

# FIRST DIVISION

[ G.R. No. 249853, September 14, 2021 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE BANCUD Y CAUILAN, ACCUSED-APPELLANT.**

## DECISION

**LOPEZ, J., J.:**

Before Us is an appeal seeking the reversal of the Decision<sup>[1]</sup> dated May 31, 2019 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 11046, which affirmed the Judgment<sup>[2]</sup> dated February 6, 2018 of the Regional Trial Court, Branch 1, of Tuguegarao City (RTC), finding Jessie Bancud y Cauilan (*accused-appellant*) guilty of violating Sections 5 and 11, Article II, of Republic Act No. (R.A.) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

### *Facts and Antecedent Proceedings*

On August 7, 2017, two (2) Informations were filed against accused-appellant for violating Sections 5 (illegal sale of dangerous drugs) and 11 (illegal possession of dangerous drugs), Article II of R.A. 9165. The charge for the illegal sale of dangerous drugs read:

That on August 6, 2017, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused JESSIE BANCUD y CAUILAN alias "JES," without authority of law and without any permit to sell, transport, deliver and distribute dangerous drugs, did then and there willfully, unlawfully and feloniously, sell and distribute two (2) pieces heat-healed transparent plastic sachets containing METHAMPHETAMINE HYDROCHLORIDE, commonly known as "shabu", a dangerous drug with a total weight of 0.1327 gram, to PO3 VINCENT V. TUMANENG, who is a member of the PNP, designated as Intelligence Operative at the Tuguegarao City Police Station, and who acted as a *poseur-buyer*, that when the accused handed to the poseur[-]buyer the two (2) pieces heat-sealed transparent plastic sachet[s] containing the dangerous drugs, the *poseur*[-]buyer in turn gave to the accused the agreed purchase price of the dangerous drug in the amount of Php1,000.00 consisting of one (1) piece genuine P1,000.00 peso-bill bearing Serial No. P179361 which was previously marked and used as buy-bust money; that this led to the immediate arrest of the accused inside his residence located at Bancud Street, Atulayan Norte, this City, and the recovery of the buy-bust money from his possession, control and custody by members of the PNP designated as Intelligence Operatives at the Tuguegarao City Police Station who formed the buy[-]bust team, and who acted in coordination with the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, Camp Marcelo Adduru, Tuguegarao City; that the buy[-]bust operation also led to the confiscation of the dangerous drugs.

CONTRARY TO LAW.<sup>[3]</sup>

On the other hand, the charge for illegal possession of dangerous drugs provides:

That on August 6, 2017, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused JESSIE BANCUD y CAUILAN alias "JES," without any authority of law and without the necessary

documents or permit from lawful authorities, did then and there, willfully, unlawfully and feloniously have in his possession, control and custody one (1) piece heat-sealed transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE, commonly known as *shabu*, a dangerous drug weighing 1.1015 grams; that the dangerous drug was found and taken from the possession, control and custody of the accused after his search as an incident to his lawful arrest inside his residence located at Bancud Street, Atulayan Norte, this city, by members of the PNP designated as Intelligence Operatives at the Tuguegarao City Police Station during the conduct of a buy-bust operation which was done in coordination with the members of the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, Camp Marcelo Adduru, Tuguegarao City; that the incident led to the confiscation of the dangerous drug.

#### CONTRARY TO LAW.<sup>[4]</sup>

Upon his arraignment on August 31, 2017, accused-appellant entered a plea of "not guilty."<sup>[5]</sup> During the pre-trial, the parties stipulated on the following:

1. the identity of accused-appellant;
2. that accused-appellant was at his residence at Bancud St., Atulayan Norte, Tuguegarao City on August 6, 2017;
3. that he was arrested by members of the Philippine National Police (PNP) assigned at the PNP-Tuguegarao City Police Station on August 6, 2017;
4. the fact of arrest; and
5. that accused-appellant was subjected to inquest proceedings.<sup>[6]</sup>

Trial thereafter ensued.

#### *Version of the Prosecution*

At around 8:15 in the morning of August 6, 2017, Police Senior Inspector Quintin Baquiran (*PSI Baquiran*) received information from a Confidential Informant (*CI*) that a *shabu* peddler going by the alias "Jes" (later identified as accused-appellant) was looking for buyers. PSI Baquiran asked the CI, who had direct contact with accused-appellant, to call the latter and tell him that a friend wanted to buy *shabu*. The CI promptly called accused-appellant and arranged for the purchase of P1,000.00 worth of *shabu* at accused-appellant's house located at Bancud St., Atulayan Norte, Tuguegarao City at 10:30 that morning. PSI Baquiran lost no time in organizing a buy-bust team<sup>[7]</sup> which was composed of Police Officer 3 Jayson Angoluan (*PO3 Angoluan*), Police Officer 2 Jacinto Cusipag (*PO2 Cusipag*), Police Officer 3 Vicente Lacambra (*PO3 Lacambra*), Police Officer 2 Sergio Sibal (*PO2 Sibal*) and Police Officer 3 Vincent Tumaneng (*PO3 Tumaneng*). PO3 Tumaneng was designated as the *poseur-buyer*, while PO3 Angoluan and PO2 Cusipag were assigned as arresting officers. The rest of the team composed the back-up. They agreed that to signal a completed sale, PO3 Tumaneng would call PO2 Cusipag's mobile phone.

Because PO3 Tumaneng was to act as the *poseur-buyer*, PSI Baquiran gave to him a P1,000.00-bill with Serial Number P179361. To easily identify the money, PO3 Tumaneng wrote his initials "VVT" on the forehead of the picture of Vicente Lim.<sup>[8]</sup> When the briefing concluded, Police Officer 2 Maximo Binarao (*PO2 Binarao*) prepared the PDEA Coordination Form which was duly received by the said office.<sup>[9]</sup>

Around two hours later, the buy-bust team proceeded to the meeting place on board four motorcycles. PO3 Tumaneng rode with the CI and when they reached accused-appellant's house, they entered the steel gate. PO3 Angoluan and PO2 Cusipag positioned themselves a few meters away within view, while the buy-bust team waited at the Atulayan Barangay Hall which was around 100 meters away. PO3 Tumaneng and the CI were standing at the main

porch when accused-appellant came out of the house. Introductions were made and after confirming that PO3 Tumaneng was the CI's friend who wanted to buy *shabu*, accused-appellant produced two (2) pieces heat-sealed transparent plastic sachets containing white crystalline substance from his pouch and gave these to PO3 Tumaneng. In exchange, PO3 Tumaneng handed to accused-appellant the marked P1,000.00-bill. As agreed during their briefing, PO3 Tumaneng immediately dialed the mobile number of PO3 Anguluan to signal that the exchange had been consummated.

Upon receiving the pre-arranged signal, PO3 Anguluan, PO2 Cusipag and the rest of the buy-bust team rushed to where the trio were and introduced themselves as police officers to accused-appellant, who ran inside his house and tried to hide inside the bathroom where he was cornered. PO3 Anguluan informed him of the reason for his arrest and of his rights as an accused before he was handcuffed. It was PO2 Cusipag who conducted the search on accused-appellant's person and he found a larger piece of heat-sealed transparent plastic sachet containing white crystalline substance and a white Samsung phone. The buy-bust money was also recovered from his possession.

With Ferdinand Gangan of the Department of Justice (*DOJ*) and Brgy. Captain Johnny Tumaliuan of Atulayan as witnesses, PO3 Tumaneng marked with his initials "VVT-1 8-16-17" and "VVT-2 8-16-17" the two plastic sachets subject of the buy-bust, while PO2 Cusipag placed his own markings ("JTC 8-16-17") on the packet he confiscated. Pictures were taken of the proceedings as well as the items subject of the buy-bust.<sup>[10]</sup> When they finished, they brought the accused-appellant to the Tuguegarao Police Station for processing and investigation by Senior Police Officer 2 Gervacio Cornelio (*SPO2 Cornelio*) who examined the confiscated plastic sachets. It was also SPO2 Cornelio who prepared the Certification of the excerpts of the police blotter.<sup>[11]</sup> On the other hand, PSI Ronlyn B. Baccay (*PSI Baccay*) prepared the Request for Laboratory Examination for the suspected *shabu* packets<sup>[12]</sup> and for the drug testing of accused-appellant.<sup>[13]</sup>

PO3 Tumaneng and PO2 Cusipag brought accused-appellant and the three plastic sachets to the Regional Crime Laboratory Office for testing. The requests were personally received by Police Officer 3 Edmar Delayun (*PO2 Delayun*). These were later handed over to Police Inspector Winchelle Shayne B. Odasco (*PI Odasco*), the forensic chemist who conducted a qualitative examination of the contents of the plastic sachet.<sup>[14]</sup> After examination, the white substance contained in the three plastic sachets were all confirmed to be *methamphetamine hydrochloride* or *shabu* a dangerous drug.<sup>[15]</sup>

The *shabu* packets were later re-sealed and surrendered to Senior Police Officer 2 George Carag (*SPO2 Carag*), the evidence custodian. These were kept inside the evidence cabinet in the crime laboratory office.<sup>[16]</sup> On August 31, 2017, SPO2 Carag delivered the pieces of evidence to the RTC, pursuant to a *subpoena*.<sup>[17]</sup> These were received by the clerk of court.<sup>[18]</sup>

### *Version of the Defense*

For his part, accused-appellant vehemently denied the accusations lodged against him. He narrated that upon waking up at around 10 o'clock in the morning on August 6, 2017, his live-in partner, Princess Lazo (*Lazo*), asked him to buy milk at a store. Upon returning from the store, he went straight to the comfort room to relieve himself. While at the toilet, a man stormed in and aimed a gun at him. The armed man gave accused-appellant time to clean himself, but was later dragged out. Once outside, he was accused of being the owner of a plastic sachet that the armed man was holding. Accused-appellant denied being the owner of the said sachet, but the armed man told him that Lazo would get in trouble if he did not cooperate. Accused-appellant was then brought outside his house where he was handcuffed. He was told that he would be freed once he revealed where his friend, Michael Tumaliuan (*Michael*), was. The armed men also told Lazo that accused-appellant would be used as a bait to know the whereabouts of

Michael. With this, Lazo informed the men that she knew where Michael was. She was then directed to accompany some of the men to Michael's boarding house supposedly in exchange for accused-appellant's freedom.<sup>[19]</sup>

After Lazo left, the men guarding accused-appellant took out two plastic sachets, a pouch bag and a piece of paper and placed them on a table. Afterwards, the barangay captain, Johnny Tumaliuan, and another man arrived. Pictures were then taken of him sitting in front of the plastic sachets that were laid out on the table. After that, accused-appellant was brought to the police station.<sup>[20]</sup>

Accused-appellant vehemently denied that he sold *shabu* to PO3 Tumaneng. He insisted that no buy-bust operation took place because he was allegedly taken completely by surprise when the man suddenly barged while he was in the toilet. Accused-appellant also explained that he did not file any complaint against the men who supposedly illegally arrested him for fear that they might harm him and Lazo. He was particularly concerned for Lazo who was, at that time, pregnant.<sup>[21]</sup>

Lazo, and Jestoni Bancud,<sup>[22]</sup> brother of accused-appellant, likewise took the witness stand to corroborate the testimony of accused-appellant.<sup>[23]</sup> During her cross-examination, Lazo disclosed that a week after the supposed buy-bust, she sought the assistance of the police after receiving threats from the men who arrested accused-appellant. One of them supposedly followed her whenever she went out. She told the trial court that she was convinced that she was already in danger from the police so she decided not to file any complaint against them so as not to aggravate her situation.<sup>[24]</sup>

### ***RTC Decision***

Due proceedings were conducted and in its Judgment dated February 6, 2018, the RTC convicted accused-appellant of the two offenses charged. Holding that all the elements of the offenses of illegal possession and sale of prohibited drugs were proved, the RTC disposed the case as follows:

WHEREFORE, the Court finds the accused JESSIE BANCUD Y CAUILAN, GUILTY BEYOND REASONABLE DOUBT of the CRIME OF VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT NO. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and hereby sentences him to suffer life imprisonment and a FINE of FIVE HUNDRED THOUSAND PESOS (P500,000.00).

The accused JESSIE BANCUD Y CAUILAN is also found GUILTY BEYOND REASONABLE DOUBT of the CRIME OF VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty of TWELVE (12) YEARS AND ONE (1) DAY, as Minimum to FIFTEEN (15) YEARS as Maximum and a FINE of THREE HUNDRED THOUSAND PESOS (P300,000.00).

The dangerous drugs presented before the Court are hereby forfeited and confiscated in favor of the government and the Branch Clerk of Court is hereby directed to immediately deliver the said items to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The Branch Clerk of Court is likewise directed to return to the PNP Tuguegarao City Police Station the buy[-]bust money used in this case.

Let a copy [of] this Judgment be furnished to the PNP Tuguegarao City Police

Station for its information and guidance.

SO DECIDED.<sup>[25]</sup>

Accused-appellant promptly filed a Notice of Appeal<sup>[26]</sup> which was given due course,<sup>[27]</sup> and the propriety of his conviction was raised before the CA. Pending appeal, accused-appellant was detained at the New Bilibid Prisons, Muntinlupa City.<sup>[28]</sup>

### ***CA Decision***

In the assailed Decision<sup>[29]</sup> dated May 31, 2019, the CA upheld the RTC Judgment and ruled as follows:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Decision dated February 6, 2018 of the Regional Trial Court, Branch 1, Tuguegarao City is AFFIRMED.

SO ORDERED.<sup>[30]</sup>

In its Decision, the CA explained that accused-appellant's guilt on the illegal sale and possession of dangerous drugs was proven beyond reasonable doubt and that there was no break in the chain of custody of the illegal drugs confiscated such that the integrity and evidentiary value thereof were properly preserved. As to the failure to present the police investigator and the evidence custodian as witnesses, the CA stated that the prosecution had the discretion as to how to present its case and to choose whom it wishes to present as witnesses. Finally, the CA enunciated that any of the supposed lapses committed by the buy-bust team did not automatically exonerate accused-appellant nor render his arrest illegal and the items seized from him inadmissible in evidence because, as cited in *People v. Bontuyan*,<sup>[31]</sup> as long as the chain of custody remains unbroken, the guilt of the accused will not be affected.

Hence, this appeal raising the issue of whether the CA committed a reversible error in affirming the RTC Judgment convicting accused-appellant of illegal sale and illegal possession of dangerous drugs.

### ***Ruling***

*The elements of illegal sale and illegal possession of drugs was established in this case.*

To successfully prosecute a case of illegal sale of drugs in a buy-bust operation, these must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>[32]</sup> It is the delivery of the dangerous drug to the *poseur-buyer* by the accused as the seller, and the receipt by the latter of the marked money during the buy-bust transaction which consummate the crime of illegal sale of the dangerous drug.<sup>[33]</sup>

A dissection of the evidence of the prosecution patently shows beyond doubt that accused-appellant was caught red-handed in selling the dangerous drug, *shabu*. The prosecution witnesses gave definitive recollections of the incidents which led to the arrest of accused-appellant. PO3 Tumaneng was unequivocal in testifying that, as *poseur-buyer*, he bought a total of 0.1327 gram of *shabu* from accused-appellant who received it for the consideration of P1,000.00. Upon laboratory examination conducted by PI Odasco, he verified that the two

plastic sachets handed by accused-appellant to the *poseur-buyer* did contain methamphetamine hydrochloride or *shabu*.

As to the charge of illegal possession of 1.1015 grams of *shabu*, We find that the prosecution also established the elements of the offense, to wit: (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 drug.<sup>[34]</sup> Here, the straightforward testimonies lead Us to conclude beyond reasonable doubt that when he was subjected to the search that was a consequence of his valid warrantless arrest, accused-appellant was revealed to be in possession of another plastic sachet containing the same white crystalline substance as the ones subject of the buy-bust. Unfortunately, accused-appellant could not adduce evidence of any legal authority to possess the same. Moreover, when subjected to scientific examination, it was conclusively proven that this single piece of sachet contained 1.1015 grams of shabu. Hence, he was correctly charged and convicted of the crime of illegal possession of a dangerous drug.

*The integrity and evidentiary value of the evidence remained untainted.*

In cases of illegal sale and/or possession of dangerous drugs under R.A. 9165, as amended by Republic Act No. 10640 (*R.A. 10640*),<sup>[35]</sup> it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>[36]</sup> Therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation.

"*Chain of custody*" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.<sup>[37]</sup> This rule is crucial as it is fundamentally important that the prohibited drug confiscated or recovered from the suspect are the very same substances offered in court as exhibits. Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*. The chain of custody requirement "ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."<sup>[38]</sup>

Section 21, Article II of R.A. 9165, as amended by R.A. 10640, provides that:

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

- (1) The apprehending team having initial custody and control of the dangerous drugs x x x shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally,* That noncompliance of 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 and custody over said items.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs x x x the same shall be submitted to Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s[.] x x x.

Hence, the essential aspects of the rule on chain of custody are the (1) immediate marking, inventory and taking of photographs of the recovered items; (2) the examination of the forensic chemist attesting that the seized items yielded positive results for the presence of illegal drugs; and (3) the presentation of the same evidence in court.<sup>[30]</sup> These all address the primordial concern that the integrity and evidentiary value of the seized items have been properly safeguarded as these would be used as the evidence in determining the liability of the accused-appellant.

There is no doubt that these aspects in the chain of custody attended the case at bench.

The testimonies of PO3 Tumaneng and PO2 Cusipag are straightforward. After arresting accused-appellant, PO3 Tumaneng marked the two plastic sachets subject of the sale with "VVT-1 8-16-17" and "VVT-2 8-16-17," while PO2 Cusipag wrote "JTC 8-16-17" on the packet he retrieved from accused-appellant. Without a doubt, this made the three plastic packets of contraband unique and easily distinguishable.

With regard to the inventory, Section 21 of R.A. 9165, as amended by R.A. 10640, requires the apprehending team to immediately, after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused or his representative or counsel, an elected public official **and** a representative from the media **or** the Department of Justice (*DOJ*), who shall be required to sign the copies of the inventory and be given a copy thereof.<sup>[39]</sup>

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure. PO3 Tumaneng and PO2 Cusipag were uniform in testifying that the marking and inventory happened outside of accused-appellant's house after his arrest. The inventory was, likewise, conducted in the presence of accused-appellant, a representative from the DOJ and the *barangay* captain, with the two witnesses signing the Receipt and Inventory of Evidence Sheet.<sup>[40]</sup> Photographs of the conduct of the inventory at the buy-bust site and processing at the police station likewise showed that accused-appellant and the two witnesses were present in these instances.<sup>[41]</sup> Accused-appellant himself testified that the marking and inventory happened at his residence and with the two witnesses present. Then, PSI Baccay prepared the laboratory request forms for the drug testing of accused-appellant and the items confiscated from him.<sup>[42]</sup> These were delivered by PO3 Tumaneng and PO2 Cusipag to the crime laboratory.<sup>[43]</sup>

Proceeding to the next step, PI Odasco examined the contents of the three plastic sachets upon her receipt on the afternoon of August 6, 2017<sup>[44]</sup> and she recorded her findings that the

specimens were positive of *shabu* in Chemistry Report No. CDT-195-2017. Based also on her admitted testimony,<sup>[46]</sup> she thereafter entrusted the pieces of evidence to the evidence custodian who,<sup>[47]</sup> in turn, likewise confirmed that he received the pieces of evidence at 4:30 in the afternoon of the same day. He kept these inside the evidence cabinet where they remained until August 31, 2017 when he received a *subpoena* from the RTC directing him to bring the evidence to the court. On the same day, he delivered the evidence to the RTC where these were duly received by Atty. Arlynne T. Saludez-Esteban, the Branch Clerk of Court.<sup>[48]</sup> Finally, when presented with the plastic sachets subject of the buy-bust operation, PO3 Tumaneng positively identified these as the ones handed to him by accused-appellant, which he previously marked with his initials.<sup>[49]</sup> For his part, PO2 Cusipag attested that the single plastic sachet shown to him that had the marking "JTC 8-16-17" was the same packet that he retrieved from the right shirt pocket of accused-appellant.<sup>[50]</sup>

Nevertheless, accused-appellant harps that the prosecution committed a grievous mistake when it failed to present the police investigator and the evidence custodian who supposedly should have testified as to how they handled the confiscated items. Unfortunately, this contention is unavailing since it is a well-established rule that the prosecution has the sole discretion in the presentation of its case and the witness it will present in court.<sup>[51]</sup> The lack of testimonies of witnesses will not detract from the fact that the integrity and evidentiary value of the evidence remained intact, as previously discussed. What matters is there was a definite chain in the handling of the pieces of evidence such that their integrity and identity remain unquestionable. It bears pointing out that in an Order dated September 25, 2017,<sup>[52]</sup> the testimony of the evidence custodian, SPO2 Cayag, as to his participation in the chain of custody was already stipulated upon. SPO2 Cayag's testimony was dispensed with, with the prosecution and the defense stipulating that: (1) he received receipt of the sealed packets of *shabu* from PI Odasco; (2) he placed these in the evidence cabinet of their office; (3) these remained in the cabinet until the morning of August 31, 2017; (4) on said date, he received a *subpoena* from the RTC requiring him to deliver the evidence to the court; and (5) within that morning, he brought the pieces of evidence to the court, where these were received by the clerk of court.<sup>[53]</sup>

Accused-appellant further argues that no buy-bust operation occurred and that he was framed supposedly because he could not point to where his friend, Tumaliuan, was. It is well established that frame-up is the usual defense of those accused in drug related cases, and it is viewed by the Court with disfavor since it is an allegation that can be made with ease.<sup>[54]</sup> For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.<sup>[55]</sup> Unfortunately, in this case, accused-appellant's defense fails to persuade because aside from the testimonies of biased witnesses, he could present nothing more to support his defense of frame-up, not even any trace of Tumaliuan, who was supposedly the real target of the police and was claimed to have also been arrested.

In an attempt to boost his claim of innocence, accused-appellant presented his brother and live-in partner who echoed his narrative. Their credibility, however, remains doubtful because of their natural interest in favoring accused-appellant; one is his flesh and blood, while the other is his romantic partner pregnant with his child. Further, jurisprudence has held that courts give less probative weight to a defense of alibi when it is corroborated by friends and relatives. One can easily fabricate an alibi and ask friends and relatives to corroborate it. When a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism.<sup>[56]</sup>

Pitted against the presumption that government officials have performed their duties in a regular and proper manner, the evidence for the defense simply cannot prevail. After all, denial and alibi cannot be given greater evidentiary value than the unequivocal testimonies of credible witnesses who testified on affirmative matters.<sup>[57]</sup> Positive identification destroys the defense

of alibi and renders it impotent, especially where such identification is credible and categorical,<sup>[58]</sup> as in this case. Accused-appellant's defenses of denial and alibi, therefore, must necessarily fail. We concur with the CA when it stated the following:

In the face of the overwhelming evidence against appellant, all that he could raise was the defense of denial. It has been consistently ruled that bare denial is an inherently weak defense because it is self-serving and easy to fabricate. Here, appellant's denial crumbles under the weight of the prosecution witnesses' positive identification of him as the seller of the *shabu*. Appellant's allegation that the evidence against him was planted, was uncorroborated by any convincing evidence. Having been caught *in flagrante delicto*, appellant's guilt can no longer be doubted. Besides, there is no showing that the police officers were impelled by any ill motive to testify falsely against the appellant. Such lack of dubious motive[,] coupled with the presumption of regularity in the performance of official duty[,] should prevail over appellant's self-serving allegations.<sup>[59]</sup>

Having established with the same exacting degree of certitude as that required of conviction that the evidence offered in court are the exact ones subject of the August 6, 2017 buy-bust, there is no doubt that the integrity and evidentiary value of the seized *shabu* packets were indeed preserved. Courts are cognizant of the presumption of regularity in the performance of duties of public officers. This presumption can be overturned if evidence is presented to prove either of two things, namely: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.<sup>[60]</sup> These do not attend the case at bench.

Perforce, the prosecution's evidence sufficiently established an *unbroken* chain of custody over the seized sachets of *shabu* from the buy-bust team to the crime laboratory for examination, to the forensic chemist, and to the evidence custodian up to the time it was surrendered for presentation as evidence in court.

### ***Penalty***

The penalty for the unauthorized sale of dangerous drugs on one hand is provided under Section 5, Article II of R.A. 9165, to wit:

**Section 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. (Emphases supplied)

On the other hand, the imposable penalty for possession of 1.1015 grams of *shabu* falls under the second paragraph of Section 11, Article II of R.A. 9165, thus:

(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. (Emphases supplies)

Hence, the penalties of life imprisonment with a fine of Five Hundred Thousand Pesos (P500,000.00) for violation of Section 5, Article II of R.A. 9165, and imprisonment of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, plus a fine of Three Hundred Thousand Pesos (P300,000.00) for violation of Section 11, Article II, of R.A. 9165 are both in accordance with law.

**WHEREFORE**, the appeal is **DISMISSED**. The Decision of the Court of Appeals, dated May 31, 2019, in CA-G.R. CR-H.C. No. 11046, which affirmed the February 6, 2018 Decision of the Regional Trial Court of Tuguegarao City, Branch 1, in Criminal Case Nos. 19107 and 19108, convicting accused-appellant Jessie Bancud y Cauilan of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, is hereby **AFFIRMED**.

**SO ORDERED.**

*Gesmundo, C. J., Caguioa, Lazaro-Javier, and M. Lopez, JJ.*, concur.

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[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Eduardo Peralta, Jr. and Gabriel T. Robeniol concurring, *rollo*, pp. 3-23.

[2] Promulgated on February 13, 2021; penned by Presiding Judge (now Court of Appeals Associate Justice) Raymond Reynold R. Lauigan, records, pp. 88-98.

[3] Records (Crim. Case No. 19107), pp. 1-2.

[4] Records (Crim. Case No. 19108), p. 1.

[5] *Rollo*, p. 44.

[6] *Id.* at 51-53.

[7] *Id.* at 13.

[8] *Id.* at 43.

[9] *Id.* at 12.

[10] *Id.* at 20-22; TSN, October 26, 2017, p. 13.

[11] CA *rollo*, p. 11.

[12] *Id.* at 15.

[13] *Id.* at 16.

[14] *Id.* at 24.

[15] *Id.* at 18.

[16] Order dated September 25, 2017; records, pp. 57-58.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 109-111.

[20] *Id.* at 112.

[21] *Id.* at 113-114.

[22] TSN, November 29, 2017.

[23] TSN, November 13, 2017, pp. 4-12.

[24] *Id.* at 20-22.

[25] Records, p. 98.

[26] CA *rollo*, p. 145.

[27] *Id.* at 146.

[28] *Id.* at 147.

[29] *Id.* at 90-110.

[30] *Id.* at 110.

[31] 742 Phil. 788, 800 (2014).

[32] *People v. Steve, et al.*, 740 Phil. 727, 736 (2014).

[33] *People v. Rogelio Yagao y Llaban*, G.R. No. 216725, February 18, 2019.

[34] *People v. Alcuizar*, 662 Phil. 794, 808 (2011).

[35] An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending For The Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002" which was approved on July 15, 2014.

[36] *People v. Crispo*, 828 Phil. 416, 429 (2018).

[37] *People v. Moner*, 827 Phil. 42, 54 (2018).

[38] *People v. Enriquez*, 718 Phil. 352, 363-364 (2013).

[39] SEC. 2I. *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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance of 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 and custody over said items." x x x.

[40] Records, p. 14.

[41] *Id.* at 20-22.

[42] *Id.* at 15-16.

[43] *Id.*

[44] Order dated September 25, 2017; *id.* at 57-58.

[45] *Id.* at 18.

[46] *Id.* at 57-58.

[47] *Id.*

[48] *Id.* at 33.

[49] TSN, October 26, 2017, p. 24.

[50] TSN, November 6, 2017, pp. 8-9.

[51] *People v. Alejandro*, 731 Phil. 662, 683 (2014).

[52] *Supra* note 47.

[53] *Id.*

[54] *People v. Zheng Bai Hui, et al.*, 393 Phil. 68, 135 (2000).

[55] *Dacanay v. People*, 818 Phil. 885, 905 (2017), citing *People v. Guzman*, 564 Phil. 282, 293 (2007).

[56] *People v. Sumalinog, Jr.*, 466 Phil. 637, 651 (2004).

[57] *People v. Espera*, G.R. No. 227313, November 21, 2018.

[58] *People v. Bandin*, 604 Phil. 522, 528 (2009), citing *People v. Delim, et al.*, 559 Phil. 771, 784 (2007).

[59] *Rollo*, p. 22.

[60] *People v. Remerata*, 449 Phil. 813, 819 (2003).