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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

OCT 06 2016

Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 214238

Present:

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 MENDOZA,* and
 REYES, JJ.

- versus -

ESMAEL ZACARIA y WAGAS,
Accused-Appellant.

Promulgated:

September 14, 2016

Wilfredo V. Lapitan

X ----- X

RESOLUTION

PEREZ, J.:

This resolves an appeal from a conviction for sale of illegal drugs and possession of dangerous drugs punishable under Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.” The Decision¹ of the Regional Trial Court (RTC), Branch 9, Davao City; dated 5 January 2009 convicting accused-appellant Esmael Zacaria y Wagas² (Zacaria) in the case entitled *People of the Philippines v. Esmael Zacaria y Wagas a.k.a. “Michael”*, docketed as Criminal Case Nos. 54,425-2004 and 54,426-2004, was affirmed by the

* In lieu of Associate Justice Francis H. Jardeleza, who takes no part, due to his prior action as Solicitor General per Raffle dated September 5, 2016.

¹ Rollo, pp. 64-88; penned by Judge Romeo C. Albarracin.

² Accused-appellant’s name is stated as Esmael Zacaria y Wangi a.k.a. “Michael” in other parts of the records.

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Court of Appeals (CA) in a Decision³ dated 24 May 2013 in CA-G.R. CR-HC No. 00825-MIN.

The Facts


On 15 May 2004 at around 3:30 p.m., upon a tip-off received by Senior Police Officer 2 Rito A. Montederamos (SPO2 Montederamos), Senior Police Officer 1 Allan B. Balingit (SPO1 Balingit), and Police Officer 1 Jesicar L. Maglacion (PO1 Maglacion) of the Philippine Drug Enforcement Agency (PDEA), Police Senior Inspector Christine S. Tan (S/Insp. Tan) formed a team of agents to conduct a buy-bust operation to entrap accused-appellant Zacaria.

Acting as poseur-buyers, SPO2 Montederamos, together with an informant, went to Victoria Plaza in Davao City to meet Zacaria. The informant first introduced Zacaria to SPO2 Montederamos. After SPO2 Montederamos showed the money to Zacaria, the latter handed one (1) plastic sachet containing white crystalline substance to SPO2 Montederamos, who immediately called the other police officers. SPO2 Montederamos then held Zacaria, but the latter managed to whisk away and board a taxi. The police officers chased Zacaria and when they were finally able to catch up with him at the back of Victoria Plaza, the police officers arrested Zacaria. During Zacaria's arrest, the police officers recovered another sachet containing white crystalline substance from him.

The police officers brought Zacaria to the PDEA Office for booking and documentation. SPO2 Montederamos turned over the seized items to Police Officer 1 Janmark V. Malibiran (PO1 Malibiran), the Desk Officer, for recording. After the recording, the seized items were returned to SPO2 Montederamos who taped, initialed, wrote the name of Zacaria, and placed it inside a cellophane before placing them in his locker in their office.

On 17 May 2004 at around 2:30 p.m., in the presence of Zacaria, an elected public official, media man, and representative from the Department of Justice (DOJ), the inventory of the seized items was conducted. Thereafter, the seized items were delivered to the PDEA Crime Laboratory in Davao City for examination, which tested positive for Methamphetamine Hydrochloride or *shabu*. Two sets of Information were filed against Zacaria: (1) Criminal Case No. 54,425-2004 for possession of dangerous drugs; and (2) Criminal Case No. 54,426-2004 for sale and delivery of dangerous drugs.

³ *Rollo*, pp. 145-156; penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Jhosep Y. Lopez, concurring.



The Information(s)

Criminal Case No. 54,425-2004

The undersigned accuses the above-named person for Possession of Dangerous Drugs, under Section 11 (sic) of Article II of Republic Act [No.] 9165, committed as follows:

That on or about May 15, 2004, in the City of Davao, [Philippines,] and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, wilfully, unlawfully and consciously had in his possession one (1) big plastic sachet of Methamphetamine Hydrochloride, otherwise known as shabu, weighing 2.7133 grams, which is a dangerous drug.

CONTRARY TO LAW.⁴

Criminal Case No. 54,426-2004

The undersigned accuses the above-named person for Sale [a]nd Delivery [o]f Dangerous Drugs, under Section 5, (sic) of Article II of Republic Act [No.] 9165, committed as follows:

That on or about May 15, 2004, in the City of Davao, [Philippines,] and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously sold and delivered one (1) big plastic sachet of Methamphetamine Hydrochloride, otherwise known as shabu, weighing 2.5409 grams, which is a dangerous drug.

CONTRARY TO LAW.⁵

During arraignment, Zacaria pleaded not guilty. The defense filed a Motion for Admission to Bail which the RTC denied. Thereafter, trial on the merits ensued.

The prosecution presented the following witnesses: (1) SPO2 Montederamos and (2) PO1 Maglacion, who testified on the arrest, procedure of the inventory, and preservation of the seized items; and (3) Police Senior Inspector Ma. Julieta Gernel Razonable (S/Insp. Razonable), a Forensic Chemical Officer, who testified that the seized items tested positive for Methamphetamine Hydrochloride or *shabu*.

⁴ RTC records, p. 1 (Crim. Case No. 54,425-04).

⁵ Id. at 1 (Crim. Case No. 54-426-04).



On the other hand, the defense presented the following witnesses: (1) accused-appellant Zacaria, (2) Bai Norma Saluang Al Hadja, and (3) Zacaria's wife, Guiaria Ingo Zacaria.⁶

Accused-appellant Zacaria testified that on 15 May 2004 at around 2:00 or 3:00 p.m., while walking around Victoria Plaza to buy some stocks for his ready-to-wear business, he was suddenly grabbed by a man in civilian clothes, forced to board a vehicle, blindfolded, and handcuffed. When the vehicle stopped, he was ordered to alight and was frisked. He was told that they were near a bridge and that if he fails to disclose the names of his companions, they will push him to the bridge and will be gunned down. When Zacaria was pushed, his stomach hit an object and he realized that he was inside a room. Zacaria was choked and his money worth Nine Thousand Pesos (₱9,000.00) and cellphone were taken from him. He was made to enter a room where his handcuffs were unlocked, then he was tied to a bar. Although blindfolded, Zacaria sensed there were people in the room due to the noise. After his blindfold was removed, he saw his companions and certain unknown women. He asked one of the women where they were and was told that they were at the barracks of PDEA.

Zacaria was transferred to a detention cell. During his investigation, he was asked to point his companions in exchange for his freedom, but he could not point anybody. He stayed at the PDEA for ten days. While at the PDEA, Zacaria used the cellphone of one of the visitors and texted his wife. The following day, his wife arrived.

Bai Norma Saluang Al Hadja corroborated Zacaria's testimony. She testified that on 15 May 2004, she saw Zacaria at the ground floor of Victoria Plaza, who was suddenly pulled by a man in civilian clothes. She saw Zacaria run away, but the man chased Zacaria and the commotion ensued.

Zacaria's wife, Guiaria Ingo Zacaria, corroborated Zacaria's testimony. According to her, SPO2 Montederamos convinced her to point a person in exchange for Zacaria's freedom.

Ruling of the RTC

The RTC rejected Zacaria's contention that the allegations against him were baseless because the prosecution failed to prove that there was

⁶ Her name is also stated as Guiaria Inog Zacaria and Guaria Ingo Zacaria in other parts of the records.



indeed a sale of *shabu* as there was no simultaneous actual exchange of the money and the *shabu*. According to Zacaria, the charges against him must fail because the prosecution failed to present the buy-bust money. Contrary to the averments of Zacaria, the RTC held that it is not necessary to present the buy-bust money.⁷ As already held, proof of actual payment of the buy-bust money is not necessary.⁸ Mere delivery of the drug purchased is sufficient.

Anent the non-compliance with Section 21 of R.A. No. 9165, the RTC ruled that the procedure laid down is not iron-clad. The implementing rules provide:

xxxx. 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.⁹

While the RTC acknowledged the presence of inconsistencies in some details of the prosecution's witnesses, the RTC resolved that it is by these inconsistencies which make the prosecution evidence more compelling. In any case, the RTC held that these inconsistencies are minor details which do not divest the substantial accuracy of the testimonies.

With regard to the defense's allegation of extortion and violence against the arresting officers, the RTC held that the defense's bare allegation cannot prevail over the prosecution evidence. The defense did not file any case against the arresting officers or present any medical certificate to prove any maltreatment.

Based on the totality of evidence, the RTC found Zacaria guilty beyond reasonable doubt of violations of Sections 5 and 11 of R.A. No. 9165. On 5 January 2009, the RTC convicted Zacaria. The dispositive portion of the RTC Decision reads:

WHEREFORE, in view of the foregoing premises, the Court declares ESMAEL WANGI ZACARIA, Filipino, 40 years old, and a resident of SK Pindatun (sic), Cotabato City, GUILTY beyond reasonable doubt of the crime for Violation of Section 11, Article II of RA 9165 in Criminal Case No. 54,425-2004 and for Violation of Section 5, Article II of RA 9165 in Criminal Case No. 54,426-2004.

⁷ *People v. Dela Cruz*, 269 Phil. 165, 171 (1990).

⁸ *People v. Balag-ey*, 471 Phil. 327, 354 (2004).

⁹ *Rollo*, p. 85, *CA rollo*, p. 71; RTC Decision dated 29 January 2009.

ACCORDINGLY, said accused is hereby sentenced to wit:

CRIMINAL CASE NO. 54,425-2004

To suffer the penalty of an Imprisonment of TWELVE (12) YEARS and one (1) day to twenty (20) years and a fine of Three Hundred Thousand Pesos (Php300,000.00) Philippine Currency; and in

CRIMINAL CASE NO. 54,426-2004

To suffer the penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) Philippine Currency.

If the prosecution finds that the substances involved in these cases will still be used by them in some other case/s, they must inform the Court immediately after the promulgation of the decision, but not later than five (5) days, otherwise the turn-over and destruction of the substances involved in these cases shall be carried out.

SO ORDERED.¹⁰

Ruling of the Court of Appeals

The CA affirmed the RTC Decision. The CA rejected Zacaria's contention that because there was no simultaneous actual exchange of the money and *shabu*, and the prosecution failed to present in evidence the buy-bust money, an acquittal is in order. The CA held that contrary to the defense's averments, it is enough that the prosecution was able to present evidence that the transaction or sale actually took place, coupled with presentation in court of the *corpus delicti* as evidence. "What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence."¹¹ This has been complied with by the prosecution. As borne by the records, SPO2 Montederamos testified on the sale transaction and identified the *shabu* in court—SPO2 Montederamos identified Zacaria as the seller.

The CA averred that the fact that no money changed hands is not a fatal defect. There is no requirement that in buy-bust operations, there must be a simultaneous exchange of the marked money and the prohibited drug between the poseur-buyer and the pusher.

¹⁰ Rollo, pp. 87-88; CA rollo, pp. 73-74.

¹¹ Id. at 121.



The failure to present the buy-bust money is likewise not fatal. “The marked money used in the buy-bust operation is not indispensable[,] but merely corroborative in nature. xxx Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.”¹²

With regard to the arresting officers’ failure to immediately conduct an inventory, take photographs, and conduct the same in Zacaria’s presence or his representative, the CA held that the inventory and laboratory examination conducted on 17 May 2004 or two days after the arrest, which is beyond the 24-hour period required by law, were justifiable because the presence of a DOJ representative could not be met on the day of the arrest and the following days, being a Saturday and a Sunday. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items as these would be utilized in the determination of the guilt or innocence of the accused: (1) “When they arrived in the office, [SPO2 Montederamos] turned over the items to the Desk Officer, PO1 Malibiran, for recording; (2) After the recording, PO1 Malibiran returned the items to [SPO2 Montederamos] who then taped, initialed, wrote the name of the accused, and placed them inside a cellophane before placing them in his locker in their office; (3) The items were only brought out from the locker on May 17, 2004 for their inventory in the presence of Zacaria, an elected public official, a media man and the representative from the DOJ; (4) On the same date, the items were delivered to the PDEA Crime Laboratory in Davao City for examination; (5) The seized items from Zacaria tested positive for Methamphetamine Hydrochloride xxx.”¹³

While the arresting officers failed to strictly comply with Section 21, the seized items were marked and kept to preserve their integrity before their inventory. There is nothing to indicate that the seized items were tampered.

Further, the positive identification of SPO2 Montederamos and PO1 Maglacion of the person of Zacaria as the seller and possessor of the seized items prevails over Zacaria’s bare denials.

Finally, Zacaria’s warrantless arrest as a product of a buy-bust operation is valid because he was caught *in flagrante delicto*.¹⁴ And thus,

¹² Id.

¹³ Id. at 123.

¹⁴ RULES OF COURT, Rule 113, Sec. 5 provides:

Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

xxxx



the search and seizure pursuant to the valid warrantless arrest are also valid.¹⁵

Our Ruling

As correctly held by the lower courts, the elements of Section 5, Article II of R.A. No. 9165 or sale of illegal drugs: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it, are present. Also, the prosecution adequately established the existence of all the elements of the offense of illegal possession of dangerous drugs under Section 11, Article II of the same Act, to wit: (1) the accused is in possession of the object identified as a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

Finding no reversible error in the findings of fact and conclusions of law of the lower courts, the Court resolves to **AFFIRM** *in toto* the Decision of the Court of Appeals.


WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated 24 May 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 00825-MIN affirming the conviction of **ESMAEL ZACARIA y WAGAS** by the Regional Trial Court of Davao City, Branch 9 in Criminal Case Nos. 54,425-2004 and 54,426-2004, which found him guilty beyond reasonable doubt of violation of Sections 5 (sale of illegal drugs) and 11 (possession of dangerous drugs), Article II of R.A. No. 9165, is **AFFIRMED** *in toto*. **ESMAEL ZACARIA y WAGAS** is therefore sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) for violation of Section 5, Article II, R.A. No. 9165 or sale of illegal drugs, and is therefore sentenced to suffer the penalty of Twelve (12) years and one (1) day to Twenty (20) years and a fine of Three Hundred Thousand Pesos (₱300,000.00) for violation of Section 11, Article II, R.A. No. 9165 or possession of dangerous drugs.

SO ORDERED.

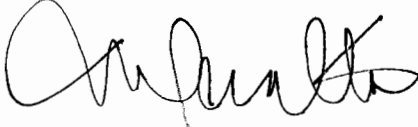

JOSE PORTUGAL PEREZ
Associate Justice

¹⁵ RULES OF COURT, Rule 126, Sec. 13 provides:
Section 13. Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. (12a)

WE CONCUR:




PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice




JOSE C. MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

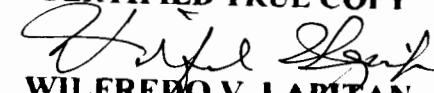
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MA. LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LARITAN
Division Clerk of Court
Third Division

OCT 06 2016