



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. ESPINAL
 Division Clerk of Court
 Third Division
 AUG 23 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 208837

Present:

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 CAGUIOA,* JJ.

-versus-

DONNA RIVERA y DUMO,
 Accused-Appellant.

Promulgated:
July 20, 2016

X----------X

RESOLUTION

PEREZ, J.:

Before this Court is an appeal from the 16 May 2013 Decision¹ of the Court of Appeals in CA-G.R. CR-H.C. No. 05117, which affirmed the 29 June 2011 Decision² of the Regional Trial Court (RTC) of Agoo, La Union, Branch 32, finding appellant Donna River y Dumo guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II, Republic Act (R.A.) No. 9165.

The case stemmed from two Informations charging appellant with illegal sale and possession of methamphetamine hydrochloride or *shabu*, the accusatory portions of which read as follows:

Criminal Case No. A-5711 (Possession)

* Additional Member per Raffle dated 13 June 2016.

¹ *Rollo*, pp. 2-22; Penned by Associate Justice Stephen C. Cruz with Associate Justices Normandie Pizarro and Myra V. Garcia-Fernandez concurring.

² Records (Crim. Case No. A-5711), pp. 281-287; Presided by Presiding Judge Jennifer A. Pilar.

That on or about the 26th day of January 2009, in the Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have in (her) possession, control and custody three (3) pieces plastic sachet marked as:

- (1) "B1 JJC" containing methamphetamine hydrochloride, a dangerous drug, weighing zero point zero five hundred thirty 0.0530 gram;
- (2) "B2 JJC" containing methamphetamine hydrochloride, a dangerous drug, weighing zero point zero five hundred sixty five 0.0565 gram;
- (3) "B3 JJC" containing methamphetamine hydrochloride, a dangerous drug, weighing zero point zero five hundred fifty four 0.0554 gram;

without first securing the necessary permit, license or prescription from the proper government agency or authority.³

Criminal Case No. A-5713 (Sale)

That on or about the 26th day of January 2009, in the Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of [this] Honorable Court, the above-named accused, for and in consideration of the sum of P500.00 did then and there willfully, unlawfully and feloniously, sell and deliver one (1) plastic sachet containing ZERO POINT ZERO FOUR HUNDRED EIGHTY FOUR (0.0484) gram of methamphetamine hydrochloride, a dangerous drug, to IO1 JAIME J. CLAVE, JR., who posed as buyer thereof using marked money, ONE (1) piece of TWO hundred peso bill bearing serial No. DQ540638; TWO (2) pcs. of ONE HUNDRED PESOS bill bearing serial nos. of EQ913638 and JM093792 respectively and FIVE (5) PCS. TWENTY PESOS bill bearing serial nos. of W783296; SC613989; V500855; W637658 and ZG282032 respectively without the necessary authority or permit from the proper government authorities.⁴

Upon arraignment, appellant pleaded not guilty to both charges.

Trial on the merits ensued.

Acting on a tip from an informant, that appellant was selling drugs in San Nicolas Central, Agoo, La Union and upon confirmation with the Intelligence Division of the Philippine Drug Enforcement Agency (PDEA) Regional Office in San Fernando City, La Union, Police Officer 3 Roy Arce Abang (PO3 Abang) formed a buy-bust team on 26 January 2009 composed

³ Id. at 1.

⁴ Records (Crim. Case No. A-5712), p. 1.



of Intelligence Officer 2 Jaime Clave (IO2 Clave) as poseur buyer and Lanibelle Ancheta (Ancheta), as immediate back-up. Intelligence Officers Rosario Vicente (Vicente), Jojo Cayuma (Cayuma), Ricky Ramos (Ramos) and IO2 Natividad also joined the operation.⁵

IO2 Clave was given five (5) pieces of ₱20.00 bill, one (1) piece of ₱200.00 bill and two (2) pieces of ₱100.00 bill to be used as buy-bust money.⁶ The team proceeded to the target area, IO2 Clave and the informant approached appellant, who was then seated on a bamboo bench. The informant introduced IO2 Clave to appellant as the one who wanted to buy *shabu* worth ₱500.00. IO2 Clave then gave appellant the marked bills. Appellant, in turn, took out an elongated plastic sachet from her pocket and handed it to IO2 Clave. Upon inspection of the sachet, IO2 Clave sent his pre-arranged signal to the other PDEA officers by wearing his sunglasses on top of his head. Ancheta then rushed to IO2 Clave's side and introduced themselves as PDEA officers. Appellant was arrested and subjected to a body search. Three (3) more elongated plastic sachets and four (4) small plastic sachets of suspected *shabu* were recovered from her. The confiscated items were marked and inventoried by IO2 Clave in the presence of the *barangay* officials, a representative from the media and other witnesses.⁷ IO2 Clave brought them to the PNP Crime Laboratory for examination.⁸ Chemistry Report No. D-007-09 contains the following findings:

SPECIMEN SUBMITTED:

A- Four (4) small heat-sealed transparent plastic sachets containing white crystalline substance with the following markings and recorded net weights:

A1 (A1 "JJC" with date and time) = 0.0484 gram

A2 (B1 "JJC" with date and time) = 0.0530 gram

A3 (B2 "JJC" with date and time) = 0.0565 gram

A4 (B3 "JJC" with date and time) = 0.0554 gram

B- Four (4) small heat-sealed transparent plastic sachets containing white crystalline residue with markings "C1 to C4" and "JJC".

x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x

⁵ TSN, 10 August 2009, pp. 4-8.

⁶ Id. at 9.

⁷ Id. at 14-23.

⁸ TSN, 17 August 2009, p. 8.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for the presence of Methamphetamine Hydrochloride, a dangerous drug. x x x⁹

In her defense, appellant presented a different version of the incident. She narrated that on 26 January 2009 at around 4:00 p.m., she was waiting for her grandmother on a bench located outside the latter's house when five armed men approached her and asked if she was "Donna Rivera." Appellant confirmed her identity. She was thereafter frisked. She and her live-in partner were arrested and brought to the PDEA office. Her live-in partner was later released while she was detained. She further claimed that during the investigation, she was not accompanied by counsel.¹⁰

On 29 June 2011, the RTC rendered a Decision finding appellant guilty of sale and illegal possession of *shabu*, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, to wit:

1. In Criminal Case No. A-5711, the [c]ourt finds accused Donna Rivera y Dumo **guilty** beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165, and hereby sentences her to suffer the indeterminate penalty of twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum, and to pay a fine of three hundred thousand pesos (P300,000.00).
2. In Criminal Case No. A-5712, the [c]ourt finds accused Donna Rivera y Dum **guilty** beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, and hereby sentences her to suffer the penalty of life imprisonment, and to pay a fine of five hundred thousand pesos (P500,000.00)

The Branch Clerk of Court is directed to transmit the eight (8) plastic sachets subject matter of these cases to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.¹¹

On 16 May 2013, the Court of Appeals affirmed the judgment of the RTC. The appellate court held that the prosecution was able to prove beyond reasonable doubt that the three (3) elongated and four (4) smaller sachets, all containing *shabu*, were seized from appellant's possession. Furthermore, the appellate court found that a consummated sale of *shabu*

⁹ Records (Crim. Case No. A-5711), p. 17.

¹⁰ TSN, 6 June 2011, pp. 4-17.

¹¹ Records (Crim. Case No. A-5711), p. 287.

transpired between IO2 Clave and appellant. The appellate court gave full credit to the testimony of the PDEA officers relative to the presence of all the elements for illegal possession and illegal sale of *shabu*.

Appellant appealed her conviction before this Court, adopting the same arguments in her Brief¹² before the Court of Appeals.

Appellant contends that the PDEA officers had sufficient time to secure a warrant of arrest but failed to do so. Appellant asserts that a buy-bust operation should not be used to dispense with the requirement of a warrant. Appellant insists that she was merely sitting on a bench and waiting for her grandmother when the PDEA officers came and apprehended her. Moreover, appellant argues that the items allegedly seized from her are not admissible in evidence because they were a product of an invalid warrantless arrest.

With these antecedents, we once more pronounce 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. 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.¹³

After a painstaking review of the records, we agree with the trial court's 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.¹⁴

On the other hand, to prove the complicity of the accused to illegal possession of a dangerous drug, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the

¹² CA rollo, pp. 39-47.

¹³ *People v. Bayan*, G.R. No. 200987, 20 August 2014, 733 SCRA 577, 587.

¹⁴ *People v. Cerdon*, G.R. No. 201111, 6 August 2014, 732 SCRA 335, 342.



accused was freely and consciously aware of being in possession of the drug.¹⁵

The prosecution has duly established all the elements of the two crimes charged. As culled from testimonies of prosecution witnesses, the PDEA officers caught appellant *in flagrante delicto* selling *shabu* to a PDEA officer. 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. After her arrest, she was frisked and eight (8) plastic sachets of *shabu* were recovered in her possession.

The result of the laboratory examination confirmed the presence of methamphetamine hydrochloride on the white crystalline substance inside the plastic sachets confiscated from appellant. This was further corroborated by the presentation of the marked money in evidence.

Denial or frame-up, like alibi, has been viewed by the court with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.¹⁶ 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.¹⁷ Bare denials of appellant cannot prevail over the positive testimonies of the three police officers. Moreover, there is no evidence of any improper motive on the part of the PDEA officers who conducted the buy-bust operation to falsely testify against appellant.

Appellant questions the propriety of the buy-bust when a warrant of arrest should have been secured.

Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure provides instances when warrantless arrest may be affected, to wit:

Sec. 5 Arrest without warrant; when lawful.

A peace officer or a private person may, without a warrant, arrest a person:

¹⁵ *Valleno v. People*, 701 Phil. 313, 322 (2013).

¹⁶ *People v. Tapugay*, G.R. No. 200336, 11 February 2015.

¹⁷ *People v. Steve*, G.R. No. 204911, 6 August 2014, 732 SCRA 385, 400.



(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another

Under Section 5(a) of the above-quoted provision, a person may be arrested without a warrant if he “has committed, is actually committing, or is attempting to commit an offense.” Appellant was caught in the act of committing an offense. When an accused is apprehended *in flagrante delicto* as a result of a buy-bust operation, the police are not only authorized but duty-bound to arrest him even without a warrant.

In *People v. Agulay*,¹⁸ the Court reiterated the rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid “warrantless arrest,” in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court. The Court proceeded to state that:

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.¹⁹

Appellant was caught in possession of 0.1649 gram of *shabu*. The illegal possession of dangerous drugs is punished under Section 11, paragraph 2(1), Article II of R.A. No. 9165 as follows:

x x x x

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or “shabu” is ten (10) grams or more but less than fifty (50) grams;

¹⁸ 588 Phil. 247 (2008).

¹⁹ Id. at 727 citing *People v. Valencia*, 439 Phil. 561, 574 (2002) and *People v. Abbu*, 317 Phil. 518, 525 (1995).

x x x x

On the other hand, selling of *shabu*, regardless of quantity, is punishable by life imprisonment under Section 5, paragraph 1 of the same law, viz:

Section 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 (P500,000.00) to Ten million pesos (P10,000,000.00) 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.

Accordingly, we sustain the penalty imposed by the RTC, as affirmed by the Court of Appeals, as it is within the range provided for by law.

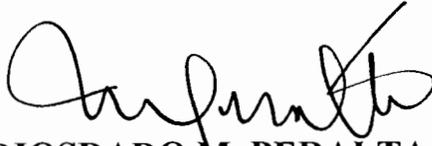
WHEREFORE, the Decision dated 16 May 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05117 affirming the conviction of appellant Donna Rivera y Dumo by the Regional Trial Court, Agoo, La Union, Branch 32, for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.

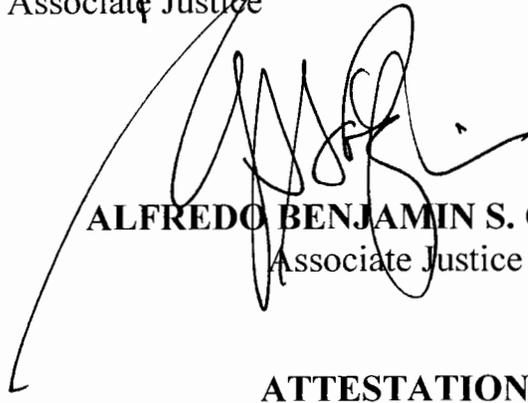

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

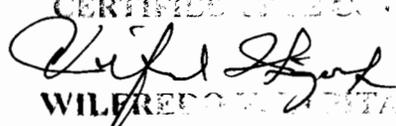
ATTESTATION

I attest that the conclusions in the above Resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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WILFREDO M. PERALTA
 Division Chairperson
 Third Division


MARIA LOURDES P. A. SERENO
 Chief Justice

AUG 23 2016