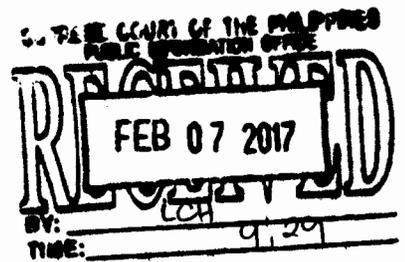




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee

G.R. No. 215942

Present:

- versus -

SERENO, *CJ*, Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, *JJ*.

KUSAIN AMIN y AMPUAN, a.k.a.
“Cocoy,”
 Accused-Appellant.

Promulgated:

JAN 18 2017

X ----- X

DECISION

SERENO, *CJ*:

This is an appeal assailing the Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01179, which affirmed the Decision² of the Regional Trial Court (RTC), Branch 40, Cagayan de Oro City, in Criminal Case No. 2004-010. The RTC found accused-appellant guilty beyond reasonable doubt of the crime of illegal sale of prohibited drugs under Section 5, paragraph 1, Article II of Republic Act (R.A.) No. 9165.

Accused-appellant was charged under the following Information:

That on January 2, 2004, at 5:40 p.m. more or less, at Landless, Colrai, Macabalan, Cagayan de Oro City, Philippines, and within the

¹ *Rollo*, pp. 3-15; Decision dated 16 October 2014 and penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Edward B. Contreras and Rafael Antonio M. Santos.

² *CA Rollo*, pp. 29-37; Decision dated 14 June 2013.

jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there wilfully and feloniously have in his possession custody and control one (1) small heated-sealed transparent plastic sachet of white crystalline substance locally known as shabu with approx. weight of 0.09 gram valued to more or less P100 and sold it to a poseur-buyer of PNP-CDO for a consideration of P100.00 marked money one (1) pc one hundred pesos bill with serial number FA246643, well knowing it to be a dangerous drug.

Contrary to law.³

Upon arraignment, accused-appellant, assisted by counsel, pleaded not guilty to the charge.⁴ Hence, trial ensued.

On 14 June 2013, the RTC rendered a Decision,⁵ the dispositive portion of which is herein quoted:

WHEREFORE, the foregoing considered, the prosecution having established all the elements of the crime of illegal sale of a dangerous drug, the Court hereby finds the accused, **Kusain Amin y Ampuan GUILTY** beyond reasonable doubt of the crime of Violation of Sec. 5, par. 1, Article II of R.A. 9165, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00. The sachet of shabu described in the Information is ordered confiscated in favor of the Government to be disposed of in accordance with law and regulations. No pronouncement as to costs.

SO ORDERED.⁶

In so ruling, the RTC gave credence to the testimonies of the prosecution witnesses: Police Inspector (P/Insp.) Penel Ramas; and Senior Police Officers (SPOs)2 Ricky Bagas, Jameson Alvior, Jr., and Benjamin Dacara (Ret.).⁷ The trial court held that the prosecution had successfully proved the existence of all the essential elements of the crime, accused-appellant having been “positively identified by the police officers who conducted the buy-bust operation as the seller of the *shabu* presented in the case.”⁸ Likewise, the prosecution established that the “sale actually occurred and that one sachet of *shabu* was sold for the price of ₱100.00.”⁹ P/Insp. Ramas testified that he was about 10 to 15 meters away when the confidential informant/poseur-buyer handed the marked money to accused-appellant in exchange for *shabu*.¹⁰ After relying on the signal given by the poseur-buyer (i.e. removing his eyeglasses), they proceeded to frisk accused-

³ Id. at 29.

⁴ Id.

⁵ Id.

⁶ Id. at 36.

⁷ Id. at 30-33.

⁸ Id. at 35.

⁹ Id.

¹⁰ Id. at 30-31.

appellant and arrest him immediately. They were able to recover the marked money in the latter's possession.¹¹

Moreover, the RTC found that the identity of the dangerous drug was sufficiently proven because the prosecution was able to establish the chain of custody, from the time it was sold by accused-appellant to when it was presented in court.¹² SPO2 Dacara testified that he had personally received the sachet of *shabu* from their poseur-buyer at the place of arrest and brought it to their office later. After making the appropriate markings (the letter "A" and his initials) on the sachet, he turned it over to SPO2 Bagas for delivery to the Philippine National Police (PNP) Crime Laboratory.¹³ SPO2 Alvior then identified the sachet as the same item that he had received on 3 January 2004 from SPO3 Bagas at the PNP Crime Laboratory Office, and that he later turned over to the examining forensic chemist, Police Senior Inspector (P/SI) April Garcia Carbajal.¹⁴

In light of the positive testimonies of the prosecution witnesses, the trial court gave scant consideration to the uncorroborated self-serving allegations of accused-appellant that he had been framed. He was sentenced to suffer the penalty of life imprisonment and to pay a fine of five hundred thousand pesos (₱500,000) for the crime of illegal sale of prohibited drugs.¹⁵

Upon intermediate appellate review, the CA rendered a Decision on 16 October 2014, the dispositive portion of which reads:

WHEREFORE, the appeal is DENIED. The Judgment dated June 14, 2013 of the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch 40 in Criminal Case No. 2004-010 is hereby AFFIRMED *in toto*.

SO ORDERED.¹⁶

In convicting appellant of the crimes charged, the CA disregarded his position that there was no valid buy-bust operation, because the arresting team had not coordinated the matter with the Philippine Drug Enforcement Agency (PDEA).¹⁷ The appellate court maintained that neither R.A. 9165 nor its Implementing Rules and Regulations (IRR) required PDEA's participation in any buy-bust operation. After all, a buy-bust is "just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of Court [sic], which police authorities may rightfully resort to in apprehending

¹¹ *Id.* at 32.

¹² *Id.* at 35.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Rollo*, p. 14.

¹⁷ *Id.* at 7.



violators x x x. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.”¹⁸

On accused-appellant's contention that the prosecution's failure to present the poseur-buyer weakened the arresting team's testimonies, the CA held that the non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction, as held in *People v. Berdadero*.¹⁹ In any case, the testimonies of SPO2 Dacara and P/Insp. Ramas, who were both within clear seeing distance, “presented a complete picture, providing every detail of the buy-bust operation.”²⁰

Finally, as regards the failure of the police officers to immediately mark the alleged *shabu* at the crime scene (but only at the police station), the CA ruled that “failure to strictly comply with Section 21(1), Article II of RA No. 9165 does not necessarily render an accused’s arrest illegal or the items seized or confiscated from him inadmissible.”²¹ It further emphasized that “[w]hat is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.”²²

We now resolve the appeal.

ISSUE

From the foregoing, the sole issue before us is whether or not the RTC and the CA erred in finding the testimonial evidence of the prosecution witnesses sufficient to warrant appellant’s conviction for the crimes charged.

THE COURT’S RULING

We reverse the appellate court.

While prior coordination with the PDEA is not necessary to make a buy-bust operation valid,²³ we are constrained to reverse the findings of the

¹⁸ Id. at 10.

¹⁹ Id. at 11.

²⁰ Id.

²¹ Id. at 13.

²² Id.

²³ *People v. Balaquit*, G.R. No. 206366, 13 August 2014, 733 SCRA 144, 152-153, citing *People v. Roa*, G.R. No. 186134, 6 May 2010, 620 SCRA 359, 368-369. In *People v. Balaquit*, we said that “[w]hile it is true that Section 8615 of R.A. No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain 'close coordination with the PDEA on all drug related matters, the provision does not, by so saying, make PDEA's participation a condition sine qua non for every buy-bust operation. After all, a buy-bust is just a form of an in flagrante arrest sanctioned by Section 5, Rule 113 of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of R.A. No. 9165 in support of the PDEA x x x.”

CA because the non-presentation of the poseur-buyer is fatal to the cause of the prosecution. In *People v. Andaya*,²⁴ the importance of presenting the poseur-buyer's testimony before the trial court was underscored by the Court in this wise:

The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested in *flagranti delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person. The arresting police officer or private person is favored in such instance with the presumption of regularity in the performance of official duty.

Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. This responsibility imposed on the State accords with the presumption of innocence in favor of the accused, who has no duty to prove his innocence until and unless the presumption of innocence in his favor has been overcome by sufficient and competent evidence.²⁵

In the same case, we emphasized that “[t]here would have been no issue against [the buy-bust operation], except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between Andaya and the poseur buyer due to their being positioned at a distance from the poseur buyer and Andaya at the moment of the supposed transaction.”²⁶ It was even noted in that case that the “members of the buy-bust team arrested Andaya on the basis of the pre-arranged signal from the poseur-buyer.”²⁷

While there is a “need to hide [the poseur-buyers] identit[ies] and preserve their invaluable service to the police,”²⁸ this consideration cannot be applied to this case, because, as in *Andaya*, the “poseur-buyer and the confidential informant were one and the same. Without the poseur buyer's testimony, the State did not credibly incriminate [the accused].”²⁹

The testimonies of prosecution witnesses SPO2 Bagas, SPO2 Alvior, Jr., SPO2 Dacara, and P/Insp. Ramas (who was 10 meters away) cannot be considered as eyewitness accounts of the illegal sale. There was no indication that they directly saw an illegal drug being sold to the poseur-buyer. In *People v. Guzon*,³⁰ we held that “the police officer, who admitted

²⁴ G.R. No. 183700, 13 October 2014.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ G.R. No. 199901, 9 October 2013, 751 SCRA 384.

that he was seven (7) to eight (8) meters away from where the actual transaction took place, could not be deemed an eyewitness to the crime.”³¹

At this juncture, We reiterate our point in *Andaya*:

Secondly, the reliance on the supposed signal to establish the consummation of the transaction between the poseur buyer and Andaya was unwarranted because the unmitigatedly hearsay character of the signal rendered it entirely bereft of trustworthiness. The arresting members of the buy-bust team interpreted the signal from the anonymous poseur buyer as the sign of the consummation of the transaction. Their interpretation, being necessarily subjective without the testimony of the poseur buyer, unfairly threatened the liberty of Andaya. We should not allow that threat to perpetuate itself. And, lastly, the reliance on the signal would deprive Andaya the right to confront and test the credibility of the poseur buyer who supposedly gave it.³²

This interpretation is premised on the legal reasoning that “when the inculpatory facts and circumstances are capable of two (2) or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.”³³ In light of the pronouncements above, We deem it unnecessary to discuss other issues raised by both parties.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the Court of Appeals Decision dated 16 October 2014 in CA-G.R. CR-H.C. No. 01179 affirming the Decision dated 14 June 2013 issued by the Regional Trial Court, Branch 40, Cagayan de Oro City, in Criminal Case No. 2004-010; and **ACQUITS** accused-appellant **KUSAIN AMIN y AMPUAN** of the crime charged in Criminal Case No. 2004-010 on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby **ORDERED** to immediately release accused-appellant **KUSAIN AMIN y AMPUAN** from custody, unless he is being detained for some other lawful cause.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice

³¹ Id. at 408.

³² Supra note 23.

³³ *People v. Tadepa*, 314 Phil. 231-241 (1995), citing *People v. Yabut*, G.R. No. 82263, 26 June 1992, 210 SCRA 394.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
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
MARIA LOURDES P. A. SERENO
Chief Justice