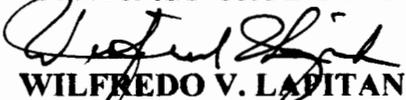




CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

JUL 28 2017

Republic of the Philippines
Supreme Court
 : **Manila**

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 224300

Present:

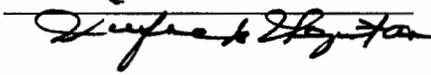
- versus -

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
REYES,
JARDELEZA, and
TIJAM, JJ.

JOSE CUTARA y BRIX,
 Accused-Appellant.

Promulgated:

June 7, 2017



X-----X

DECISION

TIJAM, J.:

For review is the Decision¹ dated April 28, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06568, which affirmed *in toto* the Decision² dated April 25, 2012 of the Regional Trial Court (RTC) of Manila, Branch 53, in Criminal Case No. 03-216994, finding the accused-appellant Jose Cutara y Brix guilty of violation of Section 5,³ Article II of Republic

¹ Penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Samuel H. Gaerlan and Pedro B. Corales; *rollo*, pp. 2-13.

² Penned by Judge Arthur L. Abundiente; *CA rollo*, pp. 57-66.

³ 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.

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Act (RA) No. 9165,⁴ otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On July 31, 2003, acting on an information on the alleged sale of shabu by accused-appellant in Parola Compound, Tondo, Manila, Police Senior Inspector Raymund Liguden (PSI Liguden), Chief of the District Detective Beat Patrol Unit (DDBPU) of the Western Police District (WPD), formed a team composed of PO3 Solomon Marcial (PO3 Marcial), PO2 Nelson Geronimo (PO2 Geronimo), PO1 Christopher Palapal and PO1 Severino Melad to undertake a buy-bust operation with PO1 Marcial as poseur-buyer using two pieces of Php200 pesos bills marked with "X".⁵

Thereafter, they contacted a confidential informant to assist them in validating the said information. The confidential informant then told the police officers that he personally knew the accused-appellant and that he was willing to help them in apprehending the latter.⁶

On the same day, at around 1:30 p.m., the buy-bust team, together with the confidential informant, proceeded to the target area. The team parked their vehicle around 200 meters away from the target area. PO3 Marcial and the confidential informant walked towards Parola Compound – Area B where they saw a man standing in a corner who seemed to be waiting for somebody. The confidential informant told PO3 Marcial that the said man was Cutara. When they approached accused-appellant, the confidential informant nodded his head and introduced PO3 Marcial as a buyer of shabu. Accused-appellant then asked how much and PO3 Marcial replied Php200 worth of shabu. PO3 Marcial then handed to accused-appellant the marked money while the latter handed over to PO3 Marcial a transparent plastic sachet containing white crystalline granules. When accused-appellant placed the buy-bust money inside his right front pocket, PO3 Marcial immediately placed his white handkerchief above his shoulder, which was the pre-arranged signal. Thereafter, PO3 Marcial introduced himself as a police officer, arrested accused-appellant, and took the buy-bust money from the latter's pocket. The members of the buy-bust team arrived and secured the area because the accused-appellant's neighbors came over and tried to stop the buy-bust team from arresting the accused-appellant. Immediately thereafter, the team brought accused-appellant to the WPD office.⁷

⁴ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

⁵ *Rollo*, pp. 4-5.

⁶ *Id.* at 4.

⁷ *Id.* at 5.

At the WPD office, the seized items were marked by PO3 Marcial with the accused-appellant's initials "JBC", and were turned over to PO2 Napoleon De Ramos, who in turn prepared the joint affidavit of arrest, booking sheet and arrest report, request for laboratory examination, and the police referral letter for inquest proceeding. Afterwards, the request for laboratory examination, together with the confiscated items, was brought to the crime laboratory by PO2 Geronimo for analysis.⁸

The Chemistry Report then revealed that the seized sachet containing 0.254 gram tested positive for methamphetamine hydrochloride or shabu.⁹

For his part, accused-appellant interposed the defense of denial. He narrated that, at around 1:00 p.m. of July 31, 2003, he was resting inside their house, together with his wife, when they heard a commotion outside. They got out of bed to find out what was going on. When he opened the door of his house, he was surprised to see six armed men who immediately entered his house without saying anything and searched the premises. Since the armed men found nothing inside his house, they forcibly brought him outside and handcuffed him. His neighbors were alarmed by the upheaval so one of the police officers said, "*Huwag kayong makikialam dito.*" The police officers then boarded him into their vehicle and brought him to the police station. On their way to the police station, one of the police officers hit him while the others were forcing him to admit that he was selling shabu. At the police station, the police officers demanded the sum of P200,000.00 in exchange for his freedom.¹⁰

The accused-appellant's brother-in-law, Michael Domingo, corroborated his testimony.¹¹

After trial, the RTC convicted the accused-appellant as charged and sentenced him to a penalty of life imprisonment and imposed a fine of P500,000.

On appeal, the CA affirmed the RTC decision in its entirety.¹² Accused-appellant then appealed his conviction to this Court.¹³

The Issue

Whether the CA erred in affirming the Decision of the RTC convicting accused-appellant of the crime of selling of *shabu*.

⁸ Id. at 6.

⁹ Id. at 11.

¹⁰ Id. at 6-7.

¹¹ Id. at 7.

¹² Id. at 13.

¹³ Id. at 14-15.

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The Court's Ruling

The appeal lacks merit.

Accused-appellant's argument centers on the credibility of the prosecution witnesses as he maintains that the prosecution's allegation that he sold illegal drugs publicly is unbelievable and contrary to common experience considering the clandestine nature of illegal drug dealings. He also contested the non-compliance with the procedure set forth in Section 21¹⁴ of RA 9165 regarding the proper custody of seized dangerous drugs.¹⁵

To secure a conviction for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: (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 its payment.¹⁶ The prosecution must also prove the illegal sale of the dangerous drugs and present the *corpus delicti* in court as evidence.¹⁷

In this case, the prosecution duly established the following: (1) the identity of the buyer – PO3 Marcial, the seller – accused-appellant, the object of the sale – one sachet of shabu which is an illegal drug, and the consideration – the two pieces of marked two hundred peso bills; and (2) PO3 Marcial positively identified accused-appellant as the one who transacted and sold the shabu to him in exchange for the marked money. He caught accused-appellant *in flagrante delicto* selling the shabu during a buy-bust operation. The seized item was sent to the crime laboratory and yielded positive results for presence of a dangerous drug. The seized sachet of shabu was likewise presented in court with the proper identification by PO3 Marcial. Evidently, what determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense.

Accused-appellant makes much of the fact that the buy-bust team did not follow the procedure set forth in Section 21 of RA 9165 regarding the proper custody of seized dangerous drugs, and manifests that there were lapses in the handling and safekeeping of the seized *shabu* that might affect its admissibility, integrity and evidentiary value.

In a buy-bust operation, the following links are necessary in order to establish the chain of custody: (1) the seizure and marking, if practicable, of

¹⁴ (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.

¹⁵ *Rollo*, p. 8.

¹⁶ *People of the Philippines v. Michael Ros y Ortega, Rodolfo Justo, Jr. y Califlores, and David Navarro y Minas*, G.R. No. 201146, April 15, 2015.

¹⁷ *People of the Philippines v. Rolando Carrera y Imbat*, GR No. 215731, September 2, 2015.

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the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.¹⁸

Applying these parameters, the Court is convinced that the chain of custody was duly established. In his direct examination, PO3 Marcial positively identified the seized sachet sold to him through the markings "JBC" placed on the seized item. Since the buy-bust team struggled against the accused-appellant's neighbors who were trying to prevent his arrest, PO3 Marcial was forced to mark the confiscated item at the police station. Thereat, it was properly inventoried and documented. Thereafter, a request for examination of the seized sachet of shabu was prepared. The seized sachet of shabu was sent to the PNP Crime Laboratory to determine the presence of illegal drug. As per Chemistry Report made by the Forensic Chemist, the seized sachet of shabu tested positive for the presence of a dangerous drug. When the prosecution presented the seized sachet of shabu in court, PO3 Marcial positively identified it to be the same illegal drug seized from accused-appellant. Further, the prosecution was able to present and identify the marked money in court.

Evidently, the records of the case showed that the prosecution successfully established the links in the chain of custody over the seized sachet of shabu, from the time the poseur-buyer seized the drugs, to the time it was brought to the PDEA office, then to the crime laboratory for testing, until the time the same was offered in evidence before the court.

Admittedly, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.¹⁹

Lastly, Cutara failed to present clear and convincing evidence to overturn the presumption that the buy-bust team regularly performed their duties. Except for his bare allegation of denial, he has not ascribed any improper motive on the part of the police officers as to why the latter would falsely accuse him of selling shabu that would cause him to be imprisoned for life. Hence, the testimonies of the prosecution witnesses as to the preservation of the integrity and the evidentiary value of the seized illegal drugs deserve full faith and credit.

¹⁸ *People of the Philippines v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016.

¹⁹ *People of the Philippines v. Juan Asislo y Matio*, G.R. No. 206224, January 18, 2016.

In sum, the totality of the prosecution's evidence undeniably shows that the integrity of the seized items had been duly preserved and its chain of custody had been accounted for. Thus, the accused-appellant's guilt for illegal selling of *shabu* had been sufficiently proved beyond reasonable doubt.

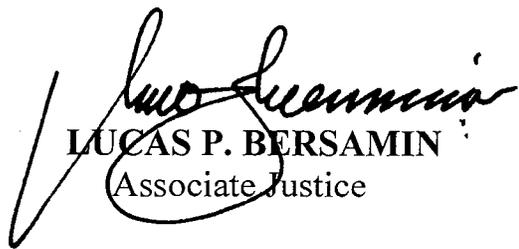
WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision dated April 28, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06568, which affirmed in *toto* the Decision dated April 25, 2012 of the Regional Trial Court of Manila, Branch 53, in Criminal Case No. 03-216994 finding the accused-appellant Jose Cutara y Brix **GUILTY** of violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED**.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

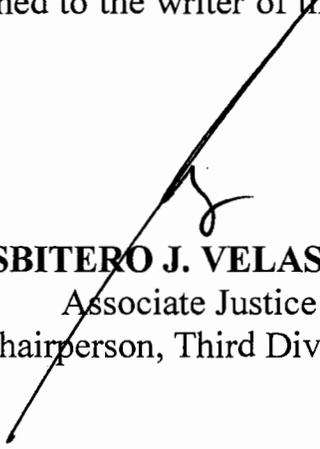

LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
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.



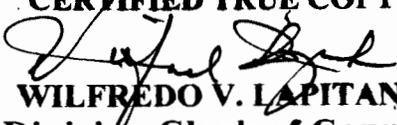
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 28 2017