



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated July 6, 2022 which reads as follows:

“G.R. No. 228775 (*The People of the Philippines v. Alex Ansay y Macatangay*) – This Court resolves the Appeal¹ filed by Alex Ansay y Macatangay alias “*Ling-Ling*” (*Ansay*), challenging the Decision² dated June 21, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06888, affirming the Decision³ dated April 23, 2014, of the Regional Trial Court of Batangas City, Branch 8 (RTC), in Crim. Case No. 17211, finding him guilty for violation of Section 5, Article II of Republic Act (R.A.) No. 9165 also known as the “Comprehensive Dangerous Drugs Act of 2002,” for selling 16.60 grams of *shabu*, a dangerous drug.

Facts

In an Information⁴ dated November 25, 2011, Ansay was indicted for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165. The accusatory portion of the said Information reads:

That on or about November 23, 2011 at around 10:40 in the early evening outside the closed gate of Terminal II, Port of Batangas, Brgy. Sta. Clara, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully and criminally transport or deliver five (5) transparent plastic sachets of *Methamphetamine Hydrochloride*, more commonly known as *Shabu*, a dangerous drug, with a total weight of 16.60 grams, placed inside a yellow colored photo envelop[e], which is a clear violation of the above-cited law.

CONTRARY TO LAW.⁵

¹ *Rollo*, pp. 22-23.

² Penned by Associate Justice Stephen C. Cruz (now retired), with Associate Justices Jane Aurora C. Lantion and Ramon Paul L. Hernando (now a member of this Court), concurring; *id.* at 2-21.

³ *CA rollo*, pp. 17-37. Penned by Presiding Judge Ernesto L. Marajas.

⁴ Records, pp. 1-2.

⁵ *Id.* at 1.

During arraignment, Ansay pleaded “not guilty” to the charge.⁶ After the pre-trial concluded, trial on merits ensued.⁷

The prosecution established that on November 23, 2011, Senior Police Officer 1 Lindbergh H. Yap IV (*SPO1 Yap*) received a tip from his confidential informant that a person known as “*Ling-Ling*” would deliver prohibited drugs before midnight at the port of Batangas.⁸ SPO1 Yap informed the Chief of Police who instructed his team to conduct a buy-bust operation to apprehend the suspected drug dealer.⁹

After proper coordination with the Philippine Drug Enforcement Agency (*PDEA*), the team proceeded to the target area.¹⁰ There, the police operatives positioned themselves near the gate of Terminal I, 15 meters away, more or less, from the closed gate of Terminal II to observe from a distance the events that would unfold.¹¹ Meanwhile, the confidential informant alighted from the vehicle, walked towards the closed gate of Terminal II and waited for the subject to arrive.¹²

Moments later, the subject arrived and approached him.¹³ After a short conversation between them, the subject handed a yellow envelope to the confidential informant, who clandestinely made a thumbs-up to signify that the delivery had been completed.¹⁴

When the police operatives saw the confidential informant execute the pre-arranged signal, they closed in on the area, and SPO1 Yap approached them.¹⁵ The confidential informant handed the yellow envelope to SPO1 Yap who examined its contents and found five plastic sachets suspected to contain *shabu* inside.¹⁶ After confirming his suspicion, SPO1 Yap arrested the subject, and later on identified him as Alex Ansay, an Overseas Filipino Worker (*OFW*) residing in Sta. Clara, Batangas City.¹⁷

Subsequently, SPO1 Yap marked the five plastic sachets with his initials “*LHY-1 11-23-11, LHY-2 11-23-11, LHY-3 11-23-11, LHY-4 11-23-11 and LHY-5 11-23-11,*” respectively, at the place of arrest.¹⁸ Later on, Ansay, together with the yellow envelope and its contents were brought to the Barangay Hall of Sta. Clara. There, media representative Maricia Lualhati

⁶ *Rollo*, p. 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ TSN dated March 5, 2012, pp. 23-24.

(*Lualhati*), Department of Justice (*DOJ*) representative Fiscal Evelyn Jovellanos (*Fiscal Jovellanos*) and elected official Brgy. Kagawad Virgilio Cunag (*Brgy. Kagawad Cunag*) witnessed the inventory of the seized items and signed the Certificate of Inventory¹⁹ to attest to the same.

After the marking and inventory, SPO1 Yap turned over the seized items to the duty investigator, Senior Police Officer 1 Pepito Adelantar (*SPO1 Adelantar*).²⁰ SPO1 Adelantar prepared the Request for Drug Test and Laboratory Examination, among others,²¹ and handed them over, along with the five (5) marked plastic sachets to Senior Police Officer 1 Herbert Bereña (*SPO1 Bereña*) of the Philippine National Police (PNP) – Crime Laboratory for examination.²²

SPO1 Bereña turned over the subject specimens to Forensic Chemist Police Senior Inspector Herminia Llacuna (*PSI Llacuna*) who examined the contents of the five marked plastic sachets and reduced her findings in Chemistry Report No. BD-369-2011.²³ In the Report, she indicated the specimens tested positive for *Methamphetamine Hydrochloride*, a dangerous drug. Thereafter, PSI Llacuna returned the pieces of evidence to SPO1 Bereña for safekeeping.²⁴ After some time, SPO1 Bereña delivered the said pieces of evidence to Rodel Espina (*Espina*), the evidence custodian of the City Prosecutor, after receiving a subpoena directing him to bring the same to the said office.²⁵

Meanwhile, the defense asserted that the pieces of evidence against Ansay were planted.²⁶ Ansay maintained that he was at the compound of the port of Batangas to check the schedule of the ships going to Mindoro.²⁷ He was on his motorcycle, when the group of SPO1 Yap appeared and forcibly boarded him into a van.²⁸ They brought him to the Philippine Ports Authority (*PPA*), where three (3) people arrived and handed something to SPO1 Yap.²⁹ Afterwards, they all went to the police station.³⁰

At the police station, he saw SPO1 Yap take an object from his pocket and make some inscription on it.³¹ Moments after, SPO1 Yap got a yellow photo envelope from his locker and placed the object from his pocket inside

¹⁹ Records, p. 11.

²⁰ TSN dated March 5, 2012, p. 46.

²¹ TSN dated April 23, 2012, p. 18.

²² *Rollo*, p. 5.

²³ Records, p. 5.

²⁴ *Id.*

²⁵ TSN dated June 25, 2012, pp. 14-15.

²⁶ *Rollo*, p. 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

the yellow envelope.³² To his surprise, Ansay was brought back to the place where he was arrested.³³ There, the police took his photos before he was taken to the Barangay Hall of Sta. Clara, where the police once again took his photos, but this time with the object previously taken by SPO1 Yap from his pocket.³⁴ Afterwards, he was detained at the police station.³⁵

Defense witness Noel Macatangay (*Macatangay*) corroborated Ansay's testimony as regards the circumstances of his actual arrest.³⁶

After trial, the RTC rendered its Decision which found Ansay guilty beyond reasonable doubt of the crime charged.³⁷ The dispositive portion of the said Decision states:

WHEREFORE, [t]his Court having found Alex Ansay to have transgressed the provisions of Article II, Section 5 of the Republic Act No. 9165, beyond reasonable doubt, he is hereby sentenced to be incarcerated for life and to pay a fine of four million pesos (P4,000,000.00).

x x x x

SO ORDERED.³⁸

Undaunted, Ansay appealed before the CA.³⁹

In its assailed Decision, the CA affirmed the ruling of the RTC, convinced that the chain of custody of the seized items does not appear to have been broken,⁴⁰ since the arresting officers substantially complied with the requirements of Section 21 of R.A. No. 9165.⁴¹ Thus, the CA upheld Ansay's conviction.⁴²

Unrelenting, Ansay filed a Notice of Appeal.⁴³

In a Resolution⁴⁴ dated January 30, 2017, this Court noted the records forwarded by the CA which gave due course to Ansay's Notice of Appeal. Likewise, the parties were ordered to file their respective supplemental briefs, should they so desire, within 30 days from notice.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 6.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 6-7.

³⁹ Records, p. 300.

⁴⁰ *Rollo*, p. 10.

⁴¹ *Id.* at 17-19.

⁴² *Id.* at 21.

⁴³ *Id.* at 22.

⁴⁴ *Id.* at 27.

On March 16, 2017, accused-appellant, through the Public Attorney's Office, filed a Manifestation⁴⁵ stating that he would no longer file a supplemental brief because all of his contentions had been exhaustively discussed in the Appellee's Brief he submitted to the CA.

On March 22, 2017, the Office of the Solicitor General, on behalf of the People, filed a similar Manifestation.⁴⁶

Issue

Whether the CA correctly affirmed accused-appellant's conviction for illegal sale of dangerous drugs.

Ruling

The appeal is meritorious.

To sustain the accused's conviction for illegal sale of dangerous drugs, the prosecution must establish these two elements: "1) proof that the transaction or sale took place and 2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."⁴⁷ Verily, "the sale transaction must be properly established and that the object thereof be presented in court and identified as the same items seized from the accused."⁴⁸

After a judicious scrutiny of the records of the case, this Court finds that the prosecution failed to prove the first element of the crime that the transaction or sale of dangerous drugs took place.

In the present case, SPO1 Yap testified that he was **more or less 15 meters** away from the place where the alleged sale took place.⁴⁹ He arrested Ansay after the confidential informant, acting as the *poseur-buyer*, executed the pre-arranged signal.⁵⁰

Confronted with a similar factual milieu, this Court, in *People v. Occiano*,⁵¹ acquitted the accused therein after finding that it was impossible for the arresting officer who was stationed **more or less five (5) meters** away,

⁴⁵ *Id.* at 31.

⁴⁶ *Id.* at 36.

⁴⁷ *People v. Cabellon*, 818 Phil. 561, 568 (2017).

⁴⁸ *People v. Occiano*, (Resolution), G.R. No. 243659, November 10, 2021, citations omitted.

⁴⁹ TSN dated March 5, 2012, p. 18.

⁵⁰ *Id.* at 21.

⁵¹ *People v. Occiano*, *supra* note 48, citations omitted.

from the *poseur-buyer* and the accused to have witnessed what happened or heard any conversation between them. In *Occiano*, this Court acquitted the accused because nobody from the apprehending team directly witnessed the alleged illicit sale.⁵² Notably, since the alleged transaction transpired only between the *poseur-buyer* and the accused, this Court ruled that “the non-presentation of the *poseur-buyer* is fatal to the prosecution's case”⁵³ because nobody could competently testify whether the illegal sale of dangerous drugs indeed transpired between them.

In the analogous case of *People v. Andaya*,⁵⁴ this Court reversed the CA's conviction of the accused when the prosecution did not present the *poseur-buyer*, who was also the confidential informant, to narrate in detail how the transaction between him and the accused had taken place. In *Andaya*, this Court ruled that such omission on the part of the prosecution failed to establish the alleged illicit sale or transaction.⁵⁵ For this reason, this Court held:

The non-presentation of the confidential informant as a witness does not ordinarily weaken the State's case against the accused. However, if the arresting [officers] arrested the accused based on the pre-arranged signal from the confidential informant who acted as the *poseur buyer*, his [or her] non-presentation must be credibly explained and the transaction established by other ways in order to satisfy the quantum of proof beyond reasonable doubt because the arresting [officers] did not themselves participate in the buy-bust transaction with the accused.

X X X X

Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. This responsibility imposed on the State accords with the presumption of innocence in favor of the accused, who has no duty to prove his [or her] innocence until and unless the presumption of innocence in his [or her] favor has been overcome by sufficient and competent evidence.

Here, the confidential informant was not a police officer. He was designated to be the *poseur buyer himself*. It is notable that the members of the buy-bust team arrested *Andaya* on the basis of the pre-arranged signal from the *poseur-buyer*. The pre-arranged signal signified to the members of the buy-bust team that the transaction had been consummated between the *poseur buyer* and *Andaya*. However, **the State did not present the confidential informant/poseur-buyer during the trial to describe how exactly the transaction between him [or her] and *Andaya* had taken place.** There would have been no issue against that, except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between *Andaya* and

⁵² *Id.*

⁵³ *Id.*

⁵⁴ 745 Phil. 237 (2014).

⁵⁵ *Id.*

*the poseur-buyer due to their being positioned at a distance from the poseur-buyer and Andaya at the moment of the supposed transaction.*⁵⁶

The ruling of this Court in *Andaya* was reiterated in the case of *People v. Cabrillos*,⁵⁷ where this Court emphasized that the presentation of the confidential informant/*poseur-buyer* is necessary to prove the fact of illegal sale since “the **seven-meter** distance between the police officers waiting for the pre-arranged signal from the *poseur-buyer* and the accused-appellant made it difficult for the police officers, the supposed eyewitnesses, to see and to hear what exactly was happening between accused-appellant and the *poseur-buyer*.”

In other words, “the mere testimony of the police operatives in a buy-bust operation that the *poseur-buyer* made a pre-arranged signal is fatal to the prosecution’s case, if the *poseur-buyer* did not take the witness stand.”⁵⁸ Elaborating on this point, in *Fernando v. People*,⁵⁹ this Court thus reasoned:

One might add that the pre-arranged hand signal should be interpreted within the context of a planned and organized buy-bust operation. One could speculate that the police operatives and the *poseur-buyer* had a prior understanding as to the use of that specific hand signal as a signifier of the consummation of an illegal drug transaction within the specific context of the buy-bust operation. However, the meaning of the hand signal is lost to this Court, since the *poseur-buyer* (who made the hand signal) did not testify and the petitioner did not have the opportunity to cross-examine him. Some material questions could have been asked from the *poseur-buyer*, such as: (i) Why did he [or she] make the hand signal? (ii) What is the meaning of this specific hand signal? (iii) Was there a prior understanding with the buy-bust team that this specific hand signal signifies the consummation of an illegal drug transaction? (iv) Did he [or she] deliberately make that hand signal to signify that he [or she] witnessed the consummation of the transaction? And (v) was there a consummated sale transaction between the petitioner and the *poseur-buyer*? We will never know the answers, precisely because the *poseur-buyer* did not testify.⁶⁰

While there is a need to protect the informant’s identity because of his or her invaluable service to the police,⁶¹ his or her non-presentation during trial “is excusable only when the *poseur-buyer’s* testimony is merely corroborative, there being some other eyewitness who is competent to testify on the sale transaction.”⁶²

Unfortunately, the same cannot be said in this case.

⁵⁶ *Id.* at 240-247. (Emphasis in the original).

⁵⁷ G.R. No. 247657 (Resolution), June 8, 2020.

⁵⁸ *Fernando v. People*, G.R. No. 250423 (Resolution), September 29, 2021.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Tan v. People*, G.R. No. 232611 (Resolution), April 26, 2021, citations omitted.

⁶² *Id.*

For *one*, the *poseur-buyer* and the confidential informant pertain to the same person, and he or she was not presented during trial. Likewise, the prosecution did not sufficiently explain why the confidential informant/*poseur-buyer* was not called to testify.

For *another*, the prosecution witness, SPO1 Yap, was stationed 15 meters away from where the confidential informant/*poseur-buyer* and Ansay stood. Indeed, this Court has considered the distance of the arresting officers from the location where the alleged sale took place in determining whether they have personal knowledge of the alleged transaction, as can be gleaned from the following cases:

In *People v. Delina*, the police officers were about 8 to 10 meters away. Likewise, in *People v. Conlu*, the police officers were approximately 10 meters away. The Court found that police officer was “merely an observer” when he testified that he was more or less 7 meters away in *People v. Casacop*. In these cases, we found that the police officers had no personal knowledge of the transaction, their testimonies were insufficient, and the non-presentation of the *poseur-buyer* proved fatal.⁶³

Guided by the said pronouncement, SPO1 Yap evidently had no personal knowledge of the alleged illicit sale. “Indeed, reasonable doubt exists whether the police officers personally witnessed the consummation of the illegal transaction,”⁶⁴ since they merely relied on the pre-arranged signal executed by the confidential informant/*poseur-buyer* who did not testify. “Even if coming from a police officer who enjoys the presumption of regularity,”⁶⁵ SPO1 Yap’s testimony is essentially wanting to persuade this Court. It is well-entrenched in our jurisdiction that “[the] presumption of regularity of performance of duty cannot prevail over the constitutional presumption of innocence of the accused.”⁶⁶

All told, the prosecution failed to prove that the transaction or illicit sale of dangerous drugs indeed took place. Perforce, accused-appellant should be acquitted of the crime charged.

FOR THESE REASONS, premises considered, the Appeal is **GRANTED**. The Decision dated April 23, 2014, of the Regional Trial Court of Batangas City, Branch 8, in Crim. Case No. 17211 and the Decision dated June 21, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06888, are hereby **REVERSED** and **SET ASIDE**. Accused-appellant Alex Ansay *y* Macatangay is **ACQUITTED** for the prosecution's failure to prove his guilt

⁶³ *Id.*

⁶⁴ *People v. Cabrillos*, *supra* note 57.

⁶⁵ *Tan v. People*, *supra* note 61.

⁶⁶ *Id.*

beyond reasonable doubt. He is ordered **RELEASED** from confinement unless he is being held for some other legal grounds.

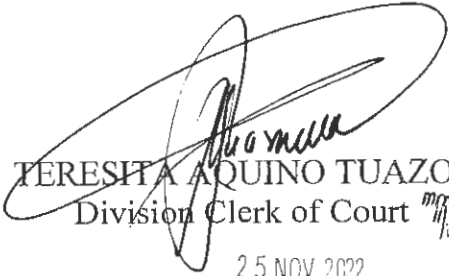
Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Resolution. For their information, copies shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court is directed to turn over the seized sachets of *shabu* to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgment be issued immediately.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court ^{mpf} 11/25
25 NOV 2022

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