



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 191071

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
MENDOZA, [^] and
REYES, JJ.

- versus -

ROGELIA JARDINEL PEPINO-
CONSULTA,
Accused-Appellant.

Promulgated:

AUG 28 2013

X-----X

DECISION

LEONARDO-DE CASTRO, J.:

The appeal before this Court seeks to challenge the Decision¹ dated November 19, 2009 of the Court of Appeals in CA-G.R. CR.-HLC. No. 02867. The appellate court affirmed the Decision² dated May 8, 2007 of the Regional Trial Court (RTC) of the City of San Fernando, Pampanga in Criminal Case No. 14206, which found accused-appellant Rogelia Jardinel Pepino-Consulta guilty of the crime of illegal sale of methylamphetamine hydrochloride, more popularly known as *shabu*, under Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

¹ Per Special Order No. 1502 dated August 8, 2013.

² *Rollo*, pp. 2-17; penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Normandie B. Pizarro and Francisco P. Acosta, concurring.

³ Records, pp. 290-309; penned by Judge Divina Luz P. Aquino-Simbulan.

In an Information³ dated February 8, 2005, accused-appellant allegedly violated the first paragraph of Section 5, Article II⁴ of Republic Act No. 9165 in the following manner:

That on or about the 7th day of February, 2005 in the City of San Fernando, Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a recidivist who was convicted of the crimes of violation of Sec. 15 and 16, Art. III of R.A. 6425 on March 8, 2002, Rogelia Pepino-Consulta, without having been lawfully authorized, did then and there wilfully, unlawfully and feloniously sell, distribute, deliver and transport five (5) heat sealed transparent plastic sachets containing Methylamphetamine [Hydrochloride] weighing SIX HUNDRED TEN THOUSANDTHS (0.0610) of a gram, FIVE HUNDRED FIFTY[-]SIX THOUSANDTHS (0.0556) of a gram, FIVE HUNDRED TWENTY THOUSANDTHS (0.0520) of a gram, SIX HUNDRED THIRTY[-]EIGHT THOUSANDTHS (0.0638) of a gram and SIX HUNDRED SEVENTY[-]SEVEN THOUSANDTHS (0.0677) of a gram[,] respectively, or a total weight of THREE THOUSAND AND ONE THOUSANDTHS (0.3001) of a gram, dangerous drugs.

When accused-appellant was arraigned on April 25, 2005, she pleaded not guilty to the offense charged.⁵

During the trial of the case, the prosecution presented the testimonies of: (1) Police Senior Inspector (P/Sr. Insp.) Aylin Casignia Perez; (2) Police Officer (PO) 2 Randy Dizon; and (3) PO3 Augusto Tiongco.

The relevant portions of their testimonies are as follows:

P/Sr. Insp. Aylin Casignia Perez testified that on February 7, 2005, she was assigned at the Regional Crime Laboratory Office 3, Camp Olivas, City of San Fernando as a Forensic Chemical Officer. On said date, she received a written request for laboratory examination from the Detective Bureau of the City of San Fernando pertaining to an alleged violation of Republic Act No. 9165. A certain Senior Police Officer (SPO) 1 Noel Doria brought the request and the drug specimens to the crime laboratory, which were received by PO2 Bagaoisan,⁶ the Duty Desk Officer. The latter then told her about the request and she received the same together with the specimens. She checked whether the letter-request and the specimens had the same markings and she registered them in their logbook. She thereafter proceeded with the qualitative examination of the specimens.⁷

³ Id. at 2.

⁴ 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 of such transactions.

⁵ Records, p. 25.

⁶ The first name of PO2 Bagaoisan was not specified in the records of the case.

⁷ TSN, June 20, 2005, pp. 4-8.

After conducting the necessary tests, P/Sr. Insp. Perez determined that the contents of the five sachets she examined were indeed dangerous drugs. Her findings were contained in Chemistry Report No. D-027-2005. Afterwards, she gave the report to the Record Custodian and submitted the drug specimens to the Evidence Custodian.⁸

On cross-examination, P/Sr. Insp. Perez told the trial court that she did not see the person who brought the specimens. She merely relied on the printed stamp receipt made by PO2 Bagaoisan. When the specimens were transmitted to their office, they were placed in a small plastic container approximately one and a half by two (1 ½ x 2) inches in size. As there were no markings on the small plastic container, she discarded the same and put the sachets in a brown envelope, which she then marked with her initials.⁹

The prosecution's version of the incident in question was derived from the testimonies of PO2 Randy Dizon and PO3 Augusto Tiongco.

PO2 Dizon testified that on February 7, 2005, he was assigned as an operative of the Drug Enforcement Unit, Intelligence Section of the City of San Fernando Police Station. On that date, his unit conducted a buy-bust operation along General Hizon Extension Avenue, Barangay Sta. Lucia, City of San Fernando. The target of the operation was a certain *Manang* who, according to PO2 Dizon, was the accused-appellant in this case. He already knew accused-appellant since 2004 in view of the information he got from fellow police officers that she had a previous drug case. From their office, he proceeded to the place where the buy-bust operation would take place along with PO3 Tiongco and a confidential informant. They rode his private vehicle and arrived at the scene at around 5:45 p.m. When they reached the place, the informant pointed to accused-appellant who was four meters away from them, standing in front of the Akim Restaurant. They passed by her. He gave instructions to the confidential informant to alight from the vehicle, approach accused-appellant, and conduct the buy-bust operation. They turned back and parked the vehicle on the other side of the road in front of the Akim Restaurant. They were about eight to ten meters away from where the accused-appellant was situated.¹⁰

While PO2 Dizon and PO3 Tiongco remained inside the car, they saw the informant talk to accused-appellant for about five to seven minutes. The informant then handed something to accused-appellant and the latter gave something in return. PO2 Dizon and PO3 Tiongco witnessed this as they were sitting inside the vehicle on the other side of the road, watching the informant and accused-appellant sideways. They saw the informant extend his left hand to give the buy-bust money to accused-appellant and the latter handed the object of the sale using her right hand. Thereafter, the informant gave the pre-arranged signal of placing the substance bought inside his

⁸ Id. at 14-16.

⁹ Id. at 24-26.

¹⁰ TSN, July 11, 2005, pp. 4-11.

pocket. PO2 Dizon and PO3 Tiongco then got out of the vehicle and approached accused-appellant.¹¹

PO2 Dizon and PO3 Tiongco introduced themselves as police officers and asked accused-appellant to empty the contents of her pocket. They were able to recover the buy-bust money, which was a five hundred peso (₱500.00) bill that was pre-marked earlier in the police station. The bill had a marking of RD placed after its serial number by PO2 Dizon. They did not recover any other object from accused-appellant and they did not conduct a body search on her anymore. PO2 Dizon stated that it was PO3 Tiongco who arrested accused-appellant, while he recovered the buy-bust money. After they boarded accused-appellant in the vehicle, PO3 Tiongco took the suspected drugs subject of the sale from the informant.¹²

PO2 Dizon said that the meeting of the informant and accused-appellant was a chance meeting. The informant came to their office at around 5:10 p.m. on February 7, 2005 and he informed PO2 Dizon and PO3 Tiongco that accused-appellant was at the Akim Restaurant selling *shabu*. They relayed this information to P/Sr. Insp. Ferdinand Germino, the Chief of their office. They were then tasked to conduct the buy-bust operation. The informant was to act as the poseur-buyer while PO2 Dizon and PO3 Tiongco were the back-up.¹³

PO2 Dizon stated that he was able to see the five pieces of transparent plastic sachets of *shabu* handed by the informant to PO3 Tiongco. After accused-appellant was arrested, they brought her to their office at the City of San Fernando Police Station. PO2 Dizon said that he placed the markings of RD1 to RD5 on the five sachets when they were already at their office. The buy-bust money and the five pieces of plastic sachets were then turned over to SPO1 Noel B. Doria. The five sachets of suspected drug specimens were submitted to the crime laboratory for examination. PO2 Dizon and PO3 Tiongco also executed a Joint Affidavit of Arrest regarding the buy-bust operation they conducted.¹⁴

On cross-examination, PO2 Dizon stated that the informant who participated in the buy-bust operation on February 7, 2005 came to their office for the first time on said date. Also, the police did not conduct any surveillance to confirm the informant's tip that a certain *Manang* was selling *shabu* on that date. The accused-appellant was, however, already included in their drug watch list. During the conduct of the buy-bust operation, he said that he saw the exchange of the buy-bust money and the *shabu*. Even if the windows of his vehicle were tinted, he can still see from the inside looking out. PO2 Dizon admitted that he did not really see the items exchanged by the informant and accused-appellant because the sachets were

¹¹ Id. at 12-15.

¹² Id. at 16-25.

¹³ Id. at 26-30.

¹⁴ Id. at 30-33.

small. They merely relied on the pre-arranged signal of the informant to indicate that the sale was consummated. Because the signal was made by the informant, they assumed that the illegal transaction indeed occurred. He also said that at the time of the buy-bust operation, they did not bring a media representative or an elected public official and they did not coordinate the operation with *barangay* officials. The police officers likewise did not take a photograph of the evidence immediately after the same were obtained because they had no available camera then.¹⁵

PO3 Augusto Tiongco's testimony corroborated that of PO2 Dizon's. He testified that on February 7, 2005, he was a newly assigned operative at the Drug Enforcement Unit of the City of San Fernando Police Station. On said date, he participated in a buy-bust operation in front of the Akim Restaurant in Barangay Sta. Lucia, City of San Fernando. The target of the operation was a certain *Manang*, whom he identified in court as the accused-appellant. From their office, they proceeded to the target place using PO2 Dizon's vehicle. When they arrived at the place, the informant pointed to accused-appellant who was standing in front of the Akim Restaurant. The informant alighted and the vehicle was parked across the road from the restaurant. The informant walked towards accused-appellant and he noticed that they made an exchange with their hands. The vehicle they were riding was about eight to ten meters away from the informant and accused-appellant. After the exchange was made, the informant gave the pre-arranged signal of putting the object of the sale in his pocket. PO3 Tiongco said that he and PO2 Dizon got out of the vehicle and proceeded towards accused-appellant. They introduced themselves as police officers. They told accused-appellant that they were arresting her for selling illegal drugs. She just looked at them while she was informed of her constitutional rights. The informant distanced himself a little from them. PO2 Dizon instructed accused-appellant to empty the contents of her pocket and it yielded the marked money that is a ₱500.00 bill. They then brought accused-appellant to their vehicle. Afterwards, PO3 Tiongco went back to the informant who was still in front of the Akim Restaurant to retrieve the five pieces of plastic sachets. He asked the informant to leave so that his identity would not be compromised.¹⁶

PO3 Tiongco stated that they brought accused-appellant to the City of San Fernando Police Station. The chief of their office talked to accused-appellant then she was turned over to the investigator. PO3 Tiongco and PO2 Dizon executed a Joint Affidavit of Arrest on February 7, 2005.¹⁷

On cross-examination, PO3 Tiongco stated that it was during the buy-bust operation that he saw accused-appellant for the first time. When they went to the Akim Restaurant, they were not accompanied by *barangay* officials. He explained that the operation they conducted was immediate in

¹⁵ TSN, August 8, 2005, pp. 2-15.

¹⁶ TSN, August 15, 2005, pp. 5-22.

¹⁷ Id. at 24-25.

nature and the suspect might leave the place at any moment. There was no representative either from the media or the Department of Justice (DOJ). After he took custody of the suspected drugs taken from accused-appellant, he did not take a photograph of them or made an inventory thereof that was supposedly signed in the presence of a media representative, a *barangay* official, and a DOJ representative.¹⁸

On redirect examination, PO3 Tiongco said that he was informed by PO2 Dizon a week before the buy-bust operation that accused-appellant was already under surveillance by the police. He was also told that accused-appellant was their number one target in their drug list and she was one of their priorities for that month. They were not able to coordinate with the *barangay* officials of the place where the buy-bust operation took place since time was of the essence then and their concern was whether accused-appellant would still be there when they arrived.¹⁹

Originally, the prosecution also intended to present the testimony of SPO1 Noel B. Doria, the officer who prepared the Advance Information and Request for Laboratory Examination. At the trial, the prosecution agreed to stipulate that SPO1 Doria had no personal knowledge of the buy-bust operation conducted on February 7, 2005. The defense further proposed for stipulation that SPO1 Doria had no knowledge of the fact that at the time the specimens were turned over to him, there was no media representative, a *barangay* official or a DOJ representative present. The prosecution and the defense also stipulated on the genuineness and authenticity of the request for laboratory examination of the five plastic sachets of *shabu*, as well as on the fact that SPO1 Doria had no personal knowledge of where and when the *shabu* was taken. In view of the said stipulations, the testimony of SPO1 Doria was dispensed with and his Advance Information and Request for Laboratory Examination were marked as evidence for the prosecution.²⁰

The testimonial evidence of the defense, however, deviated greatly from the prosecution's version of events. The defense claimed that no buy-bust operation ever took place.

Testifying for the defense, Francis Canicon stated that on February 7, 2005, he plied his route as a pedicab driver in front of the Pampanga Provincial Jail. At about 4:00 p.m., accused-appellant came from the Provincial Jail and boarded his pedicab. She asked to be brought to the Cleofers Building, which was near the Akim Restaurant. When they got there, accused-appellant was taken by two police officers, whom he saw were carrying firearms. The police officers boarded accused-appellant into their car. After that incident, Canicon went back to the Provincial Jail to tell accused-appellant's husband, who was a detainee therein, about the apprehension. Canicon knew the husband of accused-appellant as the latter

¹⁸ TSN, October 24, 2005, pp. 3-4.

¹⁹ Id. at 6-7.

²⁰ TSN, July 11, 2005, pp. 35-38.

used to be his neighbor. Afterwards, he went home. Canon said that when the police officers pulled accused-appellant out of his pedicab, he did not see them give a ₱500.00 bill to her. He previously saw accused-appellant count her money before she boarded his pedicab. He also noticed that she had a cellphone.²¹

On cross-examination, Canon said that he knew accused-appellant as she usually rode on his pedicab from the Provincial Jail to the public market. He had occasion to ask her why she frequently went to the Provincial Jail and she replied that she was visiting her husband. He clarified that accused-appellant boarded his pedicab at exactly 3:00 p.m. on February 7, 2005. They reached the Cleofers Building at about 3:45 p.m. They were in front of the Akim Restaurant when the police officers blocked their way. One of the officers approached accused-appellant, asked the latter what her name was, and she said that her name was Mikaela. The vehicle of the police officers was parked at the other side of the road. Canon added that when the police officers took accused-appellant from his pedicab, accused-appellant asked for help from the bystanders. Canon said that he just went home because he got nervous. He rested for a while then he went to the Provincial Jail at around 4:30 p.m.²²

Accused-appellant also took the witness stand. She testified that at around 2:00 p.m. on February 7, 2005, she visited her common-law husband at the Pampanga Provincial Jail. Before she was allowed to enter, a jail guard first conducted a body search on her. She was bringing money and a cellphone at that time. Her visit lasted around 4:00 p.m. From the Provincial Jail, she rode a pedicab to go to the market so that she could catch a ride in a San Matias jeepney. She knew the pedicab driver as a certain Francis, but she did not know his surname. She had known him for almost two years as she was a constant passenger of his pedicab. When they got to the jeepney terminal, the driver thereof was still waiting for more passengers. Since accused-appellant was then in a hurry to get home to breastfeed her baby, she asked Francis to bring her instead to the Cleofers Building. She said that she could catch a jeepney ride from there. They reached Cleofers Building at around 4:15 p.m. There, a male person also boarded the pedicab. That was the first time she saw him. She pointed to that person who was in court as PO2 Randy Dizon.²³

Accused-appellant stated that PO2 Dizon instructed Francis to turn and go to the other side of the road. Francis followed the instructions and parked the pedicab beside a car. PO2 Dizon made a body search on Francis. Afterwards, PO2 Dizon asked accused-appellant if her name was Mikaela. She told him that her name was Rogelia. PO2 Dizon told her to alight from the pedicab and asked her if she knew Francis. She answered that she was a passenger of Francis's pedicab. PO2 Dizon then asked Francis to leave,

²¹ TSN, February 6, 2006, pp. 4-13.

²² Id. at 13-25.

²³ TSN, March 29, 2006, pp. 3-10.

which the latter obeyed. PO2 Dizon opened the backseat door of the car and accused-appellant saw PO3 Tiongco inside. She was pushed inside the backseat of the car as she was shouting for help.²⁴

Accused-appellant said that the police officers brought her to a safehouse. They parked the car in front of the safehouse but they did not alight. PO3 Tiongco was the one who talked to her and asked her if she knew anybody who can lend money “at 5-6.” It was about 6:00 p.m. when they left the place. They brought her to Bakeline and gave her food. PO2 Dizon left to fetch a female person who was a sales lady in a clothing store near Bakeline. They then went to the police headquarters. There, PO2 Dizon asked the female person to make a body search on accused-appellant. The female person found money in accused-appellant’s pocket and gave the same to PO2 Dizon.²⁵

Accused-appellant related that when she was arrested in front of Cleofers Building, there were no representatives from the media and the DOJ and there were no *barangay* officials present. She was subsequently brought to the Municipal Hall of the City of San Fernando and she was detained. The following day, she was brought to the Hall of Justice Building to undergo inquest proceedings. She was not allowed to present any witnesses and she had no companion at that time. After the inquest, she was brought to the Provincial Jail.²⁶

On cross-examination, accused-appellant said that she told Francis to bring her to the market in the City of San Fernando, not in front of Cleofers Building as Francis testified to. When she discovered that she still had to wait for the passenger jeepney to get filled up, she decided to go to the Cleofers Building. Accused-appellant stated that she already knew that PO2 Dizon was a police officer as she had seen him in the probation office, while she was a probationer. There were also times when she would see him in uniform when she visited the Provincial Jail. Back then, she did not know PO2 Dizon’s name. She admitted that she previously pleaded guilty to the charge of selling and possessing illegal drugs, for which she was sentenced to probation. She belied the testimony of Francis that she told PO2 Dizon that her name was Mikaela.²⁷

The Judgment of the RTC

On May 8, 2007, the trial court adjudged accused-appellant guilty of the crime of selling illegal drugs. The trial court explained that:

Prosecution evidence showed that on February 7, 2005 at 5:10 in the afternoon or thereabouts, a buy-bust operation was conducted in front of Akim Restaurant located at Cleofer’s building City of San Fernando

²⁴ TSN, June 19, 2006, pp. 3-6.

²⁵ TSN, September 6, 2006, pp. 4-6.

²⁶ TSN, January 17, 2007, pp. 3-6.

²⁷ TSN, April 23, 2007, pp. 8-17.

against a certain 'Manang' who was later identified as the accused Rogelia Jardinel Pepino-Consulta. The operation yielded a positive result – 5 sachets of shabu weighing 0.3001 gram were recovered from the poseur buyer. The substance confiscated from the accused turned out to be positive for methylamphetamine hydrochloride or shabu (Exhibit "C").

On the other hand, the accused denied that there was a buy-bust operation conducted against her and that she was only framed up. She, however, failed to establish by convincing proof any motive or reason why the arresting officers will falsely impute the crime charged on her. x x x Furthermore, the two oral evidences presented by the defense contradict each other on material points and lack credibility with the accused even stating that her witness – Francis Canicon lied under oath.

The defense of denial or frame up, like alibi, has been invariably viewed by the courts with disfavor for it can just easily be concocted and is [a] common standard defense ploy in most prosecutions for violations of [the] Dangerous Drugs Act (*People vs. Solomon*, 244 SCRA 554). While testimonies of arresting officers with no motive or reason to falsely impute offenses on the accused are credible (*People vs. Ramos*, 240 SCRA 191).

In several drug cases, the courts consistently held that absent any proof to the contrary, law enforcers are presumed to have regularly performed their duty (*People vs. Ong Co*, 245 SCRA 733). It is noteworthy to state that the arresting officers – PO3 Tiongco and PO2 Dizon merely acted upon instruction of their superior which is within the scope of their duties and responsibilities as members of the PNP [Drug] Enforcement Unit of the City of San Fernando.

x x x x

Well-settled is the rule that, between the positive assertions of the prosecution witnesses and the negative averments of accused, the former indisputably deserve more credence and entitled to greater evidentiary weight (*People vs. Padre-e*, 249 SCRA 422).

Moreover, the prosecution also successfully proved that the accused is a recidivist since she has been earlier convicted of the crimes of Violation of Sections 15 and 16 of R.A. No. 6425, as amended, under Criminal Case Nos. 12219 and 12220 before this Court and was sentenced to suffer the penalty of one year imprisonment for each case. The accused availed of probation in these cases and her probation was terminated on June 3, 2003.

After a careful evaluation of the evidence presented, the Court finds that the prosecution sufficiently proved all the elements of the offense charged stated in the information filed and the guilt of the accused beyond reasonable doubt.²⁸

The RTC, thereafter, decreed:

VIEWED IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of R.A. No. 9165 and is

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Records, pp. 307-308.

hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine in the amount of **ten million pesos (₱10,000,000.00)** in favor of the government *with subsidiary imprisonment in case of insolvency*.

The accused is credited with her preventive suspension.²⁹

The Decision of the Court of Appeals

On appeal,³⁰ the Court of Appeals sustained the conviction of accused-appellant in its assailed Decision. The Court of Appeals held that accused-appellant was validly arrested after she was caught *in flagrante delicto* selling *shabu* to the confidential informant who acted as the poseur-buyer. The same was done in the presence of police officers who were watching the transaction from across the street. At any rate, accused-appellant was estopped from questioning the legality of her arrest since she failed to move for the quashal of the information against her before she was arraigned. Furthermore, the Court of Appeals ruled that the testimonial evidence of the prosecution established the elements of the crime charged, *i.e.*, that the buy-bust operation took place, that the five sachets of *shabu* subject of the illegal sale were brought to and identified in court, and that the buyer and seller were identified.

Likewise, the Court of Appeals stated that non-compliance with the first paragraph of Section 21 of Republic Act No. 9165³¹ was not fatal as long as there was justifiable ground therefor and the integrity of the confiscated illegal drugs was properly preserved by the police officers. The appellate court found that the integrity and the evidentiary value of the five sachets of *shabu* were preserved in this case as the seized items were immediately brought to the police station for marking. Afterwards, the five sachets were forwarded to the crime laboratory for the examination of the contents thereof. The police officers identified the sachets in court and accused-appellant had the opportunity to cross-examine them on said point. According to the appellate court, accused-appellant's denial could not prevail over the straightforward and positive testimonies of the police officers. The presumption of regularity was not overcome as accused-appellant did not ascribe any ill motive on the part of the police officers, which would impel them to fabricate charges against her.

²⁹ Id. at 308.

³⁰ Id. at 314.

³¹ SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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;

The appellate court disposed of the case as follows:

WHEREFORE, in view of the foregoing, the assailed decision of the Regional Trial Court of San Fernando City, Branch 41, in Criminal Case No. 14206 is hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant shall pay a fine in the amount of One Million Pesos (P1,000,000.00), instead of Ten Million Pesos (P10,000,000.00), with subsidiary imprisonment in case of insolvency.

Upon remand of the records, the Clerk of Court of Branch 41, Regional Trial Court of San Fernando City, Pampanga is **DIRECTED** to immediately transmit the subject five transparent heat-sealed plastic sachets containing the total weight of 0.3001 of a gram of methylamphetamine hydrochloride (Exhibit “B” and series), which are still under the court *a quo*’s custody, to the Philippine Drug Enforcement Agency (PDEA) for disposition in accordance with Republic Act No. 9165.³²

Accused-appellant appealed³³ the above decision to this Court.

The Ruling of the Court

In pleading for her acquittal, accused-appellant calls our attention to the allegedly fatal procedural lapses committed by the police officers in this case. Accused-appellant stresses that no justification was offered for the failure of the police officers to comply with the provisions of Section 21 of Republic Act No. 9165. Furthermore, accused-appellant claims that the evidentiary value of the items allegedly seized was not preserved.

We find merit in accused-appellant’s appeal.

The RTC essentially convicted accused-appellant as it gave greater weight to the testimonial evidence of the prosecution. The trial court brushed aside accused-appellant’s denial, ruling that she failed to prove that the police officers in this case were impelled by ill motives to falsely accuse her of the crime charged. The RTC held that accused-appellant’s evidence failed to overturn the presumption of regularity in the performance of official duties on the part of the police officers. Similarly, the Court of Appeals affirmed the judgment of the RTC by also lending greater credence to the testimonial evidence of the prosecution. Said evidence was found to have sufficiently established the elements of the crime charged, as well as the fact of preservation of the integrity and evidentiary value of the drug specimens seized. The appellate court also upheld the presumption of regularity in favor of the police officers.

We read closely the records of the present case and we saw a different story. We found that the police officers indeed committed serious lapses in procedure in the conduct of the buy-bust operation on February 7, 2005.

³² *Rollo*, p. 16.

³³ *Id.* at 18-20.

Additionally, the prosecution adduced evidence that fell short of the exacting degree of proof beyond reasonable doubt required under our criminal laws.

The Court stated in *People v. Kamad*³⁴ that “[a]s a general rule, the trial court’s findings of fact, especially when affirmed by the [Court of Appeals], are entitled to great weight and will not be disturbed on appeal. This rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied.” As will be hereinafter discussed, the above exception holds true in the present case.

We held in *People v. Hernandez*³⁵ that “[t]o secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof.” Furthermore, we explained in *People v. Denoman*³⁶ that:

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug’s unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails. (Citations omitted.)

The Court also cautioned in *People v. Roble*³⁷ that “[w]hile a buy-bust operation is legal and has been proved to be an effective method of apprehending drug peddlers, due regard to constitutional and legal safeguards must be undertaken. It is the duty of the Courts to ascertain if the operation was subject to any police abuse.”

Section 21, paragraph 1, Article II of Republic Act No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 provide the procedural guidelines that police officers must observe in the handling of seized illegal drugs in order to ensure the preservation of the identity and integrity thereof.

Section 21, paragraph 1, Article II of Republic Act No. 9165 reads:

³⁴ G.R. No. 174198, January 19, 2010, 610 SCRA 295, 302.

³⁵ G.R. No. 184804, June 18, 2009, 589 SCRA 625, 635.

³⁶ G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

³⁷ G.R. No. 192188, April 11, 2011, 647 SCRA 593, 607.

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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[.]

On the other hand, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

(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[.]

In the present case, the above-mentioned procedures were not observed at all by the police officers. Both PO2 Dizon and PO3 Tiongco clearly and categorically admitted during their respective cross-examinations that the five sachets of suspected *shabu* allegedly obtained from the buy-bust operation were not physically inventoried nor photographed in the presence of accused-appellant or her counsel, a representative from the media and the DOJ, and an elective official. In fact, they stated that the buy-bust operation was actually conducted without the presence of the said representatives.³⁸

Although Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 contains a proviso in the last sentence thereof that may excuse the non-compliance with the required procedures, the same may be availed of only under justifiable grounds and as long as the

³⁸

TSN, August 8, 2005, pp. 13-15; TSN, October 24, 2005, pp. 3-4.

integrity and evidentiary value of the seized items were properly preserved by the apprehending police officers. We held in *People v. Sanchez*³⁹ that:

We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, many of them far from ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. The participation of a representative from the DOJ, the media or an elected official alone can be problematic. For this reason, the last sentence of the implementing rules provides 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.*” Thus, **non-compliance** with the strict directive of Section 21 of R.A. No. 9165 is **not necessarily fatal** to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. These lapses, however, must be recognized and explained in terms of their **justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.**

Here, we find that the integrity and evidentiary value of the illegal drugs seized were not shown to have been preserved. Contrarily, the records of the case bear out the glaring fact that the chain of custody of the seized illegal drugs was broken even at the very first link thereof.

To recall, the testimonial evidence of the prosecution established that the poseur-buyer in the buy-bust operation was the confidential informant who tipped the police about the drug peddling activities of accused-appellant. Thus, it was the poseur-buyer who supposedly received the suspected illegal drugs from accused-appellant, which allegedly consisted of five plastic sachets of *shabu*. PO2 Dizon and PO3 Tiongco did not participate at all in this transaction. They merely witnessed the exchange while they were seated inside a vehicle parked across the road eight to ten meters away from where accused-appellant and the poseur-buyer were situated. Even more damning was PO2 Dizon's admission that he did not in fact see the item(s) handed by accused-appellant to the poseur-buyer. His testimony during cross-examination pertinently stated thus:

ATTY. DE GUZMAN:

Q: Mr. Witness, is it correct to say that you cannot possibly see the items that was exchanged by the accused and your confidential agent at a distance of ten (10) meters and at a condition wherein your car is tinted?

A: **Because the sachet is just a small pack, sir, you could not really possibly see it but we have a pre-arranged signal, sir, to prove that the operation was consummated and positive.**

³⁹

G.R. No. 175832, October 15, 2008, 569 SCRA 194, 211-212.

Q: So in other words, Mr. Witness, considering that you cannot see these items you merely rely on the pre-arranged signal of your confidential agent?

A: Yes, sir.

Q: So you are merely waiting for the pre-arranged signal of your confidential agent at that time, am I correct?

A: Yes, sir.

Q: **And because of the said pre-arranged signal made by your confidential agent you assumed, Mr. Witness, that there was indeed [an] illegal transaction that happened between the accused and your confidential agent, correct?**

A: **Yes, sir.**⁴⁰ (Emphases ours.)

Clearly, PO2 Dizon was not in a position to say whether the objects handed by accused-appellant to the poseur-buyer were in fact sachets of illegal drugs. Equally vague was the actual number thereof, *i.e.*, if in fact five sachets were handed to the poseur-buyer, not four or three or any other number. PO3 Tiongco's testimony was also silent on this aspect. The police officers had no personal knowledge whether the alleged transaction between accused-appellant and the poseur-buyer indeed involved illegal drugs.

Moreover, the suspected drugs subject of the sale were left for some time in the custody of the informant. PO3 Tiongco testified that while they were arresting accused-appellant, the informant distanced himself from them. The police officers first boarded accused-appellant into their vehicle that was parked on the other side of the road and it was only after that that PO3 Tiongco went back to the informant to retrieve the plastic sachets. Thus, from the time accused-appellant was arrested until the plastic sachets were retrieved by PO3 Tiongco, the suspected drugs were unaccounted for. That the informant may have tampered with, contaminated, substituted, added to or pilfered a portion of the plastic sachets are distinct possibilities that could not be ruled out. Undoubtedly, only the informant who acted as the poseur-buyer could possibly state for certain that accused-appellant indeed handed to him five sachets of suspected *shabu*. Unfortunately, the informant was not presented in court to testify on this matter.

Nevertheless, granting for the sake of argument that there were indeed five sachets of suspected *shabu* sold to the poseur-buyer, there were still more broken links in the chain of custody.

We elucidated in *People v. Obmiranis*⁴¹ that:

Be that as it may, although testimony about a perfect chain does not always have to be the standard because it is almost always impossible

⁴⁰ TSN, August 8, 2005, p. 12.

⁴¹ G.R. No. 181492, December 16, 2008, 574 SCRA 140, 150-151.

to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance. A unique characteristic of narcotic substances such as *shabu* is that they are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination, substitution and exchange—whether the alteration, tampering, contamination, substitution and exchange be inadvertent or otherwise not. It is by reason of this distinctive quality that the condition of the exhibit at the time of testing and trial is critical. Hence, in authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied—a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with. (Citations omitted.)

In this case, one broken link was that of the turnover of the seized items from the buy-bust team to the police investigator, SPO1 Doria. PO2 Dizon testified that after he placed the marking on the five sachets of suspected *shabu*, he turned them over to SPO1 Doria and the specimens were submitted to the crime laboratory for examination.⁴² However, SPO1 Doria did not testify before the trial court so as to shed light on this matter. The Court finds this unfortunate as the prosecution even chose to dispense with his testimony.

Still another broken link was that involving the transfer of the drug specimens from SPO1 Doria to the crime laboratory. P/Sr. Insp. Perez testified that the request for laboratory examination and drug specimens were first received by PO2 Bagaoisan, the Duty Desk Officer. The latter then called her to physically receive the same.⁴³ However, P/Sr. Insp. Perez stated that she did not actually see if it was SPO1 Doria who transmitted the specimens. She merely relied on the stamp of PO2 Bagaoisan.⁴⁴ Furthermore, PO2 Bagaoisan was not presented in court to prove that it was indeed SPO1 Doria who delivered the drug specimens to the crime laboratory.

In view of the evident breaks in the chain of custody, very serious doubts arise as to the identity of the seized illegal drugs in this case. Apparently, there can be no absolute certainty if the sachets of *shabu* seized from the informant were the very same drugs handed by accused-appellant, or, later on, the same drugs transmitted to the crime laboratory and eventually presented before the trial court.

These breaks in the chain of custody go into the very elements of the crime of illegal sale of drugs that was charged against accused-appellant.

⁴² TSN, July 11, 2005, pp. 32-33.

⁴³ TSN, June 20, 2005, pp. 7-8.

⁴⁴ Id. at 24-25.

Specifically, the elements of the identity of the object of the illegal sale of drugs and the delivery of the thing sold were not proven in this case beyond reasonable doubt.

As regards the presumption of regularity in the performance of official duty that the RTC and the Court of Appeals heavily relied upon, we clarified in *People v. Cañete*⁴⁵ that:

“[W]hile the Court is mindful that the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself constitute proof of guilt beyond reasonable doubt.” The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because “First, the presumption is precisely just that - a mere presumption. Once challenged by evidence, as in this case, x x x [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.” x x x. (Citations omitted.)

In this case, the above presumption was undoubtedly overcome by evidence that the police officers who conducted the buy-bust operation committed lapses in the seizure and handling of the allegedly seized plastic sachets of *shabu*. Even if accused-appellant failed to present evidence with respect to her defense of denial or the ill motive that impelled the police officers to falsely impute upon her the crime charged, the same is of no moment. The well-entrenched dictum in criminal law is that “[t]he evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.”⁴⁶ If the prosecution cannot, to begin with, establish the guilt of accused-appellant beyond reasonable doubt, the defense is not even required to adduce evidence. Thus, the presumption of innocence on the part of accused-appellant in this case must be upheld.

On a final note, the Court cannot emphasize enough that zealotry on the part of law enforcement agencies in the pursuit of drug peddlers is indeed laudable. However, it is of paramount importance that the procedures laid down by law be complied with, especially those that involve the chain of custody of the illegal drugs. This is necessary in order to dispel even the most infinitesimal of doubts on the outcome of arrests and buy-bust operations, so as not to render naught the efforts and the resources put forth in the apprehension and prosecution of violators of our drug laws.

WHEREFORE, We hereby **REVERSE** and **SET ASIDE** the Decision dated November 19, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02867. Accused-appellant Rogelia Jardinel Pepino-Consulta

⁴⁵ 433 Phil. 781, 794 (2002).

⁴⁶ *People v. De Guzman*, G.R. No. 186498, March 26, 2010, 616 SCRA 652, 669.

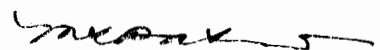
is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention unless she is confined for another lawful cause.

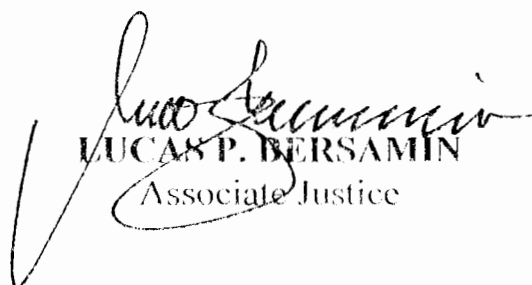
Let a copy of this Decision be furnished the Superintendent, Bureau of Corrections, Correctional Institution for Women, City of Mandaluyong for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

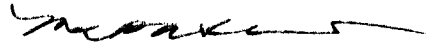

LUCAS P. BERSAMIN
Associate Justice


JOSE CATRAL MENDOZA
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