



Republic of the Philippines  
**Supreme Court**  
 Manila

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*Welford S. Legarda*  
 CLERK  
 Third Division

SEP 22 2016

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 212171**

**Present:**

VELASCO, JR., J.,  
*Chairperson,*  
 PERALTA,  
 PEREZ,  
 REYES,\* and  
 LEONEN,\*\* JJ.

*-versus-*

**MERCURY DELA CRUZ alias**  
**“DEDAY,”**  
 Accused-Appellant.

Promulgated:

**September 7, 2016**

*Welford S. Legarda*

X-----X

**DECISION**

**PEREZ, J.:**

We resolve the appeal, filed by accused-appellant Mercury Dela Cruz alias “Deday,” from the 27 September 2013 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01103.

In a Decision<sup>2</sup> dated 27 November 2008, the Regional Trial Court (RTC), Branch 58, Cebu City, found the accused-appellant guilty of illegal sale of *shabu* under Sections 5, Article II of Republic Act (R.A.) No. 9165<sup>3</sup> and

\* On Wellness Leave.

\*\* Additional Member per Raffle dated 8 August 2016.

<sup>1</sup> *Rollo*, pp. 4-21; Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla concurring.

<sup>2</sup> Records, pp. 67-74; Docketed as Criminal Case No. CBU-80787.

<sup>3</sup> Otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

*8*

sentenced him to suffer the penalty life imprisonment and to pay a fine of ₱500,000.00.

The RTC gave full credence to the testimonies of Senior Police Officer (SPO) 2 Alejandro Batobalanos, Police Officer (PO) 1 Angsgar Babyboy A. Reales, and PO1 Leopoldo Bullido who conducted the buy-bust operation against the accused-appellant, and rejected the self-serving defenses of denial and alibi of accused-appellant and her live-in partner. The RTC noted that the categorical affirmation of accused-appellant and her live-in partner that the arresting officers did not demand anything from them in exchange for the accused-appellant's liberty created the presumption that the arresting officers were performing their official functions regularly.<sup>4</sup>

On intermediate appellate review, the CA affirmed *in toto* the RTC's ruling. The CA agreed with the RTC in giving weight to the testimonies of the prosecution witnesses, and held that the arresting officers complied with the proper procedure in the custody and disposition of the seized drugs.

### Our Ruling

We dismiss the appeal and affirm the accused-appellant's guilt.

We find no reason to reverse the RTC's findings, as affirmed by the CA. In the same manner as the lower courts, we give full credit to the positive, spontaneous and straightforward testimonies of the police officers pointing to accused-appellant as the seller and possessor of the confiscated *shabu*.

We have consistently held that in order to secure a conviction for illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.<sup>5</sup> Here, all the aforesaid elements necessary for accused-appellant's prosecution have been sufficiently

<sup>4</sup> Records, pp. 73-74.

<sup>5</sup> *People v. Midenilla*, 645 Phil. 587, 601 (2010) citing *People v. Guiara*, 616 Phil. 290, 302 (2009) further citing *People v. Gonzales*, 430 Phil. 504, 513 (2002).



complied with, indubitably establishing that she has indeed committed the crime. PO1 Reales testified in detail how he was introduced by the confidential informant to accused-appellant. The confidential informant, thereafter, manifested to the accused-appellant their intention to buy shabu worth ₱200.00. Upon giving the accused-appellant the 2 marked ₱100.00 bills, she, in return, handed to PO1 Reales a small plastic containing white crystalline substance. The plastic sachet later on tested positive for the presence of Methamphetamine Hydrochloride. The testimony given by PO1 Reales was corroborated by SPO1 Batobalonos and PO1 Bullido in all material details. It is therefore clear beyond any shadow of doubt that the buy-bust operation had been substantially completed and consummated. The fact that accused-appellant was able to evade the arrest immediately after the sale and that she was arrested only after, by virtue of a warrant of arrest, did not change the fact that the crime she committed earlier had been consummated.

We agree with the lower courts that in the absence of any intent or ill-motive on the part of the police officers to falsely impute commission of a crime against the accused-appellant, the presumption of regularity in the performance of official duty is entitled to great respect and deserves to prevail over the bare, uncorroborated denial and self-serving claim of the accused of frame-up.<sup>6</sup>


Also, we reject the appellant's contention that the police officers failed to comply with the provisions of Section 21, paragraph 1 of R.A. No. 9165,<sup>7</sup> which provides for the procedure in the custody and disposition of seized drugs.

After a careful perusal of the records, we agree with the CA that the prosecution had established the unbroken chain of custody over the seized drugs. This was established through the testimonies of the prosecution witnesses, to wit: *"At around 7:15 o'clock in the evening of November 10, 2006, PO3 Batobalonos, PO1 Reales, PO1 Bullido and their civilian asset proceeded to Sitio Cogon, A. Lopez St., Barangay Labangon. When the*

<sup>6</sup> *People v. Dumlao*, 584 Phil. 732, 740 (2008).

<sup>7</sup> 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.* — x x x

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



team went inside the interior portion of Sitio Cogon, PO1 Reales together with the civilian asset approached the house of Dela Cruz, while PO3 Batobalonos and PO1 Bullido were strategically hidden more or less ten (10) meters away. The civilian asset called Dela Cruz and told her that they will buy shabu worth P200.00. Thereafter, Dela Cruz handed PO1 Reales a small plastic containing white crystalline substance and in exchange he handed to the former the P200.00 bills. Upon getting hold of the money, PO3 Batobalonos and PO1 Bullido, who saw the consummation of the transaction rushed to the scene. When PO3 Batobalonos got hold of Dela Cruz, the latter shouted for help and resisted arrest. Dela Cruz was able to run and so the team chased her, however, her neighbor Arthur Tabasa Ortega ("Ortega") blocked their way. The team introduced themselves as policemen but Ortega did not listen, so PO3 Batobalonos fired a warning shot as the people likewise started to gather around them. Meanwhile, Dela Cruz was able to evade arrest. The team then arrested Ortega for obstruction of justice.

On their way to the police station aboard their patrol car, PO1 Reales handed to PO3 Batobalonos the small plastic containing white crystalline substance which he purchased from Dela Cruz. Thereafter, upon arrival at the police station, PO3 Batobalonos marked the seized item with "DDM 11/10/06."

Afterwards, a Request for Laboratory Examination of the seized item was prepared by PO3 Batobalonos. The Request and the seized item were delivered to the Regional Crime Laboratory Office-7, Camp Sotero Cabahug, Gorordo Avenue, Cebu City by PO1 Reales at around 1:10 0'clock in the morning of November 11, 2006.

Thereafter Forensic Chemist PCI Salinas issued Chemistry Report No. D-1771-2006,<sup>8</sup> with the finding that the specimen gave positive result for the presence of Methamphetamine hydrochloride.<sup>9</sup>

The confiscated dangerous drug which also constitutes the *corpus delicti* of the crime was validly considered by the courts in arriving at the decision despite the fact that the forensic chemist who examined it did not testify in court. The relevant portion of the RTC decision reads:

<sup>8</sup> Rollo, pp. 8-9. (Emphasis supplied)

<sup>9</sup> Records, p. 9; As evidenced by Chemistry Report No. D-1771-2006.



The presentation of the testimony of **Forensic chemist PSI MUTCHIT G. SALINAS** was dispensed with, the defense having **ADMITTED**: the existence of the Letter Request dated November 10, 2006 from the PNP Station 10; the existence of one (1) small plastic pack containing white crystalline substance which is the subject for examination, however **DENIED** as to the ownership of said evidence; the existence and due execution of the Chemistry Report No. D-1771-2006 executed by witness Mutchit G. Salinas; that the intended witness is and expert witness who examined the specimen found to contain the presence of Methylamphetamine hydrochloride locally known as shabu, a dangerous drug.<sup>10</sup>

Anent accused-appellant's contention that the drugs were marked not at the place where she was apprehended but at the police station and that there was no physical inventory made on the seized item nor was it photographed, we find the same untenable. The alleged non-compliance with Section 21 of R.A. No. 9165 was not fatal to the prosecution's case because the apprehending team properly preserved the integrity and evidentiary value of the seized drugs.<sup>11</sup>

Relevant to the instant case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

(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 the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

<sup>10</sup> Id. at 67.

<sup>11</sup> In *People v. Sanchez* (590 Phil. 214, 234 [2008]), we held that "non-compliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; [but these lapses] must be recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved."

The last part of the aforequoted issuance provided the exception to the strict compliance with the requirements of Section 21 of R.A. No. 9165. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, “substantial compliance with the legal requirements on the handling of the seized item” is sufficient.<sup>12</sup> This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.<sup>13</sup> What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.<sup>14</sup> In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 were not faithfully observed, the guilt of the accused will not be affected.<sup>15</sup>

In the instant case, the failure to strictly comply with the requirements of Sec. 21 of R.A. No. 9165 was satisfactorily explained by the apprehending officers. They testified that a commotion erupted when accused-appellant resisted and shouted for help while she was being arrested. The commotion eventually gave accused-appellant the opportunity to run and elude arrest. The arresting officers further alleged that the people who gathered around them were already aggressive prompting them to decide to immediately proceed to the police station for their safety.<sup>16</sup> In fact, the arresting officers even had to fire a warning shot and arrest Arthur Tabasa Ortega, the person who intervened in the arrest of accused-appellant, in order for them to pacify the people around them.

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellant bears the burden of showing that

<sup>12</sup> *People v. Cortez*, 611 Phil. 360, 381 (2009).

<sup>13</sup> *People v. Almodiel*, 694 Phil. 449, 467 (2012); *People v. Campos*, 643 Phil. 668, 673 (2008) citing *People v. Concepcion*, 578 Phil. 957, 971 (2008).

<sup>14</sup> *People v. Magundayao*, 683 Phil. 295, 321 (2012); *People v. Le*, 636 Phil. 586, 598 (2010) citing *People v. De Leon*, 624 Phil. 786, 801 (2010) further citing *People v. Naquita*, 582 Phil. 422, 442 (2008); *People v. Concepcion*, 578 Phil. 957, 971 (2008).

<sup>15</sup> *People v. Manlangit*, 654 Phil. 427, 440-441 (2011) citing *People v. Rosialda*, 643 Phil. 712, 726 (2010) further citing *People v. Rivera*, 590 Phil. 894, 912-913 (2008).

<sup>16</sup> TSN, 16 September 2008, p. 6; TSN, 21 October 2008, p. 6.

the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.<sup>17</sup> Accused-appellant in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.<sup>18</sup> In fact, accused-appellant did not even question the credibility of the prosecution witnesses. She simply anchored her defense on denial and alibi.


We affirm the penalties imposed as they are well within the ranges provided by law. Section 5, Article II of R.A. No. 9165 prescribes a penalty of life imprisonment to death<sup>19</sup> and a fine ranging from ₱500,000.00 to ₱10,000,000.00 for the sale of any dangerous drug, regardless of the quantity or purity involved.

**WHEREFORE**, the decision dated 27 September 2013 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01103 is hereby **AFFIRMED**.

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice


**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

<sup>17</sup> *People v. Miranda*, 560 Phil. 795, 810 (2007).

<sup>18</sup> See *People v. Macabalang*, 538 Phil. 136 155 (2006).

<sup>19</sup> The imposition of the death penalty has been proscribed with the effectivity of R.A. No. 9346, otherwise known as "An Act Prohibiting the imposition of Death Penalty in the Philippines."


  
**DIOSDADO M. PERALTA**  
 Associate Justice

(On Wellness Leave)  
**BIENVENIDO L. REYES**  
 Associate Justice

  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

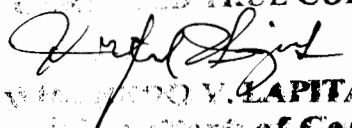
**ATTESTATION**


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

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**VICTORIA Y. LAPITAN**  
 Clerk of Court  
 Third Division  
**SEP 22 2016**

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice