

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSIE AMODIA Y ZABALA, ACCUSED-APPELLANT,

Ponente: LOPEZ, J.

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LOPEZ, J.:

This is an appeal under Rule 122 of the Revised Rules of Criminal Procedure filed by accused-appellant Rosie Amodia y Zabala, seeking the reversal of the April 5, 2011 Judgment[1] of Branch 40[2] of the Regional Trial Court of Cagayan de Oro City in Criminal Case No. 2003-1123, finding her guilty beyond reasonable doubt for Violation of Section 5, par. 1, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Factual Antecedents

Accused-appellant Rosie Amodia y Zabala was indicted for Violation of Section 5 (illegal sale of dangerous drugs), par. 1, Article II of R.A. 9165 in an Information[3] which reads as follows:

That on November 29, 2003, at 12:45 o'clock early dawn more or less, at Agora Road/Claro M. Recto Highway, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there willfully, unlawfully and feloniously sell, give away to another and distribute one (1) jumbo pack heat-sealed transparent plastic cellophane of Methamphetamine hydrochloride locally known as shabu, weighing 1.6 grams, a dangerous drug, in consideration of P4,500, Philippine currency.

Contrary to and in Violation of Section 5, Article 2 of R.A. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

Upon arraignment, accused-appellant pleaded not guilty to the offense charged.[4] Thereafter, the case was set for pre-trial conference.

At the pre-trial, the parties stipulated on the expertise of PS/Insp. April Carbajal-Madroño as the forensic chemical officer of the PNP Crime Laboratory. Likewise, the parties agreed that the only issue to be resolved by the court is whether or not the accused-appellant has violated Section 5, par. 1, Article II of R.A. 9165.[5]

However, on July 2, 2007, upon agreement of the parties, a Supplemental Pre-Trial Order[6] was issued by the court a quo whereby the parties stipulated on the following matter of facts:

- The letter-request dated November 29, 2003, signed by PS/Insp. Robert Baesa, (Exh. "A"),[7] addressed to the PNP Crime laboratory office, for the examination of the urine sample of accused-appellant, and the rubber stamp "Received" therein (Exh. "A-1").

- The letter-request dated November 29, 2003, addressed to the PNP Crime laboratory, signed by PS/Insp. Robert Baesa, (Exh. "B"),[8] for the examination of one jumbo packed heat-sealed transparent plastic cellophane

containing white crystalline substance marked as Exhibit “A”, and the rubber stamp “Received” therein (Exh. “B-1”), and the signature of the requesting officer (Exh. “B-2”).

- The letter-request dated November 29, 2003, addressed to the PNP Crime laboratory, signed by PS/Insp. Robert Baesa, (Exh. “C”),[9] for the examination of one (1) living body of Rosie Amodia y Zabala for both hands for ultraviolet powder marked as Exhibit “B” and two (2) pieces One Hundred (P100.00) Peso bill marked-money with Serial No. CV506526 and Serial No. EA922278; and the rubber stamp “Received” therein (Exh. “C-1”), and signature of the requesting officer (Exh. “C-2”).

- The Chemistry Report No. D-778-2003 dated November 29, 2003, signed by PS/Insp. April Garcia Carbajal, (Exh. “D”)[10] showing the specimen submitted for laboratory examination is one jumbo packed heat-sealed transparent plastic cellophane containing white crystalline substance (Exh. “D-1”), the findings and conclusion showing that the specimen is positive for the presence of Methamphetamine hydrochloride (shabu), a dangerous drug (Exh. “D-2” and “D-3”), and the signature of PS/Insp. April Garcia Carbajal (Exh. “D-4”).

- The one (1) sachet of white crystalline substance (Exh. “E”), the subject matter of Chemistry Report No. D-778-2003, the plastic sachet containing white crystalline substance.

- The Chemistry Report No. DT-778-2003 dated November 29, 2003, signed by PS/Insp. April Garcia Carbajal, (Exh. “F”)[11] showing the specimen submitted for laboratory examination is a 60 ml. urine sample taken from the living person of Rosie Amodia y Zabala (Exh. “F-1”), the findings and conclusion showing that the specimen is positive for the presence of Methamphetamine hydrochloride (shabu), a dangerous drug (Exh. “F-2” and “F-3”), and the signature of PS/Insp. April Garcia Carbajal (Exh. “D-4”).

- The Chemistry Report No. C-136-2003 dated November 29, 2003, signed by PS/Insp. April Garcia Carbajal, (Exh. “G”)[12] showing the specimen submitted for laboratory examination is the living person of Rosie Amodia y Zabala and two (2) pieces One Hundred (P100.00) Peso bill marked-money with Serial No. CV506526 and Serial No. EA922278 (Exh. “G-1”), the findings and conclusion showing that both specimens are positive for the presence of bright orange ultraviolet fluorescent powder (Exh. “G-2” and “G-3”), and the signature of PS/Insp. April Garcia Carbajal (Exh. “G-4”).

- The Sketch of the dorsal and palmar sides of the hands of the accused (Exh. “H”)[13] which were taken on November 29, 2003, the palmar right hand (Exh. “H-1”), the palmar left hand (Exh. “H-2”), sketch of the dorsal hands of the accused (Exh. “I”),[14] the dorsal right hand (Exh. “I-1”), the dorsal left hand (Exh. “I-2”).

- The two (2) P100 bills, subject matter of Chemistry Report No. C-136-2003 bearing Serial No. CV506526 (Exh. “J-1”) and Serial No. EA922278 (Exh. “J-2”).

- The parties have agreed to dispense with the testimony of PS/Insp. April Garcia Carbajal.

Thereafter, trial on the merits proceeded.

It was established by the prosecution that about 7:00 o'clock in the evening of November 28, 2003, the Office of the Regional Intelligence and Investigation Division (RIID), Camp Alagar, Lapasan, Cagayan de Oro City received an information from its civilian agent/informant that a certain person alias "Rose Bud" from Ozamis City, a courier-pusher of shabu arrived and is staying at Agora, Lapasan, Cagayan de Oro City.

Acting upon the said information, PS/Insp. Robert Baesa (PS/Insp. Baesa), the Team Leader of RIID-SOG 10, planned for the entrapment of the suspect. The confidential informant was asked to order shabu from "Rose Bud" worth Four Thousand Five Hundred Pesos (P4,500.00) and the same confidential informant was asked to act as the poseur-buyer. Accordingly, the confidential informant contacted "Rose Bud" through text messages and they agreed on the venue of the transaction which would be at Metro Bank located at Agora Road/Claro M. Recto Highway, Lapasan, Cagayan de Oro City at 12:00 o'clock midnight.

As planned, at about 11:00 o'clock in the evening of November 28, 2003, PS/Insp. Baesa gave the confidential informant the buy-bust money of P4,500.00 including the two (2) pieces P100.00 bill marked-money with Serial Nos. CV506526 and EA922278. Thereafter, PS/Insp. Baesa and his team composed of PO3 Cedric C. Bentuzal (PO3 Bentuzal), PO3 Fernan P. Labrador (PO3 Labrador), PO3 Cabillar, PO3 Arocha, PO2 Jabiniao and PO2 Torres went to the agreed location and they positioned strategically about three (3) to five (5) meters away from the poseur-buyer pretending to be bystanders.

At about 12:45 in the morning of November 29, 2003, a woman arrived and alighted from a "trisikad" and approached the poseur-buyer. The poseur-buyer handed the P4,500.00 marked-money to "Rose Bud" and the latter upon receiving the same counted the money. Immediately thereafter, "Rose Bud" got something from her right pocket and handed it to the poseur-buyer. When the transaction was completed, the pre-arranged signal was then given by the poseur-buyer and the team immediately rushed towards "Rose Bud" and arrested her. The poseur-buyer handed to PO3 Bentuzal a heat-sealed transparent cellophane containing a white crystalline substance while the marked-money was confiscated from "Rose Bud".

"Rose Bud" was then brought to RIID Office for investigation and it was learned that her real name is Rosie Amodia y Zabala, accused-appellant herein. Upon arrival at the RIID Office, PO3 Bentuzal, who was in possession of the heat-sealed transparent cellophane and the marked-money which were turned over to his possession at the crime scene, likewise handed the seized items to Investigator Bacal for markings. After the confiscated items were marked and were correspondingly countersigned by Investigator Bacal, PO3 Bentuzal retrieved them again and took hold of the items until they were brought to the PNP laboratory. In the meantime, the necessary letter-requests for the laboratory examination of the accused-appellant and the confiscated items were made. Thereafter, PO3 Bentuzal and PO1 Suganog brought the accused-appellant and the confiscated items to the PNP crime laboratory for examination.

The laboratory examination of the heat-sealed transparent plastic sachet containing white crystalline substance yields positive result for the presence of methamphetamine hydrochloride or shabu, a dangerous drug, as shown in the Chemistry Report No. D-778-2003.[15] Likewise, the urine examination of the accused-appellant yields positive result for the presence of methamphetamine hydrochloride as shown in Chemistry Report No. DT-778-2003.[16] The laboratory examination of accused-appellant's palmar aspects of both hands also shows positive result for the presence of bright orange ultraviolet fluorescent powder while the two (2) P100.00 bills marked-money likewise show positive result for the presence of bright orange ultraviolet fluorescent powder as shown in Chemistry Report No. C-136-2003.[17]

The foregoing facts or circumstances surrounding the arrest of accused-appellant were testified to by arresting officers PO3 Bentuzal and PO3 Labrador of the RIID-SOG 10. The accused-appellant, on the other hand, waived her right to adduce and present her evidence.[18]

After due proceedings, the court a quo rendered the assailed decision on April 5, 2011, finding the accused guilty beyond reasonable doubt of the crime charged. The dispositive portion of the assailed Judgment reads:

WHEREFORE, the foregoing considered, the prosecution having established all the elements of the crime of illegal sale of a dangerous drug, the Court hereby finds the accused, Rosie Amodia y Zabala GUILTY beyond reasonable doubt of the crime of Violation of Sec. 5, par. 1, Article II of R.A. 9165, and hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P500,000.00. The sachet of shabu described in the Information is ordered confiscated in favor of the Government to be disposed of in accordance with law and regulations. No pronouncement as to costs.

SO ORDERED.

Hence, the present appeal.

Assignment of Error

Accused-appellant assigned the lone error thus:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS (sic) GUILT BEYOND REASONABLE DOUBT.

This Court's Ruling

We sustained accused-appellant's conviction.

Accused-appellant contends that the elements of the crime charged against her were not established and as such, her constitutional presumption of innocence was not overcome by the prosecution for the following reasons, namely, the elements of sale were not established; that there was an unexplained failure on the part of the apprehending officers to faithfully comply with Section 21 of R.A. No. 9165; and that there exists a nagging doubt that the evidence offered in court is the same as that one allegedly sold by her.

Accused-appellant argues that the prosecution utterly failed to establish that an actual transaction transpired on November 29, 2003 between her and the unidentified confidential informant acting as the poseur-buyer and who was not even presented in court. The details of alleged transaction were not sufficiently and clearly shown which created a serious doubt on whether the alleged buy-bust transaction indeed occurred. Likewise, from the testimonies of the arresting officers, it was evident that the procedures under Section 21 of R.A. No. 9165 were not strictly and dutifully complied with. There was no inventory made and no photograph taken after the alleged operation. The sachet of the shabu allegedly turned over by the confidential informant to PO3 Bentuzal was not marked immediately. Hence, for non-compliance of the procedures provided by law, the integrity of the evidence against her is of doubtful character and she should be acquitted of the crime charged.

On the other hand, plaintiff-appellee through the Office of the Solicitor General (OSG) posits that contrary to appellant's assertion, the guilt of appellant was sufficiently established with moral certainty. It argues that all the elements necessary for the conviction for the illegal sale of shabu were proven beyond reasonable doubt. The identities of the seller and the buyer together with the corpus delicti of selling shabu have been duly established. Accused-appellant was caught in the very act of selling shabu, a prohibited drug. All these factual findings were not rebutted by accused-appellant considering that she even failed to present any acceptable evidence that can be

made as basis to disregard the factual findings of lower court. Against the strong, positive and substantial evidence presented by the prosecution, accused-appellant chose not to present any evidence at all.

The OSG further argues that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render the accused-appellant's arrest illegal or the items seized or confiscated from her inadmissible. In this case, there was a substantial compliance with the law and the integrity of the illegal drugs seized was properly preserved. Likewise, the non-presentation of the poseur-buyer is not fatal and does not entitle her acquittal because the testimony of the poseur-buyer would at best be corroborative only to the testimony of the arresting officers.

We agree with the OSG.

In the prosecution of sale of dangerous drugs, the following elements must concur: (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 to the prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the corpus delicti.[19]

There is no merit to accused-appellant's assertion that it was not clearly established by the testimonies of the arresting officers that she was selling an illegal drug to the confidential informant and that a sale transaction has indeed transpired between her and the poseur-buyer. It should be stressed that the issue of whether or not there was indeed a buy-bust operation primarily boils down to one of credibility. In a prosecution for violation of the drugs law, the case becomes a contest of the credibility of witnesses and their testimonies. When it comes to credibility, the trial court's assessment deserves great weight, even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[20]

After a judicious review of the records, we find no reason to overturn the decision of the trial court convicting the accused-appellant of the offense charged. We are convinced that the prosecution sufficiently discharged the burden of establishing the elements of illegal sale of dangerous drugs and in proving the guilt of the accused-appellant beyond reasonable doubt.

In this case, it was clearly and sufficiently established by PO3 Bentuzal and PO3 Labrador that a buy-bust operation occurred on November 29, 2003 at about 12:45 in the morning. These two (2) prosecution witnesses had actually witnessed the transaction as they were just three (3) to five (5) meters away from where accused-appellant and the poseur-buyer exchanged goods. Likewise, these witnesses are credible witnesses as they had no ill motives in testifying against the accused-appellant and they testified in a consistent, direct, and straight-forward manner. Their account of the buy-bust operation is also credible and consistent with the usual course of things. PO3 Bentuzal testified, thus:

PROS. TALLEDO (direct examination)

Q -

Will you please tell this court while you were on duty on November 29, 2003 at about 12:45 o'clock dawn if there is unusual incident while you were on duty?

A -

We conducted buy[-]bust operation at Agora road-Claro M. Recto Highway, Lapasan, Cagayan de Oro City going to Agora road at the outside of Metrobank to the information that there is a certain person who also identify (sic) by the confidential informant she was known as Rosie Rose Bud.

Q -

After receiving that information that certain Rosie Rose Bud coming from the confidential informant who have (sic) engaged in illegal drug, what did your group do?

A -

We conducted buy[-]bust operation sir.

Q -

Who were there police officers who participated in that buy[-]bust operation?

A -

At that time PO1 Labrador and together with the team leader Baesa and the confidential informant at that time.

Q -

How did you plan this buy[-]bust operation against the accused?

A -

We coordinated with the confidential informant that he was the one who made the test buy to the subject person.

Q -

Was that test buy pushed thru?

A -

Yes sir.

x x x x

Q -

The buy[-]bust operation was conducted according to you along Agora road, Claro M. Recto, Agora?

A -

Yes sir.

Q -

When this buy[-]bust operation was conducted were you with your confidential agent as the poseur[-]buyer arrived you and the rest of your group located at that time, how far were you from the poseur[-]buyer?

A -

Just about three meters from the distance of the transaction sir.

x x x x

Q - You said you witness the transaction by your two eyes while you were only three meters away?

A - We can see the transaction but we are waiting for the pre-arranged signal of the poseur[-]buyer.

Q - You said you witness the transaction between the poseur[-]buyer and the accused, how did this transaction was going on until it was consummated, how did it happened?

A - After giving the amount of money P4,500.00 accused secretly received the money and after that she counted the money she got from [her] right hand the cellophane containing white crystalline substance and personally gave it to the confidential informant.

Q - That was the time that a pre-arranged signal was signaled by the poseur[-]buyer?

A - After receiving the transparent cellophane by our confidential informant he turned around and it was our pre-arranged would give us sign to rush up to the crime scene.[21]

Likewise, PO3 Labrador recounted thus:

PROS. TALLEDO (direct examination)

Q -

Now, at about 12:45 o'clock early dawn of November 29, 2003, where were you, if you can recall?

A -

We were at Agora Road, C.M. Recto Highway, Lapasan, Cagayan de Oro City.

Q -

Who was your companion during that time?

A -

RIID-SOU Group Team led by PSI Robert Baesa.

Q -

Who else aside from Baesa?

A -

The rest of the team, I myself, PO1 Bentuzal, PO3 Cabillar, PO3 Arocha, PO2 Jabiniao and PO2 Torres.

Q -

Why were you and your group there at that particular area Agora Road Recto Highway, Cagayan de Oro City on November 29, 2003 at 12:45 o'clock in the morning?

A -

To conduct a buy[-]bust operation against Rosebud.

Q -

Why what prompted your group to conduct buy[-]bust operation against the accused a certain Rosebud?

A -

There was a report from our confidential informant.

x x x x

Q -

Was there any briefing that was conducted prior to your operation?

A -

Yes.

x x x x

Q -

After the briefing, what did you and your group do?

A -

We proceeded immediately to the area at Agora Road, C.M. Recto Highway, Lapasan, Cagayan de Oro City.

Q -

What mode of transportation did you use in going to the particular place from Camp Alagar?

A -

We used our office service vehicle L300 van Mitsubishi.

Q -

How about the poseur[-]buyer which you said to be used during the buy bust operation, was the (sic) together with you in going to the place?

A -

Yes.

Q -

What particular place at Agora, Lapasan where you stopped your vehicle?

A -

It was at the opposite side of the road fronting Metrobank.

Q -

When the vehicle stopped, what did you and the poseur[-]buyer do?

A -

We immediately placed ourselves in a strategic position.

Q -

How about the poseur[-]buyer?

A -

He was in the area standing waiting for the subject.

Q -

How far in relation to your location and to the poseur[-]buyer?

A -

More or less 3-5 meters.

Q -

Now, the time is 12:45 o'clock early dawn, will you please tell this court the lighting condition of the area?

A -

It was well-lighted sir.

Q -

Between you and the poseur when you said the poseur[-]buyer was standing waiting for the subject, was there any obstruction that could hamper your vision in seeing the poseur[-]buyer?

A -

No sir.

Q -

So what happened while you were in that position and when the poseur[-]buyer was standing and according to you waiting for the subject, what happened after that?

A -

Rosie Amodia arrived riding a trisicad and went to the poseur[-]buyer.

Q -

How did you know that she was Rosie Amodia?

A -

After we arrested her we identified her.

Q -

Was Rosie Amodia the accused in this case alone when she arrived on board the trisicad?

A -

Yes.

Q -

Upon her arrival, what happened?

A -

Immediately they transacted. Our poseur[-]buyer gave the money P4,500.00 to Rosie Amodia and Rosie Amodia counted the money and after counting, Rosie Amodia got something from her right pocket which is heat[-]sealed containing white crystalline substance.

Q -

By the way, you said that among the P4,500.00 two only is the marked money, how did you place the marked money along with that P4,500.00?

A -

On top sir.. on the first two.

Q - You said after receiving and counting the money, the accused took something, how did you know that it is an illegal drug?

A - After the examination from the crime laboratory office.

Q - When the accused took something from her right pocket according to you believed to be illegal drugs, what did she do to that something after she pulled out from her pocket?

A - She gave it to the poseur[-]buyer.

Q - Did the poseur[-]buyer receive that something that the accused pulled out from her pocket?

A - Yes.

Q - After the poseur[-]buyer received that something that was given by the accused to the poseur[-]buyer, what happened?

A - He made the pre-arrange[d] signal.

Q - After the pre-arrange[d] signal was made by the poseur[-]buyer, what did you and your group do?

A - We immediately approach (sic) the suspect and arrested her.[22]

In sum, the arresting officers categorically and clearly established the following facts, namely, that pursuant to the information made by their confidential agent or informant that reached the office of the RIID, Camp Alagar, Lapasan, Cagayan de Oro City, a buy-bust operation was planned; that immediately thereafter, the informant contacted the accused-appellant and the same informant was used to act as the poseur-buyer; and that on the agreed time and location, the sales transaction between the poseur-buyer and accused-appellant transpired. These facts were not rebutted and refuted by accused-appellant. Verily, from the foregoing testimonies, we are convinced that the prosecution witnesses were able to present a complete picture of the buy-bust operation. It is well-settled that the testimonies of the police officers in dangerous drugs cases carry with it the presumption of regularity in the performance of official functions. Law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary.[23]

Accordingly, it is thus clear from the evidence that all the elements of the offense of drug pushing have been proven beyond reasonable doubt contrary to the allegations of the accused-appellant. The identity of accused-appellant who sold the shabu to the poseur-buyer, the shabu which is the object of the transaction and which was found positive for methamphetamine hydrochloride per chemistry report of the forensic chemist, and the marked-money used to purchase the shabu, were all established and identified. Accordingly, the sales transaction has indeed transpired on November 29, 2003 and this was established by the police officers who actually witnessed the exchange.

The well-entrenched principle is that the accused commits the crime of illegal sale of drugs as soon he consummates the sales transaction.[24] Drug pushing, especially the ones done on a small scale, happens instantly. The illegal transaction takes place after the offer to buy is accepted and the exchange is made.[25]

In fine, the sale of illicit drug in this case was duly established by object, testimonial, and documentary evidence.

Moreover, the non-presentation of the forensic chemist is not fatal to the prosecution's case. The Supreme Court ruled in a number of cases that the non-presentation of the forensic chemist in illegal drugs cases is an insufficient cause for acquittal.[26] In *People v. Quebral*,[27] it was ruled thus:

The accused-appellants also point out that, since the chemist who examined the seized substance did not testify

in court, the prosecution was unable to establish the indispensable element of corpus delicti. But this claim is unmeritorious. This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. The corpus delicti in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential.

Besides, corpus delicti has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are prima facie evidence of the facts they state. Therefore, the report of Forensic Chemical Officer Sta. Maria that the five plastic sachets PO3 Galvez gave to her for examination contained shabu is conclusive in the absence of evidence proving the contrary. x x x (Italics added.)

Thus, it is of no moment that PS/Insp. April Garcia Carbajal, the Forensic Chemical Officer who conducted the laboratory examination, was not presented in court because the prosecution was already able to establish all the elements of drug pushing or selling. With or without the testimony of the forensic chemist, the guilt of the accused-appellant has already been proven beyond reasonable doubt. Besides, it is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.[28] What is important is that the integrity and evidentiary value of the seized drugs are properly preserved as it had been so in this case. Moreso, it has not escaped our attention that during the pre-trial conference of this case, the parties stipulated to dispense with the testimony of the forensic chemist.

Likewise, the non-presentation of the poseur-buyer in court is not fatal to the prosecution's case considering that the police operatives who conducted the buy-bust gave personal accounts of the sales transaction and identified the corpus delicti. It has been ruled in many cases that non-presentation of the informer or poseur-buyer, where his testimony would be merely corroborative or cumulative, is not fatal to the case of the prosecution.[29] Thus, in *People v. Lacbanes*[30] it was ruled: "There was no need to present the poseur-buyer as PFC Rosales witnessed the whole transaction where the marked money was exchanged for three sticks of marijuana cigarettes. The settled rule is that the testimony of a lone prosecution witness, as long as it is positive and clear and not arising from an improper motive to impute a serious offense to the accused, deserves full credit."

In *People v. Amansec*,[31] the Supreme Court elucidated to wit:

This point need not be belabored as this Court, has time and again, held that "the presentation of an informant in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative." If Amansec felt that the prosecution did not present the informant because he would testify against it, then Amansec himself should have called him to the stand to testify for the defense. The informant's testimony is not needed if the sale of the illegal drug has been adequately proven by the prosecution. In *People v. Ho Chua*,[32] we said:

The presentation of an informant is not a requisite in the prosecution of drug cases. In *People v. Nicolas*, the Court ruled that "[p]olice authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret." In any event, the testimony of the informant would be merely corroborative.

Thus, even if the poseur-buyer was not presented in court, the same would not affect the prosecution's case. It is worth noting also that "not all people who came into contact with the seized drugs are required to testify in court. There is nothing in R.A. No. 9165 or in any rule implementing the same that imposes such requirement. 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 identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.”[33]

Anent the issue concerning the integrity and evidentiary value of the subject shabu presented in evidence, the same was likewise adequately and sufficiently established. The provisions of R.A. No. 9165 are meant to safeguard the accused in drugs cases against abuses of law enforcement officers. They provide for the proper handling of confiscated dangerous drugs in order to prevent malicious imputations of guilt upon an unsuspecting accused.[34] The procedure regarding the custody and disposition of seized drugs is provided in R.A. 9165 thus:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs x x x

(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.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

x x x x

The Supreme Court held in a case[35] that ideally, the procedure on the chain of custody should be perfect and unbroken. However, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. Thus, even though the prosecution failed to submit in evidence the physical inventory and photograph of the seized drugs as required under Section 21 of Republic Act No. 9165, this will not render the arrest illegal or the items seized inadmissible in evidence. It has consistently held that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, because the same will be utilized in ascertaining the guilt or innocence of the accused.

In *People v. Rosalda*,[36] the Supreme Court likewise reiterated jurisprudence to the effect that leeway is given

to the prosecution as regards compliance with the chain of custody requirement. It has previously underscored that R.A. No. 9165's IRR provides that "non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers." What is significant in the requirement is the preservation of the integrity and evidentiary value of the seized items. Indeed, "non-compliance with the provisions of R.A. No. 9165 on the custody and disposition of dangerous drugs is not necessarily fatal to the prosecution's case. Neither will it render the arrest of an accused illegal nor the items seized from her inadmissible."

In this case, while the procedure provided under Section 21 of R.A. No. 9165 was not strictly followed by the police officers, yet, in this case, there was substantial compliance with the procedure and it is important to note however, that the prosecution was able to demonstrate that the integrity and evidentiary value of the evidence seized has been preserved. Both PO3 Bentuzal and PO3 Labrador were categorical and consistent when they testified that the possession of the seized drugs remains with PO3 Bentuzal until the same was submitted to the laboratory for examination. PO3 Bentuzal testified thus:

PROS. TALLEDO (direct examination)

Q -

Who was in possession of that mark money and the transparent cellophane containing white crystalline substance from the time the transaction was consummated?

A -

I was the one who hold all these the confiscated items.

Q -

How about the mark money?

A -

Including the mark money sir.

Q -

After that what did you do?

A -

After the investigation in our office we brought the confiscated items including the mark money to the PNP crime lab for laboratory examination.

X X X X

Q -

Who was with you when you brought the accused and these items that you confiscated from the accused?

A -

It was PO1 Sukanog.

X X X X

Q -

Where is PO1 Sukanog now?

A -

He was assigned at Camp Crame at this time.

X X X X

Q -

Police officer Bentuzal, you said that after the items was recovered from the possession of the accused such as the marked money and the sachet of white crystalline substance turned out to be shabu after examination from the crime lab, if that will be shown to you again, can you identify it?

A -

Yes sir.

Q -

I am showing to you a big sachet already marked as Exh. "E" and "E-1", will you please examine this one if this is the same pack of shabu that you recovered and took possession from the accused?

A -

Yes sir, this is the one sir.

Q -

Are you sure?

A -

Yes sir.

Q -

Was there any marking placed on the sachet that made you say that this is the same?

A -

Yes sir, Exh. "A", and it was countersigned by our Investigator.

Q -

Exh. "A", written in black ink and this signature?

A -

Yes sir.

Q -

Whose signature is this?

A -

PO1 Bacal sir.[37]

ATTY. RICOLINO AYUBAN (cross-examination)

Q -

You said during the direct examination that you confiscated from the respondent (accused) the transparent cellophane and the mark money?

A -

The transparent cellophane containing white crystalline substance it was then personally given by the poseur buyer to us.

Q -

It is not correct when you say you confiscated the transparent cellophane from the respondent when you approached them?

A -

Yes sir.

Q -

It was turnover by your poseur buyer to you?

A -

Yes sir.

Q -

It was you who personally received it?

A -

Yes sir.

x x x x

Q -

It was you who were in possession of the transparent cellophane and the mark money recovered when you went back to your office?

A -

Yes sir.

x x x x

Q -

When you were in your office you turnover the transparent cellophane and the mark money to your Investigator Bacal?

A -

Yes sir.

Q - And it was Officer Bacal who made the marking?

A - Yes sir.

Q - But it was you who deliver those items to the crime lab for examination?

A - Together with PO1 Suganog.[38]

Corollarily, PO3 Labrador testified thus:

PROS. TALLEDO (direct examination)

Q -

You said that you are only about 5 meters distance from the accused and the poseur buyer and you said there was no obstruction, will you please tell this court if you can see clearly what was happening of the transaction?

A -

Yes.

Q -

Were you able to see it?

A -

Yes.

x x x x

Q -

Who confiscated the marked money from the possession of the accused?

A -

It was PO1 Bentuzal.

Q -

Where was it recovered?

A -

Immediately sir at the hands of the accused Posie Amodia.

Q -

How about the illegal drugs that was brought by the poseur buyer what happened to that illegal drug?

A -

It was immediately turnover to PO1 Bentuzal by the poseur buyer.

Q -

After the money and the illegal drug was in possession of Bentuzal, what did you do to that illegal drugs and the accused?

A -

We proceeded to our office.

Q -

Who was in possession of the illegal drugs in going to your office?

A -

It was PO1 Bentuzal.

Q -

After arrival at your office, what did you do to the accused and to the illegal drugs that you recovered?

A -

We immediately prepared a request for the crime laboratory for examination.

Q -

Who prepared the crime laboratory request?

A -

Our investigator PO3 Bacal.

Q -

By the way, have you seen the illegal drugs when it was recovered by Bentuzal from the poseur buyer?

A -

Yes.

Q -

Where for the first time?

A -

At the crime scene.

Q -

You said, you prepared a request for the crime for the crime laboratory office, who prepared the crime lab request?

A -

Our investigator.

Q -

Who brought the letter-request to the crime lab?

A -

Bentuzal, myself and the rest of the team.

Q -

Who was in possession of the sachet that was the subject of the buy[-]bust operation in going to the crime laboratory office?

A -

Bentuzal.

Q -

How about the money and the accused, what did you do to the accused?

A -

It was subjected for examination for the presence of the powder.

Q -

And the accused, was the accused also brought to the PNP crime laboratory?

A -

Yes.

x x x x

Q -

You said that you have seen the one jumbo pack heat sealed transparent plastic cellophane when it was turnover by the poseur[-]buyer to Bentuzal, if shown to you again, can you still recognize it?

A -

Yes.

Q - I am showing to you a jumbo sachet containing white crystalline substance already marked as Exhs. "E" and "E-1" for the prosecution, tell this court if that is the same sachet that was recovered from the poseur buyer?

A - This is the same.[39]

ATTY. RICOLINO AYUBAN (cross-examination)

Q - You were able to identify this sachet of jumbo pack alleged in the information as the same one bought from the suspect at that time, correct?

A - Yes.

Q - But there was no initial on this sachet?

A - I have my initial sir.

Q - Where is that initial?

A - This one sir.

Q - In your office.

A - Yes.

Q - So, this was turned over to you by officer Bentuzal when you arrived at the office?

A - All evidence were put on the table of the investigator.

Q - It was officer Bentuzal who placed those all evidence on the table?

A - Yes.

Q - And after that you put the markings?

A - Yes.

Q - And again, you turned over the suspect to Bentuzal?

A - Yes.

Q - Because he was the one who delivered the items to the crime laboratory?

A - Yes.[40]

It is thus clear from the foregoing testimonies that the sachet containing white crystalline substance sold by the accused-appellant to the poseur-buyer was subsequently turned over by the poseur-buyer to PO3 Bentuzal and the possession thereof remains with the latter until they arrived at their office and the drugs were turned over to their investigator PO3 Bacal for markings. After the sachet was marked and signed, it was again turned over to the possession of PO3 Bentuzal who took hold of the same and brought the same to the crime laboratory for examination. Verily, the danger of abuse that Section 21, RA 9165 seeks to prevent is not present and we find no

reason to deviate from the findings of the trial court that the integrity and the evidentiary value of the seized prohibited drugs have been properly preserved.

It should be emphasized that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. In *People v. Ara*,^[41] the Supreme Court ruled that R.A. 9165 and its IRR do not require strict compliance with the chain of custody rule for 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.” It further ruled that “non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.”

Thus, the quantum of evidence necessary to prove appellant’s guilt beyond reasonable doubt had been sufficiently met. It is important to note that accused-appellant did not present any evidence, be it documentary or testimonial, to refute and rebut the prosecution’s evidence. It is equally settled that absent a showing of bad faith, ill will, or proof of tampering with the evidence, the presumption that the integrity of the evidence had been preserved lies. The case of *People v. Quiamanlon*^[42] is instructive on this point:

x x x In this case, Quiamanlon bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that they properly discharged their duties. Failing to discharge such burden, there can be no doubt that the drugs seized from Quiamanlon were the same ones examined in the crime laboratory. Evidently, the prosecution established the crucial link in the chain of custody of the seized drugs.

In this case, the prosecution therefore was able to overcome appellant’s constitutional right to be presumed innocent and it has been able to establish with moral certainty that the prohibited drugs recovered from the accused-appellant was the same presented in court as evidence. Hence, we sustain the conviction of accused-appellant.

Finally, we find the penalty imposed by the trial court in order.

Section 5, Article II of R.A. No. 9165 provides that a person found guilty of unauthorized sale of shabu, regardless of the quantity and purity involved, shall suffer the penalty of life imprisonment and a fine ranging from Five Hundred Thousand (P500,000.00) Pesos to Ten Million Pesos (P10,000,000.00).

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED. The assailed April 5, 2011 decision of Branch 40 of the RTC of Cagayan de Oro City is hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified 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.

Camelo, J., Ch., and Inting, JJ., concur.

[1] Original Records, pp. 112-121.

[2] Penned by Hon. Ma. Corazon B. Gaite-Llanderal, Presiding Judge.

- [3] Original Records, p. 1.
- [4] Order dated April 30, 2004, Original Records, p. 13.
- [5] Order dated December 6, 2004, Id., p. 20.
- [6] Id., pp. 49-51.
- [7] Folder of Exhibits, p. 1.
- [8] Folder of Exhibit, p. 2.
- [9] Folder of Exhibit, p. 3.
- [10] Folder of Exhibit, p. 4.
- [11] Folder of Exhibit, p. 5.
- [12] Folder of Exhibit, p. 6.
- [13] Folder of Exhibits, p. 7.
- [14] Folder of Exhibit, p. 8.
- [15] Exhibit "D" of the Prosecution, Folder of Exhibits, p. 4.
- [16] Exhibit "F" of the Prosecution, Id., p. 5.
- [17] Exhibit "G" of the Prosecution, Id., p. 6.
- [18] Order dated November 22, 2010, Original Records, p. 98.
- [19] Ching vs. People, G.R. No. 177237, October 17, 2008.
- [20] People vs. Naquita, G.R. No. 180511, July 28, 2008.
- [21] TSN dated May 14, 2010, pp. 3-5.
- [22] TSN dated August 17, 2010, pp. 3-7.
- [23] People v. Fundales, Jr., G.R. No. 184606, September 5, 2012.
- [24] People vs. Aspiras, G.R. Nos. 138382-84, February 12, 2003.
- [25] People v. Gaspar, G.R. No. 192816, July 6, 2011.
- [26] People v. Sultan, G.R. No. 187737, July 5, 2010.
- [27] G.R. No. 185379, November 27, 2009.
- [28] People v. Rivera, G.R. No. 182347, October, 17, 2008.
- [29] People vs. Lacbanes, G.R. NO. 88684, March 20, 1997.
- [30] G.R. No. 88684, March 20, 1997.
- [31] G.R. No. 186131, December 14, 2011.
- [32] 364 Phil. 497 (1999).
- [33] People v. Padua, G.R. No. 174097, July 21, 2010.

[34] People v. Fundales, Jr., G.R. No. 184606, September 5, 2012.

[35] People v. Amansec, Supra, note no. 32.

[36] G.R. No. 188330, August 25, 2010.

[37] TSN dated May 14, 2010, pp. 6-9.

[38] TSN dated May 14, 2010, pp. 13-15.

[39] TSN dated August 17, 2010, pp. 7-9.

[40] TSN dated August 17, 2010, pp. 14-15.

[41] G.R. No. 185011, 23 December 2009.

[42] G.R. No. 191198, 26 January 2011.

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