



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

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

**G.R. No. 209588**

**Present:**

SERENO, C.J.,  
*Chairperson,*  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

-versus-

**ERIC ROSAURO y BONGCAWIL,**  
Accused-Appellant.

Promulgated:

**FEB 18 2015**

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**DECISION**

**PEREZ, J.:**

For the consideration of the Court is an appeal of the Decision<sup>1</sup> dated 19 June 2013 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00552-MIN, which affirmed the Judgment<sup>2</sup> dated 24 November 2006 of the Regional Trial Court (RTC), Cagayan de Oro City, Branch 25 in Criminal Case No. 2004-856, finding accused-appellant Eric Rosauro y Bongcawil (accused-appellant) guilty beyond reasonable doubt of illegal sale of *shabu* under Sec. 5, Article II of Republic Act No. 9165 (R. A. No. 9165) or the *Comprehensive Dangerous Drugs Act of 2002*, sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of ₱500,000.00.

<sup>1</sup> Rollo, pp. 3-17; Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Jhosep Y. Lopez concurring.

<sup>2</sup> CA rollo, pp. 72-75; Penned by Judge Noli T. Catli.



In an Amended Information dated 21 February 2005,<sup>3</sup> accused-appellant was charged with violation of Sec. 5, Art. II of R. A. No. 9165, to wit:

That on the 3rd day of July, 2004 at about 5:30 o'clock in the afternoon, more or less, at Purok 3, Barangay Poblacion, Municipality of Villanueva, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess and to sell any dangerous drugs, knowingly, willfully and feloniously, did then and there, sell and convey to a third person, who acted as a decoy in a buy bust operation, one (1) sachet of shabu, containing 0.04 grams (sic) of shabu, which when examined gave POSITIVE result to test for the presence of Methamphetamine Hydrochloride (Shabu), a dangerous drug.<sup>4</sup>

Upon re-arraignment, accused-appellant pleaded not guilty to the crime charged.<sup>5</sup> Thereafter, pre-trial and trial on the merits ensued.

Based on the records, the prosecution's version of the facts is as follows:

On October 13, 2002, on the basis of unconfirmed reports that accused-appellant Eric Rosauro (Rosauro for brevity) was selling and distributing drugs, the Provincial Drug Enforcement Unit of Misamis Oriental conducted a test-buy operation in the Municipality of Villanueva, Misamis Oriental using a confidential agent. The confidential agent bought shabu from Rosauro at Purok 2, Barangay Katipunan, Villanueva, Misamis Oriental. The substance bought from Rosauro was examined by the PNP crime laboratory and yielded a positive result for Methamphetamine Hydrochloride (commonly known as shabu).

On July 3, 2004, the police authorities received information that again drugs were being distributed at Purok 3, Barangay Poblacion, Villanueva, Misamis Oriental. Thus, at 5:30 o'clock in the afternoon, the Provincial Anti-Illegal Drugs Special Operation Task Unit (PAID-SOTU)

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<sup>3</sup> Records, p. 1; The Original Information dated 21 September 2004 reads:

That on the 3rd day of July, 2004 at about 5:30 o'clock in the afternoon, more or less, at Purok 3, Barangay Poblacion, Municipality of Villanueva, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess and to sell any dangerous drugs, knowingly, willfully and feloniously did then and there sell and convey to a third person one (1) sachet of Shabu, containing 0.08 grams (sic) of shabu, which when examined gave POSITIVE result to the test for the presence of Methamphetamine Hydrochloride (Shabu), a dangerous drug.

<sup>4</sup> *Rollo*, p. 6; CA Decision.

<sup>5</sup> CA *rollo*, p. 72; RTC Judgment.

elements led by SPO4 Lorenzo Larot and PO3 Juancho Dizon positioned themselves in the house of their confidential agent.

There, the PAID-SOTU elements saw Rosauro negotiate with the confidential agent. In exchange for the one (1) sachet of shabu given by Rosauro to the confidential agent, the latter gave him a marked 100-peso bill with serial number YZ7 12579.

After the transaction, Larot and Dizon came out of their hiding place and arrested Rosauro. Thereafter, the confidential agent handed the sachet to Larot, who taped it, marked it with the marking “Exhibit A”, and placed it inside his pocket. He also took pictures of Rosauro and the drugs. In the police station, he prepared a Certificate of Inventory and a Request for Laboratory Examination. Both the drugs and Rosauro were then turned over to the Crime laboratory.

On the basis of the request made by Larot, Police Chief Inspector Ma. Leocy Mag-abo, the Forensic Chemical Officer of PNP Crime Laboratory conducted a laboratory examination on the contents of the sachet, on accused-appellant, and the marked money. The examination of the seized item yielded positive result for methamphetamine hydrochloride (shabu); while the accused-appellant and the marked money tested positive for the presence of ultra-violet fluorescent powder.<sup>6</sup>

For his part, accused-appellant claims that he was merely a victim of instigation:

Accused-appellant Rosauro, on the other hand, tells a different tale. He testified that on July 3, 2004, the police asset went to his house four (4) times and convinced him to do an errand for him. Rosauro refused to buy shabu as he did not know where to buy one. It was the confidential informant who told him to buy the prohibited drug from a certain “Kael” and to deliver it to the former’s house. It was also the informant who gave the money to Rosauro to buy the shabu. But Rosauro was not able to meet or buy directly from Kael because it was a young man who got and handed to him the shabu on the road. When Rosauro went to the house of the confidential informant as instructed, he was arrested by SPO4 Larot and Dizon. The sachet of shabu was not even recovered from him but from the confidential informant.<sup>7</sup>

Finding the evidence of the prosecution sufficient to establish the guilt of accused-appellant, the RTC rendered a judgment of conviction, *viz.*:

**IN THE LIGHT OF THE FOREGOING**, this Court hereby renders Judgment finding accused ERIC ROSAURO y BONGCAWIL,

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<sup>6</sup> *Rollo*, p. 3-5; CA Decision.

<sup>7</sup> *Id.* at 5.

“guilty” beyond reasonable doubt of the crime charged in the information for selling and delivering a sachet of shabu to the poseur buyer a Violation of Section 5, Article II of R.A. 9165 and imposes a penalty of life imprisonment and a fine of Five Hundred Thousand (PhP 500,000.00) Pesos and to pay the cost.

The accused ERIC B. ROSAURO who has undergone preventive imprisonment shall be credited in the service of his sentence consisting of deprivation of liberty, with the full time during which he has undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rule imposed upon convicted prisoners, except those disqualified by law.

The sachet of shabu, Exh. “A” is confiscated and forfeited in favor of the government to be destroyed in accordance with law.<sup>8</sup>

Accused-appellant appealed before the CA, assigning a lone error:

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THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.<sup>9</sup>

After a review of the records, the CA affirmed the RTC Judgment. The appellate court ruled that what transpired in the case at bar was an entrapment and not an instigation;<sup>10</sup> that all the elements of illegal sale of regulated or prohibited drugs were duly proven;<sup>11</sup> that the non-presentation of the confidential agent in court is not fatal;<sup>12</sup> that the inconsistencies in the testimony of the lone witness of the prosecution do not affect the result of the case;<sup>13</sup> and that the apprehending team was able to preserve the integrity of the subject drug and that the prosecution was able to present the required unbroken chain in the custody of the subject drug.<sup>14</sup> Thus, the CA held:

**WHEREFORE**, the Judgment dated November 24, 2006 of the Regional Trial Court, Branch 25, Cagayan de Oro City in Criminal Case No. 2004-856 is hereby **AFFIRMED**.<sup>15</sup>

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<sup>8</sup> CA *rollo*, pp. 74-75; RTC Judgment.

<sup>9</sup> Id. at 49; Brief for the Accused-Appellant.

<sup>10</sup> *Rollo*, p. 8; CA Decision.

<sup>11</sup> Id. at 11-12.

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

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

<sup>14</sup> Id. at 15.

<sup>15</sup> Id. at 17.

Accused-appellant is now before the Court seeking a review of his conviction.

After a thorough review of the records, however, we dismiss the appeal.

It is apropos to reiterate here that where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, the Court will not disturb the trial court's assessment of the facts and the credibility of the witnesses since the RTC was in a better position to assess and weigh the evidence presented during trial. Settled too is the rule that the factual findings of the appellate court sustaining those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.<sup>16</sup>

The RTC and the CA both found the arrest of accused-appellant to be the result of a legitimate entrapment procedure, and we find nothing in the records as to warrant a contrary finding. In *People v. Bartolome*,<sup>17</sup> we had the occasion to discuss the legitimacy of a "decoy solicitation," to wit:

It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the offense is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.

As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant induced the appellant to sell illegal drugs to him.

Similarly, the presentation of an informant as witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit

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<sup>16</sup> *People v. Vasquez*, G. R. No. 200304, 15 January 2014, 714 SCRA 78, 101.

<sup>17</sup> G. R. No. 191726, 6 February 2013, 690 SCRA 159, 172 citing *People v. Sta. Maria*, 545 Phil. 520, 528-529 (2007).

arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded.<sup>18</sup> In the present case, as the buy-bust operation was duly witnessed by the Provincial Anti-Illegal Drugs Special Operation Task Unit (PAID-SOTU) elements led by SPO4 Lorenzo Larot (SPO4 Larot) and PO3 Juancho Dizon, their testimonies can take the place of that of the confidential informant.

As to whether accused-appellant's guilt was established beyond reasonable doubt, we rule in the affirmative.

In a catena of cases, this Court laid down the essential elements to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous or prohibited drugs, like *shabu*, under Section 5, Article II of R.A. No. 9165, to wit: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and payment therefor. Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.<sup>19</sup>

Verily, all the elements for a conviction of illegal sale of dangerous or prohibited drugs were proven by the prosecution: the identity of accused-appellant as the seller, and that of the confidential informant as poseur-buyer were established, as well as the exchange of the sachet of *shabu* and the marked money. It was also ascertained that the seized item was positive for *shabu*, a dangerous drug, and that the same item was properly identified in open court by SPO4 Larot. Moreover, the ₱100.00 bill with serial number YZ712579, or the subject marked money, as well as the living body of the accused-appellant revealed a positive result for ultraviolet fluorescent powder.

Accused-appellant avers that the prosecution was not able to prove the *corpus delicti*, and that the statutory safeguards provided for in Sec. 21 of R.A. No. 9165 were not followed.

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<sup>18</sup> Id. at 175.

<sup>19</sup> *People v. Torres*, G. R. No. 191730, 5 June 2013, 697 SCRA 452, 462-463.

Indeed, as we held in *People v. Torres*,<sup>20</sup> equally important in every prosecution for illegal sale of dangerous or prohibited drugs is the presentation of evidence of the seized drug as the *corpus delicti*. The identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. In this regard, paragraph 1, Section 21, Article II of R. A. No. 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized, to wit:

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.

However, this Court has, in many cases, held that while the chain of custody should ideally be perfect, in reality it is “almost always impossible to obtain an unbroken chain.” 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. Hence, the prosecution’s failure to submit in evidence the physical inventory and photograph of the seized drugs as required under Article 21 of R. A. No. 9165, will not render the accused’s arrest illegal or the items seized from him inadmissible.<sup>21</sup>

The chain of custody is not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the presence of the enumerated persons. The Implementing Rules and Regulations of R. A. No. 9165 on the handling and disposition of seized dangerous drugs states:

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<sup>20</sup> Id. at 464.

<sup>21</sup> *People v. Loks*, G. R. No. 203433, 27 November 2013, 711 SCRA 187, 196-197.


x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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.<sup>22</sup> (*Italics, emphasis, undescoring omitted*)

In the case at bar, after the sale was consummated, the confidential informant gave the seized item to SPO4 Larot who placed tape on the sachet and marked it "Exhibit A." Upon reaching the police station, SPO4 Larot executed the Certificate of Inventory, as well as the request for laboratory examination. The request, the specimen, as well as the marked money and accused-appellant were then brought to the PNP Crime Laboratory for examination. They were received by SPO2 Ricardo Maisog, the Receiving Clerk of the PNP Crime Laboratory Office, who then forwarded them to Police Inspector Ma. Leocy Jabonillo Mag-abo, the Forensic Chemical Officer of the PNP Crime Laboratory.<sup>23</sup> Moreover, the seized item was duly identified by SPO4 Larot in open court as the same item seized from accused-appellant.

Accused-appellant's guilt having been established, we likewise affirm the penalty imposed by the RTC and the CA. Under the law, the offense of illegal sale of *shabu* carries with it 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), regardless of the quantity and purity of the substance.<sup>24</sup> Thus, the RTC and CA were within bounds when they imposed the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00).

**WHEREFORE,** premises considered, the present appeal is **DISMISSED.**

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice


<sup>22</sup> *People v. Torres*, supra note 19 at 465-466.

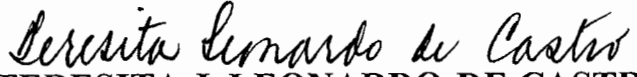
<sup>23</sup> *Rollo*, p. 15; CA Decision.

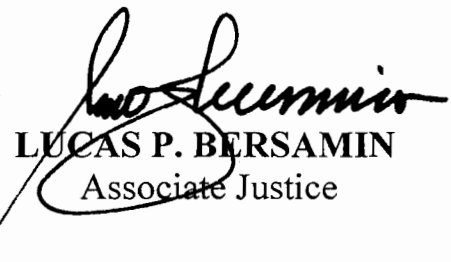
<sup>24</sup> *People v. Torres*, supra note 19 at 469.




WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson


  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were 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