Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*	**G.R. No. 193385**
	Present:
- versus -	CARPIO, *Chairperson,* DEL CASTILLO, VLLARAMA, JR.,* MENDOZA, *and* LEONEN, *JJ.*
DATS GANDAWALI *y* GAPAS and NOL PAGALAD *y* ANAS, *Accused-Appellants.*	Promulgated: DEC 0 1 2014

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RESOLUTION

DEL CASTILLO, *J.*:

For final review is the June 21, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03736, which affirmed the November 18, 2008 Decision[2] of the Regional Trial Court (RTC), Branch 82 of Quezon City in Criminal Case No. Q-03-118597 finding appellants Dats Gandawali *y* Gapas (Gandawali) and Nol Pagalad[3] *y* Anas (Pagalad) guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

On July 3, 2003, an Information[4] for Violation of Section 5, Article II of RA 9165 was filed against Gandawali and Pagalad, *viz*:

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* Per Special Order No. 1888 dated November 28, 2014.

1 CA *rollo*, pp. 99-110; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Noel G. Tijam and Marlene Gonzales-Sison.

2 Records, pp. 139-145; penned by Presiding Judge Severino B. De Castro, Jr.

3 Also referred to as Pagalan or Pagalod in some parts of the records.

4 Records, pp. 1-2.

> That on or about the 30th day of June 2003, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, not being authorized by law to sell, dispense, deliver[,] transport, or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point twenty four (0.24) gram of white crystalline substance containing methylamphetamine hydrochloride[,] a dangerous drug.
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> CONTRARY TO LAW.[5]

When arraigned on September 3, 2003, both Gandawali and Pagalad pleaded "not guilty"[6] to the charge. Pre-trial and trial ensued.

Version of the Prosecution

On June 30, 2003, a confidential informant informed the Baler Police Station 2 that a possible drug deal would take place at the corner of Sto. Niño St. and Roosevelt Avenue, San Francisco Del Monte, Quezon City. A buy-bust team was thereupon created composed of P/Insp. Joseph de Vera (P/Insp. De Vera), as team leader; PO2 Sofjan Soriano (PO2 Soriano), as the poseur-buyer who was given a ₱500.00 bill as buy-bust money; and PO1 Alvin Pineda (PO1 Pineda), PO1 Ernesto Sarangaya (PO1 Sarangaya), PO2 John John Sapad (PO2 Sapad), and PO2 Eric Jorgensen (PO2 Jorgensen), as members.

The team along with the informant proceeded to the target area and arrived thereat at around 1:30 p.m. In accordance with the plan, PO2 Soriano and the informant approached Gandawali and Pagalad, while the rest of the team positioned themselves strategically. The informant introduced PO2 Soriano to appellants as a drug dependent who wanted to buy *shabu* worth ₱500.00. As Pagalad first asked for payment, PO2 Soriano gave the ₱500.00 bill to Gandawali. Gandawali, in turn, gave the money to Pagalad who took a small heat-sealed transparent plastic sachet from his pocket. Pagalad gave the plastic sachet containing white crystalline substance to Gandawali, who then handed the same to PO2 Soriano. Thereupon, PO2 Soriano signaled to his team members by taking off his cap. He then arrested appellants together with PO1 Sarangaya, and the latter recovered from Pagalad the ₱500.00 bill used as buy-bust money. Appellants were thereafter brought to the Baler Police Station 2.

PO2 Soriano marked the plastic sachet with the initials "ES-6-30-03" (the initials of PO1 Sarangaya) and together with the ₱500.00 bill, turned them over to the desk officer for proper disposition. Thereafter, P/Insp. De Vera prepared a Request for Laboratory Examination.[7] On the same day, PO2 Soriano and the

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5 Id. at 1.
6 Id. at 16-17.
7 Id. at 153.

other team members submitted the plastic sachet to P/Insp. Bernardino M. Banac, Jr. (P/Insp. Banac) at the Central Police District Crime Laboratory Office where a qualitative examination of its contents was made. The specimen, as found by P/Insp. Banac, tested positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.[8]

Version of the Defense

Appellants denied the accusation against them and claimed extortion. Their version of the incident is as follows:

At about 6:35 a.m. of June 30, 2003, while waiting for a bus at Litex, Fairview, Quezon City, Pagalad was arrested for unknown reason by PO1 Sarangaya. When questioned, he told the arresting officer that he has a companion Gandawali, who was likewise later arrested. Both were then brought to Police Station 2 at Baler, Quezon City where PO1 Sarangaya demanded from them ₱15,000.00 in exchange for their release. Unfortunately, they were unable to produce the money, hence, their incarceration.

Gandawali and Pagalad explained that despite their wrongful apprehension and the police's act of extortion, they did not file any case against them because they were afraid and were also unfamiliar with the procedures in filing a case.

Ruling of the Regional Trial Court

Finding sufficient evidence to sustain a finding of guilt, the RTC convicted appellants through a Decision[9] dated November 18, 2008, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused DATS GANDAWALI y GAPAS and NOL PAGALAD y ANAS guilty beyond reasonable doubt of x x x violation of Section 5, Article II of R.A. 9165. Accordingly, they are hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and each to pay a fine in the amount of Five Hundred Thousand (₱500,000.00) Pesos.
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> x x x x
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> SO ORDERED.[10]

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8 Id. at 155-156.
9 Id. at 139-145.
10 Id. at 145.

Ruling of the Court of Appeals

On appeal, the CA found no reason to overturn appellants' conviction. Thus, the dispositive portion of its June 21, 2010 Decision[11] reads:

> WHEREFORE, premises considered, the judgment promulgated by Branch 82, Regional Trial Court of Quezon City, in Criminal Case No. Q-03-118597 is hereby AFFIRMED in toto.
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> SO ORDERED.[12]

Issues

Appellants argue that all the elements of the offense charged were not proven and that the police officers failed to preserve the integrity and evidentiary value of the seized item.

The Court's Ruling

The appeal lacks merit.

All the elements of the offense charged were duly established by the prosecution.

The essential requirements for a successful prosecution of illegal sale of dangerous drugs, such as *shabu* are: "(1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor."[13] Equally settled is the rule that "[t]he delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction."[14] Here, the Court is satisfied that the prosecution discharged its burden of establishing all the aforesaid elements. The prosecution positively identified appellants as the sellers of the seized substance which was later found to be positive for methamphetamine hydrochloride, a dangerous drug. Appellants sold the drug to PO2 Soriano, the police officer who acted as the poseur-buyer, and received from the latter the ₱500.00 buy-bust money as payment therefor.

Appellants' contention that the consideration of the sale was not established since the buy-bust money was not presented as evidence is unavailing. Suffice it

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11 CA *rollo*, pp. 99-110.
12 Id. at 109-110.
13 *People v. Remegio*, G.R. No. 189277, December 5, 2012, 687 SCRA 336, 347.
14 *People v. Guiara*, 616 Phil. 290, 302 (2009).

to say that "[n]either law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation x x x."[15] "It is sufficient to show that the illicit transaction did take place, coupled with the presentation in court of the *corpus delicti* in evidence. These were done, and were proved by the prosecution's evidence."[16]

The integrity and evidentiary value of the dangerous drug seized from appellants were duly proven by the prosecution to have been properly preserved; its identity, quantity and quality remained untarnished.

Appellants persistently argue that the prosecution failed to establish with moral certainty the identity of the substance seized and the preservation of its integrity. They assert that the apprehending officers failed to observe the procedures for the custody and disposition of the seized drug as laid down in Section 21(1), Article II of RA 9165, particularly the conduct of physical inventory and taking of photograph of the seized item.

The Court finds appellants' contentions unconvincing.

Section 21(1),[17] Article II of RA 9165 clearly outlines the post-seizure procedure for the custody and disposition of seized drugs. The law mandates that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory of the same and take a photograph thereof 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 explicit directive of the above statutory provision notwithstanding, the Implementing Rules and Regulations of the said law provide a saving clause

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15 *People v. Santiago*, 564 Phil. 181, 203 (2007).

16 *People v. Yang*, 467 Phil. 492, 507 (2004).

17 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 drug 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.

whenever the procedures laid down in the law are not strictly complied with, to wit:

> x x x 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.[18]

Thus, gleaned from a plain reading of the implementing rules, the most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.[19] As long as the evidentiary value and integrity of the illegal drug are properly preserved, strict compliance of the requisites under Section 21 of RA 9165 may be disregarded.[20]

In this case, while it was admitted by PO1 Sarangaya that no physical inventory of the seized item was made and no photograph thereof was taken as mandated by law, and also while the reason given for such failure appears to be unsatisfactory, *i.e.*, PO1 Sarangaya was not familiar with Section 21, Article II of RA 9165 since the said law was just then newly implemented,[21] it was nonetheless shown that the integrity and evidentiary value of the seized item had been preserved and kept intact. The crucial links in the chain of custody of the seized drug subject matter of the case, from the time Gandawali handed it to the poseur-buyer up to its presentation as evidence in court, were duly accounted for and shown to have not been broken.

To recap, the prosecution established that after the seizure of the small plastic sachet containing white crystalline substance and of the buy-bust money from appellants' possession, PO2 Soriano marked the sachet with "ES 6-30-03," the initials of PO1 Sarangaya. The police officers thereafter took appellants and the recovered items to the desk officer who investigated the case. After the investigation, a request for laboratory examination was prepared by P/Insp. De Vera. On the same day, the confiscated small plastic sachet bearing the same marking, "ES-06-30-03," and the request were thereupon brought by PO2 Sapad, a member of the team, together with PO2 Soriano and some others to the Central Police District Crime Laboratory Office and were received by P/Insp. Banac for examination. P/Insp. Banac conducted a laboratory examination of the 0.24 gram of white crystalline substance found inside the plastic sachet marked with "ES-06-30-03," which per Chemistry Report No. D-555-03 tested positive for methylamphetamine hydrochloride. During trial, and based on the marking he placed, PO2 Soriano identified the seized item as the very same sachet containing

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18 Relevant portion of Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165.

19 *People v. Campomanes*, G.R. No. 187741, August 9, 2010, 627 SCRA 494, 507.

20 *People v. Pascua*, G.R. No. 194580, August 31, 2011, 656 SCRA 629, 638.

21 TSN, January 23, 2008, p. 11.

shabu that he bought and recovered from appellants. He also identified appellants to be the same persons who sold the *shabu* to him. Moreover, as gleaned from the Pre-Trial Order, P/Insp. Banac, the chemist, brought the specimen himself to the court during the scheduled hearing.

Following the above sequence of events, the Court entertains no doubt that the sachet containing white crystalline substance sold by appellants to the poseur-buyer was the same one marked with "ES-06-30-03," which was submitted for laboratory examination, found positive for *shabu*, and later presented to the court during the trial as the *corpus delicti*. Contrary therefore to appellants' claim, "the totality of evidence presented by the prosecution leads to an unbroken chain of custody of the confiscated item from [appellants]. Though there were deviations from the required procedure, *i.e.*, making physical inventory and taking of photograph of the seized item, still, the integrity and evidentiary value of the dangerous drug seized from [appellants] were duly proven by the prosecution to have been properly preserved; its identity, quantity and quality remained untarnished."[22]

Appellants' defense of extortion and/or frame-up must fail.

"The defense of extortion and/or frame up is often put up in drug cases in order to cast doubt on the credibility of police officers. This is a serious imputation of a crime hence clear and convincing evidence must be presented to support the same. There must also be a showing that the police officers were inspired by improper motive."[23] In this case, appellants claim that PO1 Sarangaya tried to extort from them ₱15,000.00 in exchange for their release after they were arrested. However, they failed to substantiate this allegation with clear and convincing evidence. Neither were they able to show that the said police officer was impelled by improper motive in imputing the offense against them. Consequently, appellants' defense of extortion and/or frame-up must fail.

Conspiracy between appellants in the sale of illegal drug was likewise duly established by the prosecution.

In line with the principle that an appeal in a criminal case throws wide open the whole case for review whether raised as an issue or not, the Court finds it imperative to make a brief discussion on the conspiracy angle of this case considering that the courts below failed to pass upon the same.

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22 *People v. Torres*, G.R. No. 191730, June 5, 2013, 697 SCRA 452, 466.
23 *People v. Collado*, G.R. No. 185719, June 17, 2013, 698 SCRA 628, 645.

"To establish the existence of conspiracy, direct proof is not essential. Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest."[24] The series of overt acts as recounted by the prosecution witnesses unmistakably show that appellants were in concert and shared a common interest in selling the *shabu*. Thus, when PO2 Soriano gave the ₱500.00 bill to Gandawali, the latter handed the money to Pagalad; when Pagalad took a small heat-sealed transparent plastic sachet from his pocket, he gave it to Gandawali who, in turn, gave the same to PO2 Soriano; and when PO2 Soriano announced their arrest, both appellants tried to escape. Clearly, there was conspiracy between them to sell and deliver a dangerous drug. In view thereof, they are liable as co-principals regardless of their participation in the commission of the offense.

Appellants are not eligible for parole.

The Court agrees with the penalty of life imprisonment and payment of fine of ₱500,000.00 imposed by the lower courts upon appellants. It must be emphasized, however, that appellants are not eligible for parole.[25]

WHEREFORE, the June 21, 2010 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03736 is **AFFIRMED** with the **MODIFICATION** that appellants DATS GANDAWALI *y* GAPAS and NOL PAGALAD *y* ANAS shall not be eligible for parole.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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[24] *People v. Alpapara*, G.R. No. 180421, October 30, 2009, 604 SCRA 800, 812-813.
[25] *People v. SPO3 Ara y Mirasol*, 623 Phil. 939, 962 (2009).

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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