**.

The Jail Warden of the Bureau of Jail Management and Penology (BJMP) Masbate City is directed to transfer the custody of the accused to the National Penitentiary, Muntinlupa City.

SO ORDERED.<sup>11</sup>

The RTC ruled the prosecution had successfully proven all elements of illegal sale of *shabu*. Accused-appellant was positively identified by PO1 Mojados and PO1 Villaflores as the same person who sold the plastic sachet with *shabu* for Php5,000.00.<sup>12</sup> The RTC likewise gave credence to the testimonies of the prosecution witnesses over accused-appellant's uncorroborated self-serving denial.<sup>13</sup> Further, it held the evidentiary value of the seized item was preserved as the prosecution was able to establish an unbroken chain of custody over the same.<sup>14</sup>

Aggrieved, accused-appellant appealed to the CA.

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<sup>10</sup> *Id.* at 05-06.

<sup>11</sup> *CA rollo*, p. 27.

<sup>12</sup> *Id.* at 23.

<sup>13</sup> *Id.* at 26.

<sup>14</sup> *Id.*

### **Ruling of the CA**

In its Decision dated 31 March 2017, the CA affirmed accused-appellant's conviction, thus:

**WHEREFORE**, in view of the foregoing, the instant appeal is hereby **DISMISSED**. The assailed Decision dated 2 February 2016, finding accused-appellant SUSAN LAMPAGO y SILVA or SUSAN SILVA y ANTONINO @ "MANANG" GUILTY beyond reasonable doubt of violating Sec. 5, Article II, Republic Act 9165 of the Revised Penal Code, is **AFFIRMED**.

**SO ORDERED.**<sup>15</sup>

The CA agreed with the RTC that the prosecution was able to substantiate all elements of the illegal sale of *shabu*.<sup>16</sup> It also held the chain of custody over the seized drug was properly established and there was no doubt that the seized items from accused-appellant were also the items marked by the arresting officers, turned over to the police investigator, sent to the crime laboratory, tested positive for *shabu*, and presented in court.<sup>17</sup> It accorded the police officers the presumption of regularity in the performance of their duties.<sup>18</sup>

Hence, accused-appellant interposes this appeal.

### **Issue**

The sole issue in this case is whether or not the CA correctly affirmed accused-appellant's conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165.

### **Ruling of the Court**

The appeal is granted.

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. The delivery of the illicit drug to the poseur-buyer, and the receipt by the seller of the marked money successfully consummate the buy-bust

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<sup>15</sup> *Rollo*, pp. 15-16.

<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.* at 13.

<sup>18</sup> *Id.* at 12.

transaction.<sup>19</sup> What is essential is the proof that the transaction took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.<sup>20</sup>

To preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence, Section 21 of RA 9165, the applicable law at the time of the commission of the alleged offense,<sup>21</sup> outlines the procedure that the police officers must strictly follow, thus: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.<sup>22</sup>

In the same vein, the prosecution must establish the chain of custody of the dangerous drugs to ensure its integrity, *i.e.*, first, the seizure and marking 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 by the forensic chemist to the court.<sup>23</sup> Any break or disruption in the links would cast doubt on the identity and integrity of the seized item. Hence, it is essential for the prosecution to establish with moral certainty the drug presented in court is the very same drug sold by the accused.<sup>24</sup>

In the present case, the Court finds the police officers committed unjustified breaches of procedure in the seizure, custody and handling of the seized drug.

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<sup>19</sup> *People v. Cables*, G.R. No. 220758, 07 June 2017, 810 Phil. 969-978 (2017); 827 SCRA 89, 95 [Per. J. Tijam].

<sup>20</sup> *See People v. Amaro*, G.R. No. 207517, 01 June 2016, 792 SCRA 1, 10 [Per CJ. Peralta].

<sup>21</sup> The Information alleged that accused-appellant committed the offense on 30 June 2012, thus, the earlier version of Sec 21 of RA 9165 and its Implementing Rules and Regulations shall apply, *i.e.*, prior to its amendment by RA 10640, (An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of RA 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002" which was approved on 15 July 2014 and became effective on 07 August 2014 or 15 days after its publication on 23 July 2014.

<sup>22</sup> *People v. Espejo*, G.R. No. 240914, 13 March 2019 [Per J. Caguioa].

<sup>23</sup> *People v. Dahil*, G.R. No. 212196, 12 January 2015, 750 Phil. 212-239 (2015); 745 SCRA 221, 240 [Per J. Mendoza].

<sup>24</sup> *People v. De Dios*, G.R. No. 243664, 22 January 2020 [Per J. Perlas-Bernabe].

*The marking, inventory and taking of photographs of the seized items were not witnessed by a representative from the DOJ*

PO2 Abella marked the seized items and conducted inventory at the place of arrest, in the presence of accused-appellant, the *barangay* officials and media representative, while PO1 Villaflares took pictures. Notably, the absence of the representative from the DOJ during the following undertaking was left unacknowledged, much less justified. There is likewise no showing the police officers exerted earnest efforts to secure the presence of the said witness, despite the fact that the buy bust operation was planned.

The Court, in *People v. Macud*,<sup>25</sup> stressed the importance of the presence of said witnesses:

The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained. X x x

*There was no testimony as to how the seized item was preserved from the time it was received by the receiving personnel at the crime laboratory until it was presented in court*

According to PO1 Villaflares, the seized item he brought to the crime laboratory was received by PO2 Richard Daria (PO2 Daria).<sup>26</sup> There was, however, no testimony from PO2 Daria as to how he handled the seized item upon his receipt of the same until it was turned-over to the forensic chemist. This contravenes the mandate that there must be testimonial proof for every link in the chain, with

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<sup>25</sup> G.R. No. 219175, 14 December 2017, 849 SCRA 294, 323 [Per J. Del Castillo].

<sup>26</sup> CA *rollo*, p. 18.

each describing the condition of the seized item when it was delivered and the precautions taken to ensure its integrity.<sup>27</sup>

Likewise, PSI Pabustan did not testify as to his part in handling the seized item after he received and examined it, until it was presented in court. In *People v Ubungen*,<sup>28</sup> it was held that in the absence of the testimony regarding the management, storage, and preservation of the illegal drugs seized after its qualitative examination, the fourth link in the chain of custody could not be reasonably established.<sup>29</sup>

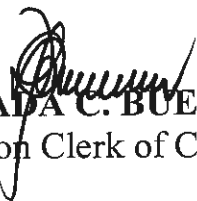
Clearly, the foregoing deviations by the police officers in the seizure, handling, and custody of the seized drug greatly diminished its evidentiary value and casts doubt as to its identity and integrity. Thus, the prosecution failed to prove the *corpus delicti* of the offense beyond reasonable doubt. The Court is, therefore, duty-bound to acquit accused-appellant.

**WHEREFORE**, the appeal is hereby **GRANTED**. The Decision dated 31 March 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08239 is **REVERSED** and **SET ASIDE**. Accordingly, **SUSAN LAMPAGO y SILVA** is **ACQUITTED** on the ground of reasonable doubt. She is ordered to be immediately **RELEASED** from detention unless she is being held for some other lawful cause.

Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institute for Women for immediate implementation. The Superintendent is **DIRECTED** to **REPORT** to this Court the action taken hereon within five (5) days from receipt.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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<sup>27</sup> *People v. Havana*, G.R. No. 198450, 11 January 2016, 776 Phil. 462-476 (2016); 778 SCRA 524 [Per J. Del Castillo].

<sup>28</sup> G.R. No. 225497, 23 July 2018, 873 SCRA 172 [Per J. Martinez].

<sup>29</sup> *Id.*

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Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 08239)

The Hon. Presiding Judge  
Regional Trial Court, Branch 45  
5400 Masbate City  
(Crim. Case No. 15442)

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