



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 206738

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

ERLINDA MALI y QUIMNO
a.k.a. "Linda",
Accused-Appellant.

Promulgated:

DEC 11 2013

X-----X

DECISION

REYES, J.:

For review is the Decision¹ dated January 31, 2013 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00863-MIN which affirmed the Decision² dated August 11, 2010 of the Regional Trial Court (RTC) of Zamboanga City, Branch 13, in Criminal Case No. 5228 (20390), convicting Erlinda Mali y Quimno a.k.a. "Linda" (accused-appellant) of illegally selling methamphetamine hydrochloride or *shabu*.

¹ Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting, concurring; CA *rollo*, pp. 107-119.

² Issued by Presiding Judge Eric D. Elumba; *id.* at 33-42.

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The Antecedents

On January 26, 2004, a buy-bust operation was carried out in Sucabon, Zone II, Zamboanga City, by the members of the Task Group Tumba Droga, now the Anti-Illegal Drugs Special Operations Task Force,³ of the Philippine National Police (PNP) in Zamboanga City. The operation led to the arrest of the accused-appellant⁴ who was charged of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, under the following criminal information, *viz.*:

That on or about January 26, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and feloniously, SELL and DELIVER to PO1 Hilda D. Montuno, a member of the PNP, who acted as buyer, one (1) small size heat-sealed transparent plastic pack weighing 0.0188 grams of white crystalline substance which when subjected to qualitative examination, gave positive result to the tests for METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing [the] same to be a dangerous drug.

CONTRARY TO LAW.⁵

On March 17, 2004, an ocular inspection was conducted, whereby the *shabu* stated in the criminal information was presented before the RTC and the accused-appellant by the Forensic Chemist of the PNP Regional Crime Laboratory, Zamboanga City, Police Chief Inspector (PC/Insp.) Mercedes D. Diestro (Diestro). The presentation was witnessed by a representative from the Philippine Drug Enforcement Agency, Senior Police Officer (SPO) 4 Bonifacio Morados.⁶ In the ensuing arraignment, the accused-appellant entered a “Not Guilty” plea. Thereafter, pre-trial and trial were held.

The prosecution presented the testimonies of the police officers who participated in the buy-bust operation, Police Officer (PO) 1 Hilda D. Montuno (Montuno) and SPO 1 Amado Mirasol, Jr. (Mirasol), as well as the investigator in charge of the case, PO3 Efren A. Gregorio (Gregorio), and PC/Insp. Ramon Manuel, Jr. (Manuel), Officer-in-Charge of the PNP Crime Laboratory Office.

³ TSN, May 10, 2005, p. 8.

⁴ Affidavits of Police Officers Hilda Montuno and Amado Mirasol, Jr.; records, pp. 4-5.

⁵ Id. at 1.

⁶ RTC Order dated March 17, 2004; id. at 11.

Documentary and object evidence were likewise submitted, such as: Request for Laboratory Examination,⁷ Chemistry Report No. D-024-2004,⁸ Affidavit of Poseur-buyer,⁹ Affidavit of Arresting Officer,¹⁰ Complaint Assignment Sheet No. 1234,¹¹ Acknowledgment Receipt of the buy-bust money,¹² Case Report,¹³ Forwarding Report,¹⁴ one piece small size heat-sealed transparent plastic sachet containing *shabu*,¹⁵ six strips of folded aluminum foils¹⁶ and marked money consisting of one ₱100.00 bill with serial number KM678788¹⁷.

Taken collectively, the foregoing evidence showed that:

On January 26, 2004, at around 1:00 p.m., a confidential informant arrived at the Zamboanga City Police Station and reported to PO1 Montuno about illegal drug activities in Sucabon, Zone II, by a woman known as “Linda”. PO1 Montuno forthwith relayed the information to Police Senior Inspector (PS/Insp.) Ricardo M. Garcia (Garcia) who, thereafter, summoned the members of the Task Group Tumba Droga for a briefing. They came up with an entrapment plan to be staged by a buy-bust team composed of PS/Insp. Garcia, SPO1 Mirasol, PO2 Rudy Deleña, PO2 Ronald Cordero, and PO1 Montuno, who was designated as the poseur-buyer.¹⁸ PS/Insp. Garcia prepared and gave Montuno ₱100.00 as marked money¹⁹ with serial number KM678788 for which she signed an Acknowledgment Receipt.²⁰

At around 2:15 p.m., the team proceeded to Sucabon on board an L-300 van which they parked in front of the Bureau of Fire before walking towards the inner portion of Sucabon. PO1 Montuno and the informant sauntered in front of the group with SPO1 Mirasol trailing behind from a distance of about eight to ten meters while the rest of the team followed.²¹

⁷ Exhibits Folder, Exhibit “A”.

⁸ Id., Exhibit “C”.

⁹ Id., Exhibit “D”.

¹⁰ Id., Exhibit “E”.

¹¹ Id., Exhibit “F”.

¹² Id., Exhibit “I”.

¹³ Id., Exhibit “J”.

¹⁴ Id., Exhibit “K”.

¹⁵ Submitted to the custody of the RTC for safekeeping and final disposition; *see* Certification dated October 11, 2010 by Branch Clerk of Court Maricel B. Lahi; id., Exhibit “B”.

¹⁶ Submitted to the custody of the RTC for safekeeping and final disposition; id., Exhibit “G”.

¹⁷ Submitted to the custody of the RTC for safekeeping and final disposition; id., Exhibit “H”.

¹⁸ TSN, May 10, 2005, pp. 10-14, 64-67.

¹⁹ Id. at 14.

²⁰ Exhibits Folder, Exhibit “I”.

²¹ TSN, May 10, 2005, pp. 16-17, 69-70.

When they reached the target area, the informant pointed to a lady in brown sleeveless shirt and pants waiting by a table and identified her as Linda.²² PO1 Montuno and the informant approached Linda who, upon recognizing the latter, asked how much they intended to buy. PO1 Montuno answered “*piso lang*”, which in street lingo means one hundred pesos. Linda then took out a small transparent plastic sachet containing white crystalline substance from her pocket and handed the same to PO1 Montuno, who in turn gave the ₱100.00 marked money.²³ Immediately thereafter, PO1 Montuno executed the pre-arranged signal by extending her left hand sideward.²⁴

Upon seeing PO1 Montuno’s signal, SPO1 Mirasol, who positioned himself at a nearby billiard hall, approached them.²⁵ PO1 Montuno introduced herself as a police officer to Linda and placed her under arrest by asking her to sit. She then frisked Linda and was able to recover from her a small plastic sachet containing six strips of aluminum foil. Afterwards, she informed Linda of her violation and apprised her of her constitutional rights.²⁶

Linda was taken to the Zamboanga City Police Station where it was learned that her full name is Erlinda Mali y Quimno.²⁷ PO1 Montuno marked the plastic sachet suspected as containing *shabu* with her initials “HM” as well as the sachet containing strips of aluminum foil. She also wrote her initials “HDM” on the ₱100.00 marked money.²⁸

PO1 Montuno turned over the confiscated items, the marked money and the person of accused-appellant to PO3 Gregorio.²⁹ Upon receipt, PO3 Gregorio wrote his initials “EG” on the plastic sachet suspected as containing *shabu* and “EAG” on the other sachet of aluminum foil strips.³⁰

Subsequently, PO3 Gregorio prepared the Request for Laboratory Examination and personally brought the same together with the seized evidence to the PNP Crime Laboratory Office.³¹ Forensic chemist, PC/Insp. Diestro conducted a laboratory examination on the specimen subject of the request and it tested positive for the presence of

²² Id. at 20.

²³ Id. at 22-24.

²⁴ Id. at 15, 25, 68-69.

²⁵ Id. at 73-77.

²⁶ Id. at 25-26.

²⁷ Id. at 31.

²⁸ Id. at 30, 32-36.

²⁹ Id. at 30.

³⁰ TSN, May 11, 2005, pp. 6-14.

³¹ Id. at 17-18.

methamphetamine hydrochloride or “*shabu*” as shown in Chemistry Report No. D-024-2004.³²

PC/Insp. Diestro was unable to take the witness stand because at the time of trial, she was on official study leave in Manila. Instead, it was PC/Insp. Manuel as the Officer-in-Charge of the Crime Laboratory Office who brought a copy of the chemistry report to the court. The actual evidence custodian of the report is PO1 Christopher Paner who was, however, dispatched to Basilan hence unavailable to testify.³³

For her part, the accused-appellant, interposed the defense of denial and frame-up. She and the other defense witness, Kalingalang Ismang (Ismang), claimed that there was no buy-bust operation actually conducted by the police and the prohibited drug presented as evidence was planted. They narrated that at around 2:00 p.m. of January 26, 2004, they were outside the accused-appellant’s house in Sucabon playing *Rami-rami*, a cards game, with a certain Golpe. During the game, the accused-appellant left to urinate and when she came back, a woman arrived and asked Ismang who Erlinda was. In reply, Ismang pointed to the accused-appellant who just remained silent.³⁴

The woman, who was with four male companions in civilian clothing but armed, then approached the accused-appellant, held her and brought her inside her house. The woman asked the accused-appellant who was selling *shabu*. The accused-appellant replied that she does not know. Thereafter, the woman’s companions searched the accused-appellant’s house but found nothing. They then brought the accused-appellant to the police station in Zamboanga City where she was again questioned about the peddler of *shabu* to which she gave the same reply. She was thereafter detained and then brought to the Hall of Justice.³⁵

Ruling of the RTC

The RTC accorded more credence to the straightforward and consistent testimony of PO1 Montuno which proved all the elements for illegal sale of drugs. Her testimony also showed that the entrapment operation passed the objective test as she was able to narrate the complete details of the transaction, from how she acted as a buyer, to the consummation of the sale and the accused-appellant’s eventual arrest. The RTC also noted that in view of the lack of a showing that the arresting

³² Exhibits Folder, Exhibit “C”.

³³ TSN, March 16, 2005, pp. 5-10.

³⁴ TSN, November 11, 2009, pp. 4-8; TSN, November 12, 2009, pp. 3-6.

³⁵ TSN, November 12, 2009, pp. 6-9, 21.

officers were impelled by evil motive to indict the accused-appellant, they are presumed to have performed their duties in a regular manner and as such their positive testimonies carry more evidentiary value than the accused-appellant's bare denial, an inherently weak and self-serving defense. Accordingly, the accused-appellant was convicted of the crime charged and sentenced as follows in the RTC Decision³⁶ dated August 11, 2010, *viz*:

WHEREFORE, in the light of the foregoing, this Court finds ERLINDA MALI y QUIMNO guilty beyond reasonable doubt for violating Section 5, Article II of R.A. 9165 and is sentenced to suffer the penalty of life imprisonment and pay a fine of five hundred thousand pesos (₱500,000[.00]) without subsidiary imprisonment in case of insolvency.

The methamphetamine hydrochloride used as evidence in this case is hereby ordered confiscated and the Clerk of Court is directed to turn over the same to the proper authorities for disposition.

SO ORDERED.³⁷

Ruling of the CA

On appeal to the CA, the accused-appellant argued that the totality of the evidence for the prosecution did not support a finding of guilt beyond reasonable doubt due to the following errors, *viz*: (1) no buy-bust operation transpired and the prohibited drug presented by the prosecution as subject of the alleged illegal sale was planted; (2) the arresting officers did not comply with the chain of custody rule under Section 21 of R.A. No. 9165 when they failed to mark, inventory and photograph the prohibited drug allegedly seized from her; (3) the chemistry report was not properly identified during trial by the forensic chemist; and (4) no evidence was presented as to what happened to the sachet from the time it was submitted to the crime laboratory until it was presented in court.

In its Decision³⁸ dated January 31, 2013, the CA denied the appeal and concurred with the RTC's findings and conclusions. The CA upheld the veracity of the buy-bust operation. Anent the supposed non-compliance with the marking, inventory and photography requirements in R.A. No. 9165, the CA remarked that the accused-appellant is considered to have waived any objections on such matters since she failed to raise the same before the RTC. At any rate, non-compliance with Section 21 of R.A. No. 9165 is not necessarily fatal to the admissibility of the seized prohibited drug because

³⁶ CA *rollo*, pp. 33-42.

³⁷ Id. at 42.

³⁸ Id. at 107-119.

the apprehending team was able to preserve their evidentiary value and integrity when they immediately turned over the effects of the crime and the buy-bust money to the police investigator on the same day. This, the CA concluded, manifests the prudence of the arresting officers in securing the integrity and probative value of the items confiscated from the accused appellant. Moreover, non-compliance with Section 21 of R.A. No. 9165 concerns not the admissibility of evidence but rather its evidentiary weight or probative value, which, in this case was correctly ruled by the RTC to heavily favor the prosecution.

The CA's judgment is now subject to the Court's automatic review.³⁹ In a Resolution⁴⁰ dated July 8, 2013, the Court required the parties to file their supplemental briefs. Instead of so filing, however, the parties manifested that they are instead adopting their respective Briefs before the CA where their legal arguments and positions have already been fully expounded and amplified.⁴¹ The Manifestations are hereby noted and we shall resolve accordingly.

The Issue

For the Court's resolution is whether or not the guilt of the accused-appellant for illegal sale of methamphetamine hydrochloride or *shabu* was proved beyond reasonable doubt.

The Court's Ruling

We affirm the accused-appellant's conviction and the penalties meted her.

Illegal sale of prohibited drugs, like *shabu*, is committed upon the consummation of the sale transaction which happens at the moment the buyer receives the drug from the seller. If a police officer goes through the operation as a buyer, the crime is consummated when he makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer.⁴²

³⁹ Pursuant to *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

⁴⁰ *Rollo*, p. 23.

⁴¹ *Id.* at 24-26, 35-36.

⁴² *People v. Bartolome*, G.R. No 191726, February 6, 2013, 690 SCRA 159, 167, citing *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 324-325.

In any case, the successful prosecution of the offense must be anchored on a proof beyond reasonable doubt of two elements, to wit: (a) the identity of the buyer and the seller, the identity of the object and the consideration of the sale; and (b) the delivery of the thing sold and of the payment for the thing. What is material is the proof showing that the transaction or sale actually took place, coupled with the presentation in court of the thing sold as evidence of the *corpus delicti*.⁴³

The confluence of the above requisites is unmistakable from the testimony of the poseur-buyer herself, PO1 Montuno, who positively testified that the illegal sale actually took place when she gave the ₱100.00 marked money to the accused-appellant in exchange for the *shabu*, thus:

PROSECUTOR ORILLO:

x x x x

Q: And, what happened next, after the briefing, which according to you, took for, more or less, thirty (30) minutes?

A: We proceeded, at or about 2:15, to the area at Sucabon.⁴⁴

x x x x

Q: So, what happened next?

A: When we reached near the area, we stopped, because the Informant pinpointed to me that “the lady waiting there, at the wooden table, wearing brown sleeveless shirt and pants is your target”.

x x x x

Q: After the Informant pointed to you the place where that certain Linda was, what did you do next?

A: We approached Linda.

x x x x

Q: So, when you approached, you and the Informant approached Linda, what happened next?

A: Since the Informant and Linda, they know each other already, it was Linda who said, “*cuanto tu compra?*” (“how much will you buy?”)

Q: And, then?

A: And, then, I replied, “[₱]100.00”; “*piso lang*”.

Q: At that time, when your Informant was conversing with Linda, how far were you from Linda and the Informant?

A: More or less, myself to the Stenographer’s table (estimated at 1 ½ meters)

⁴³ *People v. Brainer*, G.R. No. 188571, October 10, 2012, 683 SCRA 505, 517.

⁴⁴ TSN, May 10, 2005, p. 15.

Q: Now, what happened next, Madam Witness, after you replied, “*piso lang*”?

A: Then she got something from her pocket (witness demonstrated by gesturing as if getting something from her right front pocket).

Q: And, then, what happened next, after she got something from her pocket?

A: She gave it to me; the suspect gave it to me, and she demanded for money.

Q: What was that something given?

A: Small heat-sealed transparent plastic containing suspected shabu.

Q: And, you said, she demanded for the money?

A: Yes, Sir.

Q: What did you do?

A: I gave it to her.

Q: How did you give it?

A: When I got the shabu, I inspected it, I tried to check, then, I gave the money to her (witness is demonstrating by motioning the act of giving money, pretending to hold something and extending her right hand forward).

PROSECUTOR ORILLO:

Q: And, is that money the money, the marked money that was given to you by P/S Insp[.] Garcia during the briefing?

A: Yes, Sir.

Q: What does it consist of?

A: It is a [P]100.00 bill.

Q: And, you gave it to Linda?

A: Yes, Sir.

Q: The marked money?

A: Yes, Sir.

Q: Did she receive it?

A: Yes, Sir.⁴⁵ [sic]

The straightforward testimony of PO1 Montuno about the details of her transaction with the accused-appellant passed the “objective” test in buy-bust operations. It is clear from her narration that the following elements occurred: the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration

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Id. at 15, 20-24.

and the consummation of the sale by the delivery of the illegal drug subject of the sale.⁴⁶

The Court cannot accord merit to the accused-appellant's claim that the foregoing events did not take place because she was actually framed-up. Such argument brings to the fore the appreciation by the trial court of the credibility of witnesses, a matter it is most competent to perform having had the first hand opportunity to observe and assess the conduct and demeanor of witnesses.⁴⁷ Settled is the rule 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.⁴⁸

By way of exception, such findings will be re-opened for review only upon a showing of highly meritorious circumstances such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which, if considered, would affect the result of the case.⁴⁹ However, none of these circumstances obtain in the present case and thus, there is no compelling reason for the Court to review or overturn the RTC's factual findings and evaluation of the testimony of witnesses.

At any rate, we have examined the records of the case and found that the prosecution's narration vividly replicates the actual event that preceded the accused-appellant's arrest and indictment.

Moreover, allegations of frame-up are susceptible to fabrication and are thus assessed with caution by courts. To substantiate such defense, the evidence must be clear and convincing and must 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.⁵⁰ Here, the accused-appellant did not even ascribe any ill motive to PO1 Montuno that could have induced her to falsely testify against the former. Neither do the records indicate any distorted sense of duty on the part of the buy-bust team. Thus, with corroborative documentary evidence to back up the testimonies of

⁴⁶ In *People v. Doria*, this Court laid down the objective test in evaluating buy-bust operations:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. 361 Phil. 595, 621 (1999).

⁴⁷ *People v. De Jesus*, G.R. No. 191753, September 17, 2012, 680 SCRA 680, 687, citing *People v. Bautista*, G.R. No. 191266, June 6, 2011, 650 SCRA 689, 700.

⁴⁸ *People v. Reynaldo "Andy" Somoza y Handaya*, G.R. No. 197250, July 17, 2013.

⁴⁹ *People v. De Jesus*, supra note 47.

⁵⁰ *People v. Brainer*, supra note 43, at 522.

prosecution witnesses, the presumption that PO1 Montuno and the rest of the buy-bust team regularly performed their duties must be upheld.

The courts *a quo* correctly rejected the accused-appellant's contention that the chain of custody rule was not fulfilled.

First, the fact that PO1 Montuno marked the plastic sachet seized from the accused-appellant at the Zamboanga City Police Station and not at the crime scene did not impair its admissibility as evidence or the integrity of the chain of custody. As clarified in *People v. Angkob*,⁵¹ marking upon "immediate" confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team.⁵²

The allegation that no inventory of the items seized from the accused-appellant was made is belied by the Complaint Assignment Sheet No. 1234 signed by PS/Insp. Garcia enumerating the items confiscated from the accused-appellant during the buy-bust operation: "one (1) small size heat sealed transparent plastic pack containing suspected *shabu* (methamphetamine hydrochloride), marked money of one hundred peso bill with SN KM678788 and six (6) strips/fol[d]ed aluminum foil."⁵³

Anent the failure of the buy-bust team to take photographs of the confiscated plastic sachet of *shabu*, it must be noted that while Section 21, paragraph 1, Article II of R.A. No. 9165⁵⁴ dictates the procedural safeguards that must be observed in the handling and custody of confiscated drugs, the implementing rules and regulations (IRR) of the law provides for a qualification such that non-compliance with the procedure will not nullify the confiscation of the drugs, thus:

⁵¹ G.R. No. 191062, September 19, 2012, 681 SCRA 414.

⁵² Id. at 426.

⁵³ Exhibits Folder, Exhibit "F".

⁵⁴ 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;

x x x x

(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[.]**⁵⁵ (Emphasis ours)

In the recent *People v. Cardenas*,⁵⁶ we underscored the *proviso* by stressing that R.A. No. 9165 and its IRR do not require strict compliance with the chain of custody rule:

The arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. We have emphasized that **what is essential 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.”**

Briefly stated, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.⁵⁷ (Emphasis supplied)

The failure to photograph the confiscated sachet of *shabu* is not fatal to the totality of the evidence for the prosecution. Such fact is immaterial to the legitimacy of the buy-bust operation for it is enough that it is established that the operation was indeed conducted and that the identity of the seller and drugs subject of the sale are proved.⁵⁸

Second, the failure of the forensic chemist to testify in court did not undermine the case for the prosecution. The non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. This is

⁵⁵ IRR of R.A. No. 9165, Article II, Section 21.

⁵⁶ G.R. No. 190342, March 21, 2012, 668 SCRA 827.

⁵⁷ Id. at 837, citing *People v. Ara*, G.R. No. 185011, December 23, 2009, 609 SCRA 304, 325.

⁵⁸ *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 835, citing *People v. Campos*, G.R. No. 186526, August 25, 2010, 629 SCRA 462, 468.

because the *corpus delicti* in criminal cases on prohibited drugs has nothing to do with the testimony of the laboratory analyst.⁵⁹

The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. To sustain conviction, its identity must be established in 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 as it ensures that unnecessary doubts concerning the identity of the evidence are removed.⁶⁰

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. 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 *People v. Arriola*,⁶¹ we enumerated the different links that the prosecution must establish with respect to the chain of custody in a buy-bust operation, *to wit*: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁶²

Tested against the foregoing guidelines, the Court finds that the prosecution adequately established that there was no break in the chain of custody over the *shabu* seized from the accused-appellant.

During the buy-bust operation, the accused-appellant gave PO1 Montuno a small transparent plastic sachet containing white crystalline substance in exchange for the latter’s payment of ₱100.00.⁶³

⁵⁹ *People v. Quebral*, G.R. No. 185379, November 27, 2009, 606 SCRA 247, 255.

⁶⁰ *People v. Brainer*, supra note 43, at 523-524.

⁶¹ G.R. No. 187736, February 8, 2012, 665 SCRA 581.

⁶² Id. at 598.

⁶³ TSN, May 10, 2005, pp. 23-24.

After arresting the accused-appellant, PO1 Montuno held on to the confiscated plastic sachet until they reached the Zamboanga City Police Station where she marked the same with her initials “HM”.⁶⁴ Thereat, an inventory of the items seized from the accused-appellant, including the small transparent plastic sachet containing white crystalline substance, was also made in the Complaint Assignment Sheet signed by the team leader of Task Force Tumba Droga, PS/Insp. Garcia.⁶⁵

Thereafter, PO1 Montuno turned over the marked plastic sachet to the investigating officer,⁶⁶ PO3 Gregorio, who in turn, also wrote his initials “EG” thereon.⁶⁷

Within the same day, PO3 Gregorio prepared the Request for Laboratory Examination and personally brought the marked plastic sachet to the PNP Crime Laboratory Office where it was received by PO2 Danilo Cabahug.⁶⁸ Based on her Chemistry Report No. D-024-2004, forensic chemist, PC/Insp. Diestro received the plastic sachet with marking EG HM and examined its contents which tested positive for the presence of *shabu*.⁶⁹

Lastly, the same small transparent plastic sachet with markings EG HM and the white crystalline substance it contains were identified in open court by PO1 Montuno and she confirmed that the marking she placed at the police station is the same marking on the plastic sachet presented as evidence in court, *viz*:

PROSECUTOR ORILLO:

x x x x

Q How about the shabu, which you said, you bought from the accused, and can you still identify it?

A Yes, because I placed my marking before turning it over.

Q Will you describe to this Honorable Court the condition of this item?

A A very small heat-sealed plastic sachet.

⁶⁴ Id. at 30, 54-55.

⁶⁵ Exhibits Folder, Exhibit “F”.

⁶⁶ TSN, May 10, 2005, p. 30.

⁶⁷ TSN, May 11, 2005, pp. 10-12.

⁶⁸ Id. at 17-18.

⁶⁹ Exhibits Folder, Exhibit “C”.

Prosecutor Orillo:

- Q I am showing to you, Madam Witness, a small heat-sealed transparent plastic pack containing shabu, will you go over this and tell the Honorable Court what is this, in relation to the shabu that you bought from the accused, using the marked money?
- A This is the very one, because I placed marking on it, the one I bought from the suspect.
- Q And, you said, you placed your marking on it?
- A Yes, Sir.
- Q When you turned it over to your Police Station?
- A Yes, Sir.
- Q Where is your marking?
- A These letters, HM; this is covered by the masking tape (witness pointing to the initial "HM", where "H" is covered by the white masking tape).⁷⁰

The details by which PO1 Montuno was able to identify her markings leave no room for doubt that indeed, the heat-sealed plastic sachet of *shabu* presented during trial was the exact item sold to her by the accused-appellant during the buy-bust operation. As a matter of fact, even during cross-examination, PO1 Montuno was able to declare another distinct feature of the marking she placed on the confiscated sachet containing *shabu* amidst rigid cross-examination by the defense, thus:

ATTY. TALIP:

x x x x

- Q If shown to you another very or small sachet of about the same size with the same marking, HM, would you know the difference between one to the other?
- A Yes, Ma'am, after we placed the marking, we brought it already to the crime laboratory.
- Q Were you the one who brought it?
- A No, Ma'am.
- Q You have no knowledge of that?
- A As far as the purpose of the investigation only.

⁷⁰ TSN, May 10, 2005, pp. 32-34.

Q Exactly, that's why I am asking you, because your knowledge of the sachet only stops there, on the sachet with marking HM. So, I am asking you, if shown another set of sachet of about the same size with the same marking, would you be able to distinguish one from the other?

A Yes, it depends on the marking.

Q Similar marking, HM; anyone could write those letters.

A Because I am particular with my marking, because I wrote it with a blue pilot pen.⁷¹

Indeed, PO1 Montuno's meticulous identification of the small heat-sealed transparent plastic sachet containing *shabu* precludes any misgivings of tampering from the time it was submitted to the crime laboratory until it was presented in court.

All told, there exists no reason for the Court to overturn the courts *a quo* in finding the accused-appellant guilty beyond reasonable doubt of the offense of illegal sale of *shabu* as defined and penalized in Section 5, Article II of R.A. No. 9165.⁷²

Pursuant to the same provision, the RTC and the CA were correct in imposing the penalty of life imprisonment and ₱500,000.00 fine upon the accused-appellant.

WHEREFORE, premises considered, the Decision dated January 31, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 00863-MIN is **AFFIRMED**.

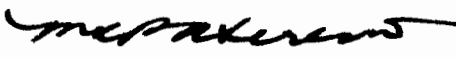
SO ORDERED.



BIENVENIDO L. REYES
Associate Justice

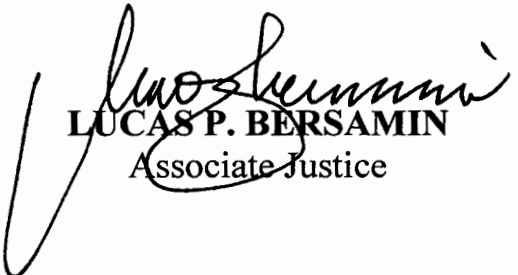
⁷¹ Id. at 56-57.

⁷² 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.

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

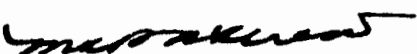

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
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