

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
REYNAN ALCANTARA Y GARCIA @ “POPOY”, ACCUSED AND
APPELLANT.**

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

Before this Court is an Appeal[1] from the 4 December 2013 Decision of the Regional Trial Court of Pasig City, Branch 70 (lower court), in Criminal Case No. 16902-D, finding accused-appellant Reynan Alcantara y Garcia @ “Popoy” (appellant), guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs defined and punished under Section 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as The Comprehensive Dangerous Drugs Act of 2002, allegedly committed as follows:

“That, on or about the 12[th] day of November 2009, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully and knowingly have in his possession one (1) plastic sachet containing zero point two(sic) (0.02) gram of white crystalline substance of suspected “shabu”, and after the required laboratory test/examination, found positive for Methamphetamine Hydrochloride, commonly known as “shabu”, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.”[2]

When arraigned, appellant, while assisted by counsel, pleaded “not guilty” to the charge.[3]

During the pre-trial of the case, the parties stipulated on the following:

- the identity and the jurisdiction of the court over the person of the accused, nature of the case and subject matter of the case;
- the qualification of Forensic Chemist Police Chief Inspector Abraham Verde Tecson;
- the existence and due execution of Physical Science Report No. D-530-09S;
- the existence of the specimen and documents marked as exhibits, but with a counterproposal that the forensic chemist has no personal knowledge as to the source of the specimen and the manner or circumstance of the arrest, and
- the due execution and genuineness of the findings on the qualitative examination on the specimen which gives positive result to the tests of Methamphetamine Hydrochloride, a dangerous drug.[4]

Thereafter, trial on the merits ensued:

The lone witness for the prosecution is PO1 Ronaldo Barrameda (PO1 Barrameda) who testified that on 12 November 2009, an informant came to his office at Taguig City Police Station, Anti-Illegal Drugs, and informed his team leader, Police Senior Inspector Olat Amindalan, that there will be a sale of illegal drugs at Hagonoy,

M.L. Quezon Street at around 7:00 o'clock in the evening.[5]

After receiving said information, PO1 Barrameda then coordinated with the Southern Police District (SPD) and the Philippine Drug Enforcement Agency (PDEA) for the upcoming buy-bust operation as evidenced by a Coordination Form[6] and Pre-Operation Report[7]. Subsequently, PO1 Barrameda and his team which includes Chief Inspector Olat Amindalan and Alexander Saez (collectively referred herein as the team) went to the target area and conducted surveillance for thirty (30) to forty (40) minutes. Afterwards, the team saw two (2) persons talking at the road which were identified by the informant as Mando Minao and appellant. Later, the team saw appellant took out some money from his pocket and handed it over to Mando Minao, who in turn, passed something to appellant. At that point, the team approached the two, but Mando Minao and appellant tried to scamper away. Mando Minao was successful in eluding arrest, while appellant was not so fortunate as he was caught by PO1 Barrameda himself. When told to open his palm, appellant yielded a plastic sachet which PO1 Barrameda marked as "RGA".[8]

The marked plastic sachet was then brought to the Taguig City Police Station for an Inventory of Seized and Property Items[9] and thereafter, submitted to the crime lab for examination as shown by a Request for Laboratory Examination dated 13 November 2009.[10] Appellant, meanwhile, was brought for inquest and then returned to the Taguig City Police Station, where he was jailed.[11]

On the other hand, the defense gave a different version of facts. According to appellant, on 11 November 2009, at around 8:00 o'clock in the evening, he was inside in his room located in the upper floor of his house at Hagonoy, Taguig City having a massage from a hilot. All of a sudden, a man in civilian clothes barged inside and asked appellant if he is "Popoy". Appellant replied that he is not "Popoy", but "Popeye". Notwithstanding, the man who barged in told appellant to stand up as someone is complaining against appellant. Thereafter, the two went downstairs and then to an owner type jeep where there were four (4) other individuals waiting. Appellant was made to seat at the back of the owner type jeep which then proceeded to the Municipal Hall of Taguig. Upon arriving at the Municipal Hall, appellant was shown a man and asked if he could identify such person. Appellant answered in the negative. The person shown was then identified as Mando. Afterwards, Mando left while appellant stayed in the office. Appellant was later informed that a case for drugs would be filed against him. First, appellant was told by a man named Saez that a case involving Section 5 would be filed. The next day, however, another person told appellant that they would just file a violation of Section 11 against him.[12]

The other defense witness, Zenaida Punzal, the hilot, testified that on 12 November 2009, she was giving appellant a massage when suddenly, a man in civilian clothes barged in and asked appellant if he is "Popoy". Appellant replied that he is not and that he is "Popeye". The man who entered uninvited, nonetheless, told appellant to stand up and brought appellant downstairs.[13]

After trial and after weighing the evidence proffered, the lower court was convinced that appellant was guilty beyond reasonable doubt of the crime charged. Invariably, on 4 December 2013, it rendered the impugned Decision with the dispositive portion:

"WHEREFORE, premises considered, accused REYNAN ALCANTARA y Garcia is hereby found GUILTY beyond reasonable doubt of the crime of Violation of Sec. 11, Art. II, or Republic Act 9265, otherwise known as Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY AS MINIMUM, TO SEVENTEEN (17) YEARS AND FOUR (4) MONTHS AND ONE (1) DAY AND A FINE OF THREE HUNDRED THOUSAND PESOS (PHP300,000.00).

Pursuant to Section 21 of Republic Act 9165, Magella Monashi, Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA), or any of the PDEA authorized representative is hereby ordered to take charge

and to have custody of the “shabu” subject matter of this case, within 74 hours from notice, for proper disposition.

Furnish the PDEA a copy of this Decision for its information and guidance.

Costs against the accused.

SO ORDERED.”[14]

Aggrieved, appellant, interposed the present Appeal, anchored on the following assigned errors:

I.

THE LOWER [COURT] ERRED IN HANDING DOWN A GUILTY VERDICT NOTWITHSTANDING THE INCREDIBILITY OF THE PROSECUTIONS(sic) THEORY/STORY AND THE INCREDIBILITY OF THE UNCORROBORATED TESTIMONY OF ITS LONE WITNESS PO1 RONALDO BARRAMEDA.

B.

THE LOWER COURT ERRED IN HANDING DOWN A GUILTY VERDICT NOTWITHSTANDING THE CLEAR VIOLATION OF THE TAGUIG POLICE OF THE PROVISIONS OF R.A. 9165 IN THE CONDUCT OF THEIR ALLEGED OPERATION AGAINST THE ACCUSED.

In praying for his acquittal, appellant essentially argues that the lone testimony of PO1 Barrameda is tattered with inconsistencies and improbabilities creating a cloud of doubt as to its veracity. Further, appellant claims that there were procedural lapses committed in handling the confiscated plastic sachet, hence, his constitutional presumption of innocence should be upheld.

The Office of the Solicitor General (OSG), representing the People of the Philippines, maintains that there was compliance with the requirements of Sec. 21 of R.A. 9165 and in the absence of any showing that the members of the buy-bust team were ill-motivated, the testimony of PO1 Barrameda deserves full faith and credit and carry with presumption of regularity in the performance of office functions.

We deny the instant appeal for lack of merit.

At the outset, it bears to state that in order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following facts with moral certainty: (1) that the accused is in possession of the object identified as a prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[15]

The first element was proven beyond reasonable doubt by the prosecution through the testimony of PO1 Barrameda, thus:

PROSEC JABSON

Your Honor, we would like to manifest that this Coordination Form was previously marked as Exhibit “F” and the Pre-Operation Report as Exhibit “G”, Your Honor.

Q After getting the Pre-Operation Report and the Coordination Form, what did you do?

A After that, we went to the target area where the selling of drugs will happen, sir.

Q After going to the area, what happened?

A We conducted surveillance, sir.

Q For how long did you conduct the surveillance?

A Almost thirty (30) to forty (40) minutes, sir.

Q After the said surveillance, what did you do?

A We saw two (2) men talking at the road, sir.

Q And who are these two (2) persons talking by the road?

A According to our informant, it was Mando Minao and the man that he was talking with Reynan Alcantara alias Popoy, sir.

Q What happened next?

A We saw them having a transaction, sir.

Q What kind of transaction?

A Reynan Alcantara took his money out from his pocket and passed it on to Mando Minao, sir.

Q After passing the money to Minao?

A That's the time we need to arrest them, sir the time when Mando Minao took something out from his pocket, sir.

Q And when you say “siya” who are you referring to?

A Mando Minao, sir.

Q And?

A He passed it on to Reynan Alcantara, sir.

Q What did you do after seeing Minao giving something to Alcantara?

A We approached them, sir.

Q What you say we, who else was with you?

A My team leader, sir, and my other companions.

Q What are their names?

A Chief Inspector Olat Amindalan and Alexander Saez sir.

Q How did you approach the accused Alcantara?

A When we approached them, they tried to run but I was able to catch Reynan Alcantara and my other teammates pursued Mando Minao, sir.

Q When you arrested Alcantara, what did you do?

A His right palm was close so I asked him to open his palm, sir.

Q And what did the accused do?

A He obliged, sir because I introduced myself as a police officer.

Q What did you discover?

A I saw a plastic sachet of shabu, sir.

Q How did you know that it was shabu?

A We had it tested in the Crime Lab, sir.

Q After discovering the suspected shabu from accused Alcantara, what did you do with the specimen?

A I marked the specimen, sir.

Q What markings did you put? A RGA, sir.” [16]

Later, the plastic sachet marked as “RGA” was submitted to the crime lab[17] and found to contain 0.02 gram of methamphetamine hydrochloride, a dangerous drug,[18] which possession is not authorized by law.[19] As to the last element, the rule is settled that possession of dangerous drugs constitutes prima facie evidence of knowledge or animus possidendi, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession.[20]

Verily, the lower court correctly accorded credence to the testimony of PO1 Barrameda. It is an elementary principle in evidence that the trial court's determination of the issue of credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value had been overlooked, which, if considered, might affect the result of the case. This is because the trial courts can easily detect whether a witness is telling the truth or not because they have heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[21] Jurisprudence is likewise replete in that the testimonies of members of the buy-bust team regarding their operation deserve full faith and credit because as public officers, they enjoy the disputable presumption of regularity in the performance of official duty.[22] Also, it is not significant that PO1 Barrameda was the only one who testified for the prosecution, because well-settled is the rule that the testimony of a lone prosecution witness, as long as it is credible and positive, can prove the guilt of the accused beyond reasonable doubt.[23]

With respect to the inconsistencies and improbabilities alleged by appellant in PO1 Barrameda's testimony, we find the same trivial matters that have no bearing in the crime charged. The Supreme Court thus had an occasion to state that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration, its veracity or the weight of their testimonies.[24]

Even if we discuss point by point the alleged inconsistencies and improbabilities, we still find the same bereft of merit.

First, appellant raised a howl as to the alleged improbability of the duration of the operation in the Coordination Form which is from 2:00 a.m. of 12 November 2009 until 2:00 a.m. of 13 November 2009 when the said

Coordination Form was only received by the Station Anti-Illegal Drugs, Special Operation Task Group of SPD at 12:15 a.m. of 12 November 2009 and by the PDEA at 12:41 of same date. Appellant then queried why the duration of the operation came way ahead of the coordination itself. Also, appellant assailed the alleged incompatibility in the number of police officers as indicated in the Coordination Form with the actual number of members who participated in the buy-bust operation.

The answer lies in PO1 Barrameda's testimony that the Coordination Form originated from Taguig City Police Station which was then circulated to the SPD and PDEA and back to Taguig Police Station through fax.[25] Logically, the Taguig Police Station would have to supply the details of the Coordination Form before sending it to SPD and PDEA such as the duration of the operation, as well as the number of team members. The Taguig Police Station, however, is not expected to know the exact time the SPD and PDEA would confirm the former's operation. Logically, the Taguig Police Station would have to give a rough estimate as to the details of the planned operation. What is significant is that the buy-operation actually took effect within the time-frame as shown in the Booking and Information Sheet that appellant was arrested on 8:30 p.m. of 12 November 2009[26] and that the team was led by PSI Olat Amindalan.[27]

Relevantly, it is also settled that the absence of coordination of the police with the PDEA does not make an arrest illegal nor evidence obtained pursuant to such an arrest inadmissible. For as long as the mandatory requirements of R.A. 9165 have been complied with, the buy-bust operation remains legal, and appellant's conviction shall be upheld.[28] In the same vein, a pre-operation report is not indispensable in a buy-bust operation.[29]

As to the inconsistency in the Sinumpaang Salaysay ng Pag-Aresto[30] of PO1 Barrameda wherein he claimed that there was already a positive result for methamphetamine hydrochloride on 12 November 2009, when the actual result came out only the day after or on 13 November 2009, the same was not raised by the defense during PO1 Barrameda's cross-examination, hence, a non-issue. Moreover, the Sinumpaang Salaysay ng Pag-Aresto was not objected to by the defense on this ground. The established doctrine is that when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived.[31]

Notwithstanding, a perusal of the Sinumpaang Salaysay ng Pag-Aresto, would reveal that the date - 12 November 2009, when PO1 Barrameda allegedly signed his affidavit could have just been a mere oversight, because below his signature is a Jurat wherein it is stated that it was subscribed and sworn to before the Administering Officer on 13 November 2009.

As to the absence of the names of the suspects in the Sinumpaang Salaysay ng Pag-Aresto vis-a-vis the testimony of PO1 Barrameda that they have already identified appellant prior to the operation, it is well to stress that the discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits are generally incomplete.[32] It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when the affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. [33]

As to the averred improbability that an informant would volunteer information of a narcotic trade involving 0.02 gram of shabu, the same is specious in view of the fact that the sale of drugs no matter how small should not be undermined because it destroys the moral fiber of society. It cannot be overemphasized that drugs have eroded and disrupted family life, increased the transmission of sexually related diseases, resulted in permanent and fatal damage to the physical and mental health, and wasted dreams, opportunities and hopes for a better future.[34] Furthermore, it is possible that Mando Minao was carrying a greater amount of illegal drugs, only that appellant

bought a small amount. One must not forget that Mando Minao was not captured during the buy-bust operation, hence, the amount of drugs he was carrying could not be ascertained.

With respect to the improbability that PO1 Barrameda saw the sale of illegal drugs from a distance of twenty (20) meters, the same could have been easily proven during trial. Again, however, the defense did not ask for a demonstration of PO1 Barrameda's range of vision, thus, appellant could no longer raise this as an issue in the appellate stage.

Further, it is plausible that Mando Minao and appellant still proceeded with the sale despite the presence of policemen from twenty (20) meters away, because they were not aware of the buy-bust team's presence. It is fair to assume that the policemen working undercover did not wear their official uniforms and were not in the plain sight of their target individuals.

As to the marking of "RGA", it is worth to note that PO1 Barrameda explained that the identity of appellant had been known to them prior to the buy-bust operation.[35] Consequently, it is not impossible for him to know the whole name of appellant which is Reynan Garcia Alcantara, which also stands for "RGA".

Appellant then draws attention to the failure of the apprehending police officers to comply with Section 21, Article II of RA 9165 regarding the physical inventory and photograph of the seized plastic sachet. This provision reads as follows:

- (1) The apprehending officer/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;

Appellant points out that the inventory of the confiscated plastic sachet was only done at the police station and not immediately after appellant's arrest as evidenced by the fact that it was typewritten.

However, it is worth mentioning that the failure of the prosecution to show that the police officers conducted the required physical inventory and take photograph of the objects confiscated after seizure does not ipso facto render inadmissible in evidence the items seized. There is a proviso in the implementing rules of Section 21 stating that when it is shown that there exist justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused.[36]

Here, the integrity of the plastic sachet confiscated from appellant was preserved as it was immediately marked "RGA upon appellant's arrest. In *People v. Somoza*, [37] it was ruled that marking is the initial step in inventory, hence, when the marking was done right at the scene of the buy-bust operation, it was as if the physical inventory was also done at the scene of the crime.

Later, the marked plastic sachet, "RGA", was submitted to the PNP Crime Laboratory, Southern Police District Office for laboratory examination.[38] Subsequently, the said office issued Physical Science Report No. D-530-09S disclosing that the marked plastic sachet "RGA" contains methamphetamine hydrochloride.[39]

The prosecution could also not be faulted for not giving justifiable grounds for conducting the actual inventory of the plastic sachet at the police station because appellant raised the buy-bust team's alleged non-compliance with the requirements of chain of custody only on appeal. Failure to raise this issue during trial is fatal to the case of appellant, as the Supreme Court had succinctly explained in *People v. Torres* [40]:

“The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers’ alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.” (underscoring supplied)

As to PO2 Vergelio del Rosario's participation, the parties already stipulated that PO2 del Rosario was the one who requested for the lab exam,[41] thus his signature therein should not come as a surprise to appellant.

Meanwhile, appellant's defenses of denial and frame-up are also unconvincing and lacked strong corroboration. Denial and frame up are the most common defenses in prosecution for violations of the Comprehensive Dangerous Drugs Act of 2002 and are generally viewed with caution because they are easy to contrive and difficult to disprove.[42] To merit credibility, denial and frame up must be buttressed by strong evidence of lack of culpability.[43]

On this score, the testimony of appellant does not even jibe with the so-called corroborating testimony of Zenaida Punzal. While appellant claimed that he was arrested on 11 November 2009,[44] Zenaida Punzal, meanwhile, attested that it happened on 12 November 2009.⁴⁵ Further, appellant claimed that it was only him and Zenaida Punzal inside the house when he was arrested,[46] while Zenaida Punzal asserted that appellant's wife and kids were there.[47] No matter, we find it highly incredible and downright preposterous that appellant was just picked up by plainclothes policemen and without reason, the latter would conjure a case against appellant for illegal possession of drugs. In fine, the said self-serving testimony of appellant cannot be given greater evidentiary weight than that given to the testimony of a credible witness who is PO1 Barrameda.

Lastly, as to the issue of penalty. The total amount of shabu confiscated from appellant amounts to 0.02 gram. Now, under Section 11, paragraph 3, Article II of Republic Act 9165, the penalty that should be imposed for possession of less than five (5) grams of shabu is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00). The lower court is thus correct in imposing that penalty of Twelve (12) Years And One (1) Day as Minimum, to Seventeen (17) Years and Four (4) Months and One (1) Day as Maximum and a Fine of Three Hundred Thousand Pesos (PHP300,000.00).

WHEREFORE, premises considered, the instant Appeal is DENIED for lack of merit and the assailed 4 December 2013 Decision of the Regional Trial Court of Pasig City, Branch 70 is hereby AFFIRMED.

SO ORDERED.

Salazar-Fernando, R. A., Chairperson and Cruz, R.A., JJ., concur.

[1] Notice of Appeal, Records, p. 166.

[2] Records, p. 1.

[3] Order dated 2 March 2010, p. 69.

[4] Pre-Trial Order dated 19 April 2010, Records, pp. 74-75

- [5] TSN, 21 February 2011, pp. 4-6.
- [6] Exhibit “F”.
- [7] Exhibit “G”.
- [8] TSN, 21 February 2011, pp. 7-12.
- [9] Exhibit “E”.
- [10] Exhibit “C”.
- [11] TSN, 21 February 2011, pp. 14-21.
- [12] TSN, 5 November 2012, pp. 5-15.
- [13] TSN, 25 September 2013, pp. 3-6.
- [14] Records, pp. 156-157.
- [15] People v. Del Norte, G.R. No. 149462, 29 March 2004.
- [16] TSN, 21 February 2011, pp. 8-12
- [17] TSN, 21 February 2011, pp. 14-15.
- [18] Physical Science Report No. D-530-09S dated 13 November 2009, Exhibit “B”.
- [19] Section 11 of R.A. 9165.
- [20] People v. Maongco, G.R. No. 196966, 23 October 2013.
- [21] People of the Philippines v. del Monte, G.R. No. 179940, 23 April 2008.
- [22] People of the Philippines vs. Naquita, G.R. No.180511, J28 July 2008.
- [23] People v. Gonzales, G.R. No. 105689, 23 February 1994.
- [24] People v. Blanco, G.R. No. 193661, 14 August 2013.
- [25] TSN, 21 February 2001, pp. 39.40.
- [26] Exhibit “H”.
- [27] TSN, 21 February 2011, p. 11.
- [28] People v. Rebotazo, G.R. No. 192913, 13 June 2013.
- [29] People v. Daria, Jr., G.R. No. 186138, 11 September 2009.
- [30] Exhibit “A”.
- [31] Sps. Decaleng V. Bishop Of The Missionary District Of The Philippine Islands Of Protestant Episcopal Church In The United States Of America, G.R. No. 171209, 27 June 2012.
- [32] Kummer v. People, G.R. No. 174461, 11 September 2013.
- [33] P/CPL Sarabia, PNP v. People, G.R. No. 142024, 20 July 2001.
- [34] See People v. Noque, G.R. No. 175319, 15 January 2010.

[35] TSN, 21 February 2011, p. 29.

[36] People v. Montervirgen, G.R No. 189840, 11 December 2013.

[37] G.R. No. 197250, 17 July 2013.

[38] Exhibit "C".

[39] Exhibit "B".

[40] G.R. No. 191730, 5 June 2013, citing People v. Sta Maria, 545 Phil. 520 (2007).

[41] Page 3 of the Assailed Decision, Records, p. 154.

[42] People v. de Guzman, G.R. No. 177569, 28 November 2007.

[43] People v. Lazaro, Jr., G.R. No. 186418, 16 October 2009.

[44] TSN, 5 November 2012, p. 5.

[45] TSN, 25 September 2013, p. 3.

[46] TSN, 5 November 2012, pp. 6-7.

[47] TSN, 25 September 2013, p. 5.

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