



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 195850

Present:

- versus -

CARPIO, *Chairperson,*  
VELASCO, JR.,<sup>\*</sup>  
DEL CASTILLO,  
MENDOZA, *and*  
LEONEN, *JJ.*

ABOLA BIO y PANAYANGAN,  
*Accused-Appellant.*

Promulgated:  
FEB 16 2015

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RESOLUTION

DEL CASTILLO, J.:

Assailed in this appeal is the September 21, 2010 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03859, which affirmed the January 5, 2009 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 82, Quezon City, finding appellant Abola Bio y Panayangan (appellant) guilty beyond reasonable doubt of Violation of Sections 5 (illegal sale of dangerous drugs) and 11 (illegal possession of dangerous drugs), Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The evidence for the prosecution established that at around 9:00 p.m. of September 8, 2003, an asset reported to Police Superintendent Nilo Wong (P/Supt. Wong), Chief of the Station Anti-Illegal Drugs Special Operations Task Unit (SAID-SOTU), Novaliches Police Station, the alleged illegal drugs activities of appellant. P/Supt. Wong immediately formed a team composed of SPO3 Mario Concepcion, PO2 Noel Magcalayo, PO1 Edmond Paculdar, PO1 Emeterio Mendoza, PO1 Michael Collado and PO2 Fernando Salonga (PO2 Salonga). As

<sup>\*</sup> Per Special Order No. 1910 dated January 12, 2015.

<sup>1</sup> CA *rollo*, pp. 106-116; penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court) and concurred in by Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Elihu A. Ybañez.

<sup>2</sup> Records, pp. 132-140; penned by Judge Severino B. De Castro, Jr.

PO2 Salonga would act as the poseur-buyer, he was provided with two 100-peso bills as buy-bust money.

The team then proceeded to the designated area along Ramirez St., Brgy. Nova Proper. Upon arrival thereat an hour later, the asset introduced PO2 Salonga to the appellant as a buyer of *shabu*. After a brief conversation, appellant agreed to the sale. PO2 Salonga handed to appellant the two 100-peso bills and, in turn, the latter gave the former a plastic sachet. PO2 Salonga thereupon scratched his head as the pre-arranged signal to his companions that the sale had been consummated. He then introduced himself to appellant as a police officer and apprehended him. However, before he could handcuff appellant, a woman later identified as appellant's wife, suddenly grabbed appellant such that the latter was able to run away. PO2 Salonga gave a chase and caught appellant, who, when searched, was found possessing another plastic sachet suspected to contain *shabu*.

Appellant, together with the buy-bust money previously marked with PO2 Salonga's initials "FAS" and the two plastic sachets, were then brought to the Novaliches Police Station. Thereat, the plastic sachet subject of the sale was marked with the initial "FAS"<sup>3</sup> while the sachet recovered from appellant's possession with "FAS-1."<sup>4</sup> They were thereafter turned over to the duty desk officer for booking and later, to PO1 Oliver Estrelles (PO1 Estrelles), the police investigator on duty. Afterwards, appellant and the above-mentioned pieces of evidence were brought by PO2 Salonga and PO1 Estrelles to the Philippine National Police (PNP) Crime Laboratory. A qualitative examination conducted by Forensic Chemist P/Insp. Leonard Arban<sup>5</sup> shows that each sachet contained a net weight of 0.15 gram of white crystalline substance that tested positive for methamphetamine hydrochloride or *shabu* as indicated in Chemistry Report No. D-927-03.<sup>6</sup>

For his part, appellant interposed the defenses of denial and extortion. He claimed that he was just buying charcoal when arrested. One of the policemen who is not familiar to him demanded ₱80,000.00 for settlement.

After trial, the RTC rendered a Decision<sup>7</sup> on January 5, 2009 finding appellant guilty beyond reasonable doubt of Violation of Sections 5 and 11, Article II of R.A. 9165. It ruled that the elements for the prosecution of illegal sale and illegal possession of dangerous drugs have been established. The dispositive portion of the RTC Decision reads:

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<sup>3</sup> Exhibit "B-1", id. at 146.

<sup>4</sup> Exhibit "B-2", id.

<sup>5</sup> His testimony was dispensed with per stipulation of the prosecution and the defense on April 14, 2004.

<sup>6</sup> Exhibit "C," id. at 148.

<sup>7</sup> Id. at 132-140.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

a) Re: Criminal case No. Q-03-120914 – The Court finds accused ABOLA BIO y PANAYANGAN guilty beyond reasonable doubt of a violation of Section 5, Article II of R.A. No. 9165 and accordingly, hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Five Hundred Thousand (₱500,000.00) Pesos.

b) Re: Criminal Case No. Q-03-120915 – The Court finds accused ABOLA BIO y PANAYANGAN guilty beyond reasonable doubt of a violation of Section 11, Article II of R.A. No. 9165 and accordingly, hereby sentences him to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to FOURTEEN (14) YEARS as MAXIMUM and to pay a fine in the amount of THREE HUNDRED THOUSAND (₱300,000.00) PESOS.

The Branch Clerk of Court is hereby ordered to transfer the possession and custody of the dangerous drugs subject of these cases to the Philippine Drug Enforcement Agency for proper disposition and final disposal.

SO ORDERED.<sup>8</sup>

Appellant appealed to the CA.

In its Decision<sup>9</sup> dated September 21, 2010, the CA found a confluence of the elements of illegal sale and illegal possession of dangerous drugs as to justify appellant's conviction for the said offenses. It likewise noted that the prosecution was able to establish the integrity and evidentiary value of the *shabu* seized from appellant. Ultimately, the CA affirmed appellant's conviction, thus:

WHEREFORE, premises considered, the assailed judgment of conviction is hereby AFFIRMED.

SO ORDERED.<sup>10</sup>

Hence, this appeal.

Appellant posits that the prosecution failed to prove the indispensable element of *corpus delicti* of the crime. He maintains that the prosecution failed to show that the police officers complied with the requirements of R.A. 9165 in handling the seized evidence, particularly with respect to the immediate marking, physical inventory and taking of photographs of the items confiscated. According to him, this raises serious doubts as to the integrity and evidentiary value of the evidence. Moreover, appellant claims that he was not assisted by counsel during

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<sup>8</sup> Id. at 139-140.

<sup>9</sup> CA *rollo*, pp. 106-116.

<sup>10</sup> Id. at 115.

the investigation and inquest proceedings in violation of his fundamental right to due process.

The appeal fails.

After reviewing the evidence on record, the Court is fully convinced that a legitimate buy-bust operation was indeed conducted against appellant wherein he sold to PO2 Salonga one plastic sachet of *shabu* and that an ensuing body search revealed that he possessed another plastic sachet containing the same illegal substance.

To sustain a conviction under Section 5, Article II of R.A. 9165, all that is needed for the prosecution to establish are (1) the identity of the buyer, seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>11</sup> In illegal possession of dangerous drugs, on the other hand, it is necessary to prove that: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely and consciously possessed the drug.<sup>12</sup>

In his testimony, PO2 Salonga, the poseur-buyer, positively identified appellant as the seller of the plastic sachet containing white crystalline substance which was later identified by the PNP Forensic Chemist to be positive for methamphetamine hydrochloride or *shabu*. The same sachet and substance was identified in court by PO2 Salonga as the *shabu* sold to him by appellant for the sum of ₱200.00. As correctly ruled, therefore, by both lower courts, all the elements of the offense of illegal sale of *shabu* are obtaining in this case. In the same vein, appellant, upon being frisked after his apprehension, was found possessing another plastic sachet containing 0.15 gram of methamphetamine hydrochloride or *shabu*. There is no evidence on record showing that he was legally authorized to possess the same. Neither was there any explanation that he did not freely or consciously possess the said illegal drug. Settled is the rule that “possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession.”<sup>13</sup> Clearly, all the elements of the offense of illegal possession of dangerous drugs are likewise present in this case.

Appellant, however, questions the integrity and evidentiary value of the seized items due to the failure of the police officers to comply with requirements set forth under Section 21 of R.A. 9165.

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<sup>11</sup> *People v. Dela Rosa*, G.R. No. 185166, January 26, 2011, 640 SCRA 635, 646.

<sup>12</sup> *People v. Desuyo*, G.R. No. 186466, July 26, 2010, 625 SCRA 590, 604.

<sup>13</sup> *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 327.

The Court, however, finds that the chain of custody of the seized items was shown to be intact and unbroken notwithstanding the failure of the apprehending officers to mark the evidence upon arrest, to make the inventory, and to take photographs of the same in the presence of the appellant and the persons mentioned in Section 21 of R.A. 9165. As held in *People v. Domado*,<sup>14</sup> mere lapses in procedures need not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been preserved. Thus, the CA aptly held, viz:

In the recent case of *People vs. Jakar Mapan Le*, the Supreme Court clarified that there are links that must be established in the chain of custody in the buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

In the present case, the links in the chain have been duly proven. During the conduct of the buy-bust operation, PO2 SALONGA, the poseur-buyer, was able to confiscate two (2) plastic sachets of shabu from accused-appellant: the first one was sold to him in exchange for the buy-bust money, and the second one was recovered from the latter during the routinary frisk conducted by PO2 SALONGA. He thereafter gave the plastic sachets to SPO3 CONCEPCION, who kept the same in his custody until they reached the police station, where SPO3 CONCEPCION, in turn, surrendered them to the desk officer who placed the appropriate markings thereon. Subsequently, the seized items were turned over to PO1 ESTRELLES, the police officer on duty, who prepared the request for laboratory examination on the specimens, which he delivered, together with the seized plastic sachets, to the PNP Crime Laboratory on September 9, 2003. [Thereupon], forensic chemist P/INSP ARBAN duly received the request for laboratory examination and the confiscated items and conducted the qualitative examination thereon, which yielded positive results.

Thus, the prosecution in this case was able to establish the integrity and the evidentiary value of the *shabu* seized from accused-appellant, hence, there was substantial compliance with the requirements of the law. It must be stressed that non-compliance with Sec. 21 of [R.A.] 9165 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. The requirements under [R.A.] 9165 and its implementing rules are not inflexible. 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.'<sup>15</sup>

Anent appellant's claim of denial of due process allegedly because he was not assisted by counsel during the investigation and inquest proceedings, the Court cannot accord credence to the same. As correctly observed by the CA, this issue cannot be raised for the first time on appeal without offending the basic rules of

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<sup>14</sup> G.R. No. 172971, June 16, 2010, 621 SCRA 73, 85.

<sup>15</sup> CA *rollo*, pp. 113-114.

fair play, justice and due process. Besides, the fact that he was not assisted by counsel during the investigation and inquest proceedings does not in any way affect his culpability. It has already been held that “the infractions of the so-called Miranda rights render inadmissible only the extrajudicial confession or admission made during custodial investigation.”<sup>16</sup> Here, appellant’s conviction was based not on his alleged uncounseled confession or admission but on the testimony of the prosecution witness.

In light of the above discussion and of PO2 Salonga’s positive identification of appellant, the courts below rightly brushed aside his defenses of denial and frame-up or extortion. Aside from being not substantiated by strong and convincing evidence, the Court has viewed such defenses with disfavor for they can easily be concocted and are common and standard ploy in prosecutions for violation of the Dangerous Drugs Act.<sup>17</sup>

All told, the Court affirms appellant’s conviction of the offenses charged. As to the penalties imposed, the Court also finds them proper and likewise affirms the same. However, appellant is not eligible for parole with respect to the case of illegal sale of *shabu*.<sup>18</sup>

**WHEREFORE**, the assailed September 21, 2010 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03859 is **AFFIRMED with the MODIFICATION** that appellant Abola Bio y Panayangan is not eligible for parole with respect to the case for illegal sale of *shabu*.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

<sup>16</sup> *Hoi Wai Pang v. People*, G.R. No.176229, October 19, 2011, 659 SCRA 624, 633 citing *Aquino v. Paiste*, 578 Phil. 244, 257-258 (2008).

<sup>17</sup> *People v. Naquita*, 582 Phil. 422, 448-449 (2008).

<sup>18</sup> See Section 2, Indeterminate Sentence Law.

  
**PRESBITERO J. VELASCO, 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*

