



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 188571

Present:

- versus -

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

MARICAR BRAINER y
MANGULABNAN,
Accused-Appellant.

Promulgated:

10 OCT 2012

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DECISION

LEONARDO-DE CASTRO, J.:

On appeal is the Decision¹ dated July 23, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02463, which affirmed the Decision² dated July 3, 2006 of the Regional Trial Court (RTC), Branch 2, Manila in Criminal Case No. 04-227764, finding accused-appellant Maricar M. Brainer *aka* “Cacay” (Brainer) guilty of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002.”

¹ Rollo, pp. 2-11; penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Amelita G. Tolentino and Japar B. Dimaampao, concurring.

² CA rollo, pp. 78-88; penned by Presiding Judge Alejandro G. Bijasa.

In an Information³ dated June 28, 2004, Brainer was charged as follows:

That on or about June 23, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully, and knowingly sell One (1) heat-sealed transparent plastic sachet with markings “MMB” containing ONE POINT ZERO THREE THREE (1.033) grams, of white crystalline substance, containing methamphetamine hydrochloride known as “shabu” which is a dangerous drug.

When arraigned on October 11, 2004, Brainer pleaded not guilty to the crime charged.⁴

The prosecution presented the following version of events based on the testimonies of Police Officer (PO) 2 Leandro Gatdula (Gatdula) and Police Inspector and Forensic Chemical Officer Elisa G. Reyes (Reyes):

At around 6:00 p.m. on June 22, 2004, a confidential informant (CI) apprised PO2 Gatdula of the Western Police District, Sampaloc Police Station 4 (PS4), that a certain Cacay was looking for a *shabu* buyer. PO2 Gatdula relayed the information to Police Inspector Alfredo David (David), Chief of the Station Anti-Illegal Drug-Special Operation Task Unit (SAID-SOTU), who immediately organized a buy-bust team composed of himself, PO3 Renaldo Robles (Robles), PO3 Ronaldo Intia (Intia), PO3 Jonathan Dy, PO1 Arnel Pornillosa (Pornillosa), and PO2 Gatdula as the poseur-buyer. A coordination report was faxed to the Philippine Drug Enforcement Agency stating that the entrapment would be conducted on June 22-23, 2004.⁵

³ Records, p. 1.

⁴ Id. at 20.

⁵ TSN, January 19, 2005, pp. 5-9.

Police Inspector David then gave PO2 Gatdula one ₱1,000.00 bill as buy-bust money. PO2 Gatdula marked the said ₱1,000.00 bill with his initials “GAT” and “SAID-SOTU.” Police Inspector David also signed the ₱1,000.00 bill. Before the buy-bust operation, PO2 Gatdula had the marked ₱1,000.00 bill photocopied.⁶

The CI, who was in personal contact with Cacay, arranged for the transaction to take place the following day, on June 23, 2004, at the Holy Trinity Church in Calabash Road, Sampaloc, Manila.⁷

On June 23, 2004, at around 5:30 p.m., the buy-bust team, accompanied by the CI, arrived at the Holy Trinity Church compound. Only the CI and PO2 Gatdula went inside the gate of the Church, while the other team members stayed in close proximity. Brainer arrived a few minutes later and approached the CI. Brainer and the CI talked for a while. Thereafter, the CI introduced PO2 Gatdula to Brainer as the person in need of and willing to pay ₱1,000.00 for *shabu*. Since Brainer said that she already had the *shabu* with her, PO2 Gatdula handed the marked money to Brainer. After receiving the marked money, Brainer took a green Safeguard soap box from the right front pocket of her pants and informed PO2 Gatdula that the *shabu* was inside the box. PO2 Gatdula opened the soap box and saw inside one small transparent plastic sachet containing white crystalline substance, suspected to be *shabu*. PO2 Gatdula touched his nose, the pre-arranged signal to indicate that the transaction was completed. Two members of the buy-bust team came forward and immediately arrested Brainer. PO2 Gatdula marked the green Safeguard soap box with “MMB-1.” Meanwhile, PO1 Pornillosa seized the marked money from Brainer’s

⁶ Id. at 10-15.

⁷ Id. at 16.

left pocket. Brainer was subsequently brought to PS4.⁸ At the police station, PO2 Gatdula marked the small transparent plastic sachet containing white crystalline substance with “MMB.”⁹

The transparent plastic sachet with “MMB” marking, containing 1.033 grams of white crystalline substance, was sent to the Crime Laboratory of the Philippine National Police (PNP) for testing. Police Inspector and Forensic Chemical Officer Reyes conducted the physical examination of the specimen and stated in her Chemistry Report No. D-1158-04¹⁰ that the said specimen positively tested for *methamphetamine hydrochloride*, a dangerous drug.

Thus, Brainer was charged with violation of Section 5, Article II of Republic Act No. 9165.

Brainer testified in her own defense. According to Brainer, the buy-bust operation did not take place and the *shabu* allegedly confiscated during the said operation was not hers.

Brainer testified that on June 21, 2004, at around 3:00 p.m., she agreed to accompany her friend Patty to the Holy Trinity Church. Patty and her husband had a quarrel earlier and Patty asked Brainer to help talk to her husband at the Church. Brainer was about to leave the Church premises after talking to Patty’s husband when somebody held her and told her not to run. Brainer did not know the person who grabbed her, but she was able to recognize some of the latter’s companions as PO3 Intia (who was Brainer’s neighbor) and PO2 Gatdula (who was introduced to her before).¹¹

⁸ Id. at 16-22.

⁹ Records, p. 2.

¹⁰ Id. at 9.

¹¹ TSN, August 11, 2005, pp. 5-15.

Brainer was ordered to board a tricycle with Patty and was told, “*Cacay, pera-pera lang ito sakay na.*”¹² Brainer was taken to PS4 where she was put in a small room. There, Brainer’s wallet, bracelet, watch, and shoes were taken. Brainer asked what crime did she commit and the police officers answered that she was arrested for “drugs.” When Brainer asked to see the evidence against her, PO3 Robles ordered the one called Sanchez to produce *shabu* and thereafter told Brainer, “*Ito na, Section 5 ka.*” The arresting police officers then demanded that Brainer pay them ₱300,000.00, otherwise, the police officers threatened to file a case for violation of Section 5, Article II, of Republic Act No. 9165 against Brainer.¹³

When Brainer’s siblings went to PS4 with ₱30,000.00, PO3 Intia said “*Kainin ni(n)yo iyan kung hindi ihulog ko kayo sa hagdanan.*” The arresting police officers insisted that the ₱30,000.00 was not enough as the amount would be divided among many people. Since Brainer was unable to come up with the ₱300,000.00, she was brought to the City Jail and later criminally charged.¹⁴

The defense also called on several other people to testify for the defense, namely, Reynaldo Morquia (Morquia), Brainer’s brother; Roque Nerecina (Nerecina), *Barangay* Chairman of Barangay 583 where Brainer was residing; and Evelyn Talan (Talan), a *barangay kagawad* and Brainer’s friend.

Morquia corroborated Brainer’s testimony regarding the arresting police officers’ demand for ₱300,000.00 in exchange for Brainer’s freedom. Morquia testified that the day following Brainer’s arrest, a police officer

¹² Id. at 12.

¹³ Id. at 19-26.

¹⁴ Id. at 38-43.

went to his house, demanding ₱50,000.00 just to lower the charge against Brainer from selling to mere possession of dangerous drugs. In the evening of June 25, 2004, Morquia and his other sister went to PS4 with ₱30,000.00, but the arresting police officers refused to accept the money. Thus, Morquia told Brainer, “*ilaban na lang natin.*”¹⁵

Nerecina declared that he knew Brainer since childhood as they were neighbors; and there had never been a report in the *barangay* that Brainer used or pushed illegal drugs.¹⁶

Talan claimed that she was the one who introduced Brainer to PO2 Gatdula when Brainer’s friend was in trouble. Upon learning of Brainer’s arrest sometime in 2005, Talan immediately went to PS4 to confront PO2 Gatdula. PO2 Gatdula denied that he was Brainer’s arresting officer, pointing instead to PO3 Robles. Talan asked, “*Bakit naman po ganoon, sir, hindi naman pala kayo ang arresting?*” PO2 Gatdula replied that Brainer’s case was turned over to him since PO3 Robles already had a lot of assigned cases. Talan also vouched that Brainer never engaged in drugs. Brainer had lived with Talan for a long time and drugs were forbidden at Talan’s house.¹⁷

The prosecution recalled PO2 Gatdula as rebuttal witness. PO2 Gatdula admitted that he knew Talan but denied that Talan had previously introduced Brainer to him. PO2 Gatdula maintained that he was the poseur-buyer during the buy-bust operation against Brainer. PO2 Gatdula also could not remember whether or not Talan went to PS4 after Brainer’s arrest.¹⁸

¹⁵ TSN, August 25, 2005, pp. 4-10.

¹⁶ TSN, November 16, 2005, pp. 5-8.

¹⁷ TSN, March 1, 2006, pp. 11-17.

¹⁸ TSN, March 29, 2006, pp. 3-4.

On sur-rebuttal, the defense called Edison S. Gullera (Gullera) and Brainer to the witness stand.

Gullera gave a very detailed account of the events he had witnessed. His entire testimony was summarized as follows:

[T]hat on June 21, 2004 at about 3:00 o'clock in the afternoon he was seating in front of the Holy Trinity Church located at Sampaloc, Manila; that he was at the Plaza waiting for his friend, Lara and then he saw an orange tricycle stopped; that two (2) female[s] alighted one was small and thin and the other a "meztiza" with short hair; that the duo entered the gate of Holy Trinity Parish and stayed near the guard's house on the left side; that he saw them talking and then a thin, tall man arrived who talked to the "tomboy"; that afterwards the man put his arm on the tomboy's shoulders and then the man and the woman embraced each other; that he saw the trio going outside and when they were about to step off the gutter he saw two (2) male[s] and one (1) female alighted from a blue-black vehicle which was parked on the left side of the church; that at the time he saw the trio going outside he had just crossed the street and was lighting a cigarette; that the man who was on the driver seat went at [Brainer]'s back and held her collar while the other two (2) went in front of her; that the two companion of [Brainer] stepped back and then the man ran towards Santisima Trinidad St., while the woman remained; that he heard the man behind [Brainer] uttered "pera, pera"; that he heard [Brainer] uttered "Tulungan nyo po ako," and he did nothing because he was about to leave; that then he saw the male companion already apprehended and he was boarded to a long van; that [Brainer] and the woman was boarded to blue black van; that from his position at time of the arrest of the accused which was on the right side of the plaza the accused was arrested on the left side of the gate of the Holy Trinity Parish Church; that thereafter the blue-black van followed by the long van sped away; that aside from the male and female accused did not talk to anyone else.

On cross he stated that one week after the incident the tricycle drivers stationed at Holy Trinity Church told him that somebody was looking for him and they were teasing him that he was involved in the incident. The tricycle drivers knew him because he is well known at Calabash Road. He knew the details of the incident because two days before June 21, 2004 he was paying volleyball with his friend Lara and they played volleyball on a Saturday.

On re-direct witness stated that on April 25 or 26 which was a Tuesday he was seating near a computer shop located at Santisima Trinidad St. when two (2) women approached and asked him if he was Edison; that he replied why are they looking for "Edison" and who were they; that the women answered that they will ask help from him and if he saw the incident that happened on Holy Trinity Parish; that he asked them

what about the incident and the women explained, regarding the apprehension of two (2) female and one (1) male; that they asked him to testify in court and just tell what he saw; that on June 21, 2004 it was the first time he saw accused and after talking to the two relatives of [Brainer] he went to the City Jail to talk to her and that was on April 27 or 28, a Friday; that he asked accused whether she remembers him and accused answered "I was the one who shouted for help during that time and I saw you there"; that it is only now he come to testify because the relatives asked and he pity the accused; that he did not come voluntarily because he was afraid since the tricycle boys kept on teasing him that he was involved.¹⁹

In her rebuttal testimony, Brainer reiterated that she knew PO2 Gatdula as they were introduced before by Talan and that she often visited PS4. Brainer avowed this time that PO2 Gatdula was not around during her arrest and it was one Sanchez who held her at the back. Brainer was certain that she was set up by Patty. Patty knew that Brainer had money because the latter's girlfriend was working in Japan. Patty had even told Brainer, "*Asenso ka na.*"²⁰

The RTC promulgated its Decision on July 3, 2006. The trial court gave full faith and credit to PO2 Gatdula's straight, clear, and convincing testimony, and found that an entrapment actually took place on June 23, 2004 at the Holy Trinity Church, Sampaloc, Manila. The dispositive portion of said RTC Decision reads:

WHEREFORE, from the foregoing finding the accused, Maricar Brainer y Mangulabnan @ Cacay GUILTY beyond reasonable doubt of the crime charged, is hereby sentenced to life imprisonment and to pay a fine of ₱500,000 without subsidiary imprisonment in case of insolvency and to pay costs.

The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.²¹

¹⁹ CA rollo, pp. 83-84.

²⁰ TSN, June 21, 2006, pp. 2-4.

²¹ CA rollo, p. 88.

On July 7, 2006, Brainer was committed at the Correctional Institution for Women in Mandaluyong City.²²

In the meantime, Brainer appealed to the Court of Appeals. In a Decision dated July 23, 2008, the appellate court denied Brainer's appeal, ruling that PO2 Gatdula's testimony was credible. Brainer failed to show any motive why PO2 Gatdula would falsely impute a serious crime against her. Without such proof, the presumption that official duty was performed regularly prevails. The Court of Appeals decreed thus:

WHEREFORE, the appeal is dismissed and the Decision on appeal is affirmed *in toto*.²³

In her Brief²⁴ filed before the Court of Appeals, Brainer made the following assignment of errors:

I

THE HONORABLE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY AS CHARGED ON THE BASIS OF THE UNCORROBORATED TESTIMONY OF PO2 GATDULA WHICH IT GAVE FULL FAITH AND CREDIT GIVEN THE ASSUMPTION THAT HE HAD PERFORMED HIS DUTIES REGULARLY.

II

CONTRARY TO THE FINDINGS OF THE HONORABLE TRIAL COURT, THE TESTIMONY OF PO2 GATDULA WAS NOT GIVEN IN A STRAIGHT, CLEAR AND CONVINCING MANNER, AS IN FACT HE GAVE HIS TESTIMONY INDECISIVELY AS BORNE BY THE TRANSCRIPT OF STENOGRAPHIC NOTES.

²² Records, p. 108.

²³ *Rollo*, p. 10.

²⁴ CA *rollo*, pp. 42-77.

III

THE HONORABLE TRIAL COURT, WITH DUE RESPECT, OVERLOOKED, MISUNDERSTOOD, MISAPPLIED SOME FACTS/CIRCUMSTANCES OF WEIGHT AND SUBSTANCE WHICH WOULD HAVE OTHERWISE WORKED IN THE ACQUITTAL OF THE ACCUSED.

IV

THE HONORABLE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE PERCEIVED FLAWS IN THE EVIDENCE OF THE DEFENSE.²⁵

Brainer filed a Supplemental Brief before this Court with a lone assignment of error, to wit:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED WAS PROVEN BEYOND REASONABLE DOUBT.²⁶

There is no merit in the appeal.

Brainer is urging this Court to give credence and probative value to her testimony that no entrapment occurred on June 23, 2004 which resulted in her arrest; and that she could not have sold *shabu* to PO2 Gatdula because she knew the police officer personally. Essentially, Brainer is attacking PO2 Gatdula's credibility, asserting that the police officer was ill motivated to extract money from her.

Time and again, this Court has ruled that the evaluation by the trial court of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. The reason for this rule is that the trial court is in a better position to decide

²⁵ Id. at 52.
²⁶ *Rollo*, p. 40.

thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial.²⁷ In this case, the Court finds no reason to deviate from the foregoing rule.

For the successful prosecution of illegal sale of dangerous drugs, the following elements must be established: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. In other words, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.²⁸

A review of the records of this case reveals that the prosecution was able to prove all the essential elements of illegal sale of *shabu*. PO2 Gatdula, the poseur-buyer, was able to positively identify Brainer as the person who sold to him the plastic sachet containing white crystalline substance, later determined to be *shabu*, for the sum of ₱1,000.00, during a legitimate buy-bust operation. As the RTC expressly observed, Gatdula's narration of the circumstances leading to the consummation of the sale of illegal drugs and the arrest of Brainer was given in a clear, positive, and straightforward manner. Pertinent parts of PO2 Gatdula's testimony are reproduced below:

²⁷ *People v. Domingcil*, 464 Phil. 342, 350-351 (2004).

²⁸ *People v. Arriola*, G.R. No. 187736, February 8, 2012.

Asst. City Prosecutor Yap

Q So did the operation proceed?

A Yes, Sir.

Q Then what transpired?

A During that time, the confidential informant having a close contact to alias Cacay and the place was set at Holy Trinity Church, Calabash Road, Sir.

Q Then what time was that?

A Based on the information given by the confidential informant the time was on 6:00 p.m. of June 23, Sir.

Q So what did the team do in connection with the operation?

A After the confidential informant relayed the information to us on or about 5:30 p.m. of June 23, we were dispatched by our Chief, Sir.

Q Did you arrive at the target area?

A Yes, Sir.

Q So what did you do in particular as poseur buyer?

A We proceeded inside the gate of [the] Holy Trinity Church together with the confidential informant, Sir.

Q Where were your other members of the operation?

A They positioned themselves closer to me together with the confidential informant, Sir.

Q So what happened next?

A After we arrived, Sir, we waited for a moment then alias Cacay arrived and approached the confidential informant, Sir.

Q So when this alias Cacay approached the confidential informant, what happened?

A The confidential informant and Cacay talked to each other, Sir.

Q How long?

A A few minutes, Sir. Then after that the confidential informant called me and introduced me to the suspect, Sir.

Q How were you introduced by the confidential informant to alias Cacay?

A Then he introduced me that I was the one who will buy shabu from her in the amount of ₱1,000.00, Sir.

Q So what was the response of this alias Cacay?

A And then she told me that she already brought the item, Sir.

Q So what transpired next?

A After that, sir, I gave to her the one thousand peso-bill (₱1,000.00) marked money, sir.

Q Now, what did Cacay do when you gave that to her?

A After I handed to her the one thousand peso-bill marked money, she took from her right front pocket of the maong denim pants that she was wearing a color green safeguard soap pack and told me that the said shabu is inside of this pack, and when I opened this pack I saw a one small transparent plastic sachet or shabu and when I confirmed that it is a shabu, I touched my nose as a signal to my co-operatives and they approached and arrest the suspect, Sir.

x x x x

Q Who made that marking?

A I was the one, Sir.²⁹

Clear from the foregoing is that a legitimate buy-bust operation took place on June 23, 2004 at the Holy Trinity Church that ended in Brainer's arrest.

Chemistry Report No. D-1158-04 prepared by Police Inspector and Forensic Chemical Officer Reyes confirmed that the crystalline substance in the confiscated plastic sachet, weighing 1.033 grams, tested positively for *methamphetamine hydrochloride* or *shabu*.

In contrast, the RTC and the Court of Appeals were correct in not giving much weight and credence to the testimonies of the defense witnesses, these being inconsistent and illogical for the most part. The Court quotes hereunder the astute and extensive examination by the RTC of the testimonial evidence of the defense:

1. The testimony of witness Edison S. Gullera appears to be rehearsed. He was too quick in answering questions and it was uncanny that he knew and saw everything. He knew too much and there seems to be no reason why he should be too engrossed with the activity of [Brainer] at the time. In fact he did not do anything when she allegedly shouted for help. He turned his back. He left without waiting for his date, Lara. He tried to dovetail all the allegation of [Brainer] even to the extent of hearing the word "Pera Pera", considering that he was allegedly observing from a

²⁹ TSN, January 19, 2005, pp. 15-19.

distance. If indeed he took pity on [Brainer] he should have at least exerted efforts to help her either by reporting the incident to the local “barangay” or asking the person there if someone knows her and ultimately looking for her relatives. Likewise, there was no documentary proof whatsoever that after talking to the two (2) women he came to visit accused at the Manila City [Jail].

His testimony was replete with details which could be believed if his testimony was given at most a week after the incident, not two (2) years ago unless of course he was guided by something. The transcript of accused testimony perhaps? Thus witness appears to be intelligent and no visible means of livelihood, he is jobless.

2. Aside from the bare testimony of Mrs. Talan there is no documentary evidence to show that PO2 Gatdula is assigned in the office of PS-4 as an investigator only and not as an operative in the field. At the bottom portion of the Booking Sheet and Arrest Report of accused it is clearly indicated that he was the Arresting Officer.

3. It was only an afterthought that accused denied the participation of PO2 Gatdula as a poseur-buyer since from her initial testimony she saw Gatdula as one of the companions of the person who held her back. She initially identified Intia and Gatdula as the persons who accompanied the one who held her.

Testimony of accused, page 13 &14.

Q And you said that you were able to recognize one of the companions of this person who accosted you, would you tell us what is the name of that person, Miss Witness?

The Witness

A Roland Intia, sir.

x x x x

Q Now, who else among the companion of Sanchez that you recognized?

A Kilala ko rin po si Gatdula, sir.

She is even quick in pointing PO Intia as having an axe to grind because of a certain Cheng, her former girlfriend (accused is a lesbian). This was never corroborated. Accused has no visible means of livelihood and that she is blaming the whole world for her predicament. Accused also pictured Patty to be almost feeding from her hands yet she suspected Patty of putting her down. The big question is what will Patty gain by that?

4. The innocence of accused was put in issue when her alleged brother, Reynaldo Morquia haggled with the police from the demand of a big amount to a low of ₱30,000.00.

Demand for money by the police in exchange for freedom is now a standard defense of accused.

5. And if indeed Gatdula knew her he would voluntarily shy away from the operation much more being delegated as the poseur-buyer. Some consider policemen as dumb but not as dumb to compromise an entrapment. Nevertheless, in *People v. Amable Flores*, G.R. No. 80914, April 6, 1995, the Supreme Court held; “knowledge by the accused-appellant that poseur-buyer is a policeman is not a ground to support the theory that he could not have sold narcotics to the latter. Drugs are sold to police officers nowadays,” some users, if not pushers, in fact.³⁰

The defense utterly failed to prove any ill motive on PO2 Gatdula’s part which would have spurred the police officer to falsely impute a serious crime against Brainer. Where there is nothing to indicate that the witnesses for the prosecution were moved by improper motives, the presumption is that they were not so moved, and that their testimony is entitled to full faith and credit.³¹

Neither was Brainer able to present clear and convincing evidence of frame-up and extortion to overturn the presumption that PO2 Gatdula regularly performed his duty. In *People v. Uy*,³² the Court enunciated the following position:

We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilian[s]. However, like alibi, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can be easily concocted [and] hence commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts, [rely] solely on the basis of the policemen’s alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. x x x. (Citations omitted.)

³⁰ CA rollo, pp. 85-87.

³¹ *People v. Pacis*, 434 Phil. 148, 159 (2002).

³² 392 Phil. 773, 788 (2000).

The Court further pronounced in *People v. Capalad*³³ that:

Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. (Citations omitted.)

Besides, the Court notes that even when Brainer alleges herein that PO2 Gatdula and the rest of the buy-bust team tried to extort money from her, Brainer did not pursue any administrative case against said police officers.

In a further attempt to exculpate herself of the criminal charge against her, Brainer alleges that the buy-bust team did not strictly comply with Section 21, Article II of Republic Act No. 9165.

Non-compliance by the buy-bust team with Section 21, Article II of Republic Act No. 9165 was raised for the first time by Brainer in her appeal before this Court. Settled rule is that no question will be entertained on appeal unless it had been raised in the court below. Points of law, theories, issues, and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal.³⁴

³³ G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727.
³⁴ *Santos v. People*, 520 Phil. 58, 69 (2006).

At any rate, there is little merit in Brainer's arguments on this matter that would warrant a reversal of the judgment of conviction rendered against her by the RTC and affirmed by the Court of Appeals.

In every prosecution for the illegal sale of prohibited drugs, the presentation of the drug, *i.e.*, the *corpus delicti*, as evidence in court is material. In fact, the existence of the dangerous drug is crucial to a judgment of conviction. It is, therefore, indispensable that the identity of the prohibited drug be established beyond doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.³⁵

Section 21, Article II of Republic Act No. 9165 lays down the procedure for the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, among other things. Paragraph 1 thereof reads:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Brainer contends that the item allegedly seized and confiscated from her was not immediately marked after her arrest. Per PO2 Gatdula's testimony, he only marked the green Safeguard soap box, purportedly containing a small transparent plastic sachet, at the crime scene; and he

³⁵

People v. Guiara, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 328-333.

marked the small transparent plastic sachet at the police station. Brainer added that there was no physical inventory and photograph of the item supposedly seized and confiscated from her.

The Court calls Brainer's attention to Section 21(a) of the Implementing Rules and Regulations which expounds on how Section 21, Article II of Republic Act No. 9165 is to be applied and, notably, also provides for a saving mechanism in case the procedure laid down in the law was not strictly complied with, to wit:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the 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.** (Emphasis ours.)

This Court has already ruled in several cases that the failure of the arresting officer to comply strictly with Section 21 of Republic Act No. 9165 is not fatal. It will not render the arrest of the accused illegal or the items seized or confiscated from him inadmissible. What is of utmost important is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.³⁶

³⁶ *People v. Abedin*, G.R. No. 179936, April 11, 2012.

Next, Brainer tries to raise doubts on the chain of custody of the item seized and confiscated from her. Brainer argues that since no one testified as to how the alleged seized and confiscated transparent plastic sachet, containing *shabu*, reached the PNP Crime Laboratory, then there is reasonable suspicion whether the item physically examined by the Forensic Chemical Officer was the very same one seized and confiscated by the buy-bust team from her.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, series of 2002, which implements Republic Act No. 9165, defines “chain of custody” as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In this case, the prosecution adequately established that there was an unbroken chain of custody over the *shabu* seized from Brainer: *First*, during the buy-bust operation, Brainer handed over a green Safeguard soap box, inside of which was a small transparent plastic sachet containing white crystalline substance, to PO2 Gatdula upon the latter’s payment of ₱1,000.00. *Second*, after Brainer’s arrest, PO2 Gatdula marked the green Safeguard soap box, with the small transparent plastic sachet containing the white crystalline substance still inside said soap box. The marked soap box was always in PO2 Gatdula’s custody. Upon reaching the police station, PO2 Gatdula removed the small transparent plastic sachet containing white crystalline substance from the marked soap box, and marked the sachet itself

with “MMB.” *Third*, Police Inspector David, as SAID-SOTU Chief, prepared the Request for Laboratory Examination, and said Request, together with the small transparent plastic sachet marked “MMB” containing white crystalline substance, was delivered by PO2 Mercado to the PNP Crime Laboratory, where it was received by Police Inspector and Forensic Chemical Officer Reyes. In her Chemistry Report No. D-1158-04, Police Inspector and Forensic Chemical Officer Reyes confirmed that the marked item seized from Brainer was positive for *methylamphetamine hydrochloride* or *shabu*. And *fourth*, the small transparent plastic sachet marked with “MMB” and the white crystalline substance it contains were presented and identified in open court by PO2 Gatdula. PO2 Gatdula confirmed that these were the very items confiscated from Brainer and the marking “MMB” on the small transparent plastic sachet was his own handwriting.

The Court acknowledged in *People v. Cortez*³⁷ that a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. The Court stresses that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. There is nothing herein that would have convinced the Court that the integrity and evidentiary value of the seized items could have been jeopardized.

All told, there is no reason for the Court to disturb the findings of the RTC, as affirmed *in toto* by the Court of Appeals. There is evidence beyond reasonable doubt that Brainer is guilty of the offense of illegal sale of dangerous drug, as defined and penalized under Section 5, Article II of Republic Act No. 9165, which reads:

³⁷

G.R. No. 183819, July 23, 2009, 593 SCRA 743, 763-765.

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any such transactions.


Hence, the RTC, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 upon Brainer.


WHEREFORE, the instant appeal is **DENIED**. The Decision dated July 23, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02463 is **AFFIRMED** *in toto*.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
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.



MARIA LOURDES P. A. SERENO
Chief Justice