



Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 199874**

Present:

*-versus-*

CARPIO, J.,  
Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, JJ.

**PETER FANG y GAMBOA a.k.a.**  
**“Fritz” and JEFFERSON FANG y**  
**PERALTA,**

Accused,

**PETER FANG y GAMBOA a.k.a.**  
**“Fritz,”**

Accused-Appellant.

Promulgated:

JUL 23 2014

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**DECISION**

**PEREZ, J.:**

On appeal is the Decision<sup>1</sup> of the Court of Appeals promulgated on 28 January 2010 affirming the conviction by the Regional Trial Court<sup>2</sup> (RTC) of Baguio City, Branch 4 of appellant Peter Fang y Gamboa for violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer life imprisonment and to pay a ₱500,000.00 fine.

Appellant had been charged following a “buy-bust” operation.

<sup>1</sup> Penned by Associate Justice Michael P. Elbinias with Associate Justices Juan Q. Enriquez, Jr. and Mariflor P. Punzalan-Castillo, concurring. *Rollo*, pp. 2-11.

<sup>2</sup> Presided by Acting Presiding Judge Agapito K. Laoagan, Jr. *CA rollo*, pp. 23-33.

The accusatory portion of the Information against appellant reads:

That on or about the 7<sup>th</sup> day of August, 2004, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and/or distribute to PO2 Paulino Lobus, a member of the Criminal Investigation and Detection Group-CAR, who posed as buyer, methamphetamine hydrochloride commonly known as “Shabu”, a dangerous drug, weighing 0.04 gram contained in a heat-sealed transparent plastic sachet for P500.00, without being authorized by law, in violation of the aforecited provision of law.<sup>3</sup>

When arraigned, appellant pleaded not guilty. Trial ensued.

The prosecution presented as witnesses: Police Chief Inspector Hordan Pacatiw (Police Chief Inspector Pacatiw); PO2 Paulino Abance Lubos, Jr. (PO2 Lubos), who acted as *poseur*-buyer; Police Inspector Emilia Gracio Montes, the forensic chemist; PO2 Arturo San Andres, a back-up operative who assisted a certain Officer Sabo; and PO1 Aldrin Mariano, who transmitted the drug specimen confiscated from appellant to the Philippine National Police (PNP) Crime Laboratory. Their testimonies sought to establish the following facts:

Acting on a tip from an informant that a certain “Fritz” and “Kaday” were selling *shabu* at the Slaughter Compound in *Barangay* Sto. Nino, Baguio City, Police Chief Inspector Pacatiw of the Criminal Investigation and Detection Group (CIDG) in Baguio City formed a buy-bust team on 7 August 2004 composed of PO2 Lubos as *poseur*-buyer, a certain SPO4 Lucas from Philippine Drug Enforcement Agency and a certain PO1 Lacangan from the CIDG, who acted as back-ups. PO2 Lubos and SPO4 Lucas brought the buy-bust money and a piece of Five Hundred Peso bill, to the Fiscal’s office for authentication. At around 3:10 p.m. of the same date, the buy-bust team proceeded to the Slaughter Compound. Upon reaching the area, PO2 Lubos and the informant went to the house where the alleged illegal drug activity was taking place. Other members of the buy-bust team were positioned in the area. The informant knocked on the door and a certain Fritz, who was later identified as appellant, and Kaday, who was later identified as appellant’s son, Jefferson Fang (Jefferson), came out of the house. Appellant talked to the informant. Thereafter, the informant and appellant approached PO2 Lubos, and appellant asked the latter how much will he get. PO2 Lubos answered “*limampiso lang*,” which means Five Hundred Pesos. Appellant asked about the money prompting PO2 Lubos to

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<sup>3</sup> Records, p. 1.

bring out the Five Hundred Peso bill and hand it to appellant. In turn, appellant brought out 2 small sachets of *shabu* and gave it to PO2 Lubos. After examining the same, PO2 Lubos made the pre-arranged signal of removing his cap. The back-up police operatives emerged and arrested appellant, and SPO4 Lucas frisked appellant and was able to recover the buy-bust money and another sachet of *shabu* from his pocket. Police Chief Inspector Pacatiw frisked Jefferson and recovered two sachets of *marijuana*. After informing the accused of their constitutional rights, they were placed under arrest and brought to the CAR-CIDG. The confiscated sachets of *shabu* were marked and an inventory of the seized items was made. The seized items were later brought to the Crime Laboratory.<sup>4</sup> Police Inspector Emilia Montes in her Chemistry Report No. D-057-2004<sup>5</sup> found that the seized plastic sachets are positive for *methamphetamine hydrochloride* or *shabu*. She likewise testified on her findings.

Appellant denied the charges against him and testified that he was sleeping at around 3:00 p.m. of 7 August 2004 when he was awakened by his sister who told him that several men entered their house. Appellant came out and saw men searching the cabinet. Appellant went back to his room to search for a weapon when one armed man demanded that he open the door of his room. Appellant obliged and two more men entered his room and conducted a search. The armed men took ₱2,500.00 cash and his *cellphone*. Thereafter, appellant and his son were forced to go with the armed men to the CIDG office.<sup>6</sup> In defense of appellant, his nephew Romier Antipuesto (Romier) narrated that he and appellant live in the same house with partition. Romier was watching television with Jefferson and his younger siblings in the front portion of the house while appellant was sleeping in the back portion when four men barged into their house. One of them frisked Jefferson while the others searched the house. When Romier's mother saw the four men, she ran and called appellant. Three men approached appellant. Jefferson and appellant were arrested.<sup>7</sup> Jefferson corroborated his cousin's narration and added that he and appellant were brought to the CIDG station where he was charged for illegal possession of drugs. Jefferson denied the charges against him and his father. Myrna Antipuesto, appellant's sister, recounted that she was doing the laundry when three men suddenly entered the house and she heard the children shouting. She immediately called appellant. She denied that appellant was selling illegal drugs.<sup>8</sup>

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<sup>4</sup> TSN, 17 November 2005, pp. 4-9.

<sup>5</sup> Records, p. 15.

<sup>6</sup> TSN, 5 December 2006, pp. 3-6.

<sup>7</sup> TSN, 25 July 2006, pp. 3-11.

<sup>8</sup> TSN, 26 September 2006, pp. 3-4.

On 10 March 2008, the RTC rendered a Joint Judgment finding appellant guilty of violation of Section 5, Article II of Republic Act No. 9165, and sentencing him to suffer life imprisonment and to pay a ₱500,000.00 fine. He was acquitted in Criminal Case No. 23402-R while Jefferson was acquitted in Criminal Case No. 23403-R for illegal possession of *shabu* and *marijuana*, respectively. The trial court found that in Criminal Case No. 23401-R, the prosecution has proven the guilt of appellant beyond reasonable doubt by competent object and testimonial evidence.

After receiving a copy of the trial court's decision, appellant seasonably filed a Notice of Appeal<sup>9</sup> before the Court of Appeals. On 28 January 2010, the appellate court affirmed the judgment of the RTC.

Appellant appealed his conviction before this Court, adopting the same arguments in his Brief before the Court of Appeals.

It is jurisprudential that factual findings of trial courts especially those which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings.<sup>10</sup> The evaluation of the credibility of witnesses and their testimonies are best undertaken by the trial court because of its unique opportunity to observe the witnesses' deportment, demeanor, conduct and attitude under grilling examination.<sup>11</sup>

After a painstaking review of the records, we agree with the lower courts' unanimous finding that the guilt of the appellant was established beyond reasonable doubt.

In every prosecution for illegal sale of *shabu*, the following elements must be sufficiently proved: (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 therefor.<sup>12</sup> Indeed, all these elements were duly established. Appellant was caught *in flagrante delicto* selling *shabu* through a buy-bust operation conducted by members of the CIDG in Baguio City.

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<sup>9</sup> CA rollo, p. 34.

<sup>10</sup> *People v. Ocampo*, 503 Phil. 310, 317 (2006).

<sup>11</sup> *Id.*

<sup>12</sup> *People v. Isnani*, G.R. No. 133006, 9 June 2004, 431 SCRA 439, 449 citing *People v. Tan*, 432 Phil. 171, 183 (2002) citing further *People v. Zheng Bai Hui*, 393 Phil. 68, 131 (2000); *People v. Tiu*, 460 Phil. 95, 103 (2003).

The *poseur*-buyer, PO2 Lubos, positively testified that the sale took place; that appellant was the author thereof; that appellant produced the plastic sachet containing *shabu* and handed it to the *poseur*-buyer in exchange for ₱500.00, thus:

Q: And when you went to the house of Fritz and Kaday what happened next?

A: The civilian informant went ahead about, left me at about five (5) meters from the house which, and which [sic] the civilian informant knocked at the small door.

Q: And when he knocked the small door what happened next?

A: Fritz came out.

Q: And when Fritz came out what transpired?

A: I saw them talking.

Q: And after you saw them talking what else happened?

A: Fritz came out together with the civilian informant and came to, near me, Ma'am.

Q: And when they came near you what did you do?

A: The civilian informant informed me about, introduced me as a buyer.

Q: And when you were introduced as a buyer what did you do?

A: Fritz asked me how much in *Tagalog* how much will I get.

Q: And how much did you tell him?

A: *Limampiso lang*, which means Five Hundred-Peso (500) bill.

Q: So, when you informed Fritz that you were going to buy worth *limampiso* what happened next?

A: He asked me about the money.

Q: What ... He asked you about the money?

A: Which I brought out the five hundred-peso bill and gave it him.

Q: And when you received the five hundred-peso bill what else happened?

A: He brought out two (2) small sachet of *shabu*.

Q: And when he brought out this small sachet of *shabu* to whom did he give it?

A: To me, Ma'am.

Q: And did you receive the sachet?

A: Yes, Ma'am.

Q: Upon receipt of the sachet what else happened?

- A: After examining if it is real *shabu*[,] I gave my signal to our back-up team which about ten (10) to fifteen (15) meters away then they came.
- Q: You said that you gave a pre-arranged signal, what was your pre-arranged signal?
- A: By removing my cap, Ma'am.
- Q: And the back-up team was about 10 to 15 meters away?
- A: Yes, Ma'am.
- Q: When the back-up team came what happened?
- A: When the back-up team came they arrested Fritz and Kaday who was about one (1) meter away.<sup>13</sup>

The result of the laboratory examination, as testified to by the forensic chemist, confirmed the presence of *methamphetamine hydrochloride* on the white crystalline substance inside the plastic sachet confiscated from appellant.<sup>14</sup> The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. This was further corroborated by the presentation of the marked money in evidence.<sup>15</sup>

Appellant asserts that the standard procedures for the custody and disposition of the confiscated drugs as provided in Section 21 of Republic Act No. 9165 were not complied with. Appellant argues that the physical inventory of the seized items was not conducted in the place where the seizure had taken place.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides for the custody and disposition of the confiscated illegal drugs, to wit:

(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.

This rule was elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, *viz*:

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<sup>13</sup> TSN, 17 November 2005, pp. 6-7.

<sup>14</sup> Records, p. 15.

<sup>15</sup> Id. at 8.

a) The apprehending officer/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, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless arrest; 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.

The failure of the prosecution to show that the police officers conducted the required physical inventory in the place where the subject *shabu* was seized does not automatically render accused's arrest illegal or the items seized from him inadmissible. A *proviso* was added in the implementing rules 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."

Pertinently, it is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the *corpus delicti*.

Appellant maintains that the trial court erred in convicting him despite the prosecution witnesses' conflicting testimonies. Appellant claims that the *poseur*-buyer stated that two sachets of *shabu* were sold to him but appellant was indicted for selling only one plastic sachet of *shabu*. Appellant points out that in the *poseur*-buyer's affidavit, the latter described the physical appearances and the clothes that appellant and his son were wearing but the *poseur*-buyer changed his statement at the stand and claimed that he could no longer recall the type of clothes that appellant was wearing at the time of the alleged buy-bust operation. Appellant questions the prosecution's story about an anonymous confidential informant, in that, said informant was not even identified as one of the police asset.

We quote with approval the appellate court's ratiocination on why appellant's arguments must fail:

The mere fact that the drugs obtained were more, had no bearing on the crime charged. This is because liability under Section 5 of Republic Act No. 9165 is without regard to the quantity of the drugs seized.

Of no consequence likewise was accused-appellant's argument that PO2 Lubos' testimony of his not being able to recall the type of clothes that accused-appellant wore during the buy-bust operation – was inconsistent with PO2 Lubos' description in his Affidavit of Arrest regarding the clothes worn by accused-appellant.<sup>16</sup>

The prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs. The concurrence of all elements of the illegal sale of *shabu* was proven by the prosecution. Moreover, the rule is that inconsistencies in the testimony of witnesses, when referring only to minor details and collateral matters, do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Such minor inconsistencies even enhance their veracity as the variances erase any suspicion of a rehearsed testimony.<sup>17</sup>

The chain of custody does not appear to have been broken. The recovery and handling of the seized drugs were satisfactorily established. As correctly found by the appellate court, “no ‘break’ whatsoever in the chain of custody of the prohibited drugs occurred. The testimonial, documentary, and object evidence presented by the prosecution established every link in the custody of the prohibited drugs. This leads to no other conclusion than that the specimen examined by the forensic chemist, which tested positive for *shabu*, and which were presented as evidence during the trial, were the ones taken from accused-appellant during the buy-bust operation.”<sup>18</sup>

Appellant's defense, which is predicated on a bare denial, deserves scant consideration in light of the positive testimonies of the police officers. The defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties.<sup>19</sup> Bare denials of appellant cannot prevail over the positive testimonies of the three police officers.<sup>20</sup> Moreover, there is no evidence of any improper motive on

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<sup>16</sup> *Rollo*, p. 8.

<sup>17</sup> *People v. Monceda*, G.R. No. 176269, 13 November 2013.

<sup>18</sup> *Rollo*, p. 10.

<sup>19</sup> *People v. Chua Uy*, 384 Phil. 70, 85-86 (2000) citing *People v. Dichoso*, G.R. Nos. 101216-18, 4 June 1993, 223 SCRA 174, 187; *People v. Constantino*, G.R. No. 109119, 16 August 1994, 235 SCRA 384, 391; *People v. Tranca*, G.R. No. 110357, 17 August 1994, 235 SCRA 455, 462-463.

<sup>20</sup> *People v. Lee Hoi Ming*, 459 Phil. 187, 195 (2003); *People v. Saludes*, 451 Phil. 719, 727 (2003).




the part of the police officers who conducted the buy-bust operation to falsely testify against appellant.

In fine, it has been established by proof beyond reasonable doubt that appellants sold *shabu*. Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00.


**WHEREFORE**, the Decision dated 28 January 2010 of the Court of Appeals affirming the conviction of appellant Peter Fang y Gamboa by the Regional Trial Court of Baguio City, Branch 4, for violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of ₱500,000.00 is hereby **AFFIRMED**.

**SO ORDERED.**



**JOSE PORTUGAL PEREZ**  
Associate Justice

WE CONCUR:




**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ARTURO D. BRION**  
Associate Justice



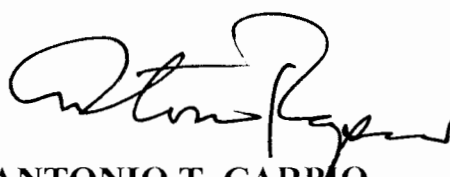
**MARIANO C. DEL CASTILLO**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Second Division Chairperson

### 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