

## FIRST DIVISION

[ G.R. No. 243796, September 08, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROWENA BUNIEL Y RAMOS AND ROWENA SIMBULAN Y  
ENCARNADO, ACCUSED,**

**ROWENA BUNIEL Y RAMOS, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**LOPEZ, J.:**

For consideration of this Court is the Decision<sup>[1]</sup> dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08192, which affirmed *in toto* the Joint Decision<sup>[2]</sup> dated March 16, 2016 of the Regional Trial Court, Branch 13 of the City of Manila, in Criminal Case Nos. 12-291642 and 12-291643, finding the accused-appellant Rowena Buniel y Ramos (in Criminal Case No. 12-291642) guilty of violation of Section 5,<sup>[3]</sup> Article II of Republic Act (RA) No. 9165.<sup>[4]</sup>

### ANTECEDENTS

Rowena Buniel y Ramos a.k.a "Weng" and Rowena Simbulan y Encarnado were separately charged with Illegal Sale and Illegal Possession of Dangerous Drugs, respectively, in two informations that read:

**Criminal Case No. 12-291642**  
***Illegal sale of dangerous drugs***

The undersigned accuses **ROWENA BUNIEL y RAMOS (a) "WENG"** of a violation of Section 5, Article II [RA No.] 9165, committed as follows:

That on or about **May 30, 2012** in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer/poseur buyer **one (1) heat-sealed transparent plastic sachet marked as "TK" containing ZERO POINT ONE ZERO EIVE (0.105) gram** of white crystalline substance known as "shabu", which after a qualitative examination gave positive result to the test for methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>[5]</sup> (Emphasis in the original.)

**Criminal Case No. 12-291643**

### ***Illegal possession of dangerous drugs***

The undersigned accuses **ROWENA SIMBULAN y ENCARNADO** of a violation of Section 11(3), Article II, [RA No.] 9165. committed as follows:

That on or about **May 30, 2012**, in the City of Manila Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession and under her custody and control **one (1) heat-sealed transparent plastic sachet marked as "TK1" containing ZERO POINT ONE FOUR ZERO (0.140)** gram of white crystalline substance commonly **known as "shabu"**, which after a qualitative examination gave positive result to the test for methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>[6]</sup> (Emphasis in the original.)

The two cases were consolidated.<sup>[7]</sup> On June 21, 2012, both accused were arraigned and they pleaded not guilty to their respective charges.<sup>[8]</sup> Joint trial then ensued.

The prosecution presented Police Officer (PO) 2 Dennis Reyes as witness. Meanwhile, the parties agreed to stipulate on the testimony of forensic chemist Police Chief Inspector (PCI) Elisa G. Reyes (PCI Reyes),<sup>[9]</sup> PO3 Archie Bernabe (PO3 Bernabe),<sup>[10]</sup> PO3 John Alfred Taruc (PO3 Taruc),<sup>[11]</sup> PO3 Modesto Bornel, Jr. (PO3 Bornel),<sup>[12]</sup> PO3 Christopher Palapal (PO3 Palapal)<sup>[13]</sup> and Rene Crisostomo.<sup>[14]</sup>

The version of the prosecution is that, in the afternoon of May 30, 2012, a confidential informant arrived at the Manila Police District (MPD), District Anti-Illegal Drugs, Special Task Group (DAID-SOTG) and reported that he made a deal with a certain Weng for the delivery of sample *shabu* worth P1,000.00.<sup>[15]</sup> According to the informant, he agreed to meet with Weng at Tiago Street corner Karapatan Street, Sta. Cruz, Manila at 10:00 p.m. of the same day.<sup>[16]</sup> With this information, the DAID-SOTG organized a buy-bust operation composed of Police Inspector Eduardo Vito Pama, PO2 Reyes, PO3 Taruc, PO3 Bornel and PO3 Palapal.<sup>[17]</sup> During the briefing, PO2 Reyes was designated as the *poseur-buyer*.<sup>[18]</sup> He was provided with the buy-bust money, a 1000-peso<sup>[19]</sup> bill, which he marked with his initials "DR."<sup>[20]</sup> Meanwhile, PO3 Taruc prepared the Authority to Operate<sup>[21]</sup> and Pre-Operation Report,<sup>[22]</sup> and the team coordinated with the Philippine Drug Enforcement Agency.<sup>[23]</sup>

At about 9:30 p.m., the buy-bust team and the informant went to Tiago Street corner Karapatan Street, Sta. Cruz, Manila to conduct the buy-bust. They arrived at around 10:00 p.m.<sup>[24]</sup> PO3 Taruc, Bornel and Palapal alighted from the vehicle first and strategically positioned themselves at about 15-20 meters from the area.<sup>[25]</sup> PO2 Reyes and the informant alighted next and they proceeded to the agreed place.<sup>[26]</sup>

At that time, there were no people around and it was drizzling.<sup>[27]</sup> After a while, PO2 Reyes saw two women coming from Tiago Street.<sup>[28]</sup> The informant whispered to PO2 Reyes that the small woman sporting short hair and wearing walking shorts and t-shirt was Weng.<sup>[29]</sup> The informant approached Weng and they conversed briefly.<sup>[30]</sup> Meanwhile, Weng's companion was standing about two meters away from them and observing them.<sup>[31]</sup> Then, the informant introduced PO2 Reyes to Weng as the buyer of sample *shabu*.<sup>[32]</sup> Weng said "*akin na po*," referring to the payment for the *shabu*, to which PO2 Reyes handed her the buy-bust money.<sup>[33]</sup> Weng placed the money in her right pocket, took out from the same pocket a small plastic sachet containing white crystalline substance, and gave it to PO2 Reyes.<sup>[34]</sup> Upon receipt of the sachet, PO2 Reyes removed his bull cap, which was the pre-arranged signal that the sale was consummated.<sup>[35]</sup> The back-up team rushed to the area. PO2 Reyes searched Weng and recovered from her right pocket the buy-bust money.<sup>[36]</sup> Next, he frisked Weng's companion and recovered from her a small plastic sachet containing white crystalline substance.<sup>[37]</sup> As rain poured, the team decided to proceed to the police station.<sup>[38]</sup>

At the MPD DAID-SOTG office, Weng was identified as accused Buniel and her companion, Simbulan. In the presence of Rene Crisostomo, a member of the media connected with tabloid Remate,<sup>[39]</sup> PO2 Reyes marked the plastic sachet subject of the sale with "TK," and the sachet recovered from Simbulan with "TK1."<sup>[40]</sup> PO2 Reyes conducted the inventory<sup>[41]</sup> and prepared the Receipt of Property/Evidence Seized<sup>[42]</sup> and the Chain of Custody Form.<sup>[43]</sup> Meanwhile, PO3 Bernabe took photographs.<sup>[44]</sup> He also prepared the Requests for Inquest<sup>[45]</sup> and Laboratory Examination,<sup>[46]</sup> and Booking Sheets and Arrest Report.<sup>[47]</sup> Thereafter, PO2 Reyes turned over the plastic sachets and buy-bust money to PO3 Bernabe.<sup>[48]</sup>

PO3 Bernabe brought the specimens and the request for laboratory examination to the crime laboratory,<sup>[49]</sup> and were received by forensic chemist PCI Reyes.<sup>[50]</sup> PCI Reyes conducted qualitative examination on the two specimens and found the contents positive for Methamphetamine Hydrochloride, also known as "*shabu*."<sup>[51]</sup> She reduced her findings in Chemistry Report No. D-443-12.<sup>[52]</sup> Thereafter, PCI Reyes presented the specimens to the prosecutor and the defense counsel. After, she turned them over to the prosecution for safekeeping.<sup>[53]</sup>

For the defense, only Buniel testified. She denied the charges and claimed that on May 30, 2012, she went to Simbulan's house to pick-up blood sugar strips for her mother. About 8:00 p.m., Simbulan accompanied her along Tiago Street to get a ride home when three men on board a van arrived. The men forced her and Simbulan to get on the car and they were brought to the MPD DAID-SOTG where they were investigated, mauled and forced to admit to selling dangerous drugs. Buniel averred that the police officers told her that they will cooperate with her in exchange for P300,000.00.<sup>[54]</sup>

On March 16, 2016, the trial court rendered a decision convicting Buniel of illegal sale of dangerous drugs and acquitting Simbulan of illegal possession.<sup>[55]</sup> The trial

court found all the elements of the crime of illegal sale present and that the prosecution proved an unbroken chain of custody of the drugs. However, the court was not convinced on the guilt of Simbulan as the alleged look-out and co-conspirator in the drug deal.

Aggrieved, Buniel filed an appeal to the CA.<sup>[56]</sup>

On May 31, 2017, the CA affirmed Buniel's conviction.<sup>[57]</sup> The CA found that the prosecution proved beyond reasonable doubt the elements of Illegal Sale of *shabu*. Most importantly, the prosecution was able to establish an unbroken chain of custody. The CA found the explanation of PO2 Reyes that they were already wet from the rain, thus, they decided to conduct the marking and inventory at the police station, justifiable. Further, the alleged inconsistencies in the testimony of PO2 Reyes were inconsequential and had no bearing on the prosecution's cause. Also, that only Crisostomo witnessed the inventory-taking and did not present proof of his identity was not fatal because the parties stipulated on Crisostomo's testimony that he signed the Receipt of Inventory of Property/Evidence Seized as member of the media. Neither did the CA find the failure of the prosecution to present the original of the buy-bust money detrimental to the prosecution's case. The CA pointed out that neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. It was sufficient that the sale of the dangerous drug was adequately proven and that the *corpus delicti* was presented in court.

Hence, this appeal.<sup>[58]</sup> Accused-appellant and the People manifested that they will no longer file their respective Supplemental Briefs, taking into account the thorough discussions of the issues in their respective appeal briefs before the CA.<sup>[59]</sup>

## **RULING**

We acquit.

In cases involving dangerous drugs, the prosecution bears not only the burden of proving the elements of the crime, but also of proving the *corpus delicti* – the dangerous drug itself. The identity of the dangerous drug must be established beyond reasonable doubt.<sup>[60]</sup> Such proof requires an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.<sup>[61]</sup> It is thus crucial for the prosecution to establish the unbroken chain of custody of the seized item.

Section 21(1) of RA No. 9165, the law applicable at the time of the commission of the crime,<sup>[62]</sup> outlines the procedure that police officers must adhere to maintain the integrity of the confiscated evidence, *viz.*:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall

be required to sign the copies of the inventory and be given a copy thereof.

Specifically, Article II, Section 21 (a) of the Implementing Rules and Regulations of RA No. 9165 enumerates the procedures to be observed by the apprehending officers to confirm the chain of custody:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

The law and implementing rules mandate that the physical inventory and photographing of the seized items must be in the presence of the accused and the following insulating witnesses: (1) a representative from the media; (2) the Department of Justice (DOJ); and (3) any elected public official, who shall sign the copies of the inventory and be given a copy.<sup>[63]</sup>

However, in earlier cases, we clarified that the deviation from the standard procedure in Section 21 will not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (1) there is justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.<sup>[64]</sup> The prosecution must explain the reasons behind the procedural lapses and must show that the integrity and evidentiary value of the seized evidence had been preserved.<sup>[65]</sup> In *People v. Ramos*,<sup>[66]</sup> this Court explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165