



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 178065**

Present:

- versus -

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

**ARNOLD TAPERÉ y POLPOL,**  
Accused-Appellant.

Promulgated:

**FEB 20 2013**

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**DECISION**

**BERSAMIN, J.:**

An accused arrested during a valid entrapment operation is not entitled to an acquittal on the ground that his arrest resulted from instigation.

Arnold P. Tapere was charged with, tried for and found guilty of illegally selling *shabu* in violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) by the Regional Trial Court (RTC), Branch 6, in Iligan City, which sentenced him to suffer life imprisonment and to pay a fine of ₱500,000.00.

On appeal, the Court of Appeals (CA) affirmed the conviction and the prescribed penalty through the decision promulgated on February 27, 2007.<sup>1</sup>

Hence, this appeal.

<sup>1</sup> *Rollo*, pp. 4-13; penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justice Teresita Dy-Liacco Flores (retired) and Associate Justice Rodrigo F. Lim, Jr. (retired).

### Antecedents

The information dated September 3, 2002 charged Tapere with illegally selling *shabu* in violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*), as follows:

That on or about September 2, 2002, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver one (1) plastic sachet containing Methamphetamine Hydrochloride, a dangerous drug commonly known as Shabu.

Contrary to and in violation of R.A. 9165, x x x.<sup>2</sup>

The evidence for the State showed the following.

At around 7:30 p.m. on September 2, 2002, elements of the Philippine Drug Enforcement Agency (PDEA) arrested Tapere for selling *shabu* to a poseur buyer during a buy-bust operation conducted against him in Purok San Antonio, Iligan City. Prior to the buy-bust operation, Tapere was already included in the PDEA's drug watch list as a drug pusher based on the frequent complaints made against him by residents of Purok San Antonio, Iligan City. It appears that SPO2 Diosdado Cabahug of the PDEA, a neighbor, had warned Tapere to stop his illegal activities, but he apparently ignored the warning and continued to sell *shabu* in that locality. Such continuing activity on the part of Tapere was the subject of the report of PDEA informant Gabriel Salgado.

In order to determine the veracity of the report of Salgado, PDEA agents conducted an investigation and surveillance of the activities of Tapere on August 30, August 31, and September 1, 2002, during which a test buy confirmed the veracity of the report. With the positive result of the test buy, the agents decided to conduct a buy-bust operation against Tapere on September 2, 2002. Consonant with their standard procedure, the agents first secured a certification from the Office of the City Prosecutor regarding the buy-bust money to be used during the buy-bust operation. They presented to City Prosecutor II Roberto Z. Albulario, Jr. of Iligan City the ₱100.00 bill bearing serial number YU859011 (Exhibit E-1) for that purpose,<sup>3</sup> and said public prosecutor then issued the certification (Exhibit E) to the effect that the bill (Exhibit E-1) was identical to the xerox copy previously made of the bill (Exhibit A). Armed with the certification, the agents went back to their office and held a pre-operation briefing. In attendance at that briefing were Team Leader SPO2 Edgardo Englatiera, SPO3 Jaime Bastatas, SPO2

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<sup>2</sup> Records, p. 1.

<sup>3</sup> Id. at 28.

George Salo, SPO2 Cabahug, PO1 Amado Margaja and Salgado. The team instructed Salgado to act as the poseur buyer, and gave to him the ₱100.00 bill (Exhibit E-1) earlier certified by the public prosecutor.

At 7:10 p.m. of September 2, 2002, the team proceeded on board the jeep of SPO2 Cabahug to Alcuizar Avenue in San Antonio, Iligan City where Tapere engaged in drug pushing. They stopped at some distance from the target area, and walked the rest of the way. They posted themselves within view of the target place, which was on the left side of the road going towards Tipanoy, Iligan City and a few meters from the Tubod Bridge. The first structure nearest the bridge on the left side of the road going towards Tipanoy was a blacksmith shop, and next to the shop was a row of stalls where fish, meat and other commodities were sold. The agents spotted Tapere vending *lanzones* along that side of the road to Tipanoy, outside the row of stalls.<sup>4</sup>

With each agent being strategically posted, Salgado was signalled to approach Tapere according to the plan. Salgado went towards Tapere. The agents saw the two conversing for a brief while before Salgado handed money to Tapere. In turn, Tapere took a small heat-sealed plastic sachet from his pocket and gave it to Salgado. After accepting the sachet, Salgado made the pre-arranged signal of scratching his head to signify the consummation of the transaction. The agents rushed towards Tapere, introduced themselves as PDEA agents, and placed him in custody. They searched him and recovered the ₱100.00 bill (Exhibit E-1) from his right pocket.<sup>5</sup> At that point, he voluntarily produced three more sachets of *shabu* from his pocket and handed them to SPO2 Bastatas.<sup>6</sup> The agents brought Tapere to the PDEA headquarters in Camp Cabili, Tipanoy, Iligan City.

In Camp Cabili, SPO2 Englatiera immediately prepared and signed a request for laboratory examination (Exhibit B),<sup>7</sup> addressed to the PNP Crime Laboratory in Iligan City to determine whether the confiscated substances contained in the four sachets marked “AT-1” to “AT-4” contained dangerous drugs.<sup>8</sup> On the following day, PO1 Margaja delivered to the PNP Crime Laboratory the request and the confiscated articles in four sachets marked “AT-1” to “AT-4”.

The request for laboratory examination and the confiscated articles were received in due course at the PNP Crime Laboratory, and turned over by the receiving personnel to Sr. Police Insp. Mary Leoncy M. Jabonillo, the Chief of the Crime Laboratory, who conducted the laboratory examination. She issued Chemistry Report No. D-083-02 on September 4, 2002 (Exhibit

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<sup>4</sup> TSN, October 8, 2002, pp. 11 and 30-31.

<sup>5</sup> Id. at 47.

<sup>6</sup> Id. at 15-16.

<sup>7</sup> Records, p. 26.

<sup>8</sup> Id.

C),<sup>9</sup> whereby she confirmed the presence of methamphetamine hydrochloride or *shabu* in the four heat-sealed transparent plastic sachets, giving the weight and marking as follows: “AT-1” – 0.09 gram; “AT-2” – 0.51 gram; “AT-3” – 0.03 gram; and “AT-4” – 0.10 gram.<sup>10</sup> The chemistry report was duly approved by Police Supt. Liza Madeja Sabong, Chief of the PNP Regional Crime Laboratory Service.

On the other hand, Tapere denied the accusation. He and his wife rendered their own version of the incident that led to his arrest.

On September 2, 2002, at around 6:30 p.m. to 7:00 p.m., Tapere went to his usual place in Tubod to vend *lanzones* near the fish stalls. His wife followed him there to ask what she would prepare for their lunch. While he was there, Salgado, his neighbor of four years<sup>11</sup> whom he knew to be a drug user currently under probation,<sup>12</sup> and with whom in the past he had sniffed *shabu* in Salgado’s house, approached and requested him to buy *shabu* for Salgado’s use.<sup>13</sup> They talked beyond the hearing distance of his wife. At first, he refused Salgado’s request, but he ultimately agreed to do the errand, explaining: *I don’t want him to be angry at me, I don’t want trouble and besides he is my neighbor so whenever he requested me to buy shabu I do it.*<sup>14</sup> With Salgado giving him the money, he asked his wife’s permission to go downtown to do something. He rode on a jeepney to go to Saray, also in Iligan City, where he bought a sachet of *shabu*.<sup>15</sup> In the meantime, the wife was left to tend to the sale of the *lanzones*. Salgado, whose name the wife did not then know, went to a nearby small store.

When he returned after an hour, Tapere did not find Salgado in the stall but in a nearby small store. He handed the *shabu* there. Salgado then immediately left. Tapere went back to his stall after buying a bottle of Coca Cola at the store. Upon returning to his stall, a multi-cab vehicle came to stop there and five men alighted, two of whom he immediately recognized as “Sir Englatierra and Cabahug.” The men, all armed, surrounded him, pointing their .45 caliber pistols at him. They frisked him, put handcuffs on him, and took him to the PDEA office. There, they produced a bill, noted its serial number and confirmed that it was the bill used in the transaction. They next brought him to the PNP Central Office in Iligan City where he was detained.<sup>16</sup> At about 10:00 p.m. that same night, his wife visited him in the jail and gave him fresh clothes to replace his clothes wet from the rain. On the next day, he was taken to the Office of the City Prosecutor and from there to the City Jail.

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<sup>9</sup> Id. at 27.

<sup>10</sup> Id.

<sup>11</sup> TSN, November 14, 2002, p. 12.

<sup>12</sup> Id. at 6.

<sup>13</sup> Id. at 14.

<sup>14</sup> Id.

<sup>15</sup> Id. at 6-8.

<sup>16</sup> Id. at 8-10.

### Decision of the RTC

After trial, on April 15, 2003, the RTC rendered judgment convicting Tapere as charged,<sup>17</sup> to wit:

WHEREFORE, the court finds the accused Arnold Tapere y Polpol GUILTY beyond reasonable doubt for violation of Section 5, Article II of Rep. Act No. 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (P500,000.00) PESOS without subsidiary imprisonment in case of solvency.

Having been under preventive detention since September 3, 2002 until the present, the period of such imprisonment shall be credited in full in favor of the accused in the service of his sentence.

The four (4) sachets of shabu are ordered confiscated in favor of the government to be disposed of pursuant to the provisions of Section 21, Article II, R.A. No. 9165.

SO ORDERED.

The RTC pointed out that the PDEA agents had arrested Tapere following a legitimate buy-bust operation conducted in a methodical manner; that on the other hand, Tapere did not plausibly explain why he had agreed to run the errand to buy *shabu* for Salgado, because he did not show that he had owed Salgado any great personal debt of gratitude that led him to ignore his personal risk and that put him in no position to refuse Salgado's request; and because he did not also show that Salgado exercised an overpowering influence by intimidation or otherwise that rendered him incapable of refusing Salgado's bidding.

### Ruling of the CA

On intermediate review, Tapere assailed his conviction, stating that the RTC gravely erred in not ruling that instigation, not entrapment, had led to his apprehension.<sup>18</sup>

On February 27, 2007, however, the CA affirmed the conviction of Tapere,<sup>19</sup> declaring that the Prosecution competently established the details of the illegal sale of *shabu* between Tapere, as the seller, and Salgado, as the poseur buyer; that the PDEA agents were not shown to have harbored any malicious motives for arresting Tapere; and that the non-presentation of Salgado as the poseur buyer did not weaken the case against Tapere

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<sup>17</sup> Records, pp. 45-49.

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

<sup>19</sup> *Id.* at 4-13.

considering that the members of the buy-bust team who testified against Tapere had witnessed the consummation of the illegal sale of *shabu*.

Hence, Tapere appeals to the Court.

### Issue

Tapere reiterates to us that his apprehension was the product of an instigation, not entrapment; and that he should consequently be acquitted because instigation was an absolatory cause.

### Ruling of the Court

The appeal has no merit.

To establish the crime of illegal sale of *shabu* as defined and punished under Section 5,<sup>20</sup> Article II of Republic Act No. 9165, the Prosecution must prove beyond reasonable doubt (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. The commission of the offense of illegal sale of dangerous drugs, like *shabu*, requires simply the consummation of the selling transaction, which happens at the moment the buyer receives the drug from the seller. In short, the Prosecution must show that the transaction or sale actually took place, and present in court the thing sold as evidence of the *corpus delicti*.<sup>21</sup>

The State conclusively established the concurrence of the foregoing elements of illegal sale of dangerous drugs. Firstly, the members of the buy-bust team identified Tapere as the person with whom Salgado had contracted on the purchase of the *shabu*. Secondly, the subject of the sale was one plastic sachet of *shabu* that the PNP Crime Laboratory later on confirmed in due course to contain methamphetamine hydrochloride, a dangerous drug. It is of no consequence that three other sachets of *shabu* recovered from Tapere's possession at the time of his arrest were also presented as evidence during the trial, or that the Prosecution failed to specify which of the four sachets was the sachet involved in the transaction between him and Salgado,

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<sup>20</sup> Section 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.

<sup>21</sup> *People v. Macabalang*, G.R. No. 168694, November 27, 2006, 508 SCRA 282, 293-294.

because what is decisive is that one of the four sachets was definitely the subject of the transaction between Tapere and the poseur buyer. Thirdly, the consideration of the sale was ₱100.00, and the actual payment of that amount through the ₱100.00 bill bearing serial number YU859011 covered by the public prosecutor's certification ensured the identification of it as the consideration. And, fourthly, the Prosecution's witnesses fully described the details of the consummated sale of *shabu* between Tapere as seller and Salgado as buyer.

Section 21(1) of Republic Act No. 9165 provides the procedure to be followed in the seizure and custody of dangerous drugs, to wit:

Section 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;

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This procedure underscores the value of preserving the integrity of the confiscated, seized, or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments, paraphernalia and laboratory equipment. It puts into focus the essentiality of the confiscated articles as the *corpus delicti* that the State must establish during the trial, as a means of avoiding the commission of abuses by the lawmen in their enforcement of the laws against illegal drug trade.

The members of the buy-bust team substantially complied with the requirements. To shield the operation from suspicion, they first saw to the certification of the buy-bust bill by the Office of the City Prosecutor of Iligan City, pursuant to their then standard operating procedure.<sup>22</sup> After arresting Tapere, they lost no time in bringing him and the confiscated sachets (marked and identified as "AT-1" to "AT-4", inclusive) to the PDEA

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<sup>22</sup> It is noted that as of September 2, 2002, the date of commission of the crime, the *Implementing Rules and Regulations of Republic Act No. 9165*, although newly adopted by the Dangerous Drugs Board on August 30, 2002, had yet to take effect upon its publication in three newspapers of general circulation and upon registration with the Office of the National Administrative Register of the University of the Philippines Law Center, Diliman, Quezon City.

office, where Team Leader SPO2 Englatiera immediately prepared and signed the request for laboratory examination. Due to the lateness of the hour, PO1 Margaja, another member of the team, brought the request and the sachets to the PNP Crime Laboratory on the next day, and the request and the sachets were received in due course. Sr. Police Insp. Jabonillo of the PNP Crime Laboratory subjected the sachets to examination, and confirmed the presence in all of them of methamphetamine hydrochloride, a dangerous drug. She also gave the weights of the contents of the four sachets in her Chemistry Report No. D-083-02 dated September 4, 2002. Her report was approved by her superior, Police Supt. Sabong of the PNP Regional Crime Laboratory. Based on all the foregoing, there was a conscious effort exerted by the buy-bust team to ensure the proper incrimination of Tapere.

Still, Tapere contends that his arrest resulted from an instigation, not from a legitimate entrapment. He insists that poseur buyer Salgado, then acting as a covert PDEA civilian agent or informant, a fact unknown to him, made him purchase the *shabu* for Salgado. Hence, being instigated to sell the *shabu*, he was entitled to be acquitted because the instigation was an absolutory cause.

Instigation takes place when a peace officer induces a person to commit a crime. Without the inducement, the crime would not be committed. Hence, it is exempting by reason of public policy; otherwise, the peace officer would be a co-principal. It follows that the person instigating must not be a private person, because he will be liable as a principal by inducement.<sup>23</sup> On the other hand, entrapment signifies the ways and means devised by a peace officer to entrap or apprehend a person who has committed a crime. With or without the entrapment, the crime has been committed already. Hence, entrapment is not mitigating. Although entrapment is sanctioned by law, instigation is not.<sup>24</sup> The difference between the two lies in the origin of the criminal intent – in entrapment, the *mens rea* originates from the mind of the criminal, but in instigation, the law officer conceives the commission of the crime and suggests it to the accused, who adopts the idea and carries it into execution.<sup>25</sup>

In light of the foregoing differentiation between instigation and entrapment, the Court rejects the contention of Tapere for its being contrary to the established facts.

Tapere was caught *in flagrante delicto* committing the illegal sale of *shabu* during the buy-bust operation. In that operation, Salgado offered to buy from him a definite quantity of *shabu* for ₱100.00. Even if, as he claims,

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<sup>23</sup> Gregorio, *Fundamentals of Criminal Law Review*, 1997 Ninth Edition, Rex Book Store, Inc., Quezon City, pp. 80-81.

<sup>24</sup> Id.

<sup>25</sup> Id. at 82, citing *Araneta v. Court of Appeals*, L-46638, July 9, 1986, 142 SCRA 534, 539; and *Cabrera v. Pajares*, Adm. Matters Nos. R-278-RTJ and R-309-RTJ, May 30, 1986, 142 SCRA 127, 134.

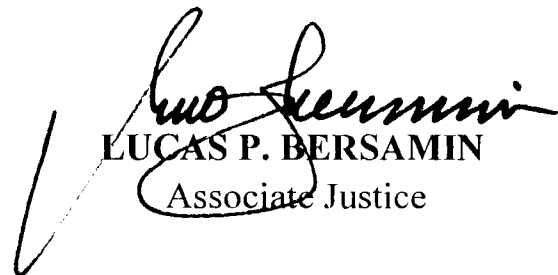


he was unaware that Salgado was then working as an undercover agent for the PDEA, he had no justification for accepting the offer of Salgado to buy the *shabu*. His explanation that he could not have refused Salgado's offer to buy for fear of displeasing the latter was implausible. He did not show how Salgado could have influenced him at all into doing something so blatantly illegal. What is clear to us, therefore, is that the decision to peddle the *shabu* emanated from his own mind, such that he did not need much prodding from Salgado or anyone else to engage in the sale of the *shabu*; hence, he was not incited, induced, instigated or lured into committing an offense that he did not have the intention of committing.<sup>26</sup>

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated by the Court of Appeals on February 27, 2007, finding **ARNOLD TAPERE, y POLPOL** guilty as charged for violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

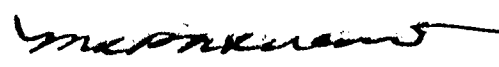
The accused shall pay the costs of suit.

**SO ORDERED.**



LUCAS P. BERSAMIN  
Associate Justice

**WE CONCUR:**



MARIA LOURDES P. A. SERENO  
Chief Justice



TERESITA J. LEONARDO-DE CASTRO Associate Justice



MARTIN S. VILLARAMA, JR.  
Associate Justice

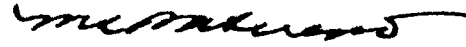


BIENVENIDO L. REYES  
Associate Justice

<sup>26</sup> *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741.

## 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