



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appelle,

G.R. No. 188345

Present:

- versus -

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, and
REYES, *JJ.*

CATALINO DULAY y
CADIENTE,
Accused-Appellant.

Promulgated:

DEC 10 2012.

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DECISION

LEONARDO-DE CASTRO, *J.*:

This is an appeal of the Decision¹ of the Court of Appeals in CA-G.R. CR.-H.C. No. 02342 dated April 18, 2008, which affirmed the Decision² of the Regional Trial Court (RTC) of Makati finding accused-appellant Catalino Dulay y Cadiente guilty beyond reasonable doubt of violation of Sections 5 and 15, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

¹ Rollo, pp. 2-30; penned by Associate Justice Edgardo F. Sundiam with Associate Justices Monina Arevalo-Zenarosa and Sixto C. Marella, Jr., concurring.

² CA rollo, pp. 43-49.

Two Informations were filed against accused-appellant, charging him with violations of Section 5 (Criminal Case No. 03-3799) and Section 15 (Criminal Case No. 03-4000), respectively, of Article II of Republic Act No. 9165. The Information charging accused-appellant of violation of Section 5 states:

That on or about the 23rd day of September, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away ₱100.00 worth of Methylamphetamine Hydrochloride (Shabu) weighing zero point zero two (0.02) gram and zero point zero two (0.02) gram, a dangerous drug.³

On arraignment, accused-appellant pleaded not guilty to the charge in Criminal Case No. 03-3799, but pleaded guilty to the charge of drug use in Criminal Case No. 03-4000.

As stated in the Pre-Trial Order, the parties stipulated:

1. That these cases were investigated by PO3 Conrado Mapili;
2. That after the investigation by PO3 Conrado Mapili, he prepared the Final Investigation Report;
3. That the Drug Enforcement Unit [DEU] through SPO4 Arsenio Mangulabnan made a Request for Laboratory Examination;
4. That the PNP Crime Laboratory through Police Inspector Karen Palacios conducted an examination on the specimen submitted;
5. That [the] Physical Science Report was issued by the PNP Crime Laboratory Office detailing the findings of the Forensic Chemist; and
6. The qualification of the Forensic Chemist.⁴

³ Records, p. 1.

⁴ Id. at 31.

The prosecution presented three witnesses: (1) Police Officer (PO) 1 Dominador Robles, who was the team leader of the buy-bust operation; (2) PO1 Jose Guadamor of the Makati Anti-Drug Abuse Council (MADAC), who was the poseur-buyer; and (3) PO1 Francisco Barbosa, also from the MADAC, who was a back-up. Culled from their testimonies, the trial court summarized the facts into the following narrative:

A buy-bust operation was conducted against accused Catalino Dulay on September 23, 2003 at around 5:45 pm due to a report given by an informant to Bgy. Capt. Del Prado at the office of MADAC Cluster 3. The report was about the illegal drug-selling activity of the accused Catalino Dulay at Mabini Street, Barangay Poblacion Makati City. After receiving said report, Brgy. Capt. Del Prado coordinated with the Makati Drug Enforcement Unit (DEU). The DEU sent PO1 Dominador Robles to the Barangay Hall of Barangay Sta. Cruz. PO1 Robles conducted a briefing of the buy-bust team. Jose Guadamor was designated as the poseur buyer. PO1 Robles as team leader, provided Guadamor with the two hundred pesos buy bust money. PO1 Robles coordinated the operation with the PDEA. After the briefing the buy-bust team accompanied by the informant proceeded to the place of operation after the briefing. The poseur buyer and the informant saw alias "Lino" standing along Mabini Street, Brgy. Poblacion, Makati City. The poseur buyer and the informant approached the accused. The informant introduced the poseur buyer to alias "Lino", "Ito si Jojo, nangangailangan ng shabu." (TSN dated 3/3/05, p. 4). The accused asked the poseur buyer how much is he going to buy. The poseur buyer replied, "Tapatan mo itong dos ko." (TSN dated 3/3/05, p. 14). The poseur buyer handed to the accused the two hundred pesos buy bust money and the accused drew from his right pocket, two plastic sachets and handed it to the poseur buyer. The poseur buyer took the two plastic sachets and gave the pre-arranged signal by lighting a cigarette. PO1 Robles and Barbosa rushed to the place of the transaction[.] [T]hey introduced themselves as narcotic operatives. They arrested alias "Lino" (TSN dated 3/3/05, pp. 16-17). It was PO1 Robles who informed the accused of his constitutional rights. Jose Guadamor, the poseur buyer marked the sachets of shabu with "CDC" the initials of the accused at the place of operation (TSN dated 3/3/05, p. 18). After the arrest, the accused was brought to [the] DEU where a complaint was filed against him. Thereafter, the accused was brought to Fort Bonifacio, Taguig for drug test of the accused and laboratory examination of the subject of sale."⁵

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CA rollo, pp. 44-45.

Physical Science Report No. D-1174-03S,⁶ prepared and submitted by P/Insp. Karen Palacios, the Philippine National Police (PNP) forensic analyst who examined the specimens, showed that the seized specimens tested positive for methylamphetamine hydrochloride.

The defense presented the accused-appellant as its lone witness. The Court of Appeals condensed his testimony in this wise:

In defense, accused Catalino Dulay denied having sold *shabu* when he was arrested. He claimed that on September 23, 2003, at about 4:30 to 5:30 [p.m.], he was sleeping when his wife woke him up because someone was knocking at the door. He then went to the door and asked those knocking who they were and what was their purpose. Two of the three men asked the accused if he was Allan, but receiving a negative answer, the men immediately held his hands, dragged him out of the house and boarded him into a Toyota Revo. Accused was brought first to the barangay headquarters where he was asked from whom he was getting shabu, and then to Drug Enforcement Unit where he was investigated and shown two (2) plastic sachets. Accused also claimed that his money amounting to ₱200.00 in two one-peso bills was taken from his wallet and these same two-peso bills were the ones marked as “C-3” at the barangay headquarters. He further claimed that he was framed-up by MADAC operatives Rogelio Milan and Kuntil Domingo, an asset of the MADAC, with whom he quarreled three days before his arrest.⁷

On June 16, 2006, the Regional Trial Court of Makati City rendered its Decision on the two charges as follows:

WHEREFORE, in view of the foregoing[,] judgment is rendered as follows:

1. In Criminal Case No. 03-3799 the accused CATALINO DULAY y CADIENTE alias “Lino” is found guilty beyond reasonable doubt of the crime of violation of Section 5, Art. II, RA 9165 and sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The period during which the accused was detained shall be considered in his favor pursuant to existing rules.

2. In Criminal Case No. 03-4000, the accused having pleaded guilty to the charge of violation of Section 15, Art. II, RA 9165, is

⁶ Records, p. 15.

⁷ Rollo, p. 6.

sentenced to undergo rehabilitation for at least six (6) months in a government rehabilitation center under the auspices of the Bureau of Correction subject to the provisions of Article VIII of RA 9165.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the two pieces of plastic sachets of shabu with a combined weight of 0.04 gram subject matter of Criminal Case No. 03-3799 for said agency's appropriate disposition.⁸

Accused-appellant elevated the case to the Court of Appeals *via* a Notice of Appeal.⁹ On April 18, 2008, the Court of Appeals rendered the assailed Decision affirming the convictions.

Accused-appellant instituted the present recourse through a Notice of Appeal.¹⁰ Both plaintiff-appellee, through the Office of the Solicitor General,¹¹ and the accused-appellant¹² manifested that they were dispensing with the filing of a Supplemental Brief, as they had exhaustively argued the issues in their respective briefs before the Court of Appeals.

In the above-mentioned brief of the accused-appellant, he submitted a lone assignment of error:

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹³

Accused-appellant claims that the prosecution failed to prove his guilt beyond reasonable doubt on account of the failure of PO1 Barbosa to identify him at the trial, and the unreliability of the testimonies of PO1 Robles and PO1 Barbosa on account of their distance of ten to fifteen meters

⁸ CA *rollo*, pp. 48-49.

⁹ Records, p. 134.

¹⁰ *Rollo*, pp. 31-33.

¹¹ Id. at 45-48.

¹² Id. at 51-53.

¹³ CA *rollo*, p. 37.

from the place where the alleged transaction took place. Accused-appellant likewise point out the failure of the prosecution to present the informant to corroborate the testimonies of the police officers.

Accused-appellant, however, did not have much to say about the testimony of the poseur-buyer himself, PO1 Guadamor, who was able to give a complete account of the transaction, from his introduction as a buyer to the accused-appellant by the informant, his handing to the accused-appellant of the payment for the two plastic sachets containing white crystalline substance, which the latter drew from his pocket and handed to him, and up to the eventual arrest of the accused-appellant and the marking of the confiscated items.¹⁴

It is significant to reiterate at this point that it is the trial court which is deemed to be in a better position to decide the question of credibility of PO1 Guadamor, as well as those of the other witnesses, since it had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath.¹⁵ The trial court found PO1 Guadamor to be credible, and our examination of his testimony does not give us any reason to find otherwise. As we have often repeated, the trial court's evaluation of the credibility of the witnesses is entitled to the highest respect absent a showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case.¹⁶

Whatever defect that may have been caused by the failure of PO1 Barbosa to identify the accused-appellant in court was cured by the

¹⁴ TSN, March 3, 2005, pp. 12-18.

¹⁵ *People v. Fernandez*, 426 Phil. 168, 173 (2002).

¹⁶ *People v. Ibay*, 371 Phil. 81, 96 (1999).

testimony of accused-appellant himself that PO1 Barbosa was part of the arresting team:

ATTY. YU

Did you recognize any of the three arresting officer at that time?

WITNESS

Yes, ma'am.

ATTY. YU

Who are they?

WITNESS

One of them is a tricycle driver who is also a MADAC operative.

ATTY. YU

What about the other two?

WITNESS

Francisco Barbosa, Jose Guadamor, and Rogelio Milan.¹⁷

The necessity of asking the witness to identify the accused in court is for the purpose of being able to pinpoint said accused to be the very same person referred to in the testimony. As regards the testimony of PO1 Barbosa, it has to be established that accused-appellant was the very same person that was arrested by the team which includes PO1 Barbosa at around 5:20 p.m. on September 23, 2003. Having himself affirmed his own arrest at the hands of the group of PO1 Barbosa on the same date and time, accused-appellant cannot now assert that he was not the person referred to in PO1 Barbosa's testimony.

¹⁷

TSN, April 18, 2006, pp. 9-10.

Furthermore, accused-appellant was, in fact, positively identified in court by PO1 Robles and the poseur-buyer himself, PO1 Guadamor. Accused-appellant's persistent assertion that PO1 Robles and PO1 Barbosa were too far at ten to fifteen meters away from the scene of the alleged transaction does not disprove their ability to positively identify accused-appellant, as they have testified that they eventually went closer to the scene when PO1 Guadamor gave the signal. Neither was the proximity of PO1 Robles and PO1 Barbosa relevant to prove the details of the transaction since their account was merely to corroborate the already convincing testimony of PO1 Guadamor.

Accused-appellant further points out that the prosecution failed to present the informant in court, alleging that the same was necessary to corroborate the testimony of PO1 Guadamor, since it was only the informant and PO1 Guadamor who witnessed the actual transaction.

We disagree. It is settled that the identity or testimony of the informant is not indispensable in drugs cases, since his testimony would only corroborate that of the poseur-buyer.¹⁸ Also, it is undeniably established in jurisprudence that:

We have repeatedly held that it is up to the prosecution to determine who should be presented as witnesses on the basis of its own assessment of their necessity. After all, the testimony of a single witness, if trustworthy and reliable, or if credible and positive, would be sufficient to support a conviction. Moreover, in determining values and credibility of evidence, witnesses are to be weighed, not numbered.¹⁹ (Citations omitted.)

Furthermore, informants are often not presented in court in order to preserve their cover and continue to be of service as such. Their lives may

¹⁸ *People v. Ong Co*, 315 Phil. 829, 845 (1995).

¹⁹ *Id.*

also be placed in danger if they testify in court. Thus, in *People v. Ho Chua*,²⁰ we held:

The presentation of an informant is not a requisite in the prosecution of drug cases. In *People v. Nicolas*, the Court ruled that “[p]olice authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret.” In any event, the testimony of the informant would be merely corroborative. (Citations omitted.)

For the crime of use of dangerous drugs in Criminal Case No. 03-4000, the accused-appellant, who pleaded guilty to this offense, was sentenced to undergo rehabilitation for at least six months in a government rehabilitation center under the auspices of the Bureau of Correction. This is proper, pursuant to Section 15, Article II of Republic Act No. 9165, which provides:

SEC. 15. *Use of Dangerous Drugs.* – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

In Criminal Case No. 03-3799, for the crime of illegal sale of a dangerous drug, the trial court imposed the penalty of life imprisonment and a fine of ₱500,000.00. Accused-appellant respectfully pleads²¹ to this Court

²⁰ 364 Phil. 497, 513-514 (1999).

²¹ *Rollo*, p. 55.

to reduce this penalty on account of the very small quantity involved in the case, which was only 0.04 gram of methylamphetamine hydrochloride. As much as this Court desires to temper justice with mercy whenever warranted by the circumstances of the case, we are restrained by the plain and unambiguous text of Section 5, Article II of Republic Act No. 9165, which provides:


SEC. 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 (₱500,000.00) to Ten million pesos (₱10,000,000.00) 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. (Emphasis added.)

We are therefore constrained to affirm the penalty imposed by the trial court *in toto*.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02342 dated April 18, 2008, which affirmed the Decision of the Regional Trial Court of Makati finding accused-appellant Catalino Dulay y Cadiente guilty beyond reasonable doubt of violation of Sections 5 and 15, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

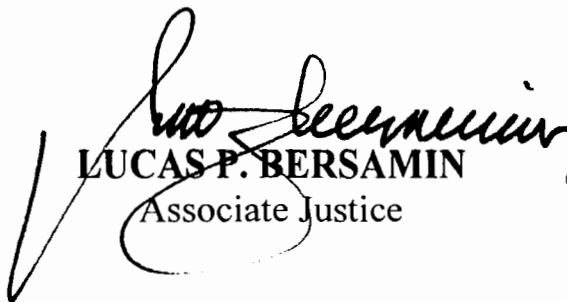
WE CONCUR:



MARIA LOURDES P. A. SERENO

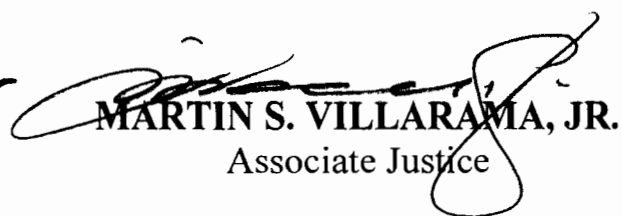
Chief Justice

Chairperson



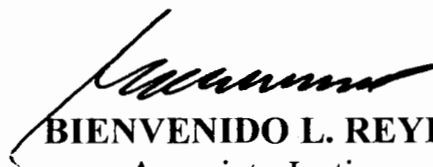
LUCAS P. BERSAMIN

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice



BIENVENIDO L. REYES

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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