

SECOND DIVISION

[G.R. No. 191061, February 09, 2011]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROSELLE
SANTIAGO Y PABALINAS, APPELLANT.**

DECISION

ABAD, J.:

The Facts and the Case

The public prosecutor of Makati charged the accused Roselle Santiago y Pabalinas alias *Tisay* (Roselle) with violation of Section 5 of Republic Act (R.A.) 9165^[1] before the Regional Trial Court (RTC) of Makati City in Criminal Case 05-792. Roselle was also charged with violation of Section 15 of the same law in Criminal Case 05-1101.^[2]

Initially, Roselle pleaded not guilty in Criminal Case 05-1101 (violation of Section 15) but she later changed her plea to guilty^[3] and was so found by the court. The latter, however, deferred her sentencing until the termination of the case for violation of Section 5.

The parties stipulated at the pre-trial (1) that PO3 Leo Gabang investigated the case; (2) that, although the latter prepared the investigation report, he had no personal knowledge of what happened; (3) that the police made a request, through P/Supt. Marietto Mendoza, for laboratory examination; (4) that P/Insp. Richard Allan Mangalip, a forensic chemist of the Philippine National Police (PNP) Crime Laboratory, examined the submitted specimen, not knowing from whom the same was taken; (5) that the PNP Crime Laboratory Office issued Physical Science Report D-090-05S; and (6) that the forensic chemist was qualified. With these stipulations, the prosecution dispensed with Mangalip's testimony.^[4]

PO1 Voltaire Esguerra (Esguerra) testified that on April 4, 2005, they received information that Roselle was selling illegal drugs at her house at Pipit Extension, *Barangay* Rizal, Makati City. Esguerra conducted a test buy and received from her one heat-sealed transparent plastic sachet that presumably contained *shabu*. When he returned to his office, Esguerra marked the sachet with "@ *Tisay*" then sent it to the laboratory for testing.^[5] Before receiving the results of the test buy, an asset told the police that Roselle was going to leave her house, prompting Esguerra's team to conduct a buy-bust operation.

Esguerra met Roselle again and told her that it was he who bought *shabu* from her earlier that day. She thus let him enter the front yard of her house where he told her that he wanted to buy another pack for P300.00. Roselle took his marked money and entered the house. While waiting and looking in, Esguerra spotted two

women^[6] inside using *shabu* with the asset by their side, apparently waiting for his turn. Subsequently, Roselle returned with one heat-sealed transparent plastic sachet presumably containing *shabu*. Upon receipt of the sachet, Esguerra signaled his team. They arrested Roselle and appraised her of her rights. Esguerra immediately marked the sachet with "RPS".

After returning to the station, he turned over Roselle and the seized sachet to the investigator. When the contents of the first and second sachets (with "@ Tisay" and "RPS" markings) were examined, these were confirmed to be *Methylamphetamine Hydrochloride* (*shabu*). A confirmatory test also found Roselle positive for the use of *shabu*.

For her defense, Roselle denies that she sold *shabu* to Esguerra. She claims that the case was a product of a mistaken identity, as she was not known as *Tisay* in the area but Roselle. She narrated how she was forcibly taken from her house and into custody.

In its decision dated June 11, 2008, the RTC found Roselle guilty of violation of Section 5, Article II of R.A. 9165, and sentenced her to life imprisonment and to pay a fine of P500,000.00. The RTC also sentenced her to undergo rehabilitation for not less than six months at a government drug rehabilitation center subject to the provisions of R.A. 9165 for her violation of Section 15, Article II of R.A. 9165.

Roselle appealed from both judgments to the Court of Appeals (CA) in CA-G.R. CR-HC 03451 but the latter court affirmed the two convictions. She looks for her acquittal from this Court.

The Issues Presented to the Court

The issues presented to the Court are (1) whether or not the police conducted a valid arrest in Roselle's case; and (2) whether or not the CA erred in affirming the RTC's finding that the prosecution evidence established her guilt of the offense charged beyond reasonable doubt.

The Court's Ruling

One. Roselle claims that the police did not make a valid arrest in her case since they arrested her without proper warrant and did not apprise her of the rights of a person taken into custody as the Constitution and R.A. 7438 provide.^[7] But Roselle raised this issue only during appeal, not before she was arraigned. For this reason, she should be deemed to have waived any question as to the legality of her arrest.^[8]

Two. Although the prosecution established through Esguerra the acts constituting the crime^[9] charged in the drug-pushing case (Section 5), it failed to provide proper identity of the allegedly prohibited substance that the police seized from Roselle.

Esguerra testified that he seized a heat-sealed sachet of white substance from Roselle and marked the sachet with "RPS" right in her presence. He claimed that he then immediately submitted the specimen to the police crime laboratory for examination. But the request for laboratory exam reveals that it was not Esguerra