

FIRST DIVISION

[G.R. No. 180514, April 17, 2013]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE L. DUMALAG, ACCUSED-APPELLANT.

DECISION

LEONARDO-DE CASTRO, J.:

For review is the Decision^[1] dated July 3, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01847, which affirmed the Decision^[2] dated November 16, 2005 of the Regional Trial Court (RTC), Branch 19, of Laoag City in Criminal Case Nos. 1683-19 and 1684-19, finding accused-appellant Dante L. Dumalag guilty beyond reasonable doubt of violating Article II, Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

The Informations against accused-appellant read:

Criminal Case No. 1683-19, for violation of Rep. Act No. 9165 (Possession)

That on or about 3:30 o'clock in the afternoon of January 5, 2005 at the Sexy Beach Resort located at Brgy. Estancia, Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody three (3) heat sealed plastic sachets weighing 0.01 grams, 0.015 grams, and 0.04 grams respectively (sic) for Methamphetamine Hydrochloride otherwise known as "shabu", without having the authority, license or prescription to do so.^[3]

Criminal Case No. 1684-19, for violation of Rep. Act No. 9165 (Sale)

That on or about 3:30 o'clock in the afternoon of January 5, 2005 at the Sexy Beach Resort located at Brgy. Estancia, Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) small heat sealed plastic sachet containing Methamphetamine Hydrochloride otherwise known as shabu, a regulated drug, weighing 0.023 grams to a police poseur buyer in a buy bust operation without the necessary license or authority to do so.^[4]

Accused-appellant pleaded not guilty to both charges when he was arraigned on June 14, 2005.^[5]

During the preliminary conference on June 27, 2005, the parties made the following admissions:

The defense admitted the following proposals of the prosecution:

1. The identity of the accused as the same Dante Dumalag also known as Dato Dumalag who was arraigned in these cases.

2. That the accused is a resident of Brgy. 2, Pasuquin, Ilocos Norte on [or] before January 5, 2005.
3. That the accused was at the Sexy Beach [Resort] at Brgy. Estancia, Pasuquin, Ilocos Norte in the afternoon of January 5, 2005.
4. That the prosecution witnesses namely: PO3 Rousel Albano, PO2 Danny Valdez, SPO4 Angel Salvatierra and PO2 Harold Nicolas are members of the Special Operations Group (SOG) on or before January 5, 2005.
5. That the accused is not authorized to sell neither to possess prohibited drugs known as shabu.

For its part, the prosecution only admitted the proposal of the defense that the accused and PO2 Danny Valdez are town mates.^[6]

The defense made additional admissions during pre-trial on June 28, 2005, which the RTC stated in its Order^[7] of even date:

Upon proposal of the Court, the defense admitted the existence of the initial laboratory report, the confirmatory report and the result of the urine test issued by Police Senior Inspector [PSI] Mary Ann Cayabyab [Cayabyab] which were marked as Exhibits "I", "J" and "K", respectively.

The prosecution and the defense also agreed that before 2:00 o'clock in the afternoon of the date of the incident, the accused had rented and was occupying room number 3 of the Resort Hotel and Restaurant located at Sexy Beach, Pasuquin, Ilocos Norte.

Thereafter, the prosecution and defense considered the pre-trial closed and terminated.

Thereafter, trial ensued.

The prosecution called Police Officer (PO) 3 Rousel Al Albano^[8] (Albano) and PO2 Danny U. Valdez^[9] (Valdez) to the witness stand, while dispensing with the testimony of Police Senior Inspector (PSI) Mary Ann Cayabyab (Cayabyab) in view of the stipulation of the parties as to the substance of her testimony.^[10] The prosecution likewise submitted the following object and documentary evidence: (a) the Joint Affidavit^[11] dated January 6, 2005 executed by the Special Operations Group (SOG) members who conducted the buy-bust operation on January 5, 2005, including PO3 Albano and PO2 Valdez; (b) the Extracted Police Blotters^[12] dated January 6, 2005 which recorded the events prior to and after the buy-bust operation; (c) two pieces of P100.00 marked bills used in the buy-bust operation;^[13] (d) the Request for Laboratory Examination^[14] dated January 5, 2005 of one heat- sealed sachet marked "RA" and three heat-sealed sachets marked "R" of suspected *shabu* confiscated from accused-appellant; (e) Request for Drug Test Examination^[15] dated January 5, 2005 of accused-appellant's person; (f) one heat-sealed sachet of suspected *shabu* marked "RA";^[16] (g) three heat-sealed sachets of suspected *shabu* marked "R";^[17] (h) PSI Cayabyab's Chemistry Report No. D-003-2005^[18] dated January 5 and 6, 2005 stating that the sachets submitted for examination tested positive for methamphetamine hydrochloride; (i) PSI Cayabyab's Chemistry Report No. CDT-002-2005^[19] dated January 6, 2005 stating that accused-appellant's urine sample tested positive for methamphetamine hydrochloride; (j) the Certification of Seized Items^[20] dated

January 5, 2005 prepared by PO3 Albano and PO2 Valdez enumerating the items seized from accused-appellant's possession when arrested; (k) several pieces of crumpled aluminum foils;^[21] (l) a purple disposable lighter;^[22] and (m) an empty Winston cigarette pack.^[23]

The prosecution's version of events was presented by the RTC as follows:

At around 2:00 o'clock in the afternoon of January 5, 2005, a female police informant from Pasuquin, Ilocos Norte went to the office of the Special Operations Group (now Provincial Anti-Illegal Drugs Special Operations Team or PAID-SOT) located at Camp Juan, Laoag City and reported that a certain Dato Dumalag, a known drug personality of Brgy. 2, Pasuquin, Ilocos Norte was at Sexy Beach Resort owned by Bebot Ferrer selling *shabu* to customers. Acting upon the report, PO3 Rousel Albano and PO2 Danny Valdez relayed the information to their team leader, Police Inspector Rolando Battulayan, who then organized a team composed of PO3 Albano, PO2 Valdez, SPO4 Salvatierra and PO2 Harold Nicolas to conduct a buy bust operation against the suspect. PO3 Albano was assigned to act as poseur buyer while the rest of the team will act as perimeter back up. PO3 Albano was also tasked to mark the two pieces of P100 bills provided by Inspector Battulayan to be used as buy bust money and placed the letter "R" between the letters G and P of Republika Ng Pilipinas on the face of the bills. The pre-operation activity was also recorded in the police blotter. Afterwards, the team proceeded to the target place located in Brgy. Estancia, Pasuquin at around 2:30 o'clock that same afternoon.

Upon reaching the place at around 3:00 o'clock, the police asked the caretaker of the beach resort if a person is occupying Room 03 as reported by the asset. The caretaker who was with another caretaker and both of whom were female gave them the information that indeed a male person was occupying the said room. After they prepared for the plan and have surveyed the area for five to seven minutes, they proceeded with the drug bust. The members of the back up security positioned themselves on the southern part of the alley about 15 meters away from Room 3 while PO3 Albano and the police asset went to the said room of the suspect which was located at northernmost part [of] the main building of the resort. When they were already at the door, the asset called out the name of the suspect Dato and PO3 Albano knocked at the door. After the asset also knocked at the door, a male person peeped through and upon recognizing the police asset, Dato Dumalag told her, "*Mano Alaenyo, sumrek kay pay lang ngarud*" (How much will you get, come in then). As they were already inside the room, PO3 Albano told the suspect, "*Balog dos ti alaenmi*" (We will get worth two). The suspect then went to the dresser located on the southern part of the room and west of the door and took one small plastic sachet and handed the same to PO3 Albano who immediately handed the two marked P100 bills. After the suspect had pocketed the money on his right front pocket, he told them, "*Rumaman kay pay ngarud tig-P50.00* (Taste first, P50 worth for each of you). At that instance, PO3 Albano gave the pre-arranged signal to the members of the back up security that the sale was already consummated by pressing the button of his cellphone to retrieve and call the last dialed number which was the cell number of PO2 Valdez. After making the signal, PO3 Albano grabbed the right hand of the suspect and informed him of his authority. The suspect scuffled with the police officer who was however able to subdue him.

In the meantime, after PO2 Valdez received the miss call of PO3 Albano, he and his companions rushed inside the room of the suspect. PO3 Albano had already handcuffed the suspect by then and was holding him at that time. While PO3 Albano frisked the accused where he confiscated a P50 bill in which three other sachets of suspected *shabu* were inserted, PO2 Valdez searched the room and confiscated some items which were on top of the dresser, such as five crumpled aluminum foil, stick of cigarette, cigarette foil, a lighter and a cellphone. Afterwards, they brought the suspect and the confiscated items to their headquarters in Laoag City where PO3

Albano marked the sachet of shabu bought from the suspect with his initials “RA”. He also marked the other three sachets and the P50 bill in which he found the said sachets with the letter “R” on one side and the letters “DD” on the other side. He also prepared the confiscation receipt which the accused signed and the post operation report. On the other hand, PO2 Valdez marked the items that he confiscated with his initials “DUV”. They then brought the confiscated items for laboratory examination together with a letter request.

Upon receipt of the specimens, the Forensic Chemical Officer of the Ilocos Norte Provincial Crime Laboratory Office in Camp Juan, Police Senior Inspector Mary Ann Cayabyab, examined the same. Particularly with respect to the four sachets, she found the contents thereof to be methamphetamine hydrochloride. This is shown in her Initial Laboratory Report as well as in her confirmatory report, Chemistry Report No. D-003-2005. The said Forensic Chemical Officer also found the urine sample of the accused positive for methamphetamine hydrochloride as shown in Chemistry Report No. CDT-002-005.

It must be noted that in the course of his testimony, PO3 Albano identified their Joint Affidavit of arrest, the extract of the police blotter showing the pre-operation activity; the extract of the police blotter containing the post operations report, the two pieces of P100 bills buy bust money bearing Serial Nos. *3664717 and PG656160, the three plastic confiscated from the possession of the accused with the marking letter “R” and “DD”, the P50 bill in which the three sachets were supposedly rolled, the plastic sachet containing crystalline substance that was sold by the suspect and the Certification of Seized Items. In the case of PO2 Valdez, he identified those that he confiscated: the five (5) pieces of crumpled aluminum foil, the Nokia 3210 cellphone, the Winston cigarette pack, a stick of Winston cigarette and a purple cigarette lighter. Both witnesses also identified the letter request for laboratory examination and the letter request for urine examination.^[24] (Citations omitted.)

Evidence for the defense were the testimonies of accused-appellant himself^[25] and Kaishel Bolosan^[26] (Bolosan), and their respective Sworn Statements dated February 18, 2005.^[27] The defense averred that the police officers framed accused-appellant after failing to extort money from him. The RTC summed up the defense’s evidence, to wit:

That afternoon of January 5, 2005, Kaishel Bolosan was with his friends Nathaniel Bolosan, Mark Milan, Jay Adaon and Benjie Galiza singing at a videoke establishment located at the corner of the entrance of Sexy Beach. While the said group was there, Dante or Dato Dumalag whom Kaishel had known because he usually played billiards in his (accused’s) house at Brgy. 2, Pasuquin but with whom he has not had any conversation before, passed by their place in a chop-chop motorcycle. Dante Dumalag was then with a female companion. As soon as Dante had parked his motorcycle, he and his female companion immediately went inside the hotel. This, Kaishel and his companions did not mind as they kept on singing. The caretaker and the cleaner of the hotel were there at that time when Dante Dumalag entered the hotel. Thirty (30) minutes after Dante and his female companion entered the hotel, six men arrived in a red pick up vehicle. Kaishel Bolosan knew them to be policemen because he recognized one of them to be Danny Valdez, a policeman who is a resident of Pasuquin and whom he usually saw in his uniform flagging down a ride in going to Laoag City, arrived in a red pick up vehicle. The police officers who were all male asked first the caretaker where the room of Dante Dumalag was and after looking for it for about five (5) minutes, Kaishel assumed that they entered the room of Dante because after they proceeded to the back, he did not see them anymore. Two of the police officers, however,

remained at the side of the hotel, one of whom moved their pick up vehicle beside the hotel.

In the meantime, as Dante Dumalag and his companion Irish Sao were already in the hotel where they were supposed to rest, they rented a room, particularly Room No. 3. When they were already inside, Dante Dumalag went to the bathroom to take a bath while his lady companion [lay] on the bed. After taking a bath, Dante heard somebody knocked at the door. Only wearing a short pants as he just came from the bathroom, he went to open the door and as he did so, police officer Rousel Albano whose name he came to know the following day, pushed the door, entered the room and pointed his gun at him. At that time, Irish Sao was then in front of the mirror. Officer Albano supposedly let Dante turn his back and without identifying himself and without giving any reason why, he handcuffed the accused, made him lie on the bed face down, placed a pillow on his head, pointed his gun at him and frisked him but did not find any contraband. The accused was then made to stand up and it was at that instance that the two policemen (including Danny Valdez) who followed Rousel Albano inside the room let Irish Sao leave the room and without telling what they were looking for, searched the room. They took his cellphone and that was the time that the policemen also showed him two sachets of *shabu*. Dante Dumalag however did not know from where they produced the *shabu* because he was made to bow his head on the bed. After showing the *shabu*, Rousel Albano placed the barrel of his gun inside the mouth of Dante Dumalag but removed it when one of his companions told him that he might accidentally pull the trigger. Rousel Albano then told him that they will just talk so that there will be no case. Dante Dumalag understood this to mean that he has to settle the case by giving them money. When he did not accede, Rousel Albano allegedly boxed and pushed him on the stomach, causing him to stoop down. They then let him put [on] his sando and because he was in handcuffs, Nicomedes or Medy Lasaten, a detainee who was with the policemen at that time, helped him do so. The policemen then brought Dante Dumalag to the vehicle.

Before that, Kaishel Bolosan and his companions were still there at the video establishment. After the lapse of 15 minutes from the time they entered the hotel, Kaishel saw the four policemen [re-appear] and just stood by and afterwards, one of them called him and his companions to board the chop chop motorcycle of the accused in their pick up and after complying with the order of the policemen, they were asked to leave. When they have already returned to the [videoke bar], that was the time that Kaishel saw Dante Dumalag brought out of the hotel by two policemen. Dante Dumalag was then boarded at the back of the pick up where he was sandwiched by three policemen while Danny Valdez was on the wheel and Irish Sao was at the passenger seat in front. The other two policemen rode at the back of the pick up. As the pick up left, it still stopped by the videoke bar where Danny Valde[z] in a threatening tone told Kaishel and his companions not to say anything and that they will arrest them all *shabu* users. At that time, Dante Dumalag did not see Kaishel because he was made to bow his head in his seat. When the pick up moved out of the place during which Kaishel allegedly saw Dante being boxed by one of the policemen, they first dropped by the house of Danny Valdez where they took something to cover the eyes of the accused, after which they proceeded to the camp.^[28]

On November 16, 2005, the RTC promulgated its Decision finding accused-appellant guilty beyond reasonable doubt of the felonies charged and decreeing thus:

WHEREFORE, judgment is hereby rendered finding the accused Dante Dumalag GUILTY beyond reasonable doubt as charged in Criminal Case No. 1683[-19] for illegal possession of *shabu* aggregately weighing 0.065 gram and is therefore sentenced to suffer the indeterminate penalty of imprisonment ranging from

TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS and to pay a fine of P400,000.00.

Said accused is likewise found GUILTY beyond reasonable doubt as charged of illegal sale of *shabu* in Criminal Case No. 1684[-19] and is therefore sentenced to suffer the penalty of life imprisonment and to pay the fine of P2,000,000.00.

The contraband subject of these cases are hereby confiscated, the same to be disposed of as the law prescribes.^[29]

In an Order^[30] dated December 2, 2005, the RTC gave due course to accused-appellant's Notice of Appeal and directed that the records of his cases be forwarded to the Court of Appeals within the period prescribed by the rules. Accused-appellant was then transferred to and committed at the New Bilibid Prison on December 5, 2005, pending his appeal.^[31]

Accused-appellant insisted that he is innocent and that the charges against him were merely fabricated. According to accused-appellant, the prosecution failed to establish the factual details which led to his arrest.

Accused-appellant pointed out that he was consistent in stating that at the time he was arrested, he had a female companion with him, which was contrary to the police officers' self-serving testimonies that accused-appellant was alone when he was arrested; that the prosecution failed to impeach the credibility of Bolosan who testified that there were six men who arrived at the resort shortly before accused-appellant's arrest, thereby refuting the prosecution's claim that the buy-bust team was composed of only four male police officers, plus the female informant; and that there would have been no doubt as to the existence of the female informant had the prosecution presented her during the trial. Accused-appellant further argued that the police officers who arrested him and purportedly confiscated the sachets of *shabu* from his possession failed to strictly comply with the mandated procedure under Section 21 of Republic Act No. 9165. The said provision of the law and jurisprudence on the matter require that the marking of the drugs be done immediately after they are seized from the accused; otherwise, reasonable doubt arises as to the authenticity of the seized drugs. Accused-appellant claimed that the sachets of *shabu* supposedly seized from his possession were marked when he was already at the police station and not at the place of his arrest.

In its Decision dated July 3, 2007, the Court of Appeals affirmed *in toto* the RTC judgment of conviction.

Thus, accused-appellant instituted this appeal^[32] anchored on the following grounds:

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE PROSECUTION WAS ABLE TO PROVE THE GUILT OF THE APPELLANT BEYOND REASONABLE DOUBT CONSIDERING THAT:

1. THE TESTIMONIES OF THE PROSECUTION'S WITNESSES ARE REPLETE WITH SUBSTANTIAL OR SIGNIFICANT INCONSISTENCIES WHICH PROVE THAT NO BUY BUST OPERATION WAS CONDUCTED.
2. THE PROSECUTION FAILED TO COMPLY WITH THE PROCEDURES IN THE CUSTODY OF SEIZED PROHIBITED AND REGULATED DRUGS AS EMBODIED IN SECTION 21 OF REPUBLIC ACT 9165 WHICH RAISES DOUBT WHETHER THE SHABU PRESENTED IN COURT IS THE SAME FROM THE ONE

ALLEGEDLY SEIZED FROM PETITIONER.

The appeal is bereft of merit.

Accused-appellant challenges the credence and weight accorded by both the RTC and the Court of Appeals to the testimonies of the witnesses for the prosecution as opposed to those of the defense.

It is an established rule that factual findings of the trial court, if supported by evidence on record, and particularly when affirmed by the appellate court, are binding on this Court, unless significant facts and circumstances were shown to have been overlooked or disregarded which, if considered, would have altered the outcome of the case. Moreover, questions as to credibility of a witness are matters best left to the appreciation of the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, which opportunity is denied to the reviewing tribunal.^[34]

Accused-appellant herein failed to present any cogent reason to disturb the factual findings of the RTC and the Court of Appeals. The totality of the prosecution's evidence established a logical, vivid, and detailed account of the buy-bust operation which ultimately led to accused-appellant's arrest and the seizure of the plastic sachets of *shabu* from his possession. The alleged inconsistencies in the prosecution witnesses' testimonies on the number and gender of the buy-bust team members are trivial and irrelevant for it does not involve any of the necessary elements for conviction of the accused-appellant for the illegal possession and sale of *shabu*.

For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug.^[35]

In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.^[36]

In this case, prosecution witnesses, PO3 Albano and PO2 Valdez, categorically stated under oath that as members of the buy-bust team, they caught accused-appellant *in flagrante delicto* selling and possessing shabu. The prosecution was able to establish that (a) accused-appellant had no authority to sell or to possess any dangerous drugs; (b) during the buy-bust operation conducted by the police on January 5, 2005 at the Sexy Beach Resort in Barangay Estancia, Pasuquin, Ilocos Norte, accused-appellant sold and delivered to PO3 Albano, acting as a poseur-buyer, for the price of Two Hundred Pesos (P200.00), one heat-sealed plastic sachet containing 0.023 grams of white crystalline substance, chemically confirmed to be *shabu*; and (c) as a result of a search incidental to the valid warrantless arrest of accused-appellant, he was caught in possession of three more heat-sealed plastic sachets containing 0.01, 0.015, and 0.04 grams of white crystalline substance, all chemically confirmed also to be *shabu*. The two marked One Hundred Peso (P100.00) bills used as buy-bust money, as well as the aforementioned sachets of *shabu* were among the object evidence submitted by the prosecution to the RTC.

As for the non-presentation by the prosecution of the informant, this point need not be belabored. The 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."^[37] The

informant's testimony is not needed if the sale of the illegal drug has been adequately proven by the prosecution.^[38]

In contrast, accused-appellant's defense of frame-up was doubtful and uncorroborated. The defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Republic Act No. 9165. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.^[39] In the instant case, accused-appellant failed to present, other than his own testimony, sufficient evidence to support his claims. Bolosan did not see and was not able to testify on the actual buy-bust operation, which took place inside accused-appellant's room at Sexy Beach Resort, as Bolosan only witnessed the events taking place from outside the resort.

Furthermore, the Court finds that the chain of custody of the sachets of *shabu* seized from accused-appellant had been duly established by the prosecution, in compliance with Section 21 of Republic Act No. 9165. As pertinently summarized by the Court of Appeals, the prosecution had proven each and every link of the chain of custody of the sachets of *shabu* from the time they were seized from accused-appellant, kept in police custody then transferred to the laboratory for examination, and up to their presentation in court, to wit:

It has been established that: after the police officers reached appellant's room at the Sexy Beach Resort, and PO3 Albano acted as poseur-buyer, he was handed one (1) heat-sealed plastic sachet containing *shabu*. After accused was arrested, the police officers were able to retrieve from appellant's possession the marked money, as well as three (3) other heat-sealed plastic sachets containing *shabu*. They brought appellant to their office, together with the confiscated items, and prepared the necessary documents for the filing of the cases against him. PO3 Albano and PO2 Valdez signed the Certification of Seized Items (Exhibit "L") dated 05 January 2005. The team leader, Police Inspector Rolando Battulayan, prepared the Request for Laboratory Examination (Exhibit "E") dated 05 January 2005 of said heat-sealed plastic sachets containing alleged *shabu*, with the necessary markings on them, to determine if said items contain methamphetamine hydrochloride. The one (1) heat-sealed plastic sachet, subject of the illegal sale of dangerous drugs, was marked with letters "RA," while the three (3) heat-sealed plastic sachets, subject of the illegal possession of dangerous drugs, were marked with the letter "R" on one side and "DD" (initials of appellant), on the other side. PO3

Albano was the one who made said markings and delivered the same to the Ilocos Norte Provincial Crime Laboratory Office, Camp Capt. Valentin. Based on the Chemistry Report No. D-003-2005 (Initial Laboratory Report) dated 05 January 2005 (Exhibit "I") and Chemistry Report No. D-003-2005 (Exhibit "J") dated 06 January 2005 of Police Senior Inspector/Forensic Chemical Officer Mary Ann Nillo Cayabyab, the four (4) specimens (A, B1, B2 and B3), upon qualitative examination, tested positive for methamphetamine hydrochloride, a dangerous drug. Even appellant's urine sample tested positive for methamphetamine, as stated in Chemistry Report No. CDT-002-2005 (Exhibit "K").^[40] (Citations omitted.)

Accused-appellant's insistence that the police officers broke the chain of custody rule when they failed to mark the seized items immediately upon their confiscation at the place where he was apprehended lacks legal basis.

It has already been settled that the failure of police officers to mark the items seized from an accused in illegal drugs cases immediately upon its confiscation at the place of arrest does not automatically impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence.^[41] In *People v. Resurreccion*,^[42] the Court explained that "marking"

of the seized items “immediately after seizure and confiscation” may be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of an accused in illegal drugs cases. It was further emphasized that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused. The Court elaborated in this wise:

Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.

The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused’s arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as these would be utilized in the determination of the guilt or innocence of the accused.

As we held in *People v. Cortez*, testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain. Cognizant of this fact, the Implementing Rules and Regulations of RA 9165 on the handling and disposition of seized dangerous drugs provides as follows:

SECTION 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:

(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; **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** **Provided, further,** that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items x x x.

Accused-appellant broaches the view that SA Isidoro’s failure to mark the confiscated *shabu* immediately after seizure creates a reasonable doubt as to the drug’s identity. **People v. Sanchez**, however, explains that RA 9165 does not specify a time frame for “immediate marking,” or where said marking should be done:

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of “marking” of the seized items in warrantless seizures to

ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the “chain of custody” rule requires that the “marking” of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.

To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. “Immediate confiscation” has no exact definition. Thus, in *People v. Gum-Oyen*, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.^[43] (Emphases supplied, citations omitted.)

There is no question herein that the confiscated sachets of *shabu* and related paraphernalia were inventoried and marked in the presence of accused-appellant at the police station where he was brought right after his arrest.

Finally, the penalties imposed by the RTC, as affirmed by the Court of Appeals, are correct.

Article II, Section 11 of Republic Act No. 9165 provides that the penalty for illegal possession of *shabu*, with a total weight of 0.065 grams, is 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). Applying the Indeterminate Sentence Law, the accused shall be sentenced to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum term shall not be less than the minimum prescribed by the same. Thus, in Criminal Case No. 1683-19, the penalties imposed upon accused-appellant of imprisonment of twelve (12) years and one (1) day, as the minimum term, to fifteen (15) years, as the maximum term, and to pay a fine of Four Hundred Thousand Pesos (P400,000.00), are in order.

The penalty for illegal sale of *shabu* (regardless of the quantity and purity involved), under Article II, Section 5 of Republic Act No. 9165, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00). Consequently, the Court upholds the sentence imposed upon accused-appellant of life imprisonment and the order for him to pay a fine of Two Million Pesos (P2,000,000.00) in Criminal Case No. 1684-19.

WHEREFORE, in view of all the foregoing, the appeal of accused-appellant Dante L. Dumalag is **DENIED** and the Decision dated July 3, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01847 is **AFFIRMED in toto**.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

[1] *Rollo*, pp. 56-98; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Ruben T. Reyes and Regalado E. Maambong, concurring.

[2] Records (Crim. Case No. 1683-19), pp. 89-100; penned by Assisting Judge Philip G. Salvador.

[3] Id. at 1-2.

[4] Records (Crim. Case No. 1684-19), pp. 1-2.

[5] Records (Crim. Case No. 1683-19), p. 48.

[6] Id. at 58-59.

[7] Id. at 60.

[8] TSN, July 25, 2005.

[9] TSN, July 28, 2005.

[10] Records (Crim. Case No. 1683-19), p. 70.

[11] Id. at 3-4.

[12] Id. at 49-50.

[13] Id. at 14; Left in the custody of the RTC as noted by its Clerk of Court Ma. Victoria A. Acidera in her Index of Exhibits (CA *rollo*, pp. 7-8).

[14] Id. at 52.

[15] Id. at 51.

[16] Supra note 13.

[17] Id.

[18] Id. at 53-54.

[19] Id. at 55.

[20] Id. at 56.

[21] Supra note 13.

[22] Id.

[23] Id.1

[24] Id. at 90-93.

[25] TSN, September 14, 2005.

[26] TSN, August 24, 2005.

[27] Records (Crim. Case No. 1683-19), pp. 74-75 and 78-83.

[28] Id. at 93-94.

[29] Id. at 100.

[30] Id. at 104.

[31] Id. at 105.

[32] *Rollo*, pp. 10-54.

[33] Id. at 18.

[43] Id. at 518-520.

[34] *People v. Go*, 406 Phil. 804, 815 (2001).

[35] *David v. People*, G.R. No. 181861, October 17, 2011, 659 SCRA 150, 157.

[36] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 408.

[37] *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 587.

[38] Id.

[39] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[40] *Rollo*, p. 92.

[41] *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 834.

[42] G.R. No. 186380, October 12, 2009, 603 SCRA 510, 520.