



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 FEB 18 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff and Appellee,

G.R. No. 209212

Present:

VELASCO, JR., J.
Chairperson,
 PEREZ,
 MENDOZA,*
 REYES, and
 PERLAS-BERNABE,** JJ.

-versus-

ROMEL SAPITULA Y PACULAN,
 Accused-Appellant.

Promulgated:

February 10, 2016

X-----*Wilfredo V. Lapitan*-----X

RESOLUTION

PEREZ, J.:

Before us for review is the Decision¹ of the Court of Appeals (CA) in CA G.R. CR.-H.C. No. 05186 dated 19 February 2013 which dismissed the appeal of accused-appellant Romel Sapitula y Paculan and affirmed with modification the Judgment² of the Regional Trial Court (RTC) of Agoo, La Union, Branch 31, in Criminal Case No. A-6013 finding accused-appellant guilty beyond reasonable doubt of attempted sale of a dangerous drug in violation of Section 5 in relation to Section 26 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

* Additional Member per Raffle dated 25 January 2016.

** Additional Member per Raffle dated 25 January 2016.

¹ Rollo, pp. 2-25; Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring.

² Records, pp. 76-122; Presided by Presiding Judge Clifton U. Ganay.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the Information reads as follows:

That on or about the 16th day of June 2011, in the Municipality of Sto. Tomas, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without authority of law, did then and there, wilfully, unlawfully and knowingly, for and in consideration of the amount of Three Hundred (Php 300.00) Pesos, sell, convey, deliver and give away to a PO3 Ardie Gayo Palabay one (1) heat sealed plastic sachet containing shabu with a weight of zero point zero nine hundred forty six (0.0946) gram, a dangerous and prohibited drug.

Contrary to the provision of Section 5, Art. 2 of R.A. 9165.³

At his arraignment, accused-appellant pleaded not guilty. Trial ensued.

The prosecution presented as witnesses Police Senior Inspector Diosdado Gagaoin (PSI Gagaoin), Police Officer 3 Ardie Palabay (PO3 Palabay), Police Inspector Maria Theresa Amor Manuel (PI Manuel), PO3 Emmanuel Pimentel, Jr., and PSI Bedalyn Antonio (PSI Antonio), whose testimonies sought to establish the following facts:

Acting on a tip from a confidential informant that accused-appellant sells *shabu*, PSI Gagaoin instructed PO3 Palabay to conduct a surveillance and casing operation on him. Upon verification of accused-appellant's involvement in illegal drug activities, PO3 Palabay and his drug asset made a test-buy operation on 14 June 2011, which yielded a purchase of Three Hundred Peso (₱300.00) worth of *shabu* from accused-appellant. Thereafter, PSI Gagaoin headed and organized a buy-bust team composed of PO3 Palabay as *poseur*-buyer, PO3 Arnel Gravidez as one of the arresting officers and SPO3 Armando Eisma and PO2 Roger Malag as perimeter security. Six (6) pieces of ₱50.00 bills were prepared as marked money on which PO3 Palabay placed a marking of "A."⁴

At four o'clock in the afternoon of 16 June 2011, the buy-bust team proceeded to Barangay Ambitacay. PO3 Palabay had already been in communication via short message system (SMS) with accused-appellant regarding the amount of *shabu* to be purchased. It had also been agreed via

³ Id. at 1.

⁴ TSN, 20 July 2011, pp. 4-13; TSN, 21 July 2011, pp. 3-13; TSN, 26 July 2011, p. 4.

SMS that they would meet at Ambitacay crossing at six o'clock in the evening.⁵

At the crossing, at half past five o'clock in the afternoon when PO3 Palabay noticed accused-appellant coming his way, he disembarked from the tricycle in which he had been waiting. He approached accused-appellant who immediately handed to him a heat-sealed plastic sachet containing a white crystalline substance; and PO3 Palabay, in exchange, gave accused-appellant the marked money. Accused-appellant then counted the money while PO3 Palabay placed the sachet in his pocket and removed his cap to signal the arrest to the other police officers. Accused-appellant attempted to flee but was subsequently overcome and handcuffed by the other officers. PO3 Palabay informed accused-appellant of his constitutional rights; took a photograph of the latter as well as the area and the plastic sachet which he marked "AJP-1-11." He also made an inventory of the marked money and the seized plastic sachet in the presence of the Barangay Captain and another witness.⁶

Accused-appellant was thereafter brought to the police station. There, PO3 Palabay executed an affidavit of arrest, an affidavit of *poseur*-buyer and a request for laboratory examination. Then, he brought accused-appellant and the seized items to the crime laboratory, received by PSI Antonio.⁷ Chemistry Report No. D-030-2011 signed by PI Manuel as Forensic Chemist found the seized plastic sachet positive for the presence of *Methamphetamine hydrochloride* or *shabu*.⁸

Accused-appellant, as the lone witness for the defense, testified that on 16 June 2011, on his way home with his wife and child after a day of ferrying passengers in his tricycle, a male person and his companion flagged him down. The man asked accused-appellant to get down from his tricycle and thereafter, drew out a gun and introduced himself as a policeman. Accused-appellant tried to run away from him but two (2) other persons blocked his way and handcuffed him. These two forced him to hold something and when accused-appellant refused, they rubbed it onto his hands. Thereafter, a patrol car arrived and he was brought to the police station.⁹

⁵ TSN, 21 July 2011, pp. 13-18.

⁶ Id. at 18-28.

⁷ Id. at 29-30; TSN, 26 July 2011, p. 8; Records, pp. 1 and 8; Exhibit "I-1" and "B-1."

⁸ Records, p. 49; Exhibit "B."

⁹ TSN, 2 August 2011, pp. 3-9.

On 5 August 2011, the RTC rendered judgment finding accused-appellant guilty of attempted sale of a dangerous drug. The dispositive portion of the RTC Decision reads:

The accused is found to have attempted to sell .0946 gram of methamphetamine hydrochloride beyond reasonable doubt. The court only found that he attempted to sell.

However, there is a catch provided in Section 26 of R.A. 9165 which prescribes the same penalty as that provided in Section 5 in case of unlawful acts that are enumerated in the aforesaid Section 26, thus the penalty for attempt or conspiracy to commit violations thereof as provided in Section 26 is the same as that provided in Section 5. HOC QUIDEM PER QUAM DURUM EST, SED ITA LEX ESCRIPTA EST or DURA LEX SED LEX is invoked.

Hence, accused Romel Sapitula is sentenced to life imprisonment and is ordered to pay a fine of Five Hundred Thousand Pesos (Php 500.000.00) for attempting to sell less than one gram of methamphetamine hydrochloride “shabu.”

The penalty is harsh but that is the law on the matter. Less than one gram of “shabu” and wham! One has to spend one’s life in prison.

But that is the reality. Not an illusion.

So it is best to avoid drugseverytime.

The drug subject of this case is confiscated in favor of the government.¹⁰

Accused-appellant filed a Notice of Appeal on 10 August 2011.¹¹ On 19 February 2013, the CA rendered the assailed judgment affirming with modification the trial court’s decision. The CA found accused-appellant guilty of the crime charged, or violation of Section 5, Article II of R.A. 9165. The CA ruled that the sale of a dangerous drug was consummated as there had been an exchange of money and the sachet of *shabu* between PO3 Palabay and accused-appellant.

Accused-appellant appealed his conviction before this Court. In a Resolution¹² dated 04 December 2013, accused-appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties manifested that they will no longer file

¹⁰ Records, pp. 120-122.

¹¹ Id. at 123-124.

¹² *Rollo*, p. 31.

supplemental briefs as their arguments in their respective briefs are already sufficient.¹³

Upon review of the records, the Court affirms the conviction of accused-appellant.

The Court agrees with the CA finding that, contrary to the accused-appellant's assertion, the trial court sufficiently stated the factual and legal bases for its disposition of the case. In convicting accused-appellant, the trial court explained that it gave credence to the testimonies of the police officers pursuant to the presumption of regularity in the performance of their official duties and absent any showing of ill-motive to plant evidence against accused-appellant.¹⁴ The trial court also stated that it found accused-appellant's testimony partly incredulous.¹⁵

The Court, however, upholds the CA's ruling that the crime of sale of a dangerous drug, in this case *shabu*, was consummated; different from the trial court's ruling that the crime had been committed only at its attempted stage. In so holding, the trial court stated that "[w]hen he realized the trap he was about to backout in the sale. Nevertheless, the penalty is the same."¹⁶ This Court disagrees.

In every prosecution for illegal sale of *shabu*, the following elements must be sufficiently proved: (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 therefor.¹⁷

The Court finds that all elements for illegal sale were duly established with accused-appellant having been caught *in flagrante delicto* selling *shabu* through a buy-bust operation conducted by the buy-bust team of PO3 Palabay.

PO3 Palabay, who acted as the *poseur* buyer, testified that accused-appellant handed to him the plastic sachet containing the prohibited drug in exchange for Three Hundred Pesos (₱300.00), thus:

¹³ Id. at 104.

¹⁴ Records, pp. 116-117.

¹⁵ Id. at 99.

¹⁶ Id. at 117.

¹⁷ *People v. Buenaventura*, 677 Phil. 230, 238 (2011).

Q: And at about what time was that when you waited at that waiting shed?

A: Around 5:30 in the afternoon, sir.

Q: And what happened after that?

A: While waiting I noticed the suspect approaching, sir.

Q: So from where did he come home (sic)?

A: From the road leading to barangay Pongpong, sir.

Q: And when you saw him approaching what did you do if any?

A: I immediately disembark from the tricycle, sir.

x x x x

Q: When you alighted from the tricycle where did you go?

A: I immediately approached him also, sir.

Q: And what happened when you approached him, what did you tell him or what happened?

A: He immediately handed to me the heat sealed plastic sachet containing white crystalline substance and then afterwards I in hand also the marked money, sir.

Q: He did not ask how much are you buying?

A: He asked already through text, sir.

Q: And where did you put the sachet that was handed to you?

A: I put in my pocket, sir.

Q: You mentioned you handed the money to the subject, what did the subject do if any?

A: After he received the money, he counted the money, sir.

Q: And while he was counting the money what did you do next?

A: After counting the money, I frisked him, I said stop and I showed my badge as an identification that I am a police but then he tried to run towards east direction, sir.

Q: By the way was there any a pre-arranged signal made by you with your Chief of Police?

A: Yes, sir.

Q: What is your pre-arranged signal?

A: When I removed my bull cup, sir.

Q: What does that indicate?

A: As a sign that the arrest shall be made by the arresting officers, sir.¹⁸

¹⁸ TSN, 21 July 2011, pp. 19-20.

This testimony was corroborated by PSI Gagaoin who was strategically posted within the perimeter of the target area.¹⁹ The result of the laboratory examination confirmed the presence of *methamphetamine hydrochloride* or *shabu* on the white crystalline substance inside the plastic sachet received from the accused-appellant. The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.²⁰

Accused-appellant's denial of the charges and assertion of a frame-up, uncorroborated by any positive testimony of the people who were allegedly with him during the incident, are indeed incredulous juxtaposed with the positive evidence for his prosecution. Besides, as adequately explained by PSI Antonio, the absence of ultraviolet (UV) powder on accused-appellant's palms (although the dorsal parts of accused-appellant's hands tested positive for UV powder presence) may have been a result of perspiration, wiping or rubbing the hand on a hard object.²¹ Thus, this matter does not completely negate accused-appellant's culpability as he so asserts.

This Court has, time and again, deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. The trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination; the trial court is in a unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.²² And in the instant case, accused-appellant has not projected any strong and compelling reasons to sway the Court into rejecting or revising such factual findings and evaluation in his favor.

We now come to accused-appellant's contention that the procedure for the custody and disposition of confiscated drugs as provided in Section 21 of R.A. No. 9165, was not complied with as the police officers had not conducted an inventory of the plastic sachet of *shabu* and the same had not been photographed in the presence of accused-appellant and representatives from the media and the Department of Justice.²³

¹⁹ TSN, 20 July 2011, pp. 15-22.

²⁰ *People v. Montevirgen*, G.R. No. 189840, 11 December 2013, 712 SCRA 459, 468.

²¹ TSN, 26 July 2011, pp. 4-6.

²² *Medina, Jr. v. People*, G.R. No. 161308, 15 January 2014, 713 SCRA 311, 320.

²³ CA *rollo*, pp. 96-97.

First, it must be underscored that this issue was only brought up on appeal and was never raised before the trial court. Nevertheless, a review of PO3 Palabay's testimony shows that the inventory and photograph requirements had been met, thus:

Q: And after the subject was handcuff, what transpired next?

A: After we handcuff the subject, we photographed the suspect, we photographed the area, we photographed also the evidence and I marked there with the presence of the Barangay Chairman and the concerned citizens in the area and then I prepared also the inventory in their presence, sir.²⁴

More importantly, the integrity and evidentiary value of the seized items were duly preserved as the chain of custody remained intact.

The Court has ruled in *People v. Enriquez*,²⁵ that the links that must be established in the chain of custody in a buy-bust situation are: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

In the case at bar, PO3 Palabay, the *poseur* buyer, positively testified that he placed in his pocket the plastic sachet of *shabu* handed to him by accused-appellant. At the time of arrest, he photographed accused-appellant, the area and the sachet of *shabu*, marked the same and conducted the inventory before the Barangay Chairman and another witness. PO3 Palabay further testified that he brought accused-appellant and the sachet of *shabu* to the police station, and there, executed affidavits of arrest and of the *poseur* buyer and made a request for laboratory examination. PO3 Palabay then took accused-appellant and the sachet of *shabu* to the crime laboratory and the latter was received by PSI Antonio. Chemistry Report No. D-030-2011 signed by PI Manuel as Forensic Chemist and PSI Antonio as Administering Officer confirmed that the sachet is positive for the presence of *methamphetamine hydrochloride*.²⁶ And finally, in open court, PO3 Palabay opened the envelope from the Forensic Chemist and identified its contents as

²⁴ TSN, 21 July 2011, p. 22.

²⁵ G.R. No. 197550, 25 September 2013, 706 SCRA 337, 353 citing *People v. Magno*, 20 October, 2010, 634 SCRA 441, 451.

²⁶ Records, p. 9.

the same sachet of *shabu* he had purchased from accused-appellant.²⁷ The same was offered in evidence and marked as Exhibit "A."²⁸


All told, it has been established by proof beyond reasonable doubt that accused-appellant sold *shabu*. Section 5, Article II of R.A. No. 9165, states that the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Thus, the CA correctly imposed the penalty of life imprisonment and the fine of ₱500,000.00.

WHEREFORE, the Decision dated 19 February 2013 of the Court of Appeals in CA G.R. CR.-H.C. No. 05186, affirming with modification the conviction of accused-appellant Romel Sapitula y Paculan by the Regional Trial Court of Agoo, La Union, Branch 31, for violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 is hereby **AFFIRMED**.

SO ORDERED.

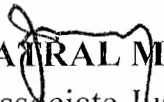

JOSE PORTUGAL PEREZ
Associate Justice


WE CONCUR:

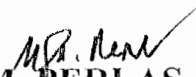

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

²⁷ TSN, 21 July 2011, pp. 25-26.

²⁸ Records, p. 48.



JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

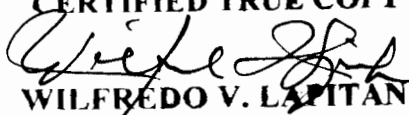
ATTESTATION

I attest that the conclusions in the above Resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division


MARIA LOURDES P. A. SERENO
Chief Justice

FEB 18 2016