

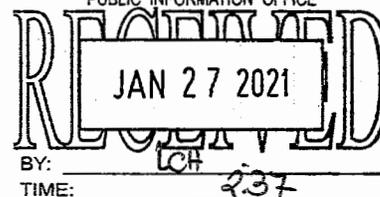


Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 22, 2020, which reads as follows:

“G.R. No. 237686 (People of the Philippines, Plaintiff-Appellee, v. Kent Israel De Jesus y Dela Cruz a.k.a. “Patchoy” and Aldine Anne Evangelio y Eluna a.k.a. “Dindin,” Accused-Appellants). – This appeal¹ seeks to reverse and set aside the 27 October 2017 Decision² promulgated by the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 02224, which affirmed the 14 December 2015 Judgment³ of Branch 30, Regional Trial Court (RTC) of Negros Oriental in Criminal Case No. 2014-22435, finding Kent Israel De Jesus y De la Cruz a.k.a. “Patchoy” (accused-appellant De Jesus) and Aldine Anne Evangelio y Eluna a.k.a. “Dindin” (accused-appellant Evangelio)⁴ guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165.⁵

Antecedents

Accused-appellants were charged with violation of Section 5, Article II of RA 9165, in an Information,⁶ the accusatory portion of which reads.

That on or about the 14th day of August 2014, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused[,] acting together and mutually aiding one another, not being then authorized by law, did, then and there[,] willfully, unlawfully[,] and criminally sell and/or deliver to poseur buyer two (2) heat-sealed transparent plastic sachets containing an approximate aggregate weight of 0.27 gram of Methamphetamine Hydrochloride, commonly called [“shabu,”] a dangerous drug.

¹ *Rollo*, pp. 18-19; *see* Notice of Appeal dated 01 December 2017.

² *Id.* at 4-17; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Geraldine C. Fiel-Macaraig, Eighteenth Division, Court of Appeals, Cebu City.

³ *CA rollo*, pp. 10-17; penned by RTC Judge Rafael Crescencio C. Tan, Jr.

⁴ Collectively referred to as “accused-appellants”.

⁵ Comprehensive Dangerous Act of 2002.

⁶ Records, p. 3.

CONTRARY TO LAW.⁷

Upon arraignment, accused-appellants pleaded not guilty to the charge.⁸ After termination of pre-trial,⁹ trial on the merits ensued.

Version of the Prosecution

On the basis of an information that a certain *alias* Patchoy and one *alias* Dindin, later identified as accused-appellants, were engaged in illegal drug-trade activities at Looc, Dumaguete City,¹⁰ a buy-bust operation was conducted by the Provincial Anti-Illegal Drugs Special Operation Task Group (PAIDSOTG). During the buy-bust, accused-appellant De Jesus, while on a motorcycle, sold to PO2 Charlotte Los Baños (PO2 Los Baños) Php500.00 worth of *shabu*. After handing two (2) sachets with suspected *shabu*, accused-appellant De Jesus instructed PO2 Los Baños to hand over her payment to his back rider, accused-appellant Evangelio. Upon receipt of the buy-bust money, accused-appellant Evangelio demanded for additional P500.00 as PO2 Los Baños got two (2) sachets. At said instance, PO2 Los Baños seized accused-appellant Evangelio. Accused-appellant De Jesus, however, sped off the motorcycle he and accused-appellant Evangelio were riding but slammed into a lamp post. PO2 Los Baños and PO1 Ariel Arabe (PO1 Arabe) then rushed to accused-appellants and arrested them.¹¹

After frisking accused-appellant Evangelio, PO2 Los Baños recovered from her the buy-bust money and a cellular phone. She immediately marked the seized items.¹² The police officers decided to conduct the inventory of the seized items at the nearest police station to avoid traffic congestion considering that the buy-bust operation was conducted on the side of the road. PO2 Los Baños and PO1 Arabe conducted the inventory and photographing of the seized items in the presence of accused-appellants, representatives from the media and the Department of Justice (DOJ), and an elected *barangay* official.¹³ PO2 Los Baños later brought the seized items with the request for laboratory examination to the crime laboratory which were duly received by Forensic Chemist Police Chief Inspector Josephine Llena (PCI Llena).¹⁴ Per Chemistry Reports,¹⁵ the specimens and the urine samples of accused-appellants were found positive for Methamphetamine Hydrochloride.

⁷ Id.

⁸ Id. at 66.

⁹ Id. at 80.

¹⁰ TSN dated 29 September 2015, pp 3-4.

¹¹ Id.

¹² Id. at 9-10.

¹³ Id. at 10.

¹⁴ Id. at 13.

¹⁵ Records of Exhibits, pp. 2 and 13.

Version of the Defense

Accused-appellants denied the charge against them. According to accused-appellant De Jesus, he was at home on 14 August 2014 when his girlfriend, accused-appellant Evangelio, sent him a message asking him to accompany her to Iglesia ni Cristo at San Jose Extension to help a friend. Once at the area, a man driving a motorcycle closed in and aimed his gun at them. They tried to speed away but bumped into a post. He sought help from those in a nearby house, but he yielded upon learning that the police officers chasing them already had accused-appellant Evangelio in their custody. Accused-appellants were detained, thereafter.¹⁶

Ruling of the RTC

On 14 December 2015, the RTC rendered its Judgment,¹⁷ convicting accused-appellants of the offense charged, thus:

WHEREFORE, in the light of the foregoing, the two (2) accused KENT ISRAEL DE JESUS [y] DELA CRUZ a.k.a. "Patchoy" and ALDINE ANNE EVANGELIO [y] ELUNA a.k.a. "Dindin" are hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.27 gram of *shabu* in violation of Section 5, Article II of RA 9165 and are hereby sentenced each to suffer a penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The two (2) heat-sealed transparent plastic sachets with markings "KD/AE-BB1-08-14-14" and "KD/AE-BB2-08-14-14," with signatures and containing 0.12 gram and 0.15 gram of *shabu*, respectively, or for an aggregate weight of 0.27 gram of *shabu* [,] are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused KENT ISRAEL DE JESUS [y] DE LA CRUZ a.k.a. "Patchoy" and ALDINE ANNE EVANGELIO [y] ELUNA a.k.a. "Dindin" shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree voluntarily and in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.¹⁸

The RTC held that the prosecution had successfully proven the existence of all the elements of illegal sale of dangerous drugs. It held that accused-appellant De Jesus acted in concert with accused-appellant Evangelio in the illegal sale of *shabu*. Further, the RTC found that the

¹⁶ TSN dated 17 November 2015, Witness De Jesus, pp. 4-10.

¹⁷ Records, pp. 128-135.

¹⁸ *Id.* at 134 (dorsal)-135.

integrity and evidentiary value of the *shabu* sold by the accused-appellants had not been compromised. The RTC also found the testimonies of the prosecution witnesses credible and bore badges of truth. The police officers were accorded the presumption of regularity in the performance of their duties, as well.¹⁹

Aggrieved, accused-appellants appealed to the CA.

Ruling of the CA

In its Decision²⁰ dated 27 October 2017, the CA affirmed accused-appellants' conviction. The dispositive portion of said decision reads:

WHEREFORE, the Judgment dated December 14, 2015 rendered by the Regional Trial Court, Branch 30, Dumaguete City, Negros Oriental in Criminal Case No. 2014-22435 [,] convicting accused-appellants Kent Israel De Jesus [y] Dela Cruz, a.k.a. "*Patchoy*" and Aldine Anne Evangelio [y] Eluna, a.k.a. "*Dindin*" of Violation of Section 5 of Article II of R.A 9165 [,] as amended [,] or the Comprehensive Dangerous Drugs Act [,] is hereby **AFFIRMED**.

With costs against the accused-appellants.

SO ORDERED.²¹

The CA held that the prosecution had proven with moral certainty the sale of *shabu* by the accused-appellants who were caught *in flagrante delicto* selling *shabu*.²² The acts of the accused-appellants in the sale of *shabu* evinced conspiracy while the sequence of events had shown that the integrity and evidentiary value of the confiscated items were properly preserved by the police officers.²³ The CA likewise accorded the police officers the presumption of regularity in the performance of their duties.²⁴

Hence, this appeal.

Issue

The sole issue in this case is whether or not the CA correctly affirmed accused-appellants' conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165.

¹⁹ Records, pp. 131-134.

²⁰ *Rollo*, pp. 4-17.

²¹ *Id.* at 16.

²² *Id.* at 12.

²³ *Id.* at 13-15.

²⁴ *Id.* at 16.

The Court's Ruling

The appeal is dismissed.

In a prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. To emphasize, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.²⁵ What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.²⁶

We find that the prosecution proved the guilt of the accused-appellants for illegal sale of *shabu*. The identities of accused-appellant De Jesus, in conspiracy with accused-appellant Evangelio, as the sellers of the illicit drugs, cannot be doubted. Accused-appellants were caught *in flagrante delicto* by PO2 Los Baños and PO1 Arabe, who positively identified them to be the persons who sold the illicit drug to PO2 Los Baños during the buy-bust operation.²⁷ Likewise, the prosecution presented in evidence the sachets subject of the sale, marked as “KD/AE/-BB1-0814-14 TO KD/AE-BB2-08-14-14,” as well as the buy-bust money²⁸ used for the transaction. PO2 Los Baños also recounted the details of the transaction from the time she met with the accused-appellants, to the time the sale of the illicit drugs transpired, up to accused-appellants' arrest.²⁹

We likewise find that the police officers complied with the procedures laid down in Section 21³⁰ of RA 9165 as to the custody and disposition of the seized items, from its seizure up to its presentation in court. PO2 Los Baños immediately marked the seized items at the place of seizure and took custody of the same.³¹ Thereafter, to avoid traffic congestion, they proceeded to the nearest police station³² where the inventory and taking of photographs

²⁵ *People v. Cabiles*, 810 Phil. 969-978 (2017); G.R. No. 220758, 07 June 2017; 827 SCRA 89, 95.

²⁶ *See People v. Amaro*, G.R. No. 207517, 01 June 2016; 792 SCRA 1, 10.

²⁷ TSN dated 29 September 2015, p.15; TSN dated 22 October 2015, pp. 14-15.

²⁸ TSN dated 29 September 2015, pp. 12-15.

²⁹ *Id.* at 6-8.

³⁰ Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.

³¹ TSN dated 29 September 2015, p. 9.

³² Jurisprudence recognizes that under varied field conditions, strict compliance with the requirements of Sec. 21 of RA 9165 may not always be possible. The Implementing Rules and Regulations (IRR) of RA 9165 provide that the inventory and taking of photographs may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165, under justifiable grounds, will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. (*See People v. Ocampo*, G.R. No.

of the seized items were done, in the presence of the accused-appellants and the three (3) mandatory witnesses: the representatives from the media and the DOJ, and an elected barangay official.³³ After a while, PO2 Los Baños brought the seized items to the crime laboratory, duly received by PCI Llena.³⁴ The seized items having tested positive for *shabu*, PCI Llena kept the same in the evidence vault of the crime laboratory, and retrieved it later for its presentation in court.³⁵ Thus, We uphold the common findings of the RTC and the CA that there was compliance with the law as to the preservation and disposition of the dangerous drug, as well as the chain of custody requirements.

Accused-appellants' bare denial cannot prevail over the positive testimonies of the prosecution witnesses. Denial is a weak form of defense especially when it is not substantiated by clear and convincing evidence, as in this case.³⁶ It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses, especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.³⁷ Accused-appellants herein failed to convince the Court that there was ill motive on the part of the arresting officers. There being no proof of motive to falsely accuse accused-appellants of such grave offenses, the presumption of regularity in the performance of official duty and the findings of the court a quo with respect to the credibility of the prosecution witnesses prevail.

All the foregoing considered, We affirm the conviction of the accused-appellants for the offense of illegal sale of *shabu*. The penalty for unauthorized sale of *shabu* under Section 5, Article II of RA 9165, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from PhP500,000 to PhP10,000,000. We, therefore, sustain the penalty of life imprisonment and payment of fine in the amount of PhP500,000.00 imposed upon each accused-appellant being within the range provided by law.

WHEREFORE, the appeal is hereby **DISMISSED**. The 27 October 2017 Decision of the Court of Appeals in CA-G.R. CEB CR-HC No. 02224, finding accused-appellants guilty beyond reasonable doubt of the offense of illegal sale of *shabu*, is **AFFIRMED**.

232300, 01 August 2018).
³³ TSN dated 29 September 2015, pp. 9-10.
³⁴ Id. at 13.
³⁵ Records, pp. 96-96A.
³⁶ *People v. Dali*, G.R. No. 234163, 06 March 2019.
³⁷ *People v. Arago, Jr.*, G.R. No.233833, 20 February 2019.

SO ORDERED.”

Very truly yours,

Mis D C Batt
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Division Clerk of Court
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1/25/21

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