

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSEMARIE MAGUNDAYAO Y ALEJANDRO ALIAS “ROSE,”
ACCUSED-APPELLANT.**

G.R. No. 188132. February 29, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

For review of the Court is the Decision[1] of the Court of Appeals dated December 19, 2008 in CA-G.R. CR. No. 02899, which affirmed the Joint Decision[2] dated June 27, 2007 of the Regional Trial Court (RTC) of Pasig City, Branch 267, in Criminal Case Nos. 14061-D and 14062-D. In the said cases, accused-appellant Rosemarie Magundayao y Alejandro alias Rose was found guilty of the crimes of illegal sale and possession of methamphetamine hydrochloride, more popularly known as shabu, under Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On April 18, 2005, two separate informations were filed against the accused-appellant for violations of the provisions of Republic Act No. 9165.

In Criminal Case No. 14061-D, the accused-appellant allegedly violated the first paragraph of Section 5,[3] Article II of Republic Act No. 9165 in the following manner:

That on or about the 14[th] day of April, 2005, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur-buyer PO1 Rey B. Memoracion 0.08 gram of white crystalline substance contained in one (1) heat-sealed transparent sachet, which substance was found positive to the test for “Methylamphetamine hydrochloride”, a dangerous drug, in violation of the above-cited law.[4]

The accusatory portion of the second information pertaining to Criminal Case No. 14062-D for violation of Section 11,[5] Article II of the same law, states:

That on or about the 14[th] day of April, 2005, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession, custody and control 0.10 gram of white crystalline substance contained in one (1) heat-sealed transparent sachet, which substance was found positive to the test for “Methylamphetamine hydrochloride” or commonly known as “shabu”, a dangerous drug, in violation of the above-cited law.[6]

Upon her arraignment on May 23, 2005, the accused-appellant entered pleas of “not guilty” to each of the charges. [7]

Thereafter, joint trial of the cases ensued.[8]

The prosecution called to the witnesses stand: (1) Police Officer III (PO3) Danilo B. Arago and (2) Police Officer

II (PO2) Rey B. Memoracion, both members of the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) of the Taguig City Police Station. On the other hand, the defense presented the lone testimony of accused-appellant Rosemarie Magundayao y Alejandro.

PO3 Danilo B. Arago testified that on April 14, 2005, at around 5:30 p.m., he was at the office of the SAID-SOTF when a reliable informant (pinagkakatiwalaang impormante) came in and gave information about a certain alias Rose who was peddling illegal drugs, particularly shabu, along M. L. Quezon Street, at the corner of Paso Street, Bagumbayan,[9] Taguig City.[10] PO3 Arago said that the information was relayed to the leader of his team, Police Chief Inspector (P/Chief Insp.) Romeo Paat, who conducted a briefing with the informant. The members of the team present were P/Chief Insp. Paat, PO3 Antonio Reyes, PO2 Memoracion[11] and PO3 Arago himself. A buy-bust operation was planned whereby PO2 Memoracion was designated as the poseur-buyer and he was to act as the back-up. He saw P/Chief Insp. Paat give the buy-bust money to PO2 Memoracion, consisting of two pieces of P100 bills, and the latter signed the initials “RBM” on the upper right hand of the bills. The team also faxed a pre-coordination report to the Philippine Drug Enforcement Agency (PDEA).[12]

PO3 Arago related that the team then proceeded to the subject area and arrived there at 8:30 p.m. They parked their vehicle along M. L. Quezon Street, around a hundred meters from Paso Street. PO2 Memoracion and the informant alighted and walked to Paso Street. The pre-arranged signal was for PO2 Memoracion to remove his bull cap. When he saw PO2 Memoracion talking to the accused-appellant, PO3 Arago went out of the car and walked towards them. He situated himself at about 15 meters away from PO2 Memoracion and the accused-appellant. He saw them talking and, after a while, PO2 Memoracion handed something to the accused-appellant, who in turn took something from her short pants and handed it to PO2 Memoracion. The latter then removed his bull cap.[13]

PO3 Arago stated that he thereafter ran to the place where PO2 Memoracion was standing. The latter already effected the arrest of the accused-appellant and ordered her to empty the contents of her right front pocket. They saw another plastic sachet, which they believed contained shabu, and the buy-bust money. PO2 Memoracion told him to place the accused-appellant in handcuffs and the former marked the evidence obtained. PO3 Arago said that he was able to see the object of the buy-bust in the custody of PO2 Memoracion, which was a small plastic sachet containing white crystalline substance suspected as shabu. He was beside PO2 Memoracion while the latter was marking the evidence. The marking “RAM-1” was placed at the plastic sachet subject of the buy-bust and the marking “RAM-2” was placed at the other plastic sachet that was also confiscated from the accused-appellant. PO3 Arago stated that he saw PO2 Memoracion take custody of the two plastic sachets and brought the same to the police station. They then turned over the plastic sachets to the crime laboratory. After the accused-appellant was arrested, she was brought to the police station.[14]

PO2 Memoracion provided a similar picture of the events that allegedly transpired in the afternoon of April 14, 2005. He testified that, at that time, an informant indeed came to their office and told them about a female individual who was selling illegal drugs at Bagumbayan corner Paso Street, Taguig City. The informant talked to P/Chief Insp. Paat and the latter set up a plan to conduct a buy-bust operation. PO2 Memoracion was designated as the poseur-buyer. He was tasked to give the marked money, consisting of two pieces of P100 bills, to the drug peddler. He stated that he was the one who placed the markings on the money, writing thereon his initials “RBM” at the upper right portion of the serial number. The team submitted a pre-operation report to the PDEA and the latter gave a certification of coordination. The plan was for the informant to assist him in buying the illegal drugs from the drug peddler. Should the sale be consummated, they will immediately arrest the said person. The pre-arranged signal for the arrest was the act of him removing his cap.[15]

PO2 Memoracion narrated that, after the preparations were completed, the team headed to Bagumbayan corner

Paso Street, Taguig City. When they got there, he and the informant took a walk, with the other members of the team following them. When the informant saw the accused-appellant, they talked and PO2 Memoracion was introduced as a friend of the informant who wanted to buy shabu. They were then facing each other about a foot away. The accused-appellant asked PO2 Memoracion how much he was going to buy and he answered that he would buy only P200 worth of shabu. He handed to her the P200 marked money and she accepted the same. She then pulled out from her pocket one transparent plastic sachet containing white crystalline powder and gave it to him. After he received the plastic sachet, he made the pre-arranged signal of removing his bull cap.[16]

PO2 Memoracion said that he afterwards saw PO3 Arago, followed by PO3 Reyes, coming towards his location. He forthwith informed the accused-appellant that he was a police officer and showed her his ID. He told her not to run and that he was arresting her for selling illegal drugs. When he requested her to bring out the contents of her pocket, she brought out another plastic sachet with suspected shabu and the buy-bust money, which he both confiscated. He then put markings on the two plastic sachets. He put therein the initials of the accused, "RAM." The shabu subject of the sale was marked as "RAM-1" and the other sachet was marked as "RAM-2." He also appraised the accused-appellant of her constitutional rights. At the scene of the crime, he prepared an inventory of the items seized, which he and the accused-appellant signed. The accused-appellant was taken to the police station, along with the plastic sachets and the marked money. Thereafter, the accused-appellant and the seized items were turned over to the investigator, SPO2 Armando Cay. The police subsequently prepared a request for laboratory examination. PO2 Memoracion then delivered the request and the suspected drug specimen to the crime laboratory. The specimen yielded a positive result for methylamphetamine hydrochloride.[17] Chemistry Report No. D-234-05 stated thus:

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weight:

A – (RAM-1) = 0.08 gram

B – (RAM-2) = 0.10 gram

x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a dangerous drug. x x x.

CONCLUSION:

Specimen A and B contain Methylamphetamine Hydrochloride, a dangerous drug.[18]

The prosecution thereafter adduced the following documentary evidence: (1) Pinagsamang Salaysay ng Pag-aresto at Paghaharap ng Reklamo o Demanda (Exhibit A);[19] (2) Request for Laboratory Examination of the specimen suspected to be shabu (Exhibit B);[20] (3) Initial Laboratory Report, stating that the specimen submitted for examination tested positive for methylamphetamine hydrochloride (Exhibit C);[21] (4) Request for Physical Examination of the accused-appellant;[22] (5) Request for Drug Test of the accused-appellant;[23] (6) Physical Examination Report;[24] (7) Certificate of Inventory (Exhibit G);[25] (8) Booking and Information Sheet;[26] (9) Pre-Operation Report/Coordination Sheet (Exhibit I);[27] (10) Certificate of Coordination (Exhibit J);[28] (11)

Photocopy of the buy-bust money (Exhibit K);[29] and (12) Chemistry Report No. D-234-05, stating that the specimen submitted for examination yielded a positive result for methylamphetamine hydrochloride (Exhibit L).[30]

The testimony of Police Inspector Alejandro de Guzman, the forensic chemist who examined the specimen seized from the accused-appellant, was dispensed with by the parties. The counsel for the accused-appellant agreed to stipulate that De Guzman indeed examined the specimen upon the request of the police and, after the requisite examination, found it positive to the test of methylamphetamine hydrochloride, a dangerous drug. The findings were reflected in Chemistry Report No. D-234-05, which was prepared under oath by De Guzman and approved by his immediate supervisor Police Chief Inspector Grace M. Eustaquio. The defense counsel also stipulated that if De Guzman were to be presented as a witness, the latter would testify to the fact that he turned over to the counsel for the prosecution the drug specimen and he could identify the same if shown to him. On the other hand, the prosecution stipulated that the forensic chemist had no personal knowledge from whom the specimen was taken and under what circumstances the specimen was taken.[31]

Expectedly, the defense presented an entirely different version of the facts. The accused-appellant claimed that she was framed by the police.

The accused-appellant testified that on April 14, 2005, she was at her house at 188 Pazzo Street, Bagong Bayan, Taguig, Metro Manila. At around 6:00 p.m., she was resting when the door of their house was suddenly opened by five unidentified male persons. They did not introduce themselves to her. They told her that they were looking for a certain alias Luga but she told the men that she did not know this person. They then ransacked her house for about ten to fifteen minutes. The men were not able to find any illegal items at her house and they afterwards brought the accused-appellant to the Tuktukan jail. There, the men allegedly asked money from her before they could allow her to go home. She stated that it was PO2 Memoracion who tried to extort money from her. Since she did not owe them any debt, she refused to give them any money. Afterwards, she was subjected to inquest proceedings. When she was brought to the Tuktukan jail, she was not shown the evidence that were supposedly taken from her. The accused-appellant further alleged that, on the afternoon of April 14, 2005, she did not even go out of her house.[32]

The defense formally rested its case without the presentation of any documentary evidence for the accused-appellant.[33]

On June 27, 2007, the RTC rendered a Joint Decision, finding the accused-appellant guilty of the offenses charged. The pertinent portions of the judgment states:

The substance of the prosecution's evidence is to the effect that accused Rosemarie Magundayao y Alejandro alias Rose was arrested by the police because of the existence of shabu [s]he sold to PO2 Rey B. Memoracion as well as the recovery of the buy-bust money from [her] possession, and the presence of another plastic sachet containing shabu that was also recovered from her person.

To emphasize, the prosecution witnesses in the person of PO2 Rey B. Memoracion and PO3 Danilo B. Arago positively identified accused Rosemarie Magundayao y Alejandro alias Rose as the person they apprehended on April 14, 2005 at Pazzo Street corner M.L. Quezon Avenue, Bagumbayan, Taguig, Metro Manila. That they arrested accused Rosemarie A. Magundayao because their team was able to procure shabu from her during the buy-bust operation they purposely conducted against the aforementioned accused.

The buy-bust money recovered by the arresting police officers from the possession of accused Rosemarie Magundayao y Alejandro alias Rose as well as the shabu they were able to purchase from the accused sufficiently constitute as the very corpus delicti of the crime of "Violation of Section 5, 1[st] paragraph, Article

II of Republic Act No. 9165”, and the other plastic sachet containing shabu that was recovered from the same accused Magundayao similarly constitute as the corpus delicti of the crime of “Violation of Section 11, 2nd paragraph, No. 3, Article II of Republic Act No. 9165”. x x x.

The testimony of PO2 Rey B. Memoracion that was corroborated by PO3 Danilo B. Arago, who have not shown and displayed any ill motive to arrest the accused, is sufficient enough to convict the accused of the crimes charged against him. x x x.[34]

As to the defense put forward by the accused-appellant, the trial court declared that:

Such allegation of the accused that her apprehension was just a result of a frame-up, as she was not really engaged in peddling shabu when she was arrested, cannot be given credence because she was not able to offer and show proof of any previous disagreement between her and the arresting law enforcers that may lead the police officers to concoct and hatch baseless accusations against her, or the presence of any other circumstances that may have fired up the ire of the police officers against her. x x x.

x x x x

Moreover, there is no evidence in the record that when the accused was brought to the Inquest Prosecutor for the requisite inquest of the charge against the accused, the latter never complained to the Inquest Prosecutor of the “framing-up” brazenly perpetrated by the policemen or by the police investigator. If indeed, the accused complained to the Inquest Prosecutor, surely, the same could have appropriately acted upon it.

x x x x

To wrap up, the testimonial evidence presented by the prosecution is sufficient to convict accused Rosemarie Magundayao y Alejandro alias Rose. There can be no other prudent conclusion that can be deduced from the circumstances present in the instant cases. The evidence presented by the prosecution leads only to one fair and reasonable conclusion – that accused Rosemarie Magundayao y Alejandro alias Rose is guilty of the offenses charged.[35]

The RTC, thus, decreed:

WHEREFORE, in view of the foregoing considerations, the Court finds accused ROSEMARIE MAGUNDAYAO y Alejandro alias Rose in Criminal Case No. 14061-D for Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165, otherwise known as “The Comprehensive Drugs Act of 2002”, GUILTY beyond reasonable doubt. Hence, accused Rosemarie Magundayao y Alejandro alias Rose is hereby sentenced to suffer LIFE IMPRISONMENT and ordered to pay a fine of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).

Moreover, accused ROSEMARIE MAGUNDAYAO y Alejandro alias Rose is also found GUILTY beyond reasonable doubt in Criminal Case No. 14062-D for Violation of Section 11, 2nd paragraph, No. 3, Article II of Republic Act No. 9165, otherwise known as “The Comprehensive Drugs Act of 2002”. And since the quantity of methylamphetamine hydrochloride (shabu) found in the possession of the accused is only 0.10 gram, accused Rosemarie Magundayao y Alejandro alias Rose is hereby sentenced to suffer imprisonment ranging from TWELVE (12) YEARS and ONE (1) DAY as minimum – to – FOURTEEN (14) YEARS and TWENTY[-]ONE (21) DAYS as maximum. Accused Rosemarie Magundayao y Alejandro alias Rose is further penalized to pay a fine in the amount of THREE HUNDRED THOUSAND PESOS (PhP300,000.00).

Accordingly, the Jail Warden of the Taguig City Jail where accused Rosemarie Magundayao y Alejandro alias Rose is presently detained is hereby ordered to forthwith commit the person of convicted Rosemarie Magundayao y Alejandro alias Rose to the Correctional Institution for Women (CIW), Bureau of Corrections in Mandaluyong City, Metro Manila.

Upon the other hand, the shabu contained in two (2) heat-sealed transparent plastic sachets with a total weight of 0.18 gram which are the subject matter of the above-captioned cases, are hereby ordered transmitted and/or submitted to the custody of the Philippine Drug Enforcement Agency (PDEA) subject and/or pursuant to existing Rules and Regulations promulgated thereto for its proper disposition.

Costs de oficio.[36]

On July 17, 2007, the accused-appellant filed a Notice of Appeal,[37] which the RTC gave due course to in an Order[38] dated July 27, 2007.

On December 19, 2008, the Court of Appeals found no merit in the appeal of the accused-appellant and disposed of the same, thus:

Wherefore, premises considered, the instant appeal is denied for lack of merit, and accordingly, the assailed June 27, 2007 Joint Decision of the trial court convicting Rosemarie Magundayao of violation of Sections 5 and 11, Article II of R.A. No. 9165, including the penalties imposed against her, is hereby affirmed in toto.[39]

The Court of Appeals found no compelling reason to overturn the verdict of guilt imposed by the trial court upon the accused-appellant. The appellate court upheld the ruling of the RTC that the evidence of the prosecution clearly established the concurrence of all the elements of the crimes of illegal sale and possession of prohibited drugs. The testimonies of the prosecution witnesses proved the fact that a buy-bust operation was conducted by the police, which resulted in the apprehension of the accused-appellant after she was caught in flagrante delicto in the act of selling shabu and possessing another sachet thereof. The appellate court likewise rejected the accused-appellant's contention that she was a victim of a frame-up since there was no evidence of any ill or improper motive on the part of the police that would have impelled the latter to fabricate grave charges against the accused-appellant. Furthermore, the Court of Appeals disregarded the allegation of the accused-appellant that the non-compliance with the provisions of Section 21(1)[40] of Republic Act No. 9165 on the part of the police was fatal to the prosecution's case. Citing *People v. Pringas*,[41] the appellate court held that "[f]ailure to comply with Section 21 of R.A. No. 9165 will not render the arrest of the accused illegal, nor will it result to the inadmissibility in evidence against the accused of the illegal drugs seized in the course of the entrapment. What is of utmost relevance is the preservation of the integrity and evidentiary value of the confiscated illegal drugs, for in the end, the same would be the thrust that shall determine the guilt or innocence of the accused."

The accused-appellant assailed the above judgment of the Court of Appeals via the instant appeal before this Court.[42]

In a Resolution[43] dated July 20, 2009, we required the parties to file their respective supplemental briefs, if they so desired, within 30 days from notice. The parties filed their respective manifestations, stating that they will no longer file any supplemental brief.[44]

Asserting her innocence, the accused-appellant avers that:

THE COURT A QUO GRAVELY ERRED IN CONVICTING [HER] WHOSE GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[45]

The accused-appellant claims that there exist in the records of the case certain facts and circumstances that makes doubtful the prosecution's version of events. She pointed to the allegedly contradictory statements in the testimonies of PO3 Arago and PO2 Memoracion as to how their team leader, P/Chief Insp. Paat, received the information disclosed by the informant. Specifically, PO2 Memoracion testified that the informant himself talked to P/Chief Insp. Paat. PO3 Arago, however, stated in his testimony that the information was first given to the other members of their team and the same was thereafter relayed to P/Chief Insp. Paat.

The accused-appellant also argues that the inventory of the items seized from the accused-appellant lacked the requisite signatures of a representative of the media, the Department of Justice or any elected public official. This procedural lapse was allegedly not explained adequately by the witnesses of the prosecution. In like manner, the police did not photograph the confiscated items in the presence of the above-enumerated individuals. These procedural lapses, the accused-appellant posits, violated the provisions of Section 21(1) of Republic Act No. 9165, thus proving that the police failed to perform their duty properly. Accordingly, in praying for her acquittal, the accused-appellant submits that the presumption of regularity in the performance of official functions cannot be invoked as a basis for her conviction given the presence of facts and circumstances tending to negate said presumption. She concludes that “the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.”[46]

The denial of the appeal is in order.

In *People v. Santos*,[47] the Court ruled as follows:

Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[48]

After a thorough review of the records of this case, we hold that the factual findings and conclusions of the trial court, which were upheld by the appellate court, are fully supported by the evidence.

The pronouncement in *People v. Padasin*[49] quoted below is relevant to the case at bar:

Appellant rightly argues that the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence. In fact it is on this premise that we have laid down the ‘objective’ test in scrutinizing buy-bust operations. In *People v. Doria*, we said:

We therefore stress that the ‘objective’ test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the ‘buy-bust’ money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.[50] (Emphasis ours.)

In consonance with the above-stated “objective test,” the testimony of PO2 Memoracion duly established that the members of the SAID-SOTF of the Taguig City Police Station properly performed their duties in the conduct of the buy-bust operation on April 14, 2005. The testimony of PO2 Memoracion, which was corroborated by the testimony of PO3 Arago, stated in great detail how his team carried out the buy-bust as follows:

PROSEC. SANTOS: Was there any incident that transpired which has relation to your work as [a] drug enforcement officer during that particular day April 14, 2005?

A:

Yes, sir.

PROSEC. SANTOS: Can you please tell us?

A:

A reliable informant in the afternoon of April 14 came to our office and informed [us] regarding a female individual who was selling illegal drug at Bagong Bayan corner Paso Street, Taguig City.

PROSEC. SANTOS: To whom did that informant talked (sic) during that time?

A:

To our chief, sir, P/Chief Insp. Romeo Paat, sir.

PROSEC. SANTOS: When Insp. Paat learned of the activity of this alias Rose, do you know what your chief did?

A:

He has a plan, sir, to conduct possible buy-bust operation, sir during that time.

PROSEC. SANTOS: And who were involved in that plan to conduct buy-bust operation?

A:

PO3 Antonio Reyes, PO3 Danilo Arago, P/Chief Insp. Romeo Paat, reliable informant and I, sir.

PROSEC. SANTOS: And what was your specific assignment in this buy-bust operation?

A:

To act as the poseur-buyer.

PROSEC. SANTOS: How about the others, what were [their] assignment?

A:

Back up, sir.

PROSEC. SANTOS: Now, you were assigned as the poseur-buyer in this particular case, was there anything that you had to buy whatever you want from this alias Rose during that time?

A:

The marked money, sir consisting of two (2) pieces of one hundred peso bill.

PROSEC. SANTOS: You said marked money, how was this money marked?

A:

I was the one who put the markings on the money, sir.

PROSEC. SANTOS: What kind of markings did you place on this money?

A:

My initial, sir, RBM.

PROSEC. SANTOS: Where was your initial placed on the money?

A:

At the upper right portion of the serial number, sir.

PROSEC. SANTOS: What else was planned during that time for the purpose of conducting a buy-bust operation?

A:

We also prepare[d] the pre-operation report and the blotter as well as the photocopy of the genuine money and then the scissor, the masking tape and ballpen, sir.

x x x x

PROSEC. SANTOS: This pre-operation report is addressed to PDEA, do you know what action did the PDEA take regarding your pre-operation report?

A:

They received our pre-operation report and simultaneously gave the coordination sheet, sir.

x x x x

PROSEC. SANTOS: What else was done or plan[ned] regarding this buy-bust operation specially you designated as the poseur-buyer?

A:

We plan that the reliable informant assisted (sic) me to buy suspected shabu from the accused during that time, sir.

x x x x

PROSEC. SANTOS: And who was assigned as your back up or your perimeter men during that time?

A:

PO3 Antonio Reyes and PO3 Danilo Arago, sir.

PROSEC. SANTOS: Now, after all this preparations were done and completed, what if any did your team do then?

A:

We proceeded to the area, sir.

PROSEC. SANTOS: And what area are you referring at this time?

A:

Bagong Bayan corner Paso Street, Taguig City.

x x x x

PROSEC. SANTOS: What happened when you were already there?

A:

The informant and I walk[ed], the back up members were following us together with the team leader. When the informant saw the accused alias Rose, they talked and I was introduced as his [friend], that I wanted to buy

shabu.

PROSEC. SANTOS: How were you introduced by your informant to this person alias Rose?

A:

The informant uttered, “Rose, kaibigan ko, galing probinsya, iiskor ng shabu sa’yo”.

x x x x

PROSEC. SANTOS: And when you were introduced as one needing the shabu and just coming from the province, what was the reaction of this alias Rose?

A:

None, sir, she just ask[ed] me how much will I buy.

x x x x

PROSEC. SANTOS: And what was your reaction when you were asked that way by this alias Rose?

A:

I uttered, “dalawang-daan lang”.

PROSEC. SANTOS: When you said “dalawang-daan lang”, what was the reaction of [this] alias Rose?

A:

None, sir, after that, I handed to her the two hundred pesos.

PROSEC. SANTOS: And to whom did you hand that money?

A:

To the accused, sir.

PROSEC. SANTOS: Did this alias Rose accept the money?

A:

Yes, sir.

PROSEC. SANTOS: After that, what happened?

A:

She pulled out from her pocket the one (1) transparent plastic sachet containing white crystalline substance, and then she gave it to me, sir.

x x x x

PROSEC. SANTOS: Did you receive the plastic sachet containing whatsoever from her during that time?

A:

Yes, sir.

PROSEC. SANTOS: After that, what happened? After you have already received or gotten hold [of] the merchandise or the item that you bought from her, what happened then?

A:

I made the pre-arranged signal, sir.

PROSEC. SANTOS: And how did you do that?

A:

I remove[d] my bullcap, sir.

PROSEC. SANTOS: After giving the pre-arranged signal, what did you do?

A:

I saw PO3 Arago followed by PO3 Reyes coming, I informed alias Rose that I was a policeman and showed her my ID, sir.

PROSEC. SANTOS: Just like that? You just informed her that you are policeman plus your ID, and that's it? You did not do anything?

A:

I told her not to run, I'm a police officer, I am arresting her for selling illegal drug.

x x x x

PROSEC. SANTOS: So, what happened?

A:

I requested her to bring out the contents of her pocket and the buy-bust money.

PROSEC. SANTOS: Did she comply with your request?

A:

Yes, sir.

PROSEC. SANTOS: And what was brought out or what were the contents of her pocket if there was anything?

A:

There was another plastic sachet with suspected shabu and the buy-bust money, and I confiscated those items.

PROSEC. SANTOS: When you confiscated the buy-bust money and another plastic sachet that were come from her pocket, what if any did you do with these? To the money and the shabu that was came from her pocket?

A:

I put markings on the two (2) plastic sachets, a suspected shabu.

PROSEC. SANTOS: Nothing more that was done in the very place where you bought the shabu, confiscated another one and arrested the accused, was there anything more that was done?

A:

I apprise[d] her of her constitutional rights, sir.

x x x x

PROSEC. SANTOS: How about the shabu that you bought from the accused and confiscated from the accused, did you not make any listing about that?

A:

I marked the shabu that I bought at the area, sir.

x x x x

COURT: What about the shabu that you saw?

A:

I also marked it, Your Honor.

COURT: After you have marked these items, what document did you prepare?

A:

The request, Your Honor.

x x x x

COURT: After marking, after apprising her, what else?

A:

I placed the recovered items in a plastic containing suspected shabu and I was holding the buy-bust money and we boarded Rose in our car.[51]

Clearly gleaned from the above testimony are the details relating to the initial contact between PO2 Memoracion and the accused-appellant; the said police officer's offer to purchase; the statement of the amount he was willing to pay; and the consummation of the sale by the accused-appellant's delivery of the shabu to PO2 Memoracion. On this matter, our ruling in *People v. Agulay*[52] dictates that "[a]bsent any proof of motive to falsely accuse [the accused-appellant] of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over that of the accused-appellant."

In seeking exculpation from the above charges, the accused-appellant invoked the defense that she was framed by the police. The Court, however, is not convinced. We reiterated in *People v. Hernandez*[53] that "[i]n order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence."

In the instant case, the accused-appellant impugned the prosecution's assertion that she was arrested after a buy-bust operation was undertaken by the SAID-SOTF operatives. Instead, she claimed that the police merely barged into her house, forcibly took her to the Tuktukan jail and tried to extort money from her. Her refusal to give in to the police officers' demand allegedly brought about the filing of the drugs charges against her. The Court notes, however, that the accused-appellant's contention was without any corroborative evidence whatsoever. Neither did she offer any proof to substantiate her allegation of extortion against the apprehending officers. The accused-appellant even admitted that, prior to her arrest, she did not know any of the police officers who arrested her. Moreover, she stated that she did not know of any reason why the police officers would file a case against her if the same were not true.[54] Consequently, the accused-appellant's claim of frame-up cannot prevail over the affirmative testimony and the positive identification made by the witnesses for the prosecution. Hence, the presumption of regularity in the performance of official duties on the part of the police officers in this case stands.

Anent the offenses charged against the accused-appellant, the RTC and the Court of Appeals adjudged her guilty of the crimes of illegal sale and possession of dangerous drugs.

It was held in *People v. Hernandez*[55] that “[t]o secure a conviction for illegal sale of shabu, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof.” *People v. Naquita*[56] further adds that “[w]hat is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.”

The above elements have been sufficiently established by the prosecution. PO2 Memoracion was the poseur-buyer and he identified the accused-appellant as the seller. The object of the sale was the sachet containing eight centigrams (0.08 grams) of shabu, which bore the marking “RAM-1,” and the consideration paid by the poseur-buyer therefor consisted of the P200 marked money. PO2 Memoracion also categorically stated that the object of the sale was in fact handed to him by the accused-appellant after he gave her the marked money.

As to the charge of illegal possession of dangerous drugs, *People v. Lazaro, Jr.*[57] provides that the elements thereof are: “(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.” That the accused-appellant knowingly carried the illegal drug shabu without authority was likewise proven in this case. PO3 Arago and PO2 Memoracion both testified to the fact that after the latter effected the arrest of the accused-appellant, she was ordered to empty her pocket. When she did so, she produced another plastic sachet, which PO2 Memoracion marked as “RAM-2.” The chemistry report of the forensic chemist P/Insp. De Guzman confirmed that the said sachet contained ten decigrams (0.10 grams) of shabu.

As regards the alleged inconsistencies in the testimonies of PO2 Memoracion and PO3 Arago, the Court finds the same unpersuasive. *People v. Lazaro*[58] states that “[f]or 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.”

We quote with approval the following discussion of the Court of Appeals on the matter:

Whether the information regarding the identity and illegal drugs activities of Rosemarie was relayed directly to P/Chief Inspector Romeo Paat, or the tip was otherwise given initially to some inferior police personnel at the station who thereafter informed their station chief is a trivial and inconsequential matter. What is of utmost importance was the undisputed fact that a trusted civilian informant volunteered a tip to the police authorities, and finding the information reliable, the tip became the basis for the police to plan an entrapment operation which, true enough, paved the way to the eventual apprehension of Rosemarie who was caught in flagrante delicto in the act of selling a sachet of shabu, and subsequently, after further search, for possession of another sachet of the same prohibited drug.[59]

The Court likewise finds untenable the contention of the accused-appellant that since the provisions of Section 21(1), Article II of Republic Act No. 9165 were not strictly complied with, the police officers failed to properly perform their duties.

Section 21(1), Article II of Republic Act No. 9165 reads:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or

laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

On the other hand, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

(a) 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: x x x 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. (Emphasis ours.)

In *People v. Padua*,^[60] the Court stated that “[c]learly, the purpose of the procedure outlined in the implementing rules is centered on the preservation of the integrity and evidentiary value of the seized items.” Furthermore, we reiterated in *People v. Naquita*^[61] that “[n]either would non-compliance with Section 21 render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance 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.”

In the case before us, the chain of custody of the drugs subject matter of the case, along with the marked money used in the buy-bust, was shown to have been preserved. The relevant portions of the testimony of PO2 Memoracion are as follows:

COURT: At the scene of the crime? May dokumento ba kayong ginagawa?

A:

Yes, Your Honor.

COURT: Anong papel yun?

A:

Yung inventory po, Your Honor.

PROSEC. SANTOS: You were talking of an inventory, who inventoried the items that you bought and seized from alias Rose?

A:

I, sir.

x x x x

PROSEC. SANTOS: At the bottom portion of this document, is the name of the suspect, representative and a purported signature above the name Rosemarie Magundayao y Alejandro, do you know whose signature is

that?

A:

It's the signature of Rosemarie, the accused.

x x x x

PROSEC. SANTOS: After that, what else happened?

A:

We went back to our office, sir.

PROSEC. SANTOS: And when you went there, where was the accused?

A:

She was with us, sir.

PROSEC. SANTOS: How about the specimen that you or the item that you bought and confiscated from the accused, where are they?

A:

It's with me, sir.

PROSEC. SANTOS: How about the money, where is it?

A:

It's with me, sir.

PROSEC. SANTOS: And what happened in your office?

A:

She was turn[ed] over to the investigator on case, sir.

x x x x

PROSEC. SANTOS: What items did you turn over to your investigator?

A:

The two (2) plastic sachets containing suspected shabu and the buy-bust money.

PROSEC. SANTOS: And who was your investigator during that time?

A:

SPO2 Armando Cay, sir.

PROSEC. SANTOS: Do you know what your investigator Cay did when you turn[ed] over the items to him during that time?

A:

We prepare[d] the request for laboratory examination.

PROSEC. SANTOS: How about the articles or the items that you turn over to Cay during that time, where

were they when Cay was preparing the request?

A:

[In front] of us, sir.

x x x x

PROSEC. SANTOS: And who delivered or transported the request and the specimen to the crime laboratory?

A:

I, sir.

x x x x

PROSEC. SANTOS: Do you know what happened to the specimen when you delivered that to the crime laboratory?

A:

Yes, sir.

PROSEC. SANTOS: What happened?

A:

It gave positive result to the test of methylamphetamine hydrochloride.

x x x x

PROSEC. SANTOS: Can you again tell us what marking did you put on the plastic sachet containing the shabu that you bought from the accused?

A:

The initial of the accused RAM, sir.

PROSEC. SANTOS: What else?

A:

RAM-1 and RAM-2, sir.

PROSEC. SANTOS: RAM-1 is the shabu?

A:

Subject of sale, sir.

x x x x

PROSEC. SANTOS: Now, how about the money Officer that you said you used in buying and which later on you found from the possession of the accused and confiscated, where are they now?

A:

It was turn[ed] over, sir, during the inquest it was submitted.[62]

The above statements of PO2 Memoracion were corroborated by the testimony of PO3 Arago, who testified that he saw the former take custody of the two plastic sachets seized during the buy-bust operation and the said items

were turned over to the crime laboratory.[63] Moreover, the Request for Laboratory Examination (Exhibit B)[64] issued by the office of SAID-SOTF of the Taguig City Police Station on April 14, 2005 reflected that the fact that the same was delivered to the crime laboratory by PO2 Memoracion on even date at 10:00 p.m.

In fine, the evidence for the prosecution established that during a buy-bust operation, the accused-appellant was caught in flagrante delicto in the act of selling a plastic sachet of shabu to a police officer, who acted as a poseur-buyer, and was thereafter caught in possession of another sachet of shabu. Thus, the guilt of the accused-appellant of the crimes charged had been proven in the instant case beyond reasonable doubt.

Under Section 5, Article II of Republic Act No. 9165, the crime of unauthorized sale of shabu, regardless of the quantity and purity thereof, is punishable with life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00).

Hence, the penalty of life imprisonment and a fine of P500,000.00 was correctly imposed by the RTC and the Court of Appeals on the accused-appellant Rosemarie Magundayao y Alejandro for illegal sale of shabu.

On the other hand, in accordance with Section 11, Article II of Republic Act No. 9165, the crime of illegal possession of less than five (5) grams of shabu is penalized with 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). Thus, the RTC and the Court of Appeals properly penalized the accused-appellant Rosemarie Magundayao y Alejandro with imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and twenty-one (21) days, as maximum, as well as a fine of P300,000.00, since the said penalties are within the range of penalties prescribed by the above provision.

WHEREFORE, the appeal is DENIED. The Decision of the Court of Appeals dated December 19, 2008 in CA-G.R. CR. No. 02899, which affirmed the Joint Decision dated June 27, 2007 of the Regional Trial Court of Pasig City, Branch 267, in Criminal Case Nos. 14061-D and 14062-D, is hereby AFFIRMED. No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Villarama, Jr., and Perlas-Bernabe,[*] JJ., concur.

[*] Per Special Order No. 1207 dated February 23, 2012.

[1] CA rollo, pp. 93-109; penned by Associate Justice Rosmari D. Carandang with Associate Justices Conrado M. Vasquez, Jr. and Mariflor P. Punzalan Castillo, concurring.

[2] Id. at 9-19; penned by Judge Florito S. Macalino.

[3] SEC. 5. 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.

[4] Records, p. 1.

[5] SEC. 11. Possession of Dangerous Drugs. – x x x

x x x x

(3) 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), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[6] Records, pp. 3-4.

[7] Id. at 28.

[8] The prosecution moved for a joint trial on November 22, 2006 and the same was ordered by the RTC on even date. (TSN, November 22, 2006.)

[9] Also referred to as "Pazzo Street" and "Bagong Bayan," respectively, in other parts of the records.

[10] Records, pp. 52-53.

[11] In the testimony of PO3 Arago (Records, pp. 50-68), PO2 Rey B. Memoracion was referred to as PO1 Memoracion.

[12] Records, pp. 53-56.

[13] Id. at 56-58.

[14] Id. at 59-62.

[15] TSN, November 22, 2006, pp. 5-9.

[16] Id. at 10-13.

[17] Id. at 13-22.

[18] Records, p. 141.

[19] Id. at 131-132.

[20] Id. at 133.

[21] Id. at 134.

[22] Id. at 136.

[23] Id. at 135.

[24] Id. at 13.

[25] Id. at 137.

[26] Id. at 15.

[27] Id. at 138.

[28] Id. at 139.

[29] Id. at 140.

[30] Id. at 141.

[31] TSN, March 12, 2007, pp. 3-5.

[32] Id. at 10-16.

[33] Records, p. 149.

[34] Id. at 213-214.

[35] Id. at 214-215.

[36] Id. at 215-216.

[37] Id. at 219.

[38] Id. at 220.

[39] CA rollo, p. 108.

[40] SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[41] G.R. No. 175928, August 31, 2007, 531 SCRA 828.

[42] Rollo, pp. 19-21.

[43] Id. at 24-25.

[44] Id. at 26-30, 33-36.

[45] CA rollo, p. 44.

[46] Id. at 48.

[47] G.R. No. 176735, June 26, 2008, 555 SCRA 578.

[48] Id. at 592.

[49] 445 Phil. 448 (2003).

[50] Id. at 456.

[51] TSN, November 22, 2006, pp. 4-16.

[52] G.R. No. 181747, September 26, 2008, 566 SCRA 571, 599.

[53] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 642.

[54] TSN, March 12, 2007, p. 18.

[55] Supra note 53 at 635.

[56] G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449.

[57] G.R. No. 186418, October 16, 2009, 604 SCRA 250, 267.

[58] Id. at 272.

[59] CA rollo, p. 102.

[60] G.R. No. 174097, July 21, 2010, 625 SCRA 220, 233.

[61] Supra note 56 at 448.

[62] TSN, November 22, 2006, pp. 17-25.

[63] Records, p. 62.

[64] Id. at 133.

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