

SECOND DIVISION

[G.R. No. 210878, July 07, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JONALYN ABENES Y PASCUA, ACCUSED-APPELLANT.**

R E S O L U T I O N

DEL CASTILLO, J.:

Assailed in this appeal is the August 22, 2013 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04923, which affirmed the February 14, 2011 Decision^[2] of the Regional Trial Court (RTC), Branch 61, Baguio City, finding Jonalyn Abenes y Pascua (appellant) guilty beyond reasonable doubt of violation of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs), Article II of Republic Act (RA) No. 9165 or The Comprehensive Dangerous Drugs Act of 2002.

The parties' respective version of the incident was summarized by the CA as follows:

Version of the Prosecution

On July 4, 2009, at around 5:00 in the afternoon, SPO1 Reynaldo Badua [SPO1 Badua] received a tip from a female informant that appellant involved in the sale of *shabu*. An hour later, after the informant was able to contact appellant, SPO1 Badua, PO1 Albert Lag-ey [PO1 Lag-ey] and [PO1 Geliza Moyao] PO1 Moyao prepared a buy-bust operation. As arranged by the informant, she and SPO1 Badua, the designated poseur-buyer, was to meet with appellant in front of Leisure Lodge, Upper Magsaysay Avenue, Baguio City to buy P1,000.00 worth of *shabu*.

At around 6:30 in the evening, the buy-bust team proceeded to the target area. After about 30 minutes from arrival, appellant approached SPO1 Badua and the informant. The informant introduced SPO1 Badua to appellant as the interested buyer. SPO1 Badua then handed to appellant the buy-bust money; the latter handed in turn a plastic sachet containing white crystalline substance.

Upon seeing that the exchange had already taken place, PO1 Lag-ey and PO1 Moyao, who were strategically positioned some two meters away, approached appellant and placed her under arrest. Appellant was informed of her constitutional rights and was subjected to a body search. Another plastic sachet containing white crystalline substance was found on appellant's person.

Thereafter the two plastic sachets were marked on site. Appellant was

then brought to the police station where the arresting officers likewise prepared their affidavit, Inventory, Booking Sheet, Qualitative Examination Request and Urine Request.

The confiscated specimen tested positive for the presence of methamphetamine hydrochloride.

Version of the Defense

At around 3:00 o'clock in the afternoon of July 4, 2009, JONALYN ABENES traveled from their home in La Trinidad, Benguet to Magsaysay Avenue in Baguio City where she has been working as a GRO together with her friend Jing Jing since the year 2004. Upon reaching the place, she headed to the room being occupied by Jing Jing at the Leisure Lodge. She asked her friend to go with her if she knows someone who sells *shabu*. After Jing Jing answered that she does not know of anybody selling *shabu*, [a] woman invited her to Katipunan Inn located at the back of Center Mall. Jing Jing acceded and the two of them went with this woman to Katipunan Inn where they got a room. Inside, the woman brought out *shabu* which the three of them consumed.

Thereafter, the accused was told by Jing Jing and the woman to return to the overpass. Accused left the duo, but instead of going to the overpass, she went to Leisure Lodge to freshen up at Jing Jing's room. As she was freshening up, someone knocked at the door. She opened the door and saw a man and woman who were looking for Jing Jing. She told the two that Jing Jing was not in the room. They asked her who she was and after she gave her name, the two introduced themselves as police officers and informed her that they have arrested Jing Jing and that she is being pointed to by [Jing Jing] as the source of *shabu*. She angrily told the police officers that the *shabu* taken from Jing Jing did not come from her but the police officers would not believe her. They handcuffed her and brought her down from the Leisure Lodge. As they were going downstairs, she saw Jing Jing asking for forgiveness for pointing to her as the *shabu* source.^[3]

Ruling of the Regional Trial Court

Giving credence to the prosecution witnesses who are presumed to have performed their duties in a regular manner, the RTC ruled the prosecution has sufficiently proven that appellant was caught in *flagrante delicto* selling dangerous drug to a law enforcement agent who posed as buyer and while being frisked, another plastic sachet containing white crystalline substance was found in her possession. When these items were subjected to chemistry examination, they were found positive for the presence of methamphetamine hydrochloride commonly known as *shabu*, a dangerous drug. The RTC rejected appellant's claim of frame-up. It took serious consideration of appellant's admission that she was indeed into illegal drugs. It thus found appellant guilty beyond reasonable doubt as charged. The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered finding the accused GUILTY, as follows:

a) In Criminal Case No. 29607-R, she is hereby sentenced to suffer a prison term of Twelve (12) Years and One (1) day to Twenty (20) Years and to pay a fine of Three Hundred Thousand (P300,000.00) Pesos, and

b) In Criminal Case No. 29608-R, she is hereby sentenced to Life Imprisonment and to pay a fine of One Million (P1,000,000.00) Pesos.

The dangerous drugs subject of these cases are ordered destroyed in accordance with law.

SO ORDERED.^[4]

Ruling of the Court of Appeals

Appellant appealed to the CA faulting the trial court in finding her guilty despite the prosecution's failure to prove the same beyond reasonable doubt and non-compliance with Section 21 of RA 9165 and its Implementing Rules and Regulations resulting to a broken chain of custody over the confiscated drugs.

By its assailed Decision of August 22, 2013, the CA affirmed the RTC Decision after finding the same to be in accordance with law and the evidence.

The CA ruled that the prosecution has clearly established that the sachets containing white crystalline substance offered as evidence before the lower court are the same sachets confiscated from the appellant during the buy-bust operation. Moreover, the CA observed that the integrity and evidentiary value of the confiscated drugs were duly preserved as the chain of custody of the same has been clearly established with supporting evidence. Thus:

WHEREFORE, the Decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED.

SO ORDERED.^[5]

Our Ruling

The appeal is partly meritorious.

In the prosecution of illegal sale of drugs to prosper, the following elements must be proven: "(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment for it."^[6]

In the present case, these elements were satisfied by the prosecution's evidence. The prosecution witnesses positively identified appellant as the seller of the white crystalline substance which was found to be methamphetamine hydrochloride or *shabu*. Appellant sold the drug to SPO1 Badua, a police officer who acted as poseur-

buyer for a sum of P1,000.00. The prosecution's witnesses likewise positively and categorically testified that the transaction or sale actually transpired. The subject *shabu* weighing 0.02 grams and the money amounting to P1,000.00 were also identified by the witnesses when presented in court.

Appellant makes capital on the prosecution's alleged failure to comply with the requirements of law^[7] with respect to the proper marking, inventory and taking of photograph of the seized specimen. However, it does not escape the Court's attention that appellant failed to contest the admissibility in evidence of the seized item during trial. In fact, at no instance did she manifest or even hint that there were lapses on the part of the police officers in handling the seized item which affected its integrity and evidentiary value. "[O]bjection to the admissibility of evidence cannot be raised for the first time on appeal."^[8] In the present case, the police operatives' alleged non-compliance with Section 21, Article II of RA 9165 was raised for the first time on appeal before the CA. In any event, it is "settled that an accused may still be found guilty, despite the failure to faithfully observe the requirements provided under Section 21 of RA 9165, for as long as the chain of custody remains unbroken."^[9] Here, it is beyond cavil that the prosecution was able to establish the necessary links in the chain of custody of the specimen subject of the sale from the moment it was seized from appellant, the delivery of the same to the crime laboratory up to the time it was presented during trial as proof of the *corpus delicti*. As aptly observed by the CA:

Prosecution witness SPO1 Reynaldo Badua consistently testified that he had the initial control of the sachet of *shabu* subject of the illegal sale case. He also stated that he marked the same with "RCB" he, together with the sachet subject of the illegal possession case personally brought the two (2) sachets of *shabu* to the crime laboratory for qualitative examination x x x.^[10]

While we uphold the finding of guilt beyond reasonable doubt of appellant by the trial court and affirmed by the CA in the illegal sale of *shabu* in Criminal Case No. 29608-R, we are of the considered view, however, that the quantum of evidence needed to convict, that is proof beyond reasonable doubt, has not been adequately established by the prosecution in the charge of illegal possession of dangerous drug under Section 11, Article II of RA 9165 in Criminal Case No. 29607-R.

We have carefully scrutinized the evidence presented by the prosecution especially the testimonies of SPO1 Badua and PO1 Lag-ey and miserably, they were not able to provide a clear identification of the illegal drug seized from appellant's possession.

We quote pertinent portions of SPO1 Badua's testimony:

- Q I have with me a brown envelope, Mr. witness, with markings, and inside this envelope are two plastic sachets. Will you please go over these two and tell this Court which of these two are handed to you by Jonalyn?
- A This is the one, Ma' am.
- Q Why do you say that this is the sachet that was handed to