

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GESSIEL MAFFER ALIAS “TOTO BUKA” ALSO KNOWN AS “JESSIEL MAFFER”, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

This is an appeal from the Decision[1] dated 3 July 2013 of the Regional Trial Court , 6[th] Judicial Region, Br. 36 of Iloilo City convicting Gessiel Maffer alias “Toto Buka” also known as “Jessiel Maffer” of violation of Section 5, Art. II of RA 9165 in Crim. Case No. 08-66249.

THE ANTECEDENTS

By Resolution[2] dated 15 September 2008, the Prosecutor I of the Iloilo City Prosecution Office found probable cause to indict Gessiel Maffer for violation of Section 5, Art. II of RA 9165, and accordingly, recommended the filing of Information,[3] the accusatory charge of which reads as follows:

“That on or about the 28[th] day of August 2008, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, said accused Gessiel Maffer, did then and there willfully, unlawfully and criminally sell/deliver one (1)-heat sealed transparent plastic sachet containing 0.01 gram of methamphetamine hydrochloride (shabu), a dangerous drug, to a PNP poseur-buyer, in consideration of the amount of Five Hundred Pesos (Php500.00), inclusive of the One Hundred Pesos marked money bill bearing Serial Number GO189945, without authority to do so.

CONTRARY TO LAW.”

Subsequently, the the first paragraph of the information was amended, to read,

“The undersigned City Prosecutor accused GESSIEL MAFFER also known as “TOTO BUKA” and “JESSIEL MAFFER”, whose date and place of birth cannot be ascertained of the crime of VIOLATION OF PAR. 1, SECTION 5, ARTICLE II, R.A. 9165 (Illegal Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs), committed as follows:

x x x x.”[4] (Emphases supplied)

As can be gleaned from the RTC Order[5] dated 4 November 2008, the Amended Information filed by the Office of the Prosecution was read to Gessiel Maffer in the dialect known to her, and thereafter, and duly assisted by her counsel, she entered a plea[6] of not guilty.

After the issues have been joined, trial ensued.

Version of the prosecution

The gist of the testimonies of following prosecution witnesses, namely: (1) IO1 Ailine Artus; (2) IO2 Daisy

Sabanal; (3) IO1 Melinda Panaguiton; (4) IO1 Jonah Mirador; and (5) the forensic chemist P/Supt. Rea Villavicencio, may be summarized as follows:

On 25 August 2008, the Philippine Drug Enforcement Agency (PDEA) in Region 6, thru its Regional Director, received information from a confidential agent that Gessiel Maffer was actively selling shabu in her house located in Brgy. Baldoza prompting the agency to organize a team to conduct a casing and surveillance operation in order to confirm the veracity of the said information. The casing and surveillance operation lasted for three (3) days. During the casing and surveillance operation, IO1 Ailine Jo Artus together with the confidential informant who acted as her lover, transacted with Gessiel Maffer. First, it was the two of them who talked to Gessiel Maffer, afterwards, the confidential informant and Gessiel Maffer went inside the latter's house. On this occasion, they were able to buy shabu from Gessiel Maffer. They turned-over the suspected shabu to the persons in-charge who in turn submitted the same to the PNP Crime Laboratory. After having confirmed the veracity of the information, a team was formed to conduct a buy-bust operation. The team was composed of IO1 Ailine Jo Artus, IO1 Jose Ramir Batuigas, IO3 Jonah Arugay, IO1 Panaguiton, IO1 Sabanal and IO1 Cataluña, with IO1 Jonah Arugay as team leader.

IO1 Ailine Jo Artus was designated as poseur-buyer, IO3 Arugay as arresting officer and the rest of the team as back-up. Five P100.00 bills were prepared to be used as payment but only the P100.00 bill with serial number GQ189945 was marked. IO3 Arugay gave the marked bills to IO1 Artus. They still proceeded with the operation even if they were not sure if Gessiel Maffer would be in her house on the afternoon of 28 August 2008 because anyway on the morning of that same day their confidential informant already talked to Gessiel Maffer.

Again, IO1 Artus and the confidential informant were going to act as lovers. At about 2 PM to 3 PM on the same day, the two proceeded to Brgy. Baldoza and looked for Gessiel Maffer. Not finding her there, they proceeded to her house but she was nowhere to be found. They went to the La Paz Plaza which was about one (1) kilometer away from the house of Gessiel Maffer. After two (2) hours of waiting at the plaza, Gessiel Maffer did not show up, so they decided to go back to her residence. When they arrived in the area, they saw Gessiel Maffer sitting in front of a house, which was five (5) meters away from her house, playing with a child. When she saw them, she asked if they were the ones who were looking for her, to which they answered in the affirmative. Thereafter, they were told to follow her to her house. Upon arriving there, they were told to wait outside. Afterwards, Gessiel Maffer came out of the house and handed IO1 Artus the suspected shabu. After receiving the item, IO1 Artus paid Gessiel Maffer with the prepared five (5)-P100.00 bills. After paying Gessiel Maffer, IO1 Artus immediately pressed the "dial" button on her mobile phone to call IO3 Arugay. IO1 Artus explained that even before the illegal sale transaction, she was already holding her mobile phone and that the number of IO3 Arugay was already on the screen.

The confidential informant manifested to Gessiel Maffer that he wanted to use the shabu they just bought. Gessiel Maffer, that time, might not have wanted her house to be used as drug den, so she left them and went to her neighbor to check if she could use the neighbor's house instead. One minute passed, Gessiel Maffer came out from her neighbor's house. After about another two to three minutes the back-up arrived and rushed towards them. They apprehended Gessiel Maffer and identified themselves as PDEA agents. They apprised her of her constitutional rights and then brought her to their office.

IO1 Artus took possession of the suspected shabu and then searched the person of Gessiel Maffer from where the following were recovered: two (2) brown wallets, one (1) lighter, one (1) coin purse, one (1) pair of scissors, two (2) keys, one (1) SIM card, one (1) crumpled aluminum foil, two (2) pieces P100.00 bills, one (1) piece P500.00 bill, two (2) pieces P20.00 bills and two (2) P2.00 bills. Thereafter, they brought Gessiel Maffer to their office. They were able to recover only two of the five-(5) P100.00 purchase money, one of which is the marked money.

The suspected shabu was marked in their office and not at the crime scene because there was already a commotion after Gessiel Maffer resisted arrest. The suspected drug was marked with “GM-1” where the “GM” stands for Gessiel Maffer. The other items were marked with the initials “GM-2” and “GM-3” and onwards. After the marking which was around 7PM, they conducted an inventory. Present during the inventory were media representative Julius Padilla, Prosecutor Melwen Sustento and Brgy. Capt. Benito Bonete, who, together with IO1 Artus, IO3 Arugay and IO1 Daisy Sabanal, signed the Certificate of Inventory. IO1 Sabanal took pictures of what transpired during the inventory.

After the inventory, IO1 Artus turned over the suspected drug to IO2 Sabanal. As to the non-drug items, including the marked money (Exhibit “R”), the same were turned-over by IO2 Sabanal to the evidence custodian, IO2 Maria Melinda Panaguiton.

IO2 Sabanal prepared the Request for Laboratory Examination and submitted the said document together with the suspected drug to the PNP crime laboratory.

The forensic chemist, P/Supt. Rea Villavicencio, examined the confiscated item and accordingly, made a report on her findings and conclusion thereon.

Gessiel Maffer was then turned-over to the police station.

Version of the defense:

Gessiel Maffer:[7]

At around 5:30 o'clock on the afternoon of August 28, 2008, Gessiel Maffer went to the basketball court located in Zone 2, Brgy. Baldoza, La Paz, Iloilo City to watch a game. While she was watching the game, two persons approached her and asked her if she knows a certain Alvin. Gessiel Maffer pointed to these persons where Alvin could be found. She then told the basketball players to stop playing for the meantime so that the policemen can pass although she did not know then that they are policemen because she was only joking when she told the players that they are.

After about twenty (20) minutes, she saw people getting inside the basketball court and on the run shouting “PDEA”, “PDEA”. Then, the lady beside her grabbed her hand. Afterwards, she saw two persons running towards her and one of them threatened to strike her with a knife and told her not to resist. She continued resisting for about ten (10) minutes. Her nephew arrived and told them not to harm her because she is a lady and that she has not done anything wrong. Her nephew was told not to go near her.

She was brought to Camp Delgado in Iloilo City. She was accused of warning Alvin about the presence of the PDEA operatives and of their plan to go to where he [Alvin] was. Later, the PDEA operatives wanted her to accompany them to Alvin's place but she refused. She was brought to the La Paz Station and told to just rest there. While at the police station, she called her family who visited her. During the visit, her family noticed that she has scratches/ marks on her arms. During her detention at the La Paz police station, she did not dare report about the persons who threatened her at the basketball court because of fear. Eventually, she was told that she was the subject of the buy-bust operation. After two (2) months she was transferred to the BJMP.

Maryjane Mabaquiao:[8]

She is the older sister of Gessiel Maffer. She narrated that on that fateful day, after watching a movie with Gessiel Maffer, they went to the town plaza where her son was playing a game of basketball. While they were watching the game, a man suddenly came over to where they were and held Gessiel Maffer by the shoulder. The man was brandishing a knife to keep the people from going near them. That is why, nobody came to help Gessiel Maffer.

Then, a woman, who she saw took out a firearm from her shoulder bag, approached Gessiel Maffer and the man who was holding her. Both the man and the woman prevented Gessiel Maffer from leaving the place. Then, some PDEA agents arrived. She knew that they were PDEA agents because they were wearing shirts with a name tag and caps with the initials “PDEA” printed on them. The PDEA agents led Gessiel Maffer out of the basketball court but she did not follow them because she could not leave her twenty-one year old child who was with her at that time. She did not know what happened with Gessiel Maffer after that.

THE RULING[9] OF THE REGIONAL TRIAL COURT

After considering the parties' evidence, the RTC concluded and disposed the case in this wise, viz -

“The evidence adduced by the prosecution has duly established all the elements of violation of Section 5, Article II, Republic Act No. 9165, as follows:

'x x x x'

In fine, the Court finds that on the afternoon of August 28, 2008 in Brgy. Baldoza, Lapaz, Iloilo City, the herein accused sold and delivered a shabu, a dangerous drug weighing 0.01 gram to a poseur-buyer in consideration of the sum of Five Hundred Pesos (P500.00), without authority to do so, contrary to law.

WHEREFORE, judgment is hereby rendered finding accused Gessiel Maffer alias “Toto Buka” also known as Jessiel Maffer GUILTY beyond reasonable doubt of violation of Section 5, Article II, Republic Act No. 9165 and sentencing her to suffer the penalty of life imprisonment and to pay the fine of Five Hundred Thousand Pesos (P500,000.00).

The shabu (Exhibit “H”) subject of the case and the other items (x x x) which have no apparent value and may be used for illegal purposes are confiscated in favor of the government and the Branch Clerk of Court is directed to turn over said items to the Philippine Drug Enforcement Agency, Region 6, for proper disposition pursuant to existing rules and regulations.

On the other hand, the other items confiscated from the accused (x x x) and the money (x x x) which are not illegal per se and have not been shown to be the effects of the crime are ordered to be returned to the accused.

The other money (Exhibit “R”) which is part of the buy-bust money is ordered to be returned to PDEA.

SO ORDERED.”[10]

In reaching this conclusion, the RTC found and held, that,

“To reiterate, accused interposed the defense of denial and insinuated frame-up on the part of the members of the Philippine Drug Enforcement Agency (PDEA), Region 6. However, said defenses were not substantiated by clear and convincing evidence. The Court finds it hard to believe that the members of PDEA would arrest the accused for unknown reason in a public place and in the presence of several persons who are from the same areas where she resides. Also, the Court could not understand why despite the presence of several persons at the place of arrest, accused could not present any other witness, aside from her sister, who could indeed corroborate her version. Thus, under said circumstances, the Court will adhere [to] the opt-reiterated (sic) ruling of the Supreme Court that 'the defense of denial or frame-up, like alibi, has been viewed by the Court with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of 'Dangerous Drugs Act' and the jurisprudential rule in defense of denial is that 'if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence undeserving any weight in law.'

On the other hand, the Court is more convinced with the version of the prosecution with respect to the drug operation conducted against the accused as relayed by IO1 Artu[s], the PDEA member who posed as buyer.

Said PDEA operative gave a straightforward and detailed narration of the incident and her testimony in this regard was credible and worthy of credence. Also, there appears to be no reason why she would concoct a falsehood and implicate the accused in the commission of crime which carr[ies] with it heavy penalty, more so that there is no evidence that she or any member of PDEA had an ill-motive against her.

On this point, it may be noted that IO1 Artu[s] stood firm on her declaration in open Court despite admitting some minor inconsistency in the allegation in the affidavit (Exhibit “F”) she executed. This, to the mind of the Court, made her more credible, more so that affidavits are usually prepared in haste immediately after the incident and the allegations therein lack details. At any rate, said inconsistency did not destroy the entire version regarding the drug operation conducted against the accused.

Thus, the Court is convinced that on the afternoon of August 28, 2008, members of PDEA, Region 6 went to Brgy. Baldoza, Lapaz, Iloilo City in order to conduct a buy-bust operation against the accused. x x x.

It may be noted that the PDEA operatives were not able to recover from the actual possession of the accused the entire buy-bust money given to her. However, this is understandable, because after the transaction and before the arrest, accused still went to and stayed at the house of her neighbor for some minutes on the belief that the confidential informant will use the shabu they bought. In short, there was an instance when IO1 Artu[s] was not able to monitor the accused and what the latter did with the buy-bust money in her custody. At any rate, IO1 Artu[s] has testified to the satisfaction of the Court that there was an exchange of shabu and money that transpired between her and the accused. It may even be worth emphasizing that even if the entire buy-bust money could not be accounted [for], the version of the prosecution may not be affected following the ruling of the Supreme Court that 'neither law nor jurisprudence requires the presentation of any of the money used in a “buy-bust” operation. It is sufficient to show that the illicit transaction did take place, coupled with the presentation in court the corpus delicti in evidence. These were done, and were proved by the prosecution's evidence. In other cases, the High Tribunal also stated, as follows:

'It is not essential for the prosecution to present the marked money as its absence does not create a hiatus in the evidence provided that prosecution adequately proves the sale.

The marked money used in the buy-bust operation is not indispensable in drug cases, it is merely corroborative evidence.'

Moreover, the Court is convinced that the prosecution has duly established the chain of custody of the sachet of shabu sold by the accused. x x x.

IO2 Daisy Sabanal x x x. Also, she confirmed that there was an inventory of items at their Office witnessed by media and DOJ representatives and that she photographed the proceedings thereat. x x x.

On the other hand, when the Forensic Chemist of the PNP Crime Laboratory, Region 6 took the witness stand, the defense made several admissions. In particular, it admitted that the said Crime Laboratory received a Request for Laboratory Examination (x x x) from PDEA, Regional Office 6 on August 28, 2008. Also, it admitted that said Request was accompanied by one (1) small elongated heat-sealed plastic sachet containing suspected shabu marked as “GM-1”. Moreover, it admitted that the witness conducted an examination on said specimen and the result of her examination is contained in Chemistry Report No. D-184-08 (Exhibit “D”). Aside from said admissions, the witness also presented in Court the specimen she examined and she explained the markings thereon.

'x x x x'

- thereby confirming that the item sold by the accused and subject of the Information and also examined by the PNP Crime Laboratory is shabu, a dangerous drug weighing 0.01 grams.

At this juncture, the Court would like to note that the item sold by the accused was immediately inventoried as

required under Section 21, Article II of Republic Act No. 9165 and its Implementing Rules. Hence, its integrity and evidentiary value was not compromised.

In the same token, the Court believes that the marking made at the Office of the apprehending officer did not affect the integrity and evidentiary value of the subject item. As already pointed out, the item was duly identified and its chain of custody was duly established. Also, in the case of *Dacles vs. People*, the Supreme Court ruled, as follows:

'x x x x'

Also, in the case of *Imson vs. People*, the Supreme Court ruled that 'the failure of the policemen to mark the two plastic sachets containing shabu at the place of arrest does not render the confiscated items inadmissible in evidence. In *People vs. Resurreccion*, the Court held that the failure of the policemen to immediately mark the confiscated items does not automatically impair the integrity of chain of custody.' x x x *People vs. Sanchez*, however, explains that RA 9165 does not specify a time frame for 'immediate marking' or 'where said marking should be done' and that 'immediate confiscation has no exact definition.' Thus, in *People vs. Gum-Oyen*, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”[11]

Hence, this appeal wherein Gessiel Maffer, now appellant, makes the following assignment of errors, to wit:

“THE HONORABLE REGIONAL TRIAL COURT FAILED TO GIVE CREDIT TO THE TESTIMONIES OF THE ACCUSED AND HER WITNESSES.

THE HONORABLE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE ARRESTING POLICE OFFICER.

THE HONORABLE COURT ERRED IN FINDING THAT THE INFORMATION CHARGING THE ACCUSED OF THE CRIME CHARGED WAS PROVEN.

THE HONORABLE COURT ERRED IN FINDING THAT THE GUILT OF THE ACCUSED WAS PROVEN BEYOND REASONABLE DOUBT.”

THE ARGUMENTS

The appellant's

First. The testimony of IO1 Artus is far-fetched and unbelievable. For one, why would IO1 Artus and the confidential informant have to wait for the appellant for several hours not knowing when the latter would show up. The buy-bust operation was a well-planned operation, this being so, the whereabouts of the appellant should have been known prior thereto. For another, it is highly illogical if not irregular for IO1 Artus not to inform her fellow buy-bust operatives that the buy-bust sale did not push through yet because the appellant was not in her house when they arrived there and that they were going to town plaza to wait for the appellant. Still for another, the appellant or any person for that matter if, indeed, was engaged in any illegal activity would not just transact with a complete stranger. And still for another, if IO1 Artus and the confidential informant have already met with the appellant prior to the buy-bust operation then why did they not notice the appellant who, too, was at the town plaza watching a basketball game? What is more, IO1 Artus left out several integral matters in her affidavit making one think that she purposely did this. In fine, the testimonies of IO1 Artus are exaggerated, if not false, unbelievable and unreliable.

Second. With the glaring inconsistencies in the testimony of the primary witness, the presumption of regularity of

functions cannot stand in the present case.

Third. It appears in her testimony that IO1 Artus allowed the confidential informant to use the shabu that was purchased during surveillance. What she should have done was to turn this over to the proper authorities for laboratory examination and eventually, for destruction. For this, IO1 Artus is guilty, too, of violation of RA 9165.

Fourth. The prosecution failed to establish an unbroken chain of custody, thus, giving rise to further doubts as to the identity and integrity of the item presented in court. In not presenting the police officer who received the confiscated item from IO2 Sabanal, the link between the latter and the forensic chemist was broken as there is no evidence where the said officer kept the specimen before he gave it to the forensic chemist and when he gave it. What is more, the forensic chemist failed to disclose where she kept the specimen after she was done examining it.

The appellee-People:

That, the appellant's defense of denial cannot prevail over the positive testimonies of the PDEA operatives in the absence of ill-motive against her.

Too, the arresting officers enjoy the presumption of regularity in the performance of their official duties.

What is more, the appellant's guilt for violation of Section 5, Article II of RA No. 9164 was proven beyond reasonable doubt. True, the information alleges that the appellant was arrested by a PNP member designated as poseur-buyer when in fact it was a PDEA operative who did so. But this error is not fatal to the finding of guilt of the appellant.

Furthermore, the integrity and evidentiary value of the confiscated shabu, a dangerous drug were properly preserved. As correctly held by the RTC, "the prosecution has duly established the chain of custody of the sachet of shabu sold by the accused." The non-presentation of the custodian officer of the PNP Crime Laboratory does not and will not necessarily diminish or mar the integrity and evidentiary value of the confiscated shabu, a dangerous drug. Records will, likewise, show that the apprehending team complied with Section 2(a) of the Dangerous Drugs Board Resolution No. 01-02. Furthermore, what matters most is that "as long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to properly identify the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand."

And finally, the appellant's defense of denial is of little weight in the face of the positive testimonies of the PDEA operatives. It is settled in our jurisdiction that "a bare denial is an inherently weak defense and has been invariably viewed x x x with disfavor for it can easily be concocted but difficult to prove, and is a common standard line of defense in most prosecutions arising from violations of RA 9165."

THE ISSUE

For our consideration is this question: are the prosecution's evidence sufficient to sustain the appellant's conviction for the crime charged?

OUR RULING

We dismiss the appeal.

Elements of the Crime Duly Proven

The appellant is charged with violating Section 5, Article II of RA 9165, which reads:

“Illegal 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 (P500,000.00) to Ten million pesos (P10,000,000.00) 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.”

Pertinently, in *People v. Adam*,^[12]

This Court has held that the elements necessary for the prosecution of illegal sale of drugs are (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or illegal sale actually took place, coupled with the presentation in Court of the corpus delicti as evidence. In *Roble vs. Arbasa*,^[13] this Court held that the essential elements of an illegal sale are the following: (a) consent or meeting of the minds, that is consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent.

In this instance, all the elements essential to a successful prosecution of illegal sale of dangerous drugs are present.

Firstly, the appellant was positively identified as the one who sold and delivered the shabu to IO1 Artus. Secondly, the appellant was fully aware that she was selling and delivering a dangerous drug. She, herself, handed to IO1 Artus the one heat-sealed sachet of shabu and in exchange thereof, received from IO2 Artus five (5)-P100.00 bills, one of which was marked. This fact of illegal sale was duly proved by the testimony of IO1 Artus, which we quote below, viz -

On direct-examination:

“Q: When she arrived at the house, she just entered?

A: Yes, your Honor.

Q:

And then she gave you a sachet of shabu when she went out?

A:

Yes, your Honor.

Q:

Why? Was she aware that you will be buying shabu?

A:

Yes, your Honor because the two of us were her constant customers for three days.

Q:

You mean to say for three days you were already buying shabu from her?

A:

I mean for one day, your Honor. Three days is the length of time of our surveillance and casing, your Honor.

x x x x

Q:

So, how about the value? Was she already that [the] sachet is worth P500.00?

A:

Yes, your Honor.

Q:

How come?

A:

Because the CI is always buying that amount from her, P500.00, your Honor.

Q:

You mean to say even during the test-buy you bought P500.00?

A:

Yes, your Honor.”[14]

On cross-examination:

“Q:

And you approached her, that was the time that she went to her house, is that correct?

A:

Yes, ma'am.

Q:

Ms. Witness, you said that you gave the accused Five Hundred Pesos worth of money. That Five Hundred Pesos worth of money that you gave her, were you the one who personally gave that money to the CI?

A:

Yes, I am.

Q:

You never gave the CI the money for the buy-bust operation?

A:

Yes, ma'am.

Q:

You gave the money to the accused and your CI was the one who took hold of the item, is that correct?

A:

No, ma'am.

Q:

So, who received the item?

A:

I am (sic).

Q:

Ms. Witness, isn't it that the item that you received from the witness was a very very small plastic sachet weighing .02 gram and at that time you did know (sic) knew (sic) that that was a very very small sachet, is that correct?

A:

Yes, ma'am.

Q:

And that item was not worth P500.00, is that correct? Being a PDEA agent you know that it was not worth P500.00, correct?

A:

It is worth P500.00, ma'am.

Q:

So how much is .01 gram of small plastic sachet of shabu?

A:

That is worth P500.00"[15]

The above-quoted narration is corroborated by the certificate of inventory[16] showing that one (1) plastic heat-sealed plastic sachet containing shabu marked as "GM-1" was the item seized from the appellant after a buy-bust operation conducted against her on August 28, 2009, and the letter-request[17] for laboratory examination showing that, on even date, the said item was sent to the PNP Crime Laboratory and these were received by SPO2 Ponsaran as revealed in the acknowledgment receipt stamped thereon, and which after a qualitative examination[18] by the Forensic Chemist yielded positive result for presence of Methamphetamine Hydrochloride (or shabu).

Next, the appellant contends that "any person who was allegedly engaged in illegal drug trade would not be so stupid and so naive to approach just anyone on the street and asking strangers that they were looking for his/her person without any background information or prior notice".

This contention is specious.

For one, it was not the first meeting between the appellant and IO1 Artus and the confidential informant. Three (3) days prior to the buy-bust operation, the confidential agent and IO1 Artus already met with the appellant as testified to by IO1 Artus, viz -

On cross-examination: "

Q:

Miss Witness, you said that you have conducted surveillance for three (3) days after August 25, correct?

A:

Yes, ma'am.

Q:

And during the surveillance you were together with your confidential informant. During that one time, your confidential informant was able to go inside the house of the accused, is that correct?

A:

Yes, ma'am.

x x x x

Q:

Even if you did not know because you did not personally inside the house of the accused what was going on there, you merely rely on your confidential informant's report to conduct the said buy-bust operation, is that

correct?

A:

No, ma'am.

Q:

So what did you rely on?

A:

Because we transacted first outside of her house.”[19]

In any event, it is not unlikely that illegal sale transactions could happen between a vendor and a complete stranger. On this point, we quote the Supreme Court in *People v. Bernardino*,[20] viz -

At any rate, we agree with the CA's observation that there was nothing unusual in drug transactions between strangers. Previous cases relating to dangerous drug violations, in fact, support this observation. A case in point would be our ruling in *People v. Chua*[21] where we said:

xxx the law does not prescribe as an element of the crime that the vendor and vendee be familiar with each other. What matters in a drug related case is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the same and delivery of the prohibited drugs...

x x x

... [D]rug pushers do not confine their trade to known customers; complete strangers are accommodated provided they have the money to pay. Moreover, why a dealer would trust a buyer, which is to say the motive behind a drug deal, is not an essential element of drug-related offense. (Footnoting ours)

Apropos, the Supreme Court “has stated that the sale of prohibited drugs to complete strangers, openly and in public places, has become a common occurrence. Drug peddlers have become exceedingly daring and openly defiant of the law.”[22]

As to the non-presentation of the rest of the buy-bust money, the same is not fatal to the prosecution's cause. “x x x, the presentation of buy-bust money is not required by law or jurisprudence. Its non-presentation is not fatal to the case for the prosecution. The marked money used in the buy-bust operation is not indispensable but merely corroborative in nature.”[23]

More importantly: “Possession of dangerous drugs constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused in the absence of a satisfactory explanation of such possession.”[24]

All told, the commission of the offense of illegal sale of shabu, a dangerous drug, requires merely the consummation of the selling transaction. Prescinding from the foregoing discussion, it has been proven and established by clear and convincing evidence that the appellant committed the said unlawful act.

No break in the chain of custody, and there was compliance with the witnesses-to-the-inventory rule

In *People v. Rivera*,[25] the Supreme Court explained the rule on the chain of custody of the confiscated drugs, viz -

The procedure to be followed in the custody and handling of seized dangerous drugs is outlined in Section 21,

paragraph 1, Article II of Republic Act No. 9165 which stipulates:

(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.

The same is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:

(a) 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: 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.

The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. Indeed, the implementing rules offer some flexibility when a proviso added 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.' The same provision clearly states as well, that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved.

This Court can no longer find out what justifiable reasons existed, if any, since the defense did not raise this issue during trial. Be that as it may, this Court has explained in *People v. Del Monte*[26] that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition sine qua non for conviction for the illegal sale of dangerous drugs. The dangerous drug itself constitutes the very corpus delicti of the crime and the fact of its existence is vital to a judgment of conviction. Thus, it is essential that the identity of the prohibited drug be established beyond doubt. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.

To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. (Emphasis supplied.)

As borne in the records of the instant case, it is apparent that the buy-bust team substantially complied with the mandatory procedure laid down by Section 21 of RA 9165 and its implementing Rules.

For one, although the Rules provide that the confiscated item be marked at the site of the arrest, the Supreme Court has, in a catena of cases, considered marking of the confiscated item at the office of the arresting officers as substantial compliance for as long as reasons exist to justify non-compliance therewith. Significantly, as illustrated in the case of *People v. Quesido*,[27] non-marking at the site of the arrest was justified where the life of

the arresting officer was already being compromise by the accused's hysterical shouts, which have called the attention of the people around them. Thus, to avert potential danger to himself he decided to leave immediately without having marked the confiscated shabu, a dangerous drug.

In the case before us, the marking had to be done at the PDEA office because of the commotion that was created by the appellant's resistance to her arrest, and which, to our mind, may have posed danger to both the PDEA operatives and confidential informant.

Moreover,

“x x x, in case of warrantless seizures such as a buy-bust operation, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.”

It may be well to stress, too, that,

“Corollary, the fact that the police marked the plastic sachets at the police station, and not at the place of seizure, did not also compromise the integrity of the seized evidence. Jurisprudence holds that the phrase "marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team.”[28]

As can be gleaned from the transcript of stenographic notes taken on the testimony of IO1 Artus, it was the latter who marked the confiscated specimen, to wit:

On direct testimony:

“Q:

Could you describe that buy bust item?

A:

This is a white crystalline substance, a shabu, sir.

Q:

You said that you made the marking “GM-1”, could you still see the marking that you made in that item, Madam Witness.

A:

Yes, sir.

Q:

Where was that?

Interpreter:

Witness pointing to the black marking of black pentel pen “GM-1” and the marking is on the plastic itself.”[29]

Secondly, the first link to the chain of custody was established by the prosecution thru the testimony of IO1 Artus.

The second link was established thru the testimony of IO2 Sabanal who, after receiving the confiscated item from IO1 Artus, brought the letter-request and the confiscated item to the PNP Crime Laboratory. Thus, IO2 Sabanal testified, to wit -

“Q:

After the inventory of the items at your office, what else happened?

A:

IO1 Artus gave to me the suspected shabu and I was the one who brought it to the Crime Laboratory.”

x x x x

Q:

You said you were the one who turned over the specimen to the Crime Laboratory. I'm showing to you one item already marked as Exhibit “H”. Please go over this item and tell if you are familiar with this item, Madame Witness.

A:

Yes, sir.

Q:

You are familiar with that item according to you. Why is it that you are familiar with that item?

A:

Because I was the one who submitted this to the Crime Laboratory.”[30]

Records will show that the confiscated shabu was received by one SPO2 Ponsartan of the PNP Crime Laboratory Office 6 from IO1 Daisy Sabanal at 2100H of August 28, 2008.

The third and final link was established thru the testimony[31] of the forensic chemist, P/Supt. Rea Villavicencio. The forensic chemist testified that she received “one small elongated heat-sealed transparent plastic sachet containing suspected shabu marked as “GM-1” and which she marked with “Chemistry Control No. D-184-08” and her initials. That, after examination of the specimen, she secured the sachet with masking tape and marked it again with “Chemistry Control No. D-184-08, her initials and the weight of the examined specimen. The results of her examination are contained in Chemistry Report D-184-08[32] dated 29 August 2009, which P/Supt. Villavicencio herself prepared, and which was subscribed to before Police Chief Inspector Atty. Leilano L. Trasadas. It can be inferred from her testimony that after the test, she retained custody of the specimen and that she took out the specimen when she brought it to court for presentation.

Clearly, the prosecution was able to identify the person who received the shabu at the forensic laboratory pursuant

to the letter-request dated 28 October 2008, and who exercised custody and possession of the shabu after it was examined and before it was presented in court.

Thirdly, the confiscated item was photographed[33] and inventoried[34] at the PDEA office as testified[35] to by IO2 Sabanal within the presence of the appellant, a media man, one representative from the Department of Justice, the NBI and PDEA, and a barangay official. Thus, IO2 Sabanal testified that:

“Q:

And at the office when you said you proceeded after seizing this person of Maffer, what happened there at that office?

A:

We conducted inventory, IO1 Artus conducted body search.

Q:

What happened during the inventory?

A:

It was witnessed by the media, the DOJ representative and of course the subject Gessiel Maffer, sir.

Court:

Q:

And that transpired at your office?

A:

Yes, your Honor.”

Pros. Guadalope:

“Q:

Do you recall if there was a document which was also signed at your office?

A:

Yes, sir.

Q:

What was your role during the inventory, if you can still recall?

A:

I was the photographer, sir.”[36]

The appellant, in her last ditch effort at exculpation, attacks the credibility of the prosecution's witnesses more particularly that of IO1 Artus, it being that her testimony is full of inconsistencies and falsities.

Re: Credibility of the prosecution's witness

As settled in a catena of cases,[37]

Findings of facts and assessment of credibility of witnesses are matters best left to the trial court. What militates against the claim of appellant is the time-honored rule that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court. The trial court has the unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath — all of which are useful aids for an accurate determination of a witness' honesty and sincerity.

Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and to detect if they were lying.

In this instance, no reason exists to justify a departure from this rule. Verily, the RTC did not ignore, overlook, misconstrue or misinterpret cogent facts which if considered will change the outcome of the case in finding the prosecution's version of the incident more credible and worthy of belief than that proffered by appellant on the following reasons, to wit:

One. It is apparent in the records, that the appellant's defense is lacking in support. Without having to say more, the appellant is claiming that she was a victim of “frame-up” or “evidence-planting”. But for the defense of “frame-up” or “evidence-planting” to prosper, the appellant must present clear, convincing evidence of such fact. In this regard, the appellant failed because nary any evidence on record offer any to substantiate such claim of “frame-up” or “evidence-panting.”

Apart from her defense that she is a victim of frame-up or evidence-planting, it is incumbent upon the appellant to, likewise, adduce convincing evidence to overcome the presumption of regularity in the performance of official duties by the arresting PDEA operatives. Conversely, the appellant failed to adduce clear, convincing proof that the prosecution witnesses had any malicious or ulterior motive when they testified, or, that the evidence submitted by the prosecution had been tampered or meddled with. It can be inferred from her testimony that she did not know the PDEA operatives prior to her arrest. Hence, there could not have been bad blood between her and the PDEA operatives.

Two. After the appellant was caught in flagrante delicto, she claims innocence of the crime charged in the Information because according to her the testimony of the supposed poseur-buyer, IO1 Artus, is full of inconsistencies and falsities. The appellant is, in effect, saying that her defense of denial is more credible and believable.

This claim is not well-taken.

It is well entrenched rule that the defenses of denial and alibi have been invariably viewed by the Supreme Court with disfavor for it can easily be concocted but difficult to prove, and that, they are common and standard defense ploys in most prosecutions arising from violations of the Dangerous Drugs Act. Tellingly, aside from the

appellant's self-serving assertions, no plausible proof was presented to bolster her allegations.

What is more, the supposed inconsistencies in the testimony of IO1 Artus do not warrant the reversal of appellant's conviction in light of the positive and candid account of IO1 Artus that the appellant sold to her shabu in exchange for five (5)-P100.00 bills one of which was marked. Instructive on this point is the ruling of the Supreme Court in *People v. Lazaro, Jr.*,^[38] viz -

“For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused.

The inconsistency cited by appellant refers to trivial matter and is clearly beyond the elements of illegal sale of shabu because it does not pertain to the actual buy-bust itself - that crucial moment when appellant was caught selling shabu. Such inconsistency is also irrelevant to the elements of illegal possession of shabu. Besides, the inconsistency even bolsters the credibility of the prosecution witnesses as it erased any suspicion of a rehearsed testimony.”

Just like so in the instant case.

Three. The appellant makes issue on IO1 Artus' failure to inform the other team members that the illegal sale transaction has not yet pushed through and that she and the confidential informant would be going to the town plaza incase the appellant would show up there. The appellant, likewise, questions IO1 Artus's intention to wait for her when IO1 Artus did not even know when and if she, indeed, would show up at the town plaza.

The appellant's arguments do not convince.

We find nothing wrong, much more, irregular in IO1 Artus' decision to go to the town plaza to look for the appellant and without telling her fellow PDEA operatives about the status of the operation. Anyway, her action did not compromise the buy-bust operation.

Four. The appellant asseverates that the information is defective since it is alleged therein that the poseur-buyer involved in the buy-bust is a PNP member when in fact it is a PDEA operative.

The appellant's asseveration is specious.

In the instant case, the accusatory portion in the information alleges that:

“x x x said accused Gessiel Maffer, did then and there willfully, unlawfully and criminally sell/deliver one (1)-heat sealed transparent plastic sachet containing 0.01 gram of methamphetamine hydrochloride (shabu), a dangerous drug, to a PNP poseur-buyer, in consideration of the amount of Five Hundred Pesos (Php500.00), inclusive of the One Hundred Pesos marked money bill bearing Serial Number GO189945, without authority to do so.”

It is settled rule that the information is deemed sufficient if it contains facts sufficient to constitute the offense charged.^[39] As earlier discussed, the essential elements constituting violation of Section 5, Article II of RA 9165, specifically, illegal sale of dangerous drugs are the following:

- (1) the identity of the buyer and the seller, the object, and consideration; and
- (2) the delivery of the thing sold and the payment therefor.

Viewed vis-a-vis the enumerated elements, the subject information discloses that the appellant sold and delivered 0.01 gram of shabu to the poseur-buyer for the amount of P500.00.

True, the information alleges that the poseur-buyer is a member of the PNP and which is a mistake because the

designated poseur-buyer is a PDEA operative. Nevertheless, the appellant cannot deny the fact that the poseur-buyer's correct mother unit/agency was made clear in the course of the proceedings. In any case, whether the poseur-buyer belongs to the PNP or with any other law enforcement agency is inconsequential to the case. Suffice it to say, the primordial concern of the poseur-buyer is to be able to identify the vendor, and to prove the consummation of the illegal sale, delivery of the dangerous drug sold and that, it was to him/her that the dangerous drug was sold, with moral certainty. What is more, if the appellant considered this mistake or defect as substantial as to affect the validity of the information then why did she not question this at the earliest possible time and before she entered her plea via a motion to quash? As defined, "a motion to quash is the mode by which an accused assails the validity of a criminal complaint or Information filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the Information." [40]

Finally, specious, too, is the appellant's contention that the presumption of regularity in the performance of official duty should not be applied in favor of the prosecution witnesses.

We do not agree.

"A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; x x x" [41] By and large, the law enforcement officers are, after all, presumed to have acted regularly in the performance of their official functions, in the absence of clear and convincing proof to the contrary, or that they are motivated by ill-will.

In the present case, we have earlier ruled that the PDEA operatives substantially complied with the prescribed procedure specifically on the rules of chain of custody of the seized dangerous drug, its inventory within the presence of the appellant and the personalities named in the law to be witnesses thereto, and taking of photographs during such inventory. Too, not an iota of evidence was adduced by the appellant to show ill-motive on the part of the PDEA operatives as to tarnish their testimony. On these considerations, and applying the afore-quoted doctrine, the presumption that the PDEA operatives performed their duties regularly and in accordance with law stands.

Prescinding from all the foregoing, there is no doubt that the prosecution established with the required quantum of proof, i.e., proof beyond reasonable doubt, the appellant's guilt for the offense of illegal sale of shabu, a dangerous drug, in blatant violation of Section 5, Article II of Republic Act No. 9165.

A final note

To the appellant's assertion that IO1 Artus should, likewise, be charged of violation of RA 9165 for allowing the confidential informant to use the shabu which they purchased during the surveillance is beyond our jurisdiction. What we have before us is the appellant's appeal from the judgment convicting her of illegal sale of shabu. Verily, whatever infraction IO1 Artus may have committed, if, indeed, she committed any, should be processed accordingly.

WHEREFORE, the appeal is DISMISSED, the Decision dated 3 July 2013 of the Regional Trial Court , 6th Judicial Region, Br. 36 of Iloilo City in Crim. Case No. 08-66249 is hereby AFFIRMED in toto.

SO ORDERED.

Lagura-Yap, M.B., and Lopez, J.Y., JJ., concur.

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- [1] Original Records, 297-312.
- [2] Original Records, pp. 2-3.
- [3] Original Records, p. 1
- [4] Original Records, p. 36.
- [5] Original Records, p. 39.
- [6] Certificate of Arraignment dated November 4, 2008, Original Records, p. 37.
- [7] TSN taken on May 14, 2013.
- [8] TSN taken on February 27, 2013.
- [9] Original Records, pp. 297-312.
- [10] Original Records, pp. 311-312.
- [11] Original Records, pp. 303-311.
- [12] People of the Philippines v. Mangi Lumambas Adam, G.R. No. 143842, October 13, 2003. Citing People vs. Montano, 337 SCRA 608 (2000); People vs. So, 370 SCRA 252 (2001) & People vs. Julian-Fernandez, 372 SCRA 608 (2001).

[13] 362 SCRA 69 (2001).

- [14] TSN taken on March 10, 2009, pp. 18-19.
- [15] TSN taken on March 12, 2009, pp. 23-24.
- [16] Exhibit "B", Original Records, p. 186.
- [17] Exhibit "C", Original Records, p. 187.
- [18] Exhibit "D", Original Records, p. 188.
- [19] TSN taken on March 12, 2009, pp. 13-14.
- [20] The People of the Philippines v. Leonard L. Bernardino alias "Onat", G.R. No. 171088, October 02, 2009.
- [21] G.R. No. 133789, August 23, 2001, 363 SCRA 562.
- [22] People of the Philippines v. Li Yin Chu alias Robert Li, G.R. No. 143793, February 17, 2004.
- [23] People of the Philippines v. Jakan Suba Mapan Le and Rodel Sacruz Del Castillo, G. R. No. 188976, June 29, 2010. Citing People v. Cruz, G.R. No. 164580, February 6, 2009, 578 SCRA 147.
- [24] People of the Philippines v. Samrod Kasan Pendatun, et. al., G.R. No. 148822, July 12, 2004.
- [25] People of the Philippines v. Emilio Cablang Rivera alias "BOY", G.R. No. 182347, October 17, 2008, 569 SCRA 879.
- [26] G.R. No. 182347, October 17, 2008, 569 SCRA 879.
- [27] People of the Philippines v. Lolita Badarang Quesido, G.R. No. 189351, April 10, 2013.

[28] *Benedicto Rayos Del Sol Marquez v. People of the Philippines*, G.R. No. 197207, March 13, 2013.

[29] TSN taken on June 1, 2010, p. 8.

[30] TSN taken on June 1, 2010, pages 7 and 10.

[31] TSN taken on February 26, 2009.

[32] Exhibit “D”, Original Records, p. 188.

[33] Exhibit “F”, Original Records, p. 60.

[34] Exhibit “E”, Original Records, p. 11.

[35] TSN of July 25, 2011, p. 9.

[36] TSN taken on June 1, 2010, pp. 6-7.

[37] *People of the Philippines vs. Elegio An*, G.R.No. 169870, August 4, 2009. Citing *People of the Philippines vs. Nasario Castel*, G.R. No. 171164, November 28, 2008 (*People of the Philippines vs. Dy*, 425 Phil. 608 [2002], citing *People of the Philippine vs. Abacia*, 359 SCRA 342 [2001] and *People of the Philippines vs. Belga*, 349 SCRA 678 [2001]).

[38] *People of the Philippines v. Alfredo Lazaro, Jr., A.K.A. Jun Lazaro Aquino*, G.R. No. 186418, October 16, 2009.

[39] Section 6, Rule 110 of the Revised Rules of Criminal Procedure:

“Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused, the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense is committed.”

[40] *People of the Philippines v. Edgardo V. Odtuhan*, G.R. No. 191566, July 17, 2013. Citing *Antone v. Beronilla*, G.R. No. 183824, December 8, 2010, 637 SCRA 615.

[41] *People of the Philippines v. Rose Sali Nandi*, G.R. No. 188905, July 13, 2010.

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