



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
OCT 01 2020
BY: SANTILANO
TIME: 1:36

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 10, 2020**, which reads as follows:

“**G.R. No. 246476 (People of the Philippines v. Roger Marino)**. – This is an ordinary appeal¹ filed by accused-appellant Roger Marino (Marino) assailing the Decision² dated November 22, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10055. The CA affirmed the Decision³ dated October 13, 2017 of the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 29 in Criminal Case No. 11357, the *fallo* of which provides:

WHEREFORE, premises considered, the court finds **ROGER MARINO guilty** beyond reasonable doubt of the crime Violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of P500,000. The period during which the accused was detained at the San Fernando City Jail shall be credited in his favour pursuant to existing rules.

Pursuant to Section 21(7), Republic Act 9165, let the one (1) plastic sachet of shabu subject matter of this case be turned over to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt.

The one (1) unit Samsung cellular phone confiscated from the accused is likewise ordered confiscated to be disposed of in accordance with law.

SO ORDERED.⁴ (Emphasis in the original)

Marino was charged with violation of Section 5, Article II of Republic Act No. (R.A) 9165 in an Information⁵ dated January 12, 2016:

¹ Rollo, p. 10.

² Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Manuel M. Barrios and Henri Jean Paul B. Inting (now a Member of this Court), concurring; id. at 3-8.

³ Penned by Presiding Judge Asuncion Fikingas-Mandia; CA rollo, pp. 50-56.

⁴ Id. at 56.

⁵ Records, pp. 1-2.

That on or about the 11th day of January 2016, in the City of San Fernando, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, and feloniously for and in consideration of a sum of money in the amount of One Thousand Pesos (1,500.00), Philippine Currency, sell and deliver 0.2979 grams of Methamphetamine Hydrochloride, also known as "shabu" a dangerous and prohibited drug, contained in One (1) transparent heat-sealed sachet, to **PO3 JOSE MARIE A. BERSOLA**, who posed as buyer thereof using marked money, one (1) genuine Five Hundred Peso Bill (Php500.00) and one (1) piece One Thousand Peso (P1,000.00) boodle money, without first securing the necessary permit, license, or prescription from the proper government agency or authority.

CONTRARY TO LAW.⁶ (Emphasis in the original)

The witnesses for the prosecution alleged that at 5:15 p.m. on January 11, 2016, PO3 Jose Marie Bersola (PO3 Bersola) was at the San Fernando City Police Station when a confidential informant told him that a certain *alias* Patpat was looking for buyers of *shabu* and that he could buy from him. PO3 Bersola relayed this information to P/Insp. Juanito Buaron (P/Insp. Buaron) who then called for the conduct of a buy-bust operation. During the briefing, PO3 Bersola was designated as the *poseur*-buyer and was given⁷ one P500.00 bill with serial no. LU26232⁸ and one P1,000.00 boodle money⁹ with serial no. EY484946¹⁰ for the transaction. He marked the lower portion of the bills with his initials "JMB."¹¹ PO1 Pierre Gatchallan (PO1 Gatchallan) was designated as his perimeter back-up.¹² P/Insp. Buaron was their team leader.¹³ A Certificate of Coordination and Pre-Operational Report was submitted to the Philippine Drug Enforcement Agency.¹⁴

The buy-bust team proceeded to *alias* Patpat's residence at Barangay Catbangan, San Fernando City. The confidential informant, PO3 Bersola, and PO1 Gatchallan boarded a public utility tricycle while the rest of the buy-bust team used a private vehicle to go to the area. When they arrived at around 7:00 p.m., PO1 Gatchallan distanced himself from PO3 Bersola and the confidential informant.¹⁵

The confidential informant and PO3 Bersola approached *alias* Patpat, who was standing in front of the gate of his residence near a basketball court.¹⁶

⁶ Id. at 1.
⁷ CA *rollo*, p. 50.
⁸ Id. at 52.
⁹ Id. at 50.
¹⁰ Id. at 52.
¹¹ Id.
¹² Id. at 50-51.
¹³ Id. at 50.
¹⁴ Id. at 51.
¹⁵ Id.
¹⁶ Id.

After he was introduced by the confidential informant as a buyer, PO3 Bersola handed the buy-bust money to *alias* Patpat who then took out one heat-sealed transparent plastic sachet containing white crystalline substance from his pocket. *Alias* Patpat gave the sachet to PO3 Bersola.¹⁷ PO3 Bersola executed the pre-arranged signal of calling someone using his cellphone. Subsequently, PO1 Gatchallan and the rest of the buy-bust team approached them. PO3 Bersola frisked *alias* Patpat and recovered the buy-bust money from him as well as one Samsung mobile phone. He arrested the latter and informed him of his constitutional rights. *Alias* Patpat was identified as Marino.¹⁸

PO3 Bersola marked the seized sachet as JMB 01-11-16¹⁹ and conducted an inventory of the items seized in the place of arrest, in the presence of Marino, Barangay Kagawad Roberto Abasolo, Jr. (Kagawad Abasolo, Jr.) and media representative Dominador Dacanay (Dacanay) of DZNL Radio.²⁰ Photographs were taken during the same. Thereafter, Marino was brought to the City Health Office for medical examination and then to the police station.²¹

PO3 Bersola prepared the Request for Laboratory Examination and brought it together with the drug specimen to the Philippine National Police (PNP) Regional Crime Laboratory Office I where it was received by PO3 Jose Bucasas (PO3 Bucasas).²² PO3 Bucasas turned over the drug specimen to PSI Maria Theresa Amor Manuel Sobejana (PSI Sobejana).²³ PSI Sobejana conducted a qualitative examination on the drug specimen. The specimen tested positive for methamphetamine hydrochloride or shabu, a dangerous drug.²⁴

Marino was charged with violation of Section 5, Article II of RA No. 9165. He pleaded not guilty during his arraignment.²⁵ Marino argued that he was at home on January 11, 2016 when Raymund Flores (Flores) came by and invited him to play basketball. He refused because he needed to finish his chores first.²⁶ Flores borrowed a chair so that he could watch the basketball game at the basketball court in front of Marino's house while waiting for him. Suddenly, four armed men arrived at Marino's house and searched his room.²⁷ They did not present a search warrant.²⁸ After a while, a barangay official arrived. Marino was forced to sign a document. The armed men took Marino and brought him to the police station.²⁹

17 *Rollo*, pp. 4-5.
18 *CA rollo*, p. 51.
19 Records, p. 11.
20 *Rollo*, p. 5.
21 *CA rollo*, p. 51.
22 *Id.*
23 *Id.* at 53.
24 *Id.* at 52-53.
25 *Rollo*, p. 4.
26 *Id.* at 5.
27 *CA rollo*, p. 53.
28 *Id.* at 54.
29 *Id.*

PO3 Bersola, PO1 Gatchallan, PSI Sobejana, and Kagawad Abasolo, Jr. testified for the prosecution.³⁰ The taking of PO3 Bucasas' testimony was dispensed with after the parties stipulated that: (1) he is a police officer assigned at the PNP Regional Office 1 Crime Laboratory; (2) he received the request for laboratory examination and drug specimen allegedly confiscated from Marino. Upon receipt thereof, he signed the chain of custody form together with PO3 Bersola; (3) he turned over the drug specimen to PSI Sobejana; (4) After she was done with the examination, PSI Sobejana returned the drug specimen, sealed in a brown envelope, to him. He kept it in the evidence room as the evidence custodian; and (5) he gave the drug specimen to PSI Sobejana who brought it to the RTC.³¹ Marino, Marino's mother Asuncion Marino, and Flores testified for the defense.³²

On October 13, 2017, the RTC promulgated its Decision³³ finding Marino guilty of violation of Section 5, Article II of R.A. 9165 and sentenced him to life imprisonment. The RTC also ordered him to pay a fine of ₱500,000.00.³⁴ The RTC held that the prosecution was able to prove the existence of all the elements of the crime of Illegal Sale of Dangerous Drugs under Section 5 of R.A. 9165. PO3 Bersola positively identified Marino as the one who sold him *shabu* for ₱1,000.00. The contents of the sachet Marino gave to PO3 Bersola in exchange for ₱1,000.00 tested positive for *shabu*.³⁵ Marino's denial cannot prevail over the positive testimonies of the credible prosecution witnesses.³⁶

The RTC also ruled that the buy-bust team complied with Section 21 of R.A. 9165. *First*, PO3 Bersola marked and conducted an inventory of the seized items in the presence of Marino, Kagawad Abasolo, Jr., and Dacanay. Photographs were taken of the seized items and the signing of the inventory. *Second*, PO3 Bersola, accompanied by PO1 Gatchallan, brought the drug specimen to the PNP Regional Crime Laboratory where it was received by PO3 Bucasas.³⁷ *Third*, PO3 Bucasas turned the drug specimen over to PSI Sobejana.³⁸ PSI Sobejana examined the drug specimen and returned it to PO3 Bucasas.³⁹ *Fourth*, PSI Sobejana retrieved the drug specimen from PO3 Bucasas and presented it before the RTC. The turn-over of the drug specimen was duly recorded in the chain of custody form.⁴⁰

Marino appealed to the CA. On November 22, 2018, the CA issued its Decision⁴¹ denying the appeal. The CA held that there was no reason to deviate

30 Id. at 50.
31 Records, p. 62.
32 CA rollo, p. 53.
33 Id. at 50-56.
34 Id. at 56.
35 Id. at 55.
36 Id. at 56.
37 Id. at 55.
38 Id. at 55-56.
39 Id.
40 Id. at 56.
41 Rollo, pp. 3-8.

from the factual findings of the RTC, who was in a better position to observe the witnesses as they gave their testimonies.⁴² The alleged inconsistencies in the testimonies of the prosecution's witnesses were insignificant and did not affect the essential elements of the crime imputed against Marino.⁴³ Further, Dacanay's testimony was dispensable. The prosecution was able to establish the identity and integrity of the drug specimen without his testimony. Thus, Marino's denial cannot prevail against the prosecution's witnesses positive and categorical allegations.⁴⁴

Marino filed a notice of appeal with the CA to question its ruling before Us.⁴⁵ After this Court ordered the parties to file their supplemental briefs, both parties in this case filed a manifestation praying for the adoption of their respective briefs before the CA as their supplemental brief before this Court.⁴⁶

Marino argued that the testimonies of the prosecution's witnesses should not have been given weight because they were inconsistent on material points. *First*, PO3 Bersola said that Marino was standing in front of his house when they arrived while PO1 Gatchallan said that the confidential informant had to knock on the gate before Marino came out. *Second*, PO3 Bersola initially testified that he called P/Insp. Buaron to signify the consummation of the sale, but he later clarified that he called PO1 Gatchallan. PO1 Gatchallan made no mention of being called by PO3 Bersola. He testified that he approached PO3 Bersola when he saw the latter call someone, but not him. None of the other members of the buy-bust team testified to corroborate their testimonies. Marino also argued that Section 21 of R.A. 9165 was not complied with due to the following: (1) a representative from the National Prosecutorial Services was not present during the conduct of the inventory; and (2) Dacanay was not presented as a witness. Hence, Marino prayed for his acquittal.⁴⁷

Plaintiff-appellee undermined the alleged inconsistencies in the testimonies of its witnesses because it does not affect the elements of the crime charged. Thus, these inconsistencies are minor and immaterial. Marino also failed to prove his claims with clear and convincing evidence. He did not prove ill motive on the part of the members of the buy-bust team. Plaintiff-appellee further argued that Section 21 of R.A. 9165, as amended by R.A. 10640, was substantially complied with. Hence, the identity and integrity of the drug specimen in this case was duly established. The appealed decision should be affirmed *in toto*.⁴⁸

The sole issue before this Court is whether the CA erred in affirming the finding of guilt against Marino for violation of Sec. 5 of RA No. 9165, as amended.

⁴² Id. at 6.

⁴³ Id. at 6-7.

⁴⁴ Id.

⁴⁵ Id. at 10.

⁴⁶ Id. at 17-19, 22-23.

⁴⁷ CA *rollo*, pp. 40-47.

⁴⁸ Id. at 70-77.

The appeal is meritorious.

The general rule is that this Court is not a trier of facts and only entertains questions of law. One of the exceptions is when there is grave abuse of discretion.⁴⁹ We find that the exception, rather than the general rule, should be applied in this case.

In the case of *People v. Guillermo*,⁵⁰ We held that “evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself, such as the common experience and observation of mankind can prove as probable under the circumstances.”⁵¹ In this case, PO3 Bersola used one genuine ₱500.00 bill and one ₱1,000.00 boodle money to pay Marino. He claimed that he immediately handed Marino the buy-bust money after the confidential informant told Marino of his intention to buy *shabu*.⁵² In turn, Marino handed the sachet of *shabu* to him.⁵³ It is difficult to believe that Marino readily accepted PO3 Bersola’s payment without checking it, considering that one of the bills used was fake. Boodle money is easily discernible. In addition, the value of the drug specimens purchased by PO3 Bersola cannot be considered petty. Thus, it is incredulous that Marino easily handed the drug specimens to PO3 Bersola after receiving the payment.

Further, PO1 Gatchallan and PO3 Bersola’s testimonies were inconsistent on some points. On one hand, PO3 Bersola claimed that Marino was already outside the gate when they arrived.⁵⁴ On the other hand, PO1 Gatchallan claimed that the confidential informant knocked on the gate before Marino came out.⁵⁵ Likewise, PO1 Gatchallan said that he was not the person that PO3 Bersola called to signify the consummation of the sale.⁵⁶ PO3 Bersola initially said that he called P/Insp. Buaron⁵⁷ but likewise testified that that PO1 Gatchallan “received the miscall.”⁵⁸

The conflicting claims of PO3 Bersola and PO1 Gatchallan cannot be reconciled with each other. This means that only one of them is telling the truth, or none at all. While the CA held that these inconsistencies do not affect the presence of the elements of the crime of illegal sale of dangerous drugs, We find that it affects the credibility of their witnesses. It renders their accusation doubtful.

Moreover, the RTC’s factual findings were inconsistent with the evidence presented by the prosecution. The RTC stated in its Decision that the

⁴⁹ *Ramos v. People*, G.R. No. 227336, February 26, 2018.

⁵⁰ G.R. No. 229515, November 27, 2019.

⁵¹ Id.

⁵² TSN dated September 28, 2016, p.14.

⁵³ Id. at 7.

⁵⁴ Id. at 6.

⁵⁵ TSN, August 22, 2016, p. 16.

⁵⁶ Id.

⁵⁷ TSN, September 28, 2016, pp. 8, 15.

⁵⁸ Id. at 15.

sum paid by PO3 Bersola was ₱1,000.00. This is contrary to the allegation in the information and PO3 Bersola's testimony that the amount paid was ₱1,500.00. Notably, even the information is inconsistent. It states that the consideration for the sale was "One Thousand Pesos (1,500.00)."⁵⁹ However, the Information also provides that PO3 Bersola used "one (1) genuine Five Hundred Peso Bill (Php500.00) and one (1) piece One Thousand Peso (P1,000.00) boodle money"⁶⁰ as buy-bust money. The RTC did not explain these discrepancies. The CA likewise made no mention of this matter or expounded on whether this was a mere oversight on the part of the RTC.

Considering the foregoing, the CA erred in affirming the factual findings of the RTC. The CA should not have given credence to the prosecution's version of the events. Marino's guilt was not proven beyond reasonable doubt and he should be acquitted.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 22, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 10055 is **REVERSED** and **SET ASIDE**. Accused-appellant Roger Marino is **ACQUITTED** of the crimes charged against him and is ordered to be **IMMEDIATELY RELEASED**, unless he is being lawfully held in custody for any other reason. The Director of Prisons is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED."

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

9/28/2020

Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1104 Quezon City

COURT OF APPEALS
CA G.R. CR HC No. 10055
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Director
BUREAU OF CORRECTIONS
1770 Muntinlupa City

⁵⁹ Records, p. 1.

⁶⁰ Id.

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Roger Marino
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 29, San Fernando City
2500 La Union
(Crim. Case No. 11357)

The Director General
PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
PDEA Bldg., NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

DANGEROUS DRUGS BOARD
3rd Floor DDB-PDEA Bldg.,
NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

PUBLIC INFORMATION OFFICE
Supreme Court, Manila
[For uploading pursuant to A.M. 12-7-1-SC]

LIBRARY SERVICES
Supreme Court, Manila

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

G.R. No. 246476 *Jep*
len/

ca
(135)
URES



SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
OCT 01 2020
BY: J. SANTOS
TIME: 1:34

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 246476

-versus-

ROGER MARINO,
Accused-Appellant.

x-----/

ORDER OF RELEASE

TO: The Director
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: The Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on June 10, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

“WHEREFORE, the appeal is **GRANTED**. The Decision dated November 22, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 10055 is **REVERSED** and **SET ASIDE**. Accused-appellant Roger Marino is **ACQUITTED** of the ^M

- over -

JOS

crimes charged against him and is ordered to be **IMMEDIATELY RELEASED**, unless he is being lawfully held in custody for any other reason. The Director of Prisons is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.”

NOW, THEREFORE, You are hereby ordered to immediately release **ROGER MARINO**, unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **10th** day of **June 2020**.

Very truly yours,

Misael DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

9/28/2020

Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1104 Quezon City

COURT OF APPEALS
CA G.R. CR HC No. 10055
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 29, San Fernando City
2500 La Union
(Crim. Case No. 11357)

Mr. Roger Marino
c/o The Superintendent
New Bilibid Prison North
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Director General
PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
PDEA Bldg., NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

DANGEROUS DRUGS BOARD
3rd Floor DDB-PDEA Bldg.,
NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

PUBLIC INFORMATION OFFICE
LIBRARY SERVICES
Supreme Court, Manila

G.R. No. 246476 *CA*

