



**Republic of the Philippines
Supreme Court
Manila**

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-appellee,

G.R. No. 210610

Present:

- versus -

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
LEONEN,* and
TIJAM, *JJ.*

**MARILOU HILARIO y DIANA
and LALAINÉ GUADAYO y
ROYO,**

Accused.

Promulgated:

MARILOU HILARIO y DIANA,
Accused-appellant.

JAN 11 2018

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DECISION

LEONARDO-DE CASTRO, *J.*:

This is an appeal filed by accused-appellant Marilou D. Hilario (Hilario) of the Decision¹ dated July 18, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05244, affirming with modification the Decision² dated August 23, 2011 of the Regional Trial Court (RTC) of Lemery, Batangas, Branch 5 in Criminal (Crim.) Case Nos. 10-2008, 11-2008, and 13-2008. In its assailed Decision, the appellate court found Hilario guilty of illegal sale of dangerous drugs, in violation of Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002; but acquitted Hilario and her co-accused Lalaine R. Guadayo (Guadayo) of illegal possession of dangerous drugs, penalized under Article II, Section 11 of Republic Act No. 9165. The RTC had previously convicted Hilario and Guadayo of all charges against them.

* Per Raffle dated January 8, 2018.

¹ Rollo, pp. 2-21; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon concurring.

² CA rollo, pp. 12-17; penned by Executive Judge Eutiquio L. Quitain.

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On January 25, 2008, three Informations were filed before the RTC against Hilario and Guadayo, to wit:

Docket No.	Accused	Charge
Crim. Case No. 10-2008	Hilario	Illegal Sale of Dangerous Drugs (Article II, Section 5 of R.A. No. 9165)
Crim. Case No. 11-2008	Hilario	Illegal Possession of Dangerous Drugs (Article II, Section 11 of R.A. No. 9165)
Crim. Case No. 13-2008	Guadayo	Illegal Possession of Dangerous Drugs (Article II, Section 11 of R.A. No. 9165)

The Information in Crim. Case No. 10-2008 accused Hilario of illegal sale of dangerous drugs, allegedly committed as follows:

That on or about the 22nd day of January, 2008, at about 11:00 o'clock in the evening, at Barangay Maguihan, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully sell, deliver and give away one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as "shabu", weighing 0.04 gram, referred to as specimen A (NBS-1) in Chemistry Report No. BD-012-08, a dangerous drug.³

Hilario was also charged with illegal possession of dangerous drugs under the Information in Crim. Case No. 11-2008, thus:

That on or about the 22nd day of January, 2008, at about 11:00 o'clock in the evening, at Barangay Maguihan, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in her possession, custody and control one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as "shabu", weighing 0.03 gram, referred to as specimen B (NBS-2) in Chemistry Report No. BD-012-08, a dangerous drug.⁴

The Information in Crim. Case No. 13-2008 was similarly worded to that in Crim. Case No. 11-2008, except that it incriminated Guadayo for illegal possession of "one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as 'shabu,' weighing 0.04 gram, a dangerous drug."⁵

When arraigned on April 29, 2008, Hilario and Guadayo pleaded not guilty to the charges against them.⁶

The prosecution presented a lone witness, Police Officer (PO) 1 Nemesio Brotonel de Sagun (de Sagun) of the Philippine National Police

³ Records (Crim. Case No. 10-2008), p. 24.

⁴ Id. (Crim. Case No. 11-2008), p. 1.

⁵ Id. (Crim. Case No. 13-2008), p. 1.

⁶ Id. (Crim. Case No. 10-2008), p. 39.

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(PNP), then assigned in Lemery, Batangas. PO1 de Sagun testified that on January 22, 2008, at around 11:00 in the evening, he was with PO2 Arnold Magpantay (Magpantay) and PO1 Melvin Cabungcal (Cabungcal) in Sitio Bagong Barrio, Barangay (Brgy.) Maguihan, Lemery, Batangas, to conduct surveillance and a buy-bust operation. PO1 de Sagun, in civilian clothes, acted as poseur-buyer and was able to buy *shabu* for ₱500.00 from Hilario. Upon consummation of the sale, PO1 de Sagun personally arrested Hilario and marked the ₱500.00-bill he paid Hilario as “NBS-1” and the *shabu* Hilario sold to him as “NBS-2.” After the arrest, PO1 de Sagun brought Hilario to the Lemery police station and turned over custody of Hilario to the investigator-on-duty, but PO1 de Sagun could not recall the name of said investigator. PO1 de Sagun also claimed that he prepared an inventory of the seized items in the presence of “Ma’m Orlina” and Sims Garcia, representatives from the Department of Justice (DOJ) and the media, respectively. PO1 de Sagun then brought the seized items to the Batangas Provincial Crime Laboratory Office for examination, and according to him, the submitted specimen tested positive for *shabu*.⁷

PO1 de Sagun further recounted that during the buy-bust operation, Guadayo ran away, so PO2 Magpantay had to chase after her. When PO2 Magpantay subsequently caught up with Guadayo, he recovered and confiscated from her another sachet of *shabu*. PO1 de Sagun, though, admitted that he was not personally present when PO2 Magpantay seized the sachet of *shabu* from Guadayo.

During PO1 de Sagun’s direct examination, a brown sealed envelope was presented, and when opened, it contained two heat-sealed transparent sachets of *shabu*. When questioned as to why there were two sachets of *shabu*, PO1 De Sagun maintained that he confiscated only one sachet from Hilario, and suggested that the other sachet was the one seized by PO2 Magpantay from Guadayo. Between the two sachets of *shabu*, PO1 de Sagun identified the sachet marked “NBS-1” as the one which he confiscated from Hilario.⁸

When PO1 de Sagun was subjected to cross-examination, he reiterated that he had marked the ₱500.00-bill used in the buy-bust operation as “NBS-1” and the sachet of *shabu* bought from Hilario as “NBS-2.” When pressed further by the defense counsel on the fact that he identified the sachet of *shabu* marked as “NBS-1” as the one he seized from Hilario, PO1 de Sagun confirmed the apparent discrepancies in his testimony.⁹

Also in the course of PO1 de Sagun’s cross-examination, he attested that he, PO2 Magpantay, and PO1 Cabungcal went to Brgy. Maguihan on January 22, 2008 based on information gathered from concerned citizens that sale of dangerous drugs was rampant in the area; they prepared a pre-

⁷ TSN, November 12, 2008.

⁸ Id. at 9-10.

⁹ TSN, August 4, 2009, pp. 4-5.

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operation report but he did not have a copy of the same with him at the trial; they did not know nor did they conduct a surveillance of Hilario and Guadayo prior to January 22, 2008; and when they went to Brgy. Maguihan, they were not certain of the subject of their buy-bust operation.

The prosecution additionally submitted as evidence the *Magkalakip na Sinumpaang Salaysay* dated January 22, 2008 of PO1 de Sagun and PO2 Magpantay; Chemistry Report No. BD-012-08 dated January 23, 2008 issued by Police Chief Inspector (P/CInsp.) Jupri Caballegan Delantar, Forensic Chemical Officer, of the Batangas Provincial Crime Laboratory Office, PNP; the sachet of *shabu* with marking "NBS-1;" and photocopy of the ₱500.00-bill with Serial No. 665579 and marking "NBS-1." Chemistry Report No. BD-012-08 stated that two specimens were seized from Hilario, *i.e.*, Specimens A (NBS1) and B (NBS-2), weighing 0.04 gram and 0.03 gram, respectively, which both tested positive for Methamphetamine Hydrochloride, a dangerous drug.

For its part, the defense called Hilario¹⁰ and Guadayo¹¹ to the witness stand. Hilario used to live in Tondo, Manila, but their house was demolished, so she and her family moved to Brgy. Maguihan in Lemery, Batangas in March 2007. Guadayo lived with and served as a babysitter for Hilario's sister-in-law.

According to the combined narrative of Hilario and Guadayo, on January 22, 2008, at about 10:00 in the evening, they were both at Hilario's house. Hilario was tending to her sick 12-year-old daughter, and Guadayo was there to help Hilario with the laundry. A neighbor, Feliciano Anuran (Anuran), had just arrived to borrow a DVD, when three police officers entered Hilario's house. Among the police officers, Hilario already knew PO1 de Sagun at that time because the latter frequented their place. The police officers demanded that Hilario show them the money and *shabu*. Hilario replied that she did not have any money and *shabu*. Without presenting any warrant, the police officers, particularly, PO1 de Sagun, then searched Hilario's house, but found nothing. At this point, Anuran ran out of the house and was chased by the police officers. When the police officers returned, they invited Hilario and Guadayo to the police station to answer some of the police officers' questions. When Hilario further inquired as to the reason for the invitation, the police officers told her to just go with them. The police officers brought Hilario, Guadayo, and even Hilario's sick daughter to the police station, and after only a short stay at an office in the police station, and without actually being asked any questions, all three were put in jail. On January 23, 2008, Hilario and Guadayo were subjected to a drug test, and on January 24, 2008, they were brought to Batangas City for inquest proceedings.

¹⁰ TSN, March 8, 2010.

¹¹ TSN, February 8, 2011.

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On August 23, 2011, the RTC promulgated its Decision, finding Hilario and Guadayo guilty of all the charges against them. The RTC highlighted that this was a case of a buy-bust operation and adjudged that the prosecution was able to prove all the elements of the offenses charged, to wit, the prosecution witness, PO1 de Sagun, testified on how the buy-bust transaction took place and properly identified the poseur-buyer and seller, plus the illegal drug was presented as evidence in court. The RTC sentenced Hilario and Guadayo as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 10-2008, accused Marilou Hilario y Diana, is hereby found guilty beyond reasonable doubt for violating Sec. 5 of Republic Act 9165 and is hereby sentenced to suffer the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00);

2. In Criminal Case No. 11-2008, accused Marilou Hilario y Diana, is hereby found guilty beyond reasonable doubt for violating Sec. 11 of Republic Act 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment;

3. In Criminal Case No. 13-2008, accused Lalaine Guadayo y Royo, is hereby found guilty beyond reasonable doubt for violating Sec. 11 of Republic Act 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment.¹²

The Motion for Reconsideration of Hilario and Guadayo was denied for lack of merit by the RTC in an Order¹³ dated September 26, 2011. Hilario and Guadayo filed a Notice of Appeal,¹⁴ which the RTC granted in an Order¹⁵ dated October 5, 2011.

The appeal of Hilario and Guadayo before the Court of Appeals was docketed as CA-G.R. CR.-H.C. No. 05244.

In its Decision dated July 18, 2013, the Court of Appeals partially granted the appeal.

The Court of Appeals affirmed the conviction of Hilario for illegal sale of dangerous drugs in Crim. Case No. 10-2008, finding PO1 de Sagun's testimony on the completed buy-bust operation credible. It was amply proven by PO1 de Sagun's testimony that a sale of *shabu* transpired between Hilario as the seller and PO1 de Sagun as the poseur-buyer. The appellate court also cited the presumption of regularity in PO1 de Sagun's performance of his official duties; the absence of proof of ill motive on PO1 de Sagun's part to falsely impute a serious crime against Hilario; and substantial compliance with the procedure on custody of evidence in drug

¹² CA rollo, p. 17.

¹³ Records (Crim. Case No. 10-2008), pp. 251-252.

¹⁴ CA rollo, pp. 18-19.

¹⁵ Id. at 20.

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cases since PO1 de Sagun took custody of the sachet of *shabu* seized from Hilario and personally delivered the same to the crime laboratory for examination, wherein it was tested positive for *shabu*.

The Court of Appeals though, in the same Decision, acquitted Hilario in Crim. Case No. 11-2008 and Guadayo in Crim. Case No. 13-2008, for the following reasons:

Criminal Case No. 11-2008

On the other hand, this Court disagrees with the trial court in finding accused-appellant Hilario guilty for violation of Section 11 of R.A. No. 9165.

x x x x

In prosecution for illegal possession of a dangerous drug, it must be shown 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 accused was freely and consciously aware of being in possession of the drug.

Significantly, in the present case, only one sachet of *shabu* was confiscated from accused-appellant [Hilario], the one subject of the sale. No evidence was shown that she was further apprehended in possession of another quantity of prohibited drugs not covered by or included in the sale. As correctly argued by the plaintiff-appellee, the accused cannot be convicted for possession of the prohibited drugs she sold because possession of dangerous drugs is generally inherent in the crime of sale.

In *People v. Posada*, the Supreme Court ruled that possession of prohibited or dangerous drugs is absorbed in the sale thereof, citing the case of *People v. Lacerna* x x x.

x x x x

To reiterate, only one (1) *shabu* sold by accused-appellant, Hilario was established. There was no other evidence that another *shabu* was found in her possession, not covered by the sale and probably intended for a different purpose like another sale or for her own use was proven. Accordingly, she cannot be convicted separately for illegal possession and for illegal sale because in this particular case possession is absorbed in the act of sale thereof.

Criminal Case No. 13-2008

Anent, accused-appellant, Guadayo, this Court is convinced that the trial court erred in finding the accused guilty for violation of Section 11 of R.A. No. 9165.

The prosecution was able to establish that appellant Guadayo was in possession of a sachet of *shabu* as testified to by PO1 De Sagun who recounted that PO1 Magpantay pursued and arrested Guadayo x x x.

x x x x

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Unfortunately, the record is bereft of proof on the chain of custody of the shabu taken from appellant Guadayo. PO1 De Sagun did not state that the sachet of shabu was handed to him by PO1 Magpantay after it was confiscated from appellant Guadayo. The chain of custody rule requires that the testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. Notably, in this case, the prosecution failed to put on witness stand PO1 Magpantay who allegedly ran after appellant Guadayo and seized the shabu.

Corollary thereto, there was a break in the chain of custody because no mention was made as to what happened to the substance from the time it was seized from the appellant [Guadayo], how it got to the laboratory and how it was kept before being offered in evidence.

More importantly, no shabu allegedly seized from appellant, Guadayo was identified before the trial court.

As aptly held by the Supreme Court in *Malillin v. People*:

The dangerous drug itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt.

Likewise, the Supreme Court made an enlightening disquisition on this matter in *People v. Doria*, viz.:

Given the high concern for the due recording of the authorized movements and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment, the presentation as evidence in court of the dangerous drugs subject of and recovered during the illegal sale is material in every prosecution for the illegal sale of dangerous drugs. Without such dangerous drugs being presented as evidence, the State does not establish the corpus delicti, which, literally translated from Latin, refers to the body of the crime, or the actual commission by someone of the particular offense charged.

With crucial portions of the chain of custody not clearly accounted for and the alleged shabu confiscated from appellant Guadayo not clearly established, reasonable doubt is thus created as to her guilt. Appellant, Guadayo is therefore entitled to an acquittal for violation of Section 11 of Article II of R.A. No. 9165.¹⁶

Ultimately, the Court of Appeals decreed:

WHEREFORE, premises considered, this Court **PARTIALLY GRANTS** the instant appeal. The assailed Decision of RTC of Lemery, Batangas, (Branch 5) dated 23 August 2011 is **MODIFIED** as follows;

¹⁶ Rollo, pp. 15-19.

1. Appellant Hilario is hereby **ACQUITTED** in Criminal Case No. 11-2008 for violation of Section 11 of RA No. 9165 as being considered absorbed in the commission of Section 5 of RA No. 9165 under Criminal Case No. 10-2008; and

2. Appellant Guadayo is hereby **ACQUITTED** in Criminal Case No. 13-2008 for violation of Section 11 of R.A. No. 9165 on reasonable doubt and is ordered immediately **RELEASED** from detention, unless she is confined for any other lawful case.

Other aspects of the Decision are hereby **AFFIRMED**.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.¹⁷

Hilario's Notice of Appeal was given due course by the appellate court in a Resolution¹⁸ dated August 13, 2013.

In a Resolution¹⁹ dated February 19, 2014, this Court required the parties to file their respective Supplemental Briefs if they so desire. Both parties manifested that they are no longer filing a Supplemental Brief.²⁰

In her Brief filed before the Court of Appeals, Hilario argued that the prosecution failed to establish the elements of illegal sale of dangerous drugs, penalized under Article II, Section 5 of Republic Act No. 9165. Hilario contended that PO1 de Sagun only made a blanket declaration that as poseur-buyer, he was able to buy *shabu* from Hilario and his testimony lacked clear and complete details of the supposed buy-bust operation. Hilario likewise averred that the identity of the *shabu* supposedly bought and confiscated from Hilario was not established with certainty by the prosecution, pointing out that PO1 de Sagun's confusion as to the markings affixed on the seized item was apparent. Thus, Hilario asserted that serious doubts arose as to whether the sachet of suspected *shabu* submitted for laboratory examination were the same as that purportedly bought and confiscated from her.

There is merit in this appeal.

At the outset, the Court establishes that an appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher court authority. The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. When the Court of Appeals imposed a penalty of *reclusion perpetua* or life imprisonment, an

¹⁷ Id. at 20.

¹⁸ CA rollo, p. 185.

¹⁹ Rollo, p. 27.

²⁰ Id. at 28-31; 36-39.

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accused may: (1) file a notice of appeal under Rule 124, Section 13(c) of the Rules of Court to avail of an appeal as a matter of right before the Court and open the entire case for review on any question; or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law.²¹

In this case, the Court of Appeals affirmed the RTC judgment finding Hilario guilty of illegal sale of dangerous drugs and imposing upon her the sentence of *reclusion perpetua*. Hilario filed a Notice of Appeal with the appellate court in accordance with Rule 122, Section 3(e), in relation to Rule 124, Section 13(c), of the Rules of Court, which provide:

Rule 122
APPEAL

x x x x

SEC. 3. *How appeal taken.* –

x x x x

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

Rule 124
PROCEDURE IN THE COURT
OF APPEALS

x x x x

SEC. 13. *Certification or appeal of case to the Supreme Court.* – x
x x

x x x x

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

Therefore, Hilario’s appeal opens the entire case for review by the Court on any question, whether or not the questions were raised by Hilario as accused-appellant and whether they are questions of fact or mixed questions of fact and law.

Undeniably, Hilario challenges the sufficiency of evidence to support her conviction for illegal sale of dangerous drugs. The RTC and the Court of Appeals gave total faith and credence to the testimony of PO1 de Sagun, the sole prosecution witness.

²¹ *Dungo v. People*, 762 Phil. 630, 652 (2015).

The rule that this Court generally desists from disturbing the conclusions of the trial court on the credibility of witnesses will not apply where the evidence of record fails to support or substantiate the findings of fact and conclusions of the lower court; or where the lower court overlooked certain facts of substance and value that, if considered, would affect the outcome of the case; or where the disputed decision is based on a misapprehension of facts.²² All of these exceptional circumstances are availing in the present case.

In *People v. Ismael*,²³ the Court pronounced:

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

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In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed." (Citations omitted.)

PO1 de Sagun's testimony – consisting of generalizations which lacked material details, riddled with inconsistencies, and uncorroborated – failed to establish the elements of the offense charged with proof beyond reasonable doubt.

PO1 de Sagun described the alleged buy-bust operation only in general terms, thus:

Q Will you please tell the Honorable Court why did your group arrest accused Marilou Hilario on January 22, 2008 at about 11 o'clock in the evening?

A Through the buy-bust operation we conducted I was able to buy shabu from her, sir.

Q Alright in other words you pretended yourself to buy shabu. Were you able to buy shabu from the said accused?

A Yes, sir.

Q How much shabu did you buy [from] Marilou Hilario?

A Five hundred (₱500.00) pesos only, sir.

²² *People v. Godoy*, 321 Phil. 279, 322 (1995).

²³ G.R. No. 208093, February 20, 2017.

Q After buying shabu from the accused in the amount of five hundred pesos (₱500.00), what happened next?

A We immediately arrested the person, sir.

Q Were you in uniform on that time when you conducted the buy-bust operation?

A No sir, we were in civilian.

Q So after buying shabu you arrested the accused?

A Yes, sir.

Q Were you alone or together with other police officers in arresting the accused?

A I was with PO1 Cabungcal, sir.

Q Who actually among you arrested accused Marilou Hilario?

A I, sir.²⁴

It's a generic narrative of any buy-bust operation, offering no distinctive detail except for Hilario's name as alleged seller. PO1 de Sagun failed to describe how he came to know that Hilario was selling *shabu*; where Hilario was and what she was doing that time; how he approached her and asked to buy *shabu* from her; how they came to agree on the purchase price for the *shabu*; where Hilario got the sachet of *shabu* she handed to him; and what his pre-arranged signal was to show the other police officers that the sale had been consummated and Hilario could already be arrested – details which police officers who carried out legit buy-bust operations should be able to provide readily and completely.

When pressed for details during his cross-examination, PO1 de Sagun was unable to give enlightening answers –

Q Prior to the conduct of the buy-bust operation, can you tell us what are the preparations you made?

A We prepared a pre-operation report, ma'am.

Q What is the basis of your pre-operation report?

A Due to the sale of the illegal drugs, ma'am.

Q You mean to tell us because of the alleged information that there was a rampant selling of illegal drugs?

A Yes, ma'am.

Q By the way Mr. witness did you conduct surveillance against Marilou Hilario and Lalaine Guadayo prior to January 22, 2008?

A No, ma'am.

Q By the way, do you know this Marilou Hilario on January 22, 2008 or before that day?

A No, ma'am.

²⁴ TSN, November 12, 2008, pp. 4-5.

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Q How about accused Lalaine Guadayo?

A No, ma'am.

Q So, that was the first time that you saw on January 22, 2008 these Marilou Hilario and Lalaine Guadayo?

A Yes, ma'am.

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Q Do you have a copy of your pre-operation report?

A I have no copy of the pre-operation report, ma'am.²⁵

So according to PO1 de Sagun, he and his fellow police officers conducted a buy-bust operation in Brgy. Maguihan based on information from unnamed source/s that selling of drugs was rampant in the area; they prepared a pre-operation report which was not produced in court; they went to Brgy. Maguihan without a specific target/subject; they did not conduct any surveillance prior to the buy-bust operation on January 22, 2008; and they did not know Hilario or Guadayo prior to the buy-bust operation and the arrest of the two. How then were the police officers able to identify Hilario or Guadayo, from all the other residents of Brgy. Maguihan, as the ones selling drugs in Brgy. Maguihan and who would be the subject of their buy-bust operation?

The lack of specific details on the planning and conduct of the buy-bust operation on January 22, 2008 in Brgy. Maguihan casts serious doubts that it actually took place and/or that the police officers carried out the same in the regular performance of their official duties. Relevant herein is the following discourse of the Court on buy-bust operations in *People v. Ong*²⁶:

A buy-bust operation is a form of entrapment, which in recent years has been accepted as a valid means of arresting violators of the Dangerous Drugs Law. It is commonly employed by police officers as an effective way of apprehending law offenders in the act of committing a crime. 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. Its opposite is instigation or inducement, wherein the police or its agent lures the accused into committing the offense in order to prosecute him. Instigation is deemed contrary to public policy and considered an absolatory cause.

To determine whether there was a valid entrapment or whether proper procedures were undertaken in effecting the buy-bust operation, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately laid out through relevant, material and competent evidence. For, the courts could not merely rely on but must apply with studied restraint the presumption of regularity in the performance of official duty by law enforcement agents. This presumption should not by itself prevail over the

²⁵ TSN, August 4, 2009, pp. 3-5.

²⁶ 476 Phil. 553, 571-573 (2004).

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presumption of innocence and the constitutionally protected rights of the individual. It is the duty of courts to preserve the purity of their own temple from the prostitution of the criminal law through lawless enforcement. Courts should not allow themselves to be used as instruments of abuse and injustice lest innocent persons are made to suffer the unusually severe penalties for drug offenses.

In *People v. Doria*, we stressed the “objective” test in buy-bust operations. We ruled that in such operations, the prosecution must present a *complete picture* detailing the transaction, which “must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. We emphasized that the manner by which the initial contact was made, the offer to purchase the drug, the payment of the ‘buy-bust’ money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to *insure that law-abiding citizens are not unlawfully induced to commit an offense.*”

In the case at bar, the prosecution evidence about the buy-bust operation is incomplete. The confidential informant who had sole knowledge of how the alleged illegal sale of *shabu* started and how it was perfected was not presented as a witness. His testimony was given instead by SPO1 Gonzales who had no personal knowledge of the same. On this score, SPO1 Gonzales’ testimony is hearsay and possesses no probative value unless it can be shown that the same falls within the exception to the hearsay rule. To impart probative value to these hearsay statements and convict the appellant solely on this basis would be to render nugatory his constitutional *right to confront the witness* against him, in this case the informant, and to examine him for his truthfulness. As the prosecution failed to prove all the material details of the buy-bust operation, its claim that there was a valid entrapment of the appellants must fail. (Emphases supplied, citations omitted.)

Furthermore, the prosecution failed to present during the trial the *corpus delicti*. There were material inconsistencies between PO1 de Sagun’s testimony vis-à-vis the object and documentary evidence submitted by the prosecution itself which rendered highly questionable whether the dangerous drug presented before the RTC during trial was actually the same as that seized from Hilario during the buy-bust operation.

During his direct examination, PO1 de Sagun recalled the chain of custody of the items seized from Hilario during the buy-bust operation, thus:

Q After buying shabu from the accused in the amount of five hundred pesos (₱500.00), what happened next?

A We immediately arrested the person, sir.

x x x x

Q Who actually among you arrested accused Marilou Hilario?

A I, sir.

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- Q After arresting the accused, what did you do next, if any?
A **We placed the markings “NBS-1” to the marked money and in the alleged shabu, “NBS-2”, sir.**
- Q You mean to tell before the Court that immediately after the arrest of the accused you placed markings on the money used in buying shabu and the shabu itself?
A Yes, sir.
- Q In the place where the accused was arrested?
A Yes, sir.
- Q Who actually placed the marking in the shabu?
A I, sir.
- Q **What marking did you place in the money you used in buying shabu?**
A **“NBS-1”, sir.**
- Q What was the denomination of the money you used in buying shabu?
A A five hundred (₱500.00) peso bill, sir.
- Q **What about in the shabu you obtained from the accused in buying the same, what marking did you place?**
A **“NBS-2”, sir.**

x x x x

- Q You stated earlier, you marked the sachet of shabu you bought from the accused. If the same sachet of shabu will be shown to you, will you be able to identify or recognize the same?
A Yes, sir.
- Q Why will you be able to identify the shabu you bought from the accused during the buy-bust operation?
A Yes, because of the marking, sir.

x x x x

- Q What did you do with the shabu you bought from the accused in this case?
A We brought them to the Crime Laboratory, for examination, sir.
- Q Do you know what was the result of the laboratory examination of the specimen pertaining to this case?
A It gives positive result, sir.²⁷ (Emphases supplied.)

However, when the public prosecutor opened the brown sealed envelope purportedly containing the dangerous drugs seized from Hilario, there were two sachets of *shabu* inside, marked as “NBS-1” and “NBS-2.” Upon further questioning, PO1 de Sagun testified:

²⁷ TSN, November 12, 2008, pp. 5-8.

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FISCAL PEREZ

Q How many sachets of shabu have you taken from the accused aside from the one you bought from the accused?

A Only one, sir.

Q I will ask you, you pretended to buy shabu from the accused as in fact you were able to buy shabu?

A Yes, sir.

Q The shabu you bought you marked in evidence as "NBS"?

A Yes, sir.

x x x x

FISCAL PEREZ

Q Can you please explain why there are two (2) sachets of shabu here?

A I bought only one (1) sachet, sir.

COURT

Q What about the other one?

A PO1 Magpantay ran after one Lalaine, your Honor.

Q The other sachet of shabu was allegedly taken from one Lalaine?

A Yes, Your Honor.

FISCAL PEREZ

Q That's why a case was filed against that Lalaine?

A Yes, sir.

Q So, you were present, who is the police officer who confiscated the sachet of shabu from Lalaine?

A PO2 Magpantay, sir.

Q Were you not present when PO2 Magpantay took the shabu from Lalaine?

A Yes, sir.

COURT

Q Were you present?

A No, Your Honor.

Q You were not certain whether Magpantay is present?

A Yes, sir.

FISCAL PEREZ

Q So, in other words you were not present when Magpantay took the shabu from Lalaine?

A Yes, sir.

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X X X X

Q I am showing you sachets of suspected shabu, will you please tell the Honorable Court which among the two (2) sachets of shabu you bought from Marilou Hilario?

A The one with marking "NBS-1", sir.

Q Why did you say that "NBS-1 is the sachet of shabu you bought from Marilou?

A Because of the marking, sir.

Q What marking is that?

A NBS-1, sir.

COURT

Q What is that NBS stands for?

A Nemesio Brotonel de Sagun, Your Honor.²⁸ (Emphases supplied.)

PO1 de Sagun himself admitted the discrepancies during his cross-examination:

Q And you likewise stated that you were able to buy shabu from accused Marilou Hilario?

A Yes, ma'am.

Q You likewise stated that marked money was marked as NBS-1?

A Yes, ma'am.

Q And that suspected shabu which you allegedly bought from accused Marilou Hilario was marked as NBS-2?

A Yes, ma'am.

Q But when the Public Prosecutor presented to you the alleged shabu which you allegedly bought from the accused which you identified because of the marking NBS-1, right?

A Yes, ma'am.

Q So, there was a discrepancy with your marking because you stated before, the marked money was marked as NBS-1 and the shabu which you allegedly bought from accused Marilou Hilario was already marked as NBS-1, right?

A Yes, ma'am.²⁹

PO1 de Sagun was insistent that he seized only one sachet of *shabu* from Hilario; and that he marked the ₱500.00-bill used in the buy-bust operation as "NBS-1" and the sachet of *shabu* from Hilario as "NBS-2." Yet, confronted with two sachets of *shabu*, marked as "NBS-1" and "NBS-2," he identified the sachet marked as "NBS-1" as the one he bought from Hilario.

²⁸ Id. at 10-13.

²⁹ TSN, August 4, 2009, pp. 4-5.

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PO1 de Sagun could not explain how there were two sachets of *shabu* even though he testified that the items seized from the buy-bust operation were in his custody the entire time from the arrest of Hilario, until their inventory at the police station, and finally, until the delivery of the suspected *shabu* to the crime laboratory for examination. The prosecution claimed that the other sachet of *shabu* was the one seized by PO2 Magpantay from Guadayo.

The Court is not persuaded.

First, from the very beginning, the prosecution charged Hilario before the RTC through two separate Informations: (a) Crim. Case No. 10-2008 for illegal sale of dangerous drugs, which involved a sachet of *shabu* weighing 0.04 gram, referred to as “specimen A (NBS-1);” and (b) Crim. Case No. 11-2008 for illegal possession of dangerous drugs, which involved a sachet of *shabu* weighing 0.03 gram, referred to as “specimen B (NBS-2).” However, the prosecution changed its theory before the Court of Appeals, stating in its Brief for the Appellee that only one sachet of *shabu* was confiscated from Hilario and agreeing in the acquittal of Hilario in Crim. Case No. 11-2008 for the reason that she “cannot be convicted for possession of the prohibited drugs she sold because possession of dangerous drugs is generally inherent in the crime of sale of illegal drugs. Conviction for both crimes is not feasible.”³⁰ Meanwhile, the Information in Crim. Case No. 13-2008 for illegal possession of dangerous drugs against Guadayo involved a sachet of *shabu* weighing 0.04 gram.

Second, the documentary evidence of the prosecution, particularly, (a) the Inventories³¹ of the items seized, dated January 22, 2008, prepared by PO1 de Sagun and witnessed by Mrs. Lorna Orlina and Simplicio “Sims” Garcia, representatives of the DOJ and the media, respectively; (b) the Laboratory Examination Requests³² dated January 23, 2008 for the specimens seized, prepared by Police Superintendent Gaudencio Del Valle Pucyutan; and (c) Chemistry Report Nos. BD-012-08 and BD-013-08³³ dated January 23, 2008, issued by P/CInsp. Delantar, all consistently state that there were two sachets of *shabu* from Hilario marked as “NBS-1” (weighing 0.04 gram) and “NBS-2” (weighing 0.03 gram) and one sachet of *shabu* from Guadayo marked as “AAM-1.”

Third, PO2 Magpantay did not testify before the RTC. PO1 de Sagun conceded that he was not present when PO2 Magpantay supposedly apprehended Guadayo and seized one sachet of *shabu* from her possession, so PO1 de Sagun’s testimony on said matters are hearsay.

³⁰ CA *rollo*, p. 141.

³¹ Records (Crim. Case No. 10-2008), pp. 16-17.

³² Id. at 12-13.

³³ Id. at 4, 6.

And *finally*, the two sachets of *shabu* presented before the RTC were marked with “NBS,” the initials of PO1 de Sagun. It makes no sense that the sachet of *shabu* taken by PO2 Magpantay from Guadayo be marked with PO1 de Sagun’s initials. As the documentary evidence of the prosecution itself showed, the sachet of *shabu* supposedly seized from Guadayo was appropriately marked “AAM-1,” presumably, PO2 Magpantay’s initials.

Hence, it could not be said that one of the two sachets of *shabu* presented against Hilario during the trial before the RTC was purportedly seized from Guadayo.

Clearly, the identity and integrity of the sachet of *shabu* allegedly seized by PO1 de Sagun from Hilario were not preserved, despite PO1 de Sagun’s assertion that he had been in possession of the said sachet from its seizure from Hilario until its turnover to the crime laboratory. The prosecution failed to establish the identity of the *corpus delicti*, much less, the identity of the *corpus delicti* with moral certainty. When there are doubts on whether the seized substance was the same substance examined and established to be the prohibited drug, there can be no crime of illegal possession or illegal sale of a prohibited drug. The prosecution’s failure to prove that the specimen allegedly seized from Hilario was the same one presented in court is fatal to its case.³⁴

It is fundamental in the Constitution³⁵ and basic in the Rules of Court³⁶ that the accused in a criminal case enjoys the presumption of innocence until proven guilty. Likewise, it is well-established in jurisprudence that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict.³⁷ In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.³⁸

³⁴ *People v. Balibay*, 742 Phil. 746, 755 (2014).

³⁵ Article III, Section 14(2) of the Constitution mandates:

Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

³⁶ Rule 133, Section 2 of the Rules of Court provides:

Sec. 2. *Proof beyond reasonable doubt.* – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

³⁷ *De la Riva v. People*, 769 Phil. 872, 884-885 (2015).

³⁸ *People v. Bagano*, 260 Phil. 797, 811 (1990).

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The evidence for the prosecution were insufficient in material details and fraught with discrepancies and contradictions. PO1 de Sagun himself, who claimed to have seized, marked, and kept custody of the sachet of *shabu* seized from Hilario, could not positively identify which between the two sachets of *shabu* he was presented with at the trial, marked as “NBS-1” and “NBS-2,” was the one he actually seized from Hilario. Absent proof beyond reasonable doubt, the Court cannot merely rely on the presumption that PO1 de Sagun regularly performed his official duties.

As the Court declared in *Mallillin v. People*,³⁹ the presumption of regularity is merely just that – a mere presumption disputable by contrary proof and which, when challenged by the evidence, cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. The lack of conclusive identification of the illegal drugs allegedly seized from Hilario in this case strongly militates against a finding of guilt.

Also worth reproducing hereunder is the declaration of the Court in *People v. Pagaduan*⁴⁰ that:

We are not unmindful of the pernicious effects of drugs in our society; they are lingering maladies that destroy families and relationships, and engender crimes. The Court is one with all the agencies concerned in pursuing an intensive and unrelenting campaign against this social dilemma. Regardless of how much we want to curb this menace, we cannot disregard the protection provided by the Constitution, most particularly the presumption of innocence bestowed on the appellant. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome this constitutional presumption. If the prosecution has not proved, in the first place, all the elements of the crime charged, which in this case is the *corpus delicti*, then the appellant deserves no less than an acquittal.

WHEREFORE, premises considered, the Decision dated July 18, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05244 is **REVERSED** and **SET ASIDE**. Accused-appellant Marilou D. Hilario is **ACQUITTED** of the charge of illegal sale of dangerous drugs, under Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED** immediately **RELEASED** from detention unless she is confined for another lawful cause.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women for immediate implementation and to report the action she has taken to this Court within five (5) days from receipt of this Decision.

³⁹ 576 Phil. 576, 593 (2008).

⁴⁰ 641 Phil. 432, 450-451 (2010).

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SO ORDERED.

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

WE CONCUR:

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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

Marvic M. V. F. Leonen
MARVIC M. V. F. LEONEN
Associate Justice

Noel Gimenez Tijam
NOEL GIMENEZ TIJAM
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