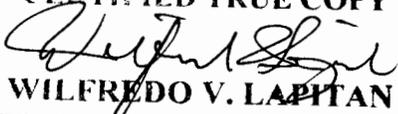




Republic of the Philippines  
 Supreme Court  
 Manila

CERTIFIED TRUE COPY  
  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division  
 JUL 19 2016

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Appellee,

**G.R. No. 220449**

**Present:**

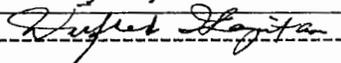
VELASCO, JR., J., *Chairperson,*  
 PERALTA,  
 BERSAMIN,\*  
 PEREZ, and  
 REYES, JJ.

- versus -

**Promulgated:**

**RUSGIE GARRUCHO Y**  
**SERRANO,**  
 Appellant.

July 4, 2016



X-----X

**DECISION**

**PERALTA, J.:**

This is an appeal from the Decision<sup>1</sup> dated March 24, 2015 of the Court of Appeals in CA-G.R. CR. HC. No. 01579, which affirmed with modification the Decision<sup>2</sup> of the Regional Trial Court (RTC) of Silay City, Branch 69, Sixth Judicial Region, finding appellant Rusgie Garrucho y Serrano guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, in Criminal Case Nos. 8255-69 and 8256-69.

In two (2) separate Informations filed before the RTC of Silay City, appellant was charged with violation of Section 5 of R.A. No. 9165, or

\* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 19, 2015.

<sup>1</sup> Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez, concurring.

<sup>2</sup> Penned by Felipe G. Banzon, Presiding Judge of the RTC of Silay City, Branch 69, 6<sup>th</sup> Judicial Region.



*Illegal Sale of Dangerous Drugs*, and Section 11 (3) thereof, or *Illegal Possession of Dangerous Drugs*, respectively, to wit:

Criminal Case No. 8255-69

On or about May 29, 2011, at around 8:30 o'clock in the evening, in Sitio Matagoy, Barangay Rizal, Silay City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there knowingly, unlawfully and criminally sell, dispense, deliver, transport, distribute or act as broker in the said transaction Zero Point Zero Three (0.03) grams of Methamphetamine Hydrochloride or shabu, a dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 8256-69

On or about May 29, 2011, at around 8:30 o'clock in the evening, in Sitio Matagoy, Barangay Rizal, Silay City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law [to] possess or use any dangerous drug did then and there, knowingly, unlawfully and criminally have in her possession and control Zero Point Zero Three (0.03) grams of Methamphetamine Hydrochloride or shabu, a dangerous drug.

CONTRARY TO LAW.

During her arraignment on July 13, 2011, appellant, assisted by counsel, pleaded not guilty to both charges. During the joint trial of the cases, the prosecution presented as witnesses the following police officers: PO3 Rayjay Rebadomia, PO2 Ian Libo-on, PO2 Christopher Panes, Police Chief Inspector (*P/C Insp.*) Paul Jerome Puentespina and PO2 Hazel Dorado. On the other hand, the defense presented the testimonies of appellant and her neighbors, Remely Buenavista and Rebecca Alterado.

The prosecution recounted that sometime in the evening of May 29, 2011, members of the Philippine National Police (*PNP*), Silay City, Negros Occidental, received reports that appellant was engaged in illegal sale of drugs within the vicinity of Sitio Matagoy, Barangay Rizal of the same city. PO3 Rebadomia and PO2 Libo-on, members of the Intelligence Division of the Silay City PNP, were on duty when they were advised that they will conduct a buy-bust operation against appellant. During the briefing, a Five Hundred Peso (₱500.00) bill was marked, recorded in the police blotter and given to the informant who, in turn, was designated as *poseur-buyer* and was told to raise his right hand over his head to signify a completed purchase.



At around 8:30 o'clock in the evening, the buy-bust team went to the target area in Sitio Matagoy. Wearing civilian clothes, the police officers positioned themselves at a corner, about five (5) meters from where the *poseur-buyer* stood. A few minutes later, a female, later identified as appellant, approached the *poseur-buyer*. Since the target area was well-lighted, the police officers saw the *poseur-buyer* hand the marked money to appellant who, in turn, gave "something" to the *poseur-buyer*. When the *poseur buyer* made a signal by raising his right hand, the police officers rushed towards appellant, and arrested her while introducing themselves as police officers and reading her constitutional rights. The *poseur-buyer* then handed to the police the suspected *shabu* that appellant sold him. Since there were several persons in the area and appellant was shouting and struggling to free herself, the police decided to bring her and the item bought from her to the police station.

With the assistance of PO2 Dorado of the Women's and Children's Desk of the police station, appellant was frisked and found in possession of the ₱500.00 marked money, an aluminum foil, Twenty-Two Pesos (₱22.00) and another sachet of suspected *shabu*. In the presence of appellant, Sangguniang Panglunsod Member Ireneo Celis of Silay City, Kagawad Raymund Amit, PO3 Rebadomia, PO2 Libo and PO2 Dorado, the items were photographed and inventoried. Thereafter, Officer-in-Charge Rosauro Francisco prepared the Request of Laboratory Examination, the Request for Drug Test and the Extract Police Report. PO2 Libo-on turned over the seized items to the provincial crime laboratory for examination. The two plastic sachets were received by PO2 Ariel Magbanua, as shown in the Chain of Custody Form. The contents of the plastic sachets yielded positive for *shabu* per Chemistry Report No. D-094-2011. Also, the urine sample taken from appellant tested positive for *shabu*.

For the defense, appellant denied that she was caught in a buy-bust operation in the evening of May 29, 2011. Appellant claimed that she just went out of her house to buy a diaper from a nearby store. She was surprised when unknown persons suddenly held her arms, dragged her towards a waiting motor vehicle, and brought her to the headquarters of the PNP Silay City. She claimed to have been searched at the police station by a policewoman (later identified as PO2 Dorado) who found no illegal object from her. She also denied having in her possession a sachet of *shabu* and the marked ₱500.00 bill, let alone having given to the unnamed *poseur-buyer* a sachet of *shabu* during a buy-bust operation. Despite appellant's protest, pictures were taken of her while being made to point at the marked bill and the sachets of *shabu* that were already placed on a table. Unable to do anything out of fear, she also claimed to have signed the certificate of inventory because she was ordered to do so, *sans* the presence of a barangay official or a policewoman.



Meanwhile, Buenavista, appellant's neighbor, testified that when she went outside her house in the evening of May 29, 2011, she saw appellant being dragged by three (3) persons, one of them was PO2 Libo-on, without being subjected to a body search. Alterado, appellant's friend, testified that she was then sitting on a chair while waiting for the store to open when she noticed that appellant was being dragged by 3 persons out of the store towards the road. Alterado shouted for help but when the people responded, appellant was already dragged to the road *sans* a body search on her person, and brought to the city hall.

In a Decision dated September 19, 2012, the RTC rendered a judgment of conviction, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED:

In Criminal Case No. 8255-69, this Court finds accused, Rusic Garrucho y Serrano GUILTY beyond reasonable doubt of Violation of Section 5 of Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", as her guilt was proven by the prosecution beyond any reasonable doubt.

ACCORDINGLY, this Court sentences accused, Rusic Garrucho y Serrano, to suffer the penalty of life imprisonment, the same to be served by her at the Correctional Institution for Women, Mandaluyong City, Metro Manila.

Accused named is, further, ordered by this Court to pay a fine of P500,000.00, Philippine Currency.

In Criminal Case No. 8526-69, this Court finds accused, Rusic Garrucho y Serrano, GUILTY beyond reasonable doubt of Violation of Section 11(3) of Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", as her guilt was, likewise, proven by the prosecution beyond any reasonable doubt.

ACCORDINGLY, and in application of the pertinent provision of the Indeterminate Sentence Law, this Court sentences accused, Rusic Garrucho y Serrano, to suffer the penalty of imprisonment for a period of from FOURTEEN (14) YEARS and ONE (1) DAY to SEVENTEEN (17) YEARS, the same to be served by her at the Correctional Institution for Women, Mandaluyong City, Metro Manila.

Accused named is, further, ordered by this Court to pay a fine of P500,000.00, Philippine Currency.

The two (2) sachets of small, heat-sealed transparent plastic sachets containing methamphetamine hydrochloride (shabu), with an aggregate weight of 0.06 grams, are ordered remitted to the Negros Occidental Provincial Police Office (NOPPO), Camp Alfredo Montelibano, Sr., Bacolod City, for proper disposition.



In the service of the sentence imposed on her by this Court, accused named shall be given full credit for the entire period of her detention pending trial.

NO COSTS.

SO ORDERED.<sup>3</sup>

Aggrieved by the RTC Decision, appellant appealed to the Court of Appeals (CA). In a Decision dated March 24, 2015, the CA affirmed with modification the decision of the trial court, thus:

**WHEREFORE**, the appeal is **DENIED**. The Decision dated September 19, 2012, of the Regional Trial Court, Sixth Judicial Region, Branch 69, Silay City, in Criminal Case Nos. 8255-69 and 8256-69 is **AFFIRMED WITH MODIFICATION**. For violation of Section 11, Article II of RA No. 9165, We impose the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and one (1) day, as maximum, and affirm the fine of P300,000.00

Costs against accused-appellant.

**SO ORDERED.**<sup>4</sup>

Dissatisfied with the CA Decision, appellant filed a Notice of Appeal. In the Brief for Accused-Appellant, the Public Attorney's Office asserted that the RTC gravely erred, as follows:

I

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF ILLEGAL SALE OF PROHIBITED DRUG DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THAT THE TRANSACTION OR SALE OF SHABU TOOK PLACE;

II

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF ILLEGAL POSSESSION OF SHABU DESPITE THE IRRECONCILABLE INCONSISTENCIES IN THE TESTIMONY OF PROSECUTION WITNESSES;

III

x x x IN FINDING ACCUSED-APPELLANT GUILTY DESPITE THE FAILURE OF THE PROSECUTION TO PROVE, PRESENT, IDENTIFY AND OFFER IN EVIDENCE THE *CORPUS DELICTI* OF THE CRIME

<sup>3</sup> Records, pp. 177-178.

<sup>4</sup> CA rollo, p. 122.

## IV

x x x IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED ITEMS.<sup>5</sup>

Appellee, through the Office of the Solicitor General, argued that the trial court did not err in convicting appellant of violation of Sections 5 and 11(3), Article II of RA No. 9165, because the prosecution successfully proved the presence of all the elements of said crimes, and that the evidentiary value of the items seized from appellant were duly safeguarded.<sup>6</sup>

The appeal is impressed with merit.

For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (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.<sup>7</sup> The delivery of the illicit drug to the *poseur-buyer* and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.<sup>8</sup>

In prosecutions for illegal possession of dangerous drugs, on the other hand, it must be shown that (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.<sup>9</sup> The existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction.<sup>10</sup>

In *People of the Philippines vs. Enrico Mirondo y Izon*,<sup>11</sup> the Court stressed that “[i]n the prosecution of criminal cases involving drugs, it is firmly entrenched in our jurisprudence that the narcotic substance itself constitutes the *corpus delicti*, the body or substance of the crime, and the fact of its existence is a condition *sine qua non* to sustain a judgment of conviction. It is essential that the prosecution must prove with certitude that

<sup>5</sup> *Id.* at 14.

<sup>6</sup> *Id.* at 69.

<sup>7</sup> *People vs. Edwin Dalawis y Hidalgo*, G.R. No. 197925, November 9, 2015.

<sup>8</sup> *Id.*, citing *People of the Philippines vs. Eric Rosauo y Bongcawil*, G.R. No. 209588, February 18, 2015 and *People vs. Torres*, G.R. No. 191730, June 5, 2013, 697 SCRA 452, 462-463.

<sup>9</sup> *Miclat, Jr. vs. People*, 672 Phil. 191, 209 (2011).

<sup>10</sup> *People vs. Martinez*, 652 Phil 347, 369 (2010).

<sup>11</sup> G.R. No. 210841, October 14, 2015.

the narcotic substance confiscated from the suspect is the same drug offered in evidence before the court. As such, the presentation in court of the *corpus delicti* establishes the fact that a crime has actually been committed. Failure to introduce the subject narcotic substance as an exhibit during trial is, therefore, fatal to the prosecution's cause."

In this case, the prosecution failed to establish the indispensable element of *corpus delicti* of the drug cases against appellant because it did not proffer, identify and submit in court the two (2) *shabu* sachets allegedly confiscated from her.

Nowhere in the testimonies of PO2 Libo-on and PO3 Rebadomia, the Seizing Officers, and P/C Insp. Puentespina, the Forensic Chemical Officer, can it be gathered that the prosecution presented and identified in court the 2 sachets of *shabu* seized from appellant and marked as "RSG-1" and "RSG-2."

Direct Examination of PO2 Libo-on

x x x x

PROS[ESCUTOR] [MA. LISA LORRAINE] ATOTUBO

Q: On May 29, 2011, were you on duty a[t] around 8:00 in the afternoon?

A: Yes ma'am.

Q: What happened?

A: At 8:30 of May 29, we recorded the ₱500.00 bill at the Police Blotter Entry to be used as marked money and we went to Matagoy St., Rizal, Silay City, together with our confidential asset that will act as poseur buyer.

x x x x

Q: After you have the marked money recorded in the police blotter what did you do?

A: We went to Sitio Matagoy together with the poseur buyer. At five (5) meters away we positioned ourselves and saw the suspect that [s]he did not identify us as police officers.

Q: What happened when you were about five (5) meters away from that suspect?

A: We were positioning ourselves that the poseur buyer's position was advantageous with us.

Q: What happened?

A: The poseur buyer handed the marked money. After the transaction [was] completed he raised h[er] hand and touched h[er] cap as a signal that the transaction was completed.

Q: What did you do when the poseur buyer likewise, raised his hand as a signal that the transaction was completed?

A: We immediately rushed to the suspect and arrested h[er].

Q: How did you effect the arrest?

A: We informed h[er] that we are police officers and we arrested h[er] for Violation of Anti-Illegal Drugs. We recovered the suspected shabu which we marked as "RSG-1."

Q: When you effect[ed] the arrest of the suspect, the police buyer was there also?

A: Yes ma'am.

Q: After you recovered the sachet of shabu [from] the poseur buyer what happened?

A: He handed to us the sachet of shabu and we brought the suspect to the police station.

Q: Were you about to recover from the suspect?

A: At first we were able to get the sachet of shabu after that we brought h[er] to the police station as [s]he was resisting the effect of our arrest.

Q: You said that the poseur buyer g[a]ve one (1) sachet of shabu?

A: Yes ma'am.

Q: And you recover[ed] one (1) sachet from that station?

A: Yes ma'am.

Q: All in all there were two (2) sachets that you found in the possession of the accused?

A: Yes the one given to me by the poseur buyer which I marked as "RSG-1" and "RSG-2" which was found from h[er] possession at the police station.

x x x x

Q: Aside from the two (2) sachets what else?

A: The aluminum [foil] which I marked as "RSG-3" and the P22.00 cash.

Q: That is the only amount you recovered?

A: Yes ma'am.

Q: What about the marked money?

A: Yes ma'am.

x x x x

Q: I am showing to you the money -- one of them taken from the possession of the accused.



INTERPRETER:

Let the record show that witness is presented an aluminum foil which was marked as RSG-I which was marked as Exhibit "I"

Q: How about this P500.00 bill?

A: It is in h[er] possession.

**Q: How about these sachets of two (2) suspected shabu, where was these taken?**

**A: These we marked "RSG-1" and it was previously marked as "Exhibit H-3" and "H-3-1."**

x x x x

**Q: RSG-1 was recovered from the Buy Bust Operation and "RSG-2 at the station?**

**A: Yes ma'am.**

Q: After you brought the accused at the police station and recovered these items what happened?

A: We brought these items to the Crime Laboratory for direct testing and drug examination.

x x x x

Q: You said that you brought the accused to the Noppo, were there documents you prepared?

A: I prepared for drug testing and drug examination.

Q: If this document be presented to you would you be able to identify it?

A: Yes ma'am.

INTERPRETER:

Let the records show witness is being presented a document denominated Memoranda dated May 13, 2011.

Q: Is this the one you are referring to?

A: Yes ma'am.

PROS. ATOTUBO:

May I request that this be marked as Exhibit "B."

Q: Aside from this request for direct testing what other document that you prepared?

A: Request for Laboratory Examination.

PROS. ATOTUBO:

Your Honor we would like to mark the Request for Laboratory Examination be marked as Exhibit "C".

Q: What did you do with the items allegedly taken from the accused?

A: We recorded the evidence for inventory.



Q: Do you prepare any document?

A: Yes ma'am.

Q: If that inventory be ... shown to you would you be able to identify?

A: Yes ma'am.

Q: I am showing to you a Certificate of Inventory, is this the one that you prepared?

A: Yes ma'am.

Q: There is a signature on top of the name of PO3 Libo-on, whose signature is this?

A: That is mine.

PROS. ATOTUBO:

Your Honor we would like to mark that the Certificate of Inventory be marked as Exhibit "E" and the signature of Ian Libo-on as Exhibit "E-1".

COURT:

Make the markings as prayed.

PROS. ATOTUBO:

x x x x

Q: How about the accused, was [s]he able to sign?

A: The accused acknowledged h[er] signature.

x x x x

Q: When she signed the Certificate of Inventory signed by Rusic Garr[u]cho which was marked as Exhibit "E-2", aside from the Certificate of Inventory, what else did you prepare?

A: I prepare[d] for the Custody Form.

Q: What is the purpose?

A: Compliance with Section 21, Republic Act 9165, so that you will know that the evidence will be presented was forwarded to the Crime Laboratory.

x x x x

PROS. ATOTUBO:

We request that the Chain of Custody Form be marked as Exhibit "F" and the signature of Ian Libo-on be marked as "F-1" and the person who received the receipt of the Custody Form – PO2 Ariel Magbanua be marked as "F-2"

COURT:

Make the markings as prayed.

Q: After you prepared on this document what else happened?

A: We filed the complaint to the Office of the Prosecutors.



- Q: Then what happened next?  
A: We presented the shabu together with the subject person for examination at the Crime Laboratory.
- Q: Were you able to get the results?  
A: The subject person is positive for methamphetamine hydrochloride otherwise known as shabu.
- Q: Can you recall if you have executed an Affidavit?  
A: Yes ma'am.

x x x x

- Q: I am showing to you the Joint Affidavit of PO2 Rebadomia and Ian Libo-on, can you recall if this is the Affidavit that you executed?  
A: Yes that is my Affidavit.
- Q: There is a signature on top of the name PO2 Ian Libo-on, whose signature is this?  
A: That was the signature of PO2 Ian Libo-on

PROS. ATOTUBO:  
You Honor we would like to request that the signature of PO2 Ian Libo-on be marked as Exhibit "A-2".

- Q: Do you still affirm and confirm the truthfulness of your Affidavit.  
A: Yes ma'am.

PROS. ATOTUBO:  
That would be all for the witness.<sup>12</sup>

### Direct Examination of PO3 Rebadomia

[PROS. ATOTUBO:]

- Q: On May 29, 2011 at around 8:30 in the evening, what happened?  
A: At around 8:30 of May 29, 2011, we caused the blotter of P500.00 peso bill to be used in the buy-bust operation.

x x x x

- Q: You recorded that you will use the P500.00 as buy-bust money?  
A: Yes ma'am.
- Q: Can you recall if you have secured a copy of that blotter?  
A: Yes ma'am.

<sup>12</sup> TSN, November 14, 2011, pp. 4-11. (Emphasis added.)



INTERPRETER:

Let the records show that witness is showing the machine copy of the extract of the police blotter.

Q: If I show the said blotter, can you authenticate if this is the one?

INTERPRETER:

Let the records show that witness is shown the original copy of said document.

A: Yes ma'am.

PROS. ATOTUBO:

I would like to mark this as Exhibit "B", the Entry No. 01789 as "B-1"

COURT:

Mark it.

PROS. ATOTUBO:

Q: Mr. Witness, what was your purpose in having that serial number of the P500.00 bill recorded in the blotter?

A: Because we will use that as marked money for our buy-bust operation.

Q: You said it was P500.00. I am showing to you this P500.00 bill. What can you say about this P500.00 bill?

INTERPRETER:

Let the records show that witness is shown a P500.00 bill with Serial No. QS5226583.

A: This is the marked money that we used.

Q: How do you know that this is the same P500.00 bill?

A: Aside from the blotter, we made marking in the last digit of the serial number.

Q: And what number was that?

A: Last digit No. 3.

PROS. ATOTUBO:

Your Honor, may I request that this P500.00 bill be marked as Exhibit "J"

COURT:

Mark it.



PROS. ATOTUBO:

Q: Mr. Witness, after you have caused the blotter of that serial number of the P500.00 will use for buy-bust operation, what then happened?

A: We gave the P500.00 bill to our poseur-buyer and we proceeded to Sitio Matagoy.

Q: Were you together with the poseur-buyer when you proceeded to Sitio Matagoy?

A: Yes, but he went ahead of us. And then we followed, PO2 Ian Libo-on and me.

x x x x

Q: When you reached Matagoy where did you proceed?

A: From where the poseur-buyer was, we were five minutes (sic) away from him

Q: From where you are sitting, can you compare the position of the poseur-buyer?

A: From where I am sitting, to the door of the courtroom.

Q: And was there anyone with the poseur-buyer when you saw him or her?

A: About 9:00, a female person approached him.

Q: Since you said it was 9:00 in the evening, were you able to see the poseur-buyer and the person who approached the poseur-buyer?

A: Yes, because the place was well-lighted.

Q: How about you, were you visible if you were five meters from the poseur-buyer?

A: They could not see us because only us can see them.

Q: Why?

A: Because where we were located, we were in a corner and we could see them if we peeked at them.

Q: So, you said there was a woman who approached your poseur-buyer. What happened next?

A: After that, the poseur-buyer handed something to the woman.

Q: What did the poseur-buyer do next?

A: After the woman handed something to him, he raised his right hand over this head.

Q: And what was the meaning of that raising of his right hand?

A: It means that the transaction was already completed.

Q: So, what did you do?

A: Immediately, we ran towards the woman and identified ourselves as police officers.

- Q: And what else?  
A: We arrested her after we identified ourselves as police officers and we apprised her of her constitutional rights.
- Q: And what was her reaction when she say you?  
A: She was struggling to free herself while we were holding on to her.
- Q: If that person is in court, can you identify her?  
A: Yes, Ma'am.
- Q: Please look out and identify her.

INTERPRETER:

Let the records show that witness pointed to a person who gave her name as Rusgie Garrucho.

- Q: After that, what happened?  
A: Because there were many persons in the area, and the woman was shouting and struggling, we brought her to the police station, and we made an inventory at the police station.
- Q: What else happened?  
A: We asked the WCPD to inspect her.
- Q: Who was the police woman who inspected her?  
A: PO2 Hazel Dorado.
- Q: How about the items, were there items which were found in her possession?  
A: Yes, we recovered aluminum foil the P500.00 marked money and one sachet of shabu from her, as well as various amounts totaling P22.00.
- Q: I am showing to you this alleged aluminum foil, what can you say about this?

INTERPRETER:

Let the records show that witness is being presented an aluminum foil marked as RSGF.

- A: This was the aluminum foil which we recovered from her.
- Q: From where was this taken from her possession?  
A: From her pocket.

PROS. ATOTUBO:

May we request that this be marked as Exhibit "I".

COURT:

Mark it.

PROS. ATOTUBO:

x x x x



Q: How many sachets of alleged shabu were taken from the accused?  
A: Aside from the one we bought, we found in her possession another sachet or a total of two sachets.

Q: This one sachet was bought from the accused. The sachet bought from the accused, what happened to it?  
A: The other sachet of shabu which was bought from the accused was given by the poseur-buyer to us.

Q: When was this given by the poseur-buyer?  
A: Immediately right in the area, he gave it to us.

Q: There at Matagoy?  
A: Yes, Ma'am.

Q: So, after you have frisked the accused and the item was found in her possession, what else did you do?  
A: We have it laboratory-tested.

x x x x

Q: What were the documents which you prepared in order to have the substance which were taken from the accused undergo laboratory test?  
A: We prepared request for laboratory examination and request for drug test.

x x x x

Q: I am showing to you this document for drug test. What can you say about this document?

INTERPRETER:

Let the records show that witness is being shown a document dated May 30, 2011, signed by P/Supt. Rosauro B. Francisco, Jr.

A: This is the original copy of the document which we prepared.

PROS. ATOTUBO:

Your Honor, may I request that this request for drug test dated May 30, 2011 be marked as Exhibit "J" for the prosecution.

COURT:

Make the marking.

PROS. ATOTUBO:

Q: You said there was a request for laboratory examination which you prepared. I am showing to you this request for laboratory examination. What can you say about this document?

A: This is the original copy of the document which we prepared.

x x x x



PROS. ATOTUBO:

Request that this document be marked as Exhibit "C" for the prosecution.

COURT:

Make the marking.

PROS. ATOTUBO:

Q: Aside from the request for drug test and request for laboratory examination, what other documents were you able to prepare?

A: We prepared the certificate of inventory.

x x x x

Q: I am showing to you a certificate of inventory, one signatory of which is Rayjay Rebadomia. Is this the certificate of inventory which you prepared?

A: Yes, Ma'am.

Q: Here, the items which were seized from the accused as stated in your certificate of inventory, Item No. 1, two transparent plastic sachets of suspected shabu marked as RSG-1; Item No. 2, one aluminum foil with marking RSG-1 (sic); Item No. 3, P500.00 bill marked money; Item No. 4, cash money marked as RSG-1 (sic).

Mr. Witness, you said that there were two plastic sachets of shabu marked as RSG-1 and RSG-2 which were the subject of the buy-bust operation.

A: The subject of the buy-bust operation was RSG-1 while the recovered sachet was marked RSG-2.

Q: Is this your signature on top of the name RAYJAY REBADOMIA?

A: Yes, Ma'am.

PROS. ATOTUBO:

We request that this be marked as Exhibit "B" and the name and signature of the witness be marked as Exhibit "B-1"

COURT:

Make the markings.

PROS. ATOTUBO:

Q: Aside from the certificate of inventory, were there other documents which you prepared?

A: We also prepared chain of custody form.

Q: What is this chain of custody form about?

A: This document would show where we turned over the recovered items.



Q: Where did you turn over the recovered suspected shabu?  
A: It was turned over by my companion, PO2 Ian Libo-on to the Provincial Crime Laboratory at Negros Occidental Provincial Office.

PROS. ATOTUBO:  
May I request that this Chain of Custody form be marked as Exhibit "F"

COURT:  
Make the markings.

PROS. ATOTUBO:  
Q: Were you able to get the result of your laboratory examination and drug testing?  
A: Yes, we have.

Q: What was the result for the request for drug test of the accused?  
A: She was positive as user of shabu.

Q: How about the request for laboratory examination, what was the result?  
A: It was found out positive.

Q: Where was the request for drug test, do you have a copy of that?

INTERPRETER:  
Let the records show that witness is presenting to the prosecutor the said document dated May 30, 2011.

Q: We have here the initial laboratory report dated May 30, 2011. What can you say about this?  
A: This is the original copy of the request.

x x x x

PROS. ATOTUBO  
Your Honor, may I request that this laboratory result be marked as Exhibit "G".

COURT:  
Make the marking.

PROS. ATOTUBO:

x x x x

Q: I am showing to you this Chemistry Result No. D-094-2011. This is the original copy. Can you read the findings?  
A: "Qualitative examination conducted on the above-stated specimen show positive result of methamphetamine hydrochloride, a dangerous drug."

x x x x



Q: Mr. Witness, were you able to execute an affidavit regarding this case?

A: Yes, Ma'am.

x x x x

Q: I am showing to you this Affidavit of PO3 Rayjay Rebadomia and PO2 Ian Libo-on. What can you say about this?

A: Yes, this is the original copy of our joint affidavit.

PROS. ATOTUBO:

May I request that this Join Affidavit be marked as Exhibit "B"?

COURT:

Mark it.

x x x x

PROS. ATOTUBO:

Q: By the way, Mr. Witness, you said you entered into police blotter the serial number of the money. After you were able to apprehend the accused, were you able to enter the fact of the apprehension in the police blotter?

A: Yes, it was in the blotter report.

Q: Can you show it to me?

INTERPRETER:

Let the records show that witness is presenting to the Prosecutor a copy of the Extract Police Report dated May 30, 2011, specifically Entry No. 01793 dated May 29, 2011.

PROS. ATOTUBO:

Your Honor, may I request that the Entry No. 01793 be marked as Exhibit "E-2."

COURT:

Make the marking.

PROS. ATOTUBO:

Q: Mr. Witness, do you still affirm and confirm your statement in your Affidavit marked as Exhibit "A"?

A: Yes, Ma'am.

PROS. ATOTUBO:

That is all for this witness.<sup>13</sup>

Direct Examination of P/C Insp. Puentespina

<sup>13</sup> TSN, August 22, 2011, pp. 4-16.

PROS. ATOTUBO:

Q: You are a Forensic Chemical Officer of the PNP Crime Lab?

A: Yes ma'am.

Q: On May 30, 2011, were you on duty?

A: Yes ma'am

Q: Can you recall if there was a request for drug test on certain Rusgie Garr[u]cho on said date?

A: Yes ma'am.

x x x x

Q: Who was the person who requested a drug test for laboratory examination?

A: P/Supt. Rosauro Fran[is]co, the Officer-in-Charge of Silay City Philippine National Police.

Q: I have here a Request for Drug Test of the Silay City Philippine National Police, can you identify if this is the same request received by your office?

A: Yes ma'am, I have here the rubber stamped of the PNP Crime Laboratory.

Q: Is this the evidence you received from said letter?

A: Yes ma'am.

Q: Who was the person who received the request?

A: PO2 Magbanua.

PROS. ATOTUBO.

May I request the Receipt for Drug Test be marked as Exhibit "B-1".

Q: When you received this Request for Drug Test what happened next?

A: Upon receiving the Letter Request PO2 Magbanua properly [p]reserved the urine specimen of Rusgie Garr[u]cho until I arrived at the office to conduct my laboratory examination.

Q: When did you conduct the drug test?

A: I conducted my drug test after lunch in the afternoon.

Q: So the Request for Drug Test which was rubber stamped by your office was received when?

A: In the morning at about 10:32 of May 30, 2011.

x x x x

Q: What is the result of the urine sample of Rusgie Garr[u]cho?

A: After conducting the preliminary test we used of the test kit, I proceeded to conduct the confirmatory test for methamphetamine hydrochloride.



Q: You have the result of the drug test?

INTERPRETER:

Let the records show witness is showing to the counsel a document denominated as Chemistry Report No. DT-065-2011 dated May 30, 2011 issued by Chief Insp. Jerome Puentespina.

Q: Is this the final laboratory test?

A: Yes ma'am.

Q: Did you have initial laboratory report?

A: Yes ma'am.

Q: Why do you have two (2) laboratory report?

A: If we could not release the test because we have to undergo the confirmatory test which will take (sic) awhile for the drug specimen we make initial report and immediately release it [but] we have to confirm the identity of the person if indeed the presence of methamphetamine is indeed in the urine sample of the suspect.

PROS. ATOTUBO:

Your Honor we would like to request the Chemistry Report No. DT-065-2011 be marked as our Exhibit "G".

COURT:

Make the marking as praye[d].

PROS. ATOTUBO:

x x x x

Q: Can you read the Findings?

A: "Qualitative examination conducted on the urine sample taken from the above-named living person gave POSITIVE result for Methamphetamine Hydrochloride, a dangerous drug. (Screening Test).

PROS. ATOTUBO:

We request that the conclusion be marked as Exhibit "G-3".

Q: Aside from the Request for Drug Testing, were there other request from Silay City, Philippine National Police?

A: Yes the Request for Laboratory Examination on two (2) heat sealed transparent plastic sachet[s] marked as "RSG-1" and "RSG-2".

Q: You have that Request?

INTERPRETER:

Let the records show witness is showing to this Hon. Court a document denominated as Memorandum Request for Laboratory Examination dated May 30, 2011.

Q: Is this the one you are referring to?

A: Yes ma'am.



PROS ATOTUBO:

We have already marked this as Exhibit "C".

x x x x

**Q: What are the specimens received by your office?**

**A: The two (2) heat sealed transparent plastic sachets.**

**Q: Were you able to conduct your examination on these two (2) specimens?**

**A: Yes sir.**

**Q: What kind of Test?**

**A: The qualitative examinations – physical, chemical and confirmatory tests.**

**Q: How did you conduct the qualitative examinations?**

**A: The weighing of the samples.**

**Q: How much is the weight of two heat sealed transparent plastic sachets?**

**A: It contains 0.01 gram and the other one contains 0.02 grams of white crystalline substance marked as "RSG-1" and "RSG-2" with a total weight of 0.03 grams.**

**Q: After weighing of the sample what test did you take?**

**A: We proceeded to the Chemical Test – with the use of Simmons re-agents added to the representative sample produced color blue which indicates the presence of methamphetamine hydrochloride.**

**Q: So both specimens change to blue color?**

**A: Yes ma'am.**

**Q: After conducting the Simmons' Test, what happened next?**

**A: I conducted the confirmatory test to confirm the identity of the specimen of which thin later chromatography test was applied.**

x x x x

**Q: Your confirmatory [test] gave positive results on both specimens?**

**A: Yes ma'am.**

**Q: Do you have a Chemistry Report?**

**A: Yes ma'am.**

**INTERPRETER:**

Let the records show witness is presented a document denominated as Chemistry Report No. D-094-2011 dated May 30, 2011.



**PROS. ATOTUBO:**

**Q:** In this Chemistry Report, what were the specimens submitted?

**A:** The two (2) heat sealed transparent plastic sachets containing 0.01 gram and 0.02 grams of white crystalline substance with markings "RSG-1" and "RSG-2".

**Q:** What were your findings?

**A:** Qualitative examination conducted on the above stated specimens gave positive result to the tests for Methamphetamine Hydrochloride (shabu) a dangerous drug.

**Q:** What is your conclusion?

**A:** Specimens A and B contain Methamphetamine Hydrochloride, a dangerous drug.

**PROS. ATOTUBO:**

Your Honor may I request that the Chemistry Report No. D-094-2011 be marked as Exhibit "H" and the Findings as "H-1" and the Conclusion as "H-2"; the 2 specimens be marked as "H-3".

**Q:** There is here the signature at the top of the printed name of Engr. Paul Jerome Puentespina, whose signature is this?

**A:** That is mine.

**PROS. ATOTUBO:**

Your Honor the signature of Engr. Paul Jerome Puentespina be marked as Exhibit "H-4".

**PROS. ATOTUBO:**

That would be all for the witness.<sup>14</sup>

Nothing in the records would show that the 2 sachets of *shabu* seized from appellant and marked as "RSG-1" and "RSG-2" were presented in court. During the direct testimonies of PO2 Libo-on, PO3 Rebadomia and P/C Insp. Puentespina, the prosecution only identified and marked in evidence the following Exhibits:

"A" – The Joint Affidavit of Arrest of PO3 Rebadomia and PO2 Libo-on;<sup>15</sup>

"B" – The Request for Drug Test dated May 30, 2011;<sup>16</sup>

"C" – The Request for Laboratory Examination Test dated May 30, 2011;<sup>17</sup>

"D" – The Extract of the Police Blotter Report dated May 30, 2011;<sup>18</sup>

"E" – The Certificate of Inventory;<sup>19</sup>

<sup>14</sup> TSN, October 17, 2011, pp. 3-9. (Emphasis added.)

<sup>15</sup> Records (Criminal Case No. 8256-69), p. 122.

<sup>16</sup> *Id.* at 123.

<sup>17</sup> *Id.* at 124.

<sup>18</sup> *Id.* at 125.

<sup>19</sup> *Id.* at 126.



- “F” – The Chain of Custody Form;<sup>20</sup>  
“G” – The Chemistry Report No. DT-065-2011;<sup>21</sup>  
“H” – The Chemistry Report No. D-094-2011;<sup>22</sup>  
“I” – The Aluminum Foil;<sup>23</sup>  
“J” – The marked money of P500.00 bill with Serial No. QS226583.<sup>24</sup>

Not one of the said prosecution witnesses was made to identify the 2 marked sachets while on the witness stand. Contrary to the testimony of PO2 Libo-on<sup>25</sup> that the 2 sachets of suspected *shabu* marked as “RSG-1” was previously marked as Exhibits “H-3” and “H-3-1”, records only show that Exhibit “H” pertains to Chemistry Report No. D-094-2011,<sup>26</sup> whereas the sub-markings “H-1”, “H-2”, and “H-4” refer only to the Findings, the Conclusion and the signature of P/C Insp. Puentespina, respectively. There is no evidence on record which was marked as Exhibits “H-3” and “H-3-1.”

Not even P/C Insp. Puentespina, the Forensic Chemical Officer and last person in official custody of the said sachets, presented and identified them when he testified on their test results under Chemistry Report No. D-094-2011. Even though the prosecution prayed<sup>27</sup> that the 2 subject specimens be marked as Exhibit “H-3,” there is nothing in his testimony which shows that the 2 marked sachets were actually produced in court. In fact, only Exhibits “I” [one (1) piece aluminum foil], “J” [Five Hundred Peso (P500.00) marked money] and “K” [Twenty-two pesos (P22.00) cash] are singled out as “[o]bject evidence and cannot be forwarded to the Court of Appeals” in the Index of Exhibits prepared by the Clerk III and certified correct by the Court Legal Researcher II/Officer-in-Charge of the RTC of Silay City, Branch 69. There is no mention of the marked sachets being part of the evidence submitted to the RTC.

No stipulation was also made as to the identity and existence of the dangerous drugs seized from appellant. As stated in the Pre-Trial Order,<sup>28</sup> the parties admitted only that the trial court has jurisdiction over the cases, and that appellant was the accused therein. Neither did the prosecution proffer and pre-mark during the pre-trial the 2 sachets of *shabu* confiscated from appellant. In the Pre-trial Order,<sup>29</sup> the prosecution pre-marked only the following Exhibits:

<sup>20</sup> *Id.* at 127.

<sup>21</sup> *Id.* at 128.

<sup>22</sup> *Id.* at 129.

<sup>23</sup> Object evidence not forwarded to the Court of Appeals per Index of Exhibits of Criminal Case Nos. 8255-69 and 8256-69.

<sup>24</sup> *Id.*

<sup>25</sup> TSN, November 14, 2011, p. 6.

<sup>26</sup> Records (Criminal Case No. 8256-69), p. 129.

<sup>27</sup> TSN, October 17, 2011, pp. 8-9.

<sup>28</sup> Records (Criminal Case No. 8256-69), p. 29.

<sup>29</sup> *Id.*

- “A” – The Joint Affidavit of Arrest of PO3 Rayjay Rebadomia and PO2 Ian Libo-on;
- “B” – The Request for Drug Test dated May 30, 2011;
- “C” – The Request for Laboratory Examination Test dated May 30, 2011;
- “D” – The Extract of the Police Blotter Report;
- “E” – The Certificate of Inventory;
- “F” – The Chain of Custody Form;
- “G” – The Initial Report dated May 30, 2011;
- “H” – The Chemistry Report No. D-094-2011;
- “I” – The Aluminum Foil;
- “J” – The marked money of P500.00 bill with Serial No. QS226580;
- “K” – Cash money in the amount of P22.00; and
- “L” – The pictures.<sup>30</sup>

To prove appellant’s guilt of the crimes charged, the prosecution formally offered in evidence the above-stated Exhibits “A” to “K” including their sub-markings, as well as the testimonies of all its witnesses, all of which were admitted by the trial court, without objection on the part of the defense.<sup>31</sup> However, the 2 sachets marked as “RSG-1” and “RSG-2” were notably absent in the prosecution’s Formal Offer of Exhibits.<sup>32</sup>

It is also significant to note that the two Informations separately charged appellant with illegal sale of “Zero Point Zero Three (0.03) grams”<sup>33</sup> of *shabu* and illegal possession of “Zero Point Zero Three (0.03) grams”<sup>34</sup> of *shabu*, whereas per Chemistry Report D-094-2011, the specimens submitted were: “Two (2) heat-sealed transparent plastic sachet each containing 0.01 gram and 0.02 gram[s] of white crystalline substance with sub-markings ‘RSG-1’ and ‘RSG-2’ ... Total Weight= 0.03 gram[s] xxx”.<sup>35</sup> To recall, PO2 Libo-on testified that the sachet marked as “RSG-1” was seized from appellant during the buy-bust operation, while the sachet marked as “RSG-2” was recovered from appellant when she was frisked by PO2 Dorado at the police station.<sup>36</sup> Clearly, there are differences in the weights of drugs confiscated from appellant, as alleged in the Informations, and those which tested positive for *shabu* per the Chemistry Report D-094-2011. Given the fungible nature and unique characteristic of narcotic substances of not being readily identifiable and similar in form to common household substances,<sup>37</sup> the failure of the prosecution to present in court the marked specimens, and to reconcile the noted weight differences, casts serious doubt over the identity and existence of the drugs seized from appellant.



<sup>30</sup> *Id.* at 30.

<sup>31</sup> *Id.* at 131.

<sup>32</sup> *Id.* at 119-129.

<sup>33</sup> Records (Criminal Case No. 8255-69), p. 1.

<sup>34</sup> Records (Criminal Case No. 8256-69), p. 1.

<sup>35</sup> *Id.* at 129.

<sup>36</sup> TSN, November 14, 2011, p. 6.

<sup>37</sup> For example, sugar, baking powder or alum powder.

It bears emphasis that Chemistry Report No. D-094-2011<sup>38</sup> is inadequate to establish the existence of the dangerous drugs seized from appellant, because it only tends to prove that the said sachets marked as “RSG-1 and RSG-2” tested positive for *shabu*. Likewise, the Certificate of Inventory<sup>39</sup> and the Chain of Custody Form<sup>40</sup> are insufficient to prove the *corpus delicti* because they merely state that the said marked sachets were seized from appellant, and were then turned over by PO2 Libo-on to the Provincial Crime Laboratory. Anent the photograph of appellant pointing to the items recovered from her, such evidence shows the presence of 2 tiny plastic sachets containing suspected *shabu*, but not the markings “RSG-1 and RSG-2” which identifies them as the items seized from her. While the foregoing pieces of documentary evidence are crucial in proving the unbroken chain of custody of the drugs seized from appellant, the prosecution failed to establish the identity and existence of the dangerous drugs when it dispensed with the production in court of the very specimens themselves.

The burden of proving the guilt of the accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.<sup>41</sup> When moral certainty as to the culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right irrespective of the reputation of the accused, who enjoys the right to be presumed innocent until the contrary is proved.<sup>42</sup> With the failure of the prosecution to prove with moral certainty the identity and existence of the dangerous drugs seized from her, appellant deserves exoneration from the crimes charged.

Finally, it is not amiss to state that the lower courts should be circumspect and meticulous in scrutinizing the evidence for the prosecution, so as to make sure that the stringent standard of proof beyond reasonable doubt is met.<sup>43</sup> After all, this would redound to the benefit of the criminal justice system by protecting civil liberties and maintaining the respect and confidence of the community in the application of criminal law, as well as inculcating in the prosecutors the need to properly discharge the burden of proving the crime/s charged.<sup>44</sup> The lower courts are further exhorted to be extra vigilant in trying drug cases, and to exercise the utmost diligence and prudence in deliberating upon the guilt of the accused, lest an innocent person is made to suffer unnecessary deprivation of liberty, let alone the severe penalties of drug offenses.

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<sup>38</sup> Records (Criminal Case No. 8256-69), p. 129; Exhibit “H.”

<sup>39</sup> *Id.* at 126; Exhibit “E.”

<sup>40</sup> *Id.* at 127; Exhibit “F.”

<sup>41</sup> *People vs. T/Sgt. Angus, Jr.*, 640 Phil. 552, 563 (2010).

<sup>42</sup> *Zafra, et al. vs. People*, 686 Phil. 1095, 1109 (2012).

<sup>43</sup> *People of the Philippines vs. Enrico Mirondo y Izon, supra.*

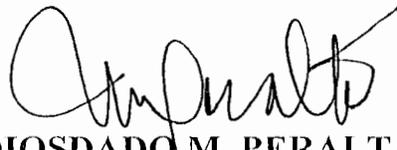
<sup>44</sup> *Id.*

In light of the foregoing discussions, there is no more necessity to delve into the other issues raised by the parties.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated March 24, 2015 of the Court of Appeals in CA-G.R. CEB-CR. HC. No. 01579, which affirmed the Decision of the Regional Trial Court of Silay City, Branch 69, Sixth Judicial Region, in Criminal Case Nos. 8255-69 and 8256-69, is **REVERSED** and **SET ASIDE**. Accordingly, appellant Ruscie Garrucho y Serrano is **ACQUITTED** of the charges against her for violation of Sections 5 and 11(3), Article II of Republic Act No. 9165.

The Director of the Bureau of Corrections (Correctional Institution for Women) is **DIRECTED** to cause the release of appellant, unless she is being lawfully held for another cause, and to inform the Court the date of her release or reason for her continued confinement, within five (5) days from notice.

**SO ORDERED.**

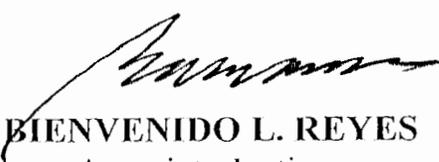
  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

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

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**JOSE PORTUGAL BEREZ**  
Associate Justice

  
**BIENVENIDO L. REYES**  
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, I certify 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.



**ANTONIO T. CARPIO**  
Acting Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

JUL 19 2016