

SECOND DIVISION

[G.R. No. 171732, August 14, 2009]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGAR DENOMAN Y ACURDA, ACCUSED-APPELLANT.**

DECISION

BRION, J.:

We review the conviction of accused-appellant Edgar Denoman y Acurda (*accused-appellant*) for illegal sale of *shabu* under Section 5, Article II of Republic Act (RA) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*. The Regional Trial Court (RTC), Branch 72, Malabon City, originally rendered the judgment^[1] of conviction. The Court of Appeals (CA) affirmed the conviction in its own decision^[2] dated January 16, 2006 in CA-G.R. CR H.C. No. 00305.

The accused-appellant was charged under two informations for violation of RA No. 9165 before the RTC. The *first*, docketed as Criminal Case No. 27283-MN, charged him with illegal possession of dangerous drug under Section 11, Article II of RA No. 9165. This Information reads:

That on or about the 30th day of July, 2002 in the City of Malabon, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control One (1) heat-sealed transparent plastic sachet containing white crystalline substance with net weight 0.04 gram which substance when subjected to chemistry examination gave positive result for Methylamphetamine Hydrochloride otherwise known "shabu", a dangerous drug.^[3]

The *second*, docketed as Criminal Case No. 28387-MN, charged him with the crime of illegal sale of *shabu* under the following allegations:

That on or about the 17th day of February 2003 in the City of Malabon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously sell and deliver for consideration in the amount of P 100.00 to poseur buyer One (1) heat-sealed transparent plastic sachet containing white crystalline substance with a net weight of 0.03 gram which substance when subjected to chemistry examination gave positive result for Methylamphetamine Hydrochloride otherwise known as "shabu", a dangerous drug.^[4]

The accused-appellant pleaded not guilty to both charges^[5] which were jointly tried after pre-trial.

THE FACTS

The prosecution showed that on two separate occasions, the accused-appellant was caught red-handed in the illegal possession of *shabu* and of drug pushing. The prosecution presented two (2) witnesses: P/A Ronald Ticlao (P/A *Ticlao*) and PO1 Alexander Carlos (PO1 *Carlos*) who both positively identified the accused-appellant as the person who handled the *shabu* (in P/A Ticlao's case) and sold the *shabu* (in PO1 Carlos' case).^[6]

P/A Ticlao,^[7] testifying in Criminal Case No. 27283-MN, related that on July 30, 2002 at 3:15 p.m. in Sulucan,^[8] Malabon City, he and the other operatives of the Drug Enforcement Unit (DEU) of the Malabon Police Station were engaged in a narcotics operation after receipt of reports of rampant selling of *shabu* in the area. In the course of their operation, P/A Ticlao saw the accused-appellant and one Jomarie Damasco^[9] each holding a plastic sachet which he suspected contained *shabu*. The operatives then immediately arrested the accused-appellant and his companion and brought them to the *Pagamutang Bayan* before proceeding to the police headquarters. The items seized from the accused-appellant were sent to laboratory examination, and they tested positive for *shabu*.^[10]

The prosecution presented the following documentary evidence:

Exhibits "A" and "A-1"	- Blotter of Dispatch and Brought-in;
Exhibits "B" and "B-1"	- Improvised wrapper and <i>shabu</i> ;
Exhibit "C"	- Request for Laboratory Examination;
Exhibit "D"	- Laboratory Report; and
Exhibits "E," "E-1" to "E-3"	- Affidavit of arrest/sworn statement.

In Criminal Case No. 28387-MN, PO1 Carlos^[11] testified that he was a member of the DEU, Malabon Police Station. He related that upon being informed on February 17, 2003 at 6:45 p.m. by a confidential informant of illegal drug selling activities by one alias Edgar, the Malabon City police conducted a buy-bust operation on Sulucan St., Hulong Duhat, Malabon City. He was designated as *poseur buyer*, and he was given a P100.00 bill as buy-bust money. On arrival at the indicated place, PO1 Carlos and the confidential informant saw and approached the accused-appellant. After a short talk, the trio proceeded to a house located in the area where the accused-appellant presented to him a small plastic sachet which he suspected contained *shabu*. PO1 Carlos agreed to buy the small plastic sachet and gave the P100.00 bill to the accused-appellant as payment. Upon receipt of the plastic sachet containing the suspected *shabu*, he gave the pre-arranged signal, prompting his

back-ups to come forward and arrest the accused-appellant. After the arrest, they brought the accused-appellant to the *Pagamutang Bayan*. The seized plastic sachet was sent to a forensic chemist for laboratory examination which showed positive results for *shabu*.^[12]

The prosecution presented the following documentary evidence:

Exhibits "F" and "F-1"	- Blotter of Dispatch and Brought-in;
Exhibits "G" and "G-1"	- Xerox of P 100 bill;
Exhibits "H" and "H-1"	- Improvised wrapper and <i>shabu</i> ;
Exhibit "I"	- Request of Laboratory Examination;
Exhibit "J"	- Laboratory Report; and
Exhibits "K", "K-1" to "K-4"	- Affidavit of arrest/sworn statement and signatures.

In both cases, the accused-appellant denied the accusations against him.^[13] He claimed that he was a victim of frame-up and extortion. He also claimed that the police filed the charges against him because he failed to provide the whereabouts of a person named Rollie.^[14]

The prosecution and defense agreed during the trial to dispense with the testimonies of the defense witnesses - Jomarie Damasco and Marife Demata - on the stipulation that these witnesses would simply corroborate the accused-appellant's testimony.^[15] The two sides likewise dispensed with the rebuttal testimony of PO1 Carlos and sur-rebuttal testimony of the accused-appellant on the stipulation that they will simply repeat and insist on their respective versions of events.^[16]

In a Joint Decision dated August 15, 2003,^[17] the RTC found the accused-appellant guilty beyond reasonable doubt of drug pushing but was acquitted of the charge of illegal possession of *shabu*. The RTC sentenced the accused-appellant to life imprisonment and to pay a fine of P500,000 and to pay the costs.^[18]

The accused-appellant appealed to the CA essentially challenging the RTC's findings of fact. He argued that: (1) the incredible testimony of PO1 Carlos should not be believed because of its inconsistencies and contradictions; and (2) the seized plastic sachet allegedly containing *shabu* was not properly marked and identified.

The CA fully affirmed the accused-appellant's conviction in its decision dated January 16, 2006.^[19]

The CA found no reason to overturn the RTC findings anchored on PO1 Carlos' testimony for being a clear and straightforward narration of the antecedent events that transpired and that indubitably showed the arrest of the accused-appellant during a legitimate buy-bust operation.^[20] On the basis of PO1 Carlos' testimony, the CA also brushed aside the accused-appellant's attack on the identity and

integrity of the buy-bust money and the seized plastic sachet. [21]

The CA also rejected the accused-appellant's defenses of denial and frame-up, and gave greater credence to PO1 Carlos' testimony, relying on the presumption of regularity in the performance of official functions by the police officers who conducted the buy-bust operation. [22]

THE ISSUE

In the petition now before us, the accused-appellant raises the core issue of whether sufficient evidence exists to support his conviction for illegal sale of *shabu* under RA No. 9165.

In his Appellant's Brief, [23] the accused-appellant questions the lower courts' reliance on PO1 Carlos' incredible story that the accused-appellant sold *shabu* to PO1 Carlos, a stranger to him. He also questions the worth of PO1 Carlos' testimony about the buy-bust sale in light of PO1 Carlos' failure to explain how he (PO1 Carlos) could have agreed to a pre-arranged signal with the confidential informant and the DEU operatives when he never expected that the illegal transaction would take place inside a house.

Lastly, the accused-appellant attacks the prosecution evidence for its failure to establish the proper chain of custody of the *shabu* allegedly seized from him.

In its Brief for the Appellee, [24] the Office of the Solicitor (*OSG*), representing the People, contends that the prosecution evidence amply supports the accused-appellant's guilt beyond reasonable doubt of drug pushing. The *OSG* emphasizes that on the issue of the witness' credibility, great respect must be given to the factual findings of the RTC, especially after the defense failed to adduce evidence of improper motive against the prosecution witness. The *OSG* further posits that the accused-appellant's defense of denial is self-serving and uncorroborated by any credible evidence from a disinterested witness. His denial should not also prevail over the positive, convincing and credible testimony of PO1 Carlos.

OUR RULING

We find the appeal meritorious.

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. [25] In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. [26] Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually

recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

Section 21, paragraph 1, Article II of RA No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations (*IRR*) of RA No. 9165 give us the procedures that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case.^[27] Parenthetically, in *People v. De la Cruz*,^[28] we justified the need for strict compliance with the prescribed procedures to be consistent with the principle that penal laws shall be construed strictly against the government and liberally in favor of the accused.

Section 21, paragraph 1, Article II of RA No. 9165, states:

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. [Emphasis supplied]

This provision is further elaborated in Section 21(a), Article II of the *IRR* of RA No. 9165, which reads:

(a) The apprehending office/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, 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. [Emphasis supplied]

In the present case, the records show that the buy-bust team did not observe even the most basic requirements of the prescribed procedures. While the markings, "AOC-BB/17-02-03," were made in the small plastic sachet allegedly seized from the accused-appellant, the evidence does not show the identity of the person who made these markings and the time and place where these markings were made.^[29] Notably, PO1 Carlos' testimony failed to disclose whether a physical inventory and