



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated November 10, 2021, which reads as follows:*

**“G.R. No. 223557 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. MISUG ADAPUN AMPUAN, MALIK ALLAH, OMAR DIMDIMAN ARAGON, and EVELYN TUMULAK GERONGAY, *accused*; MISUG ADAPUN AMPUAN, *accused-appellant*). — To warrant a conviction, the prosecution must show proof beyond reasonable doubt that the accused is guilty of the crime charged.**

This Court resolves an appeal from the Decision<sup>1</sup> of the Court of Appeals, finding Misug Adapun Ampuan (Ampuan), Malik Allah (Allah), Omar Dimdiman Aragon (Aragon), and Evelyn Tumulak Gerongay (Gerongay) guilty beyond reasonable doubt of violating Article III, Section 15<sup>2</sup> of Republic Act No. 6425, or the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659.

On October 14, 1999, an Information was filed against Ampuan, Allah, Aragon, and Gerongay, charging them with illegal sale of dangerous drugs:

That on or about the 29<sup>th</sup> day of September, 1999, at about 10 o’clock in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and

<sup>1</sup> *Rollo*, pp. 6–28. The November 19, 2015 Decision in CA G.R. CEB CR HC No. 00754 was penned by Associate Justice Edgardo L. Delos Santos (now a retired Member of this Court) with the concurrence of Associate Justices Edward B. Contreras and Germano Francisco D. Legaspi of the Nineteenth Division, Court of Appeals, Cebu City.

<sup>2</sup> Republic Act No. 6425 (1972), as amended by Republic Act No. 7659 (1993), sec. 15 provides: SECTION 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* – The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

confederating together and mutually helping with one another, with deliberate intent, did then and there sell, deliver or give away to a poseur buyer ten (10) plastic packs of white crystalline substance, having a total weight of 1,200.51 grams, locally known as “shabu”, containing methylamphetamine [sic] hydrochloride, a regulated drug, without being authorized by law.

CONTRARY TO LAW.<sup>3</sup>

On arraignment, all four accused pleaded not guilty to the crime charged.<sup>4</sup>

During the pre-trial conference, the parties stipulated that the transaction was done through a cellphone or telephone, but the prosecution qualified that the final transaction was done through a buy-bust operation.<sup>5</sup>

The prosecution also marked two physical science reports during the pre-trial.<sup>6</sup> Then, trial ensued.

The prosecution presented five witnesses: (1) Police Senior Inspector Romer S. Daguno (PS/Insp. Daguno), (2) Senior Police Officer II Vivencio Elorde (SPO2 Elorde), (3) SPO4 Hari Decena (SPO4 Decena); (4) Police Officer I Jose Alan Jalagpas (PO1 Jalagpas), and (5) PS/Insp. Mutchit G. Salinas (PS/Insp. Salinas), the forensic analyst.<sup>7</sup>

The prosecution alleged that at around 11:00 a.m. on September 28, 1999, the Presidential Anti-Organized Crime Task Force-Visayas met an informant who reported that drug dealers had contacted her looking for big-time buyers of shabu. These drug dealers would later be identified as Allah and Gerongay, with their two other companions, Ampuan and Aragon.<sup>8</sup>

Accordingly, two buy-bust teams were formed. Team 1 was composed of PS/Insp. Daguno as poseur-buyer and PO1 Jalagpas as business partner. Team 2, composed of three other police officers, acted as back-up.<sup>9</sup>

Shortly after, the informant left the office to arrange a meeting between the drug dealers and the poseur-buyers. By 7:30 p.m., the informant returned

---

<sup>3</sup> *Rollo*, p. 7.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 7-8.

<sup>9</sup> *Id.* at 8.

and confirmed that the drug dealers would meet the poseur-buyers at 4:00 p.m. the following day at the Ayala Center Cebu parking lot.<sup>10</sup>

The next day, September 29, 1999, PS/Insp. Daguno and PO1 Jalagpas arrived at the parking lot at around 4:00 p.m. They waited in their car until around 5:30 p.m., when the informant arrived with two people. In the car, the informant introduced her two companions as Allah and Gerongay. PS/Insp. Daguno asked where the drugs were, to which Allah replied that they were with his two other companions. PS/Insp. Daguno then asked how much the drugs were, to which Allah replied ₱900,000.00. When PS/Insp. Daguno asked if there really was shabu, Allah confirmed, saying they may still bargain when his companions arrive. Allah and Gerongay then got off the car and the officers returned to their office.<sup>11</sup>

Later at 8:00 p.m., PS/Insp. Daguno received ₱850,000.00 worth of buy-bust money placed in a plastic bag. One of the bills, dusted with ultraviolet powder, was placed on the topmost bundle.<sup>12</sup>

At around 9:00 p.m., Team 2 went ahead to the designated area, closely followed by Team 1. Allah and Gerongay later arrived and boarded Team 1's car. Shortly after, Ampuan and Aragon also boarded the car. When PS/Insp. Daguno asked about the shabu, Ampuan showed a dark-colored knapsack, saying that the shabu was inside. When asked about the money, PS/Insp. Daguno said that he only had ₱850,000.00. Ampuan said that it was not enough, but PS/Insp. Daguno answered that it was the only money he had and that he will buy only ₱850,000.00 worth of shabu. Ampuan agreed.<sup>13</sup>

The exchange was then made. When PS/Insp. Daguno opened the knapsack, he saw 10 plastic packs of white crystalline granules packed in newspaper. Upon confirming the contents of the bag, PS/Insp. Daguno pressed the hazard light of the car—the pre-arranged signal that the sale has been made.<sup>14</sup>

At this, the back-up team rushed to their position. Meanwhile, PS/Insp. Daguno announced that they were police officers and that Allah, Gerongay, Ampuan, and Aragon were under arrest. Ampuan tried to escape, but he was apprehended. PS/Insp. Daguno secured the buy-bust money and the evidence

---

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id. at 9.

<sup>13</sup> Id.

<sup>14</sup> Id.

while the four accused were apprised of their constitutional rights. Then, the officers returned to their office with the accused and the items.<sup>15</sup>

They reached the office at around 10:00 p.m., at which point, all four accused were turned over to the Legal and Investigation Division.<sup>16</sup> The seized items, meanwhile, were turned over to the evidence custodian, SPO2 Elorde, who then marked the knapsack with the date and time of arrest, "Ayala Center Parking Lot, 9/29/99, 10:00 P.M." and the letters "MAA" which stood for Misug Adapun Ampuan. He also marked the plastic bag and numbered the 10 plastic packs from 1 to 10. After marking, he placed the confiscated items inside a steel cabinet that only he could access.<sup>17</sup>

Upon receipt of the letter-request, Police Chief Inspector Myrna Areola, a forensic analyst, conducted a field test on the 10 plastic packs of white crystalline substance, which weighed a total of 1,305.7 grams. Then, she wrote a certification saying that the substance inside the 10 plastic packs marked with numbers 1 to 10 tested positive for shabu.<sup>18</sup>

PS/Insp. Salinas also examined the 10 plastic packs of white crystalline powder, which she said was wrapped in newspaper inside a plastic bag with red and white stripes. This plastic bag was further placed inside a white plastic bag marked "Golden Crust Bakery," which in turn was inside a green knapsack marked "MAA/09/29/99-B." The piece of paper containing the weights of each pack was also marked and identified. After weighing, PS/Insp. Salinas conducted a color test and the thin layer chromatographic test on the substances, which tested positive for shabu.<sup>19</sup>

PS/Insp. Salinas also examined Ampuan's hands and the dusted ₱500.00 bill to determine the presence of ultraviolet powder. Both tested positive.<sup>20</sup>

Allah, Gerongay, and Aragon testified in their defense.

Gerongay claimed that she was framed. She testified that she was a prostitute, and that at about 4:00 p.m. on September 29, 1999, a man she would know as Allah, had just engaged her services. At around 7:00 p.m., as they were about to leave Ayala Center Cebu for a hotel, Gerongay said a

---

<sup>15</sup> Id. at 9-10.

<sup>16</sup> Id. at 10.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 10-11.

<sup>20</sup> Id. at 11. The result of the examination was reflected in Physical Science Report No. P3-017-99.

woman named Carla approached them in the parking lot and invited them to her car, where her supposed husband was.<sup>21</sup>

Gerongay and Allah boarded the car, occupying the rear seats while Carla and her husband were in the front seats. Gerongay saw a green knapsack placed in front of the car near Carla. In the car, Carla and her husband introduced themselves as black diamond sellers. While they were talking, Gerongay saw three men approach the car. Carla explained that these men were looking for buyers. As soon as two of them boarded the car, Carla's husband pulled out a gun, saying they were under arrest. One of the men who just got aboard attempted to escape, but was caught just as fast. She later knew the man as Ampuan. When Gerongay got off the car, somebody hit her buttocks causing her to fall on the ground. She was dragged to another nearby vehicle where she saw Allah and another person who she later knew as Aragon. Gerongay asked why she was arrested, but she was told to wait for the answer at the office.<sup>22</sup>

Gerongay said they were brought to a police station for questioning. Ampuan was allegedly kicked inside a room. Then, the officers showed them shabu atop a table and said that it belonged to them. The officers blindfolded her and ordered her to place her hands on the table, which were struck, so she would reveal her source. Afterward, when her blindfold was temporarily removed, she saw that all the other accused were also handcuffed and blindfolded. All their blindfolds were removed when they were introduced to the media as the shabu sellers.<sup>23</sup>

Gerongay claimed that she did not see Ampuan and Aragon carry a knapsack. She said that it was Carla who carried the bag. Gerongay also denied having a cellphone at the time of the incident and that it was Carla and her husband who carried cellphones. She denied knowing any of the accused before the incident.<sup>24</sup>

Allah corroborated Gerongay's testimony.<sup>25</sup>

Aragon denied the charges against him. He testified that at 6:00 p.m. of September 29, 1999, Ampuan invited him to Ayala Center Cebu. An hour later, when they were about to go home, police officers in plain clothes suddenly arrested them. They were brought in a car and were scolded. Aragon saw two other persons inside, including the driver who pointed a gun

---

<sup>21</sup> Id. at 12-13.

<sup>22</sup> Id.

<sup>23</sup> Id. at 13-14.

<sup>24</sup> Id. at 14.

<sup>25</sup> Id.

at him. Ampuan attempted to run but was chased. They were then brought to the office, where they were mauled, interrogated, and blindfolded. When his blindfold was removed, he saw the knapsack, but denied knowing its contents. He claimed that he and Ampuan did not carry anything to Ayala Center Cebu.<sup>26</sup>

Ampuan initially did not testify and did not explain why.<sup>27</sup> He merely alleged that his lawyer prevented him from doing so.<sup>28</sup>

In its July 24, 2002 Decision,<sup>29</sup> after trial on the merits, the Regional Trial Court of Cebu City, Branch 15, convicted all the accused, as follows:

WHEREFORE, aforecited premises considered, the Court finds all the accused GUILTY as charged for violation of Section 15, Article III of R.A. 6425, as amended by R.A. 7659. Pursuant to said law, possession of shabu weighing 200 grams or more carries with it the penalty of reclusion perpetua to death and a fine ranging from Five Hundred Thousand (₱500,000.00) Pesos to Ten Million (₱10,000,000.00) Pesos. Since no aggravating circumstance attended the commission of the offense, accused MISUG ADAPUN AMPUAN, MALIK ALLAH, OMAR DIMDIMAN ARAGON and EVELYN TUMULAK GERONGAY are sentenced each to suffer the penalty of RECLUSION PERPETUA and each shall pay a fine of TWO MILLION (₱2,000,000.00) PESOS. The physical evidence is hereby ordered confiscated and forfeited in favor of the government to be disposed of as mandated by law.

SO ORDERED.<sup>30</sup>

Ampuan moved for new trial, which was granted by the trial court in the interest of justice.<sup>31</sup> The assailed conviction was vacated and set aside.<sup>32</sup> After the trial court's presiding judge inhibited, the case was re-raffled and was assigned to Branch 17.<sup>33</sup>

At this new trial, Ampuan testified that at around 7:30 p.m. on September 29, 1999, he was watching a movie alone at the Ayala Center Cebu. After watching, he met with his friends Hamerol Lacsaman (Lacsaman) and Sultan Nomanayao (Nomanayao). As the three were about to go to the snack counter, someone from the parking area signaled at him. He approached this

<sup>26</sup> Id.

<sup>27</sup> CA rollo, p. 38.

<sup>28</sup> Rollo, p. 26.

<sup>29</sup> CA rollo, pp. 31-42. The Decision in Criminal Case No. CBU-52065 was penned by Presiding Judge Fortunato M. De Gracia, Jr. of the Regional Trial Court, Cebu City, Branch 15.

<sup>30</sup> Id. at 42.

<sup>31</sup> Id. at 43.

<sup>32</sup> Id.

<sup>33</sup> Rollo, p. 16.

person, who stood near a vehicle. Then, he allegedly saw a person inside the vehicle poke a gun at another person, and shouted, “hold up!” at the same time. Ampuan ran away and asked the security guard for help, but instead, he was arrested. When the other persons arrived, he was already blindfolded and his hands tied. He was then allegedly brought to a place where he was mauled.<sup>34</sup>

Lacsaman and Nomanayao also testified, in an attempt to corroborate Ampuan’s testimony.<sup>35</sup>

In its May 16, 2003 Decision,<sup>36</sup> the Regional Trial Court of Cebu City, Branch 17, arrived at the same conclusion. It disposed of the case as follows:

WHEREFORE, the court finds accused MISUG ADAPUN AMPUAN, MALIK ALLAH, OMAR DIMDIMAN ARAGON and EVELYN TUMULAK GERONGAY all GUILTY beyond reasonable doubt of the offense charged in the Information. Accordingly, each of the said accused is hereby sentenced to suffer the penalty of reclusion perpetua and to pay a fine of P1,000,000.00 each.

Let the ten (10) packs of shabu, subject matter of the instant case, be forfeited in favor of the government to be disposed in accordance with law.

SO ORDERED.<sup>37</sup>

The trial court held that Ampuan and his witnesses were not able to subvert the prosecution’s evidence. It noted material discrepancies and contradictions in the defense’s testimonies.<sup>38</sup> It found that Ampuan expressly declared that he was alone at the Ayala Center, but Lacsaman and Nomanayao testified that Ampuan had several companions.<sup>39</sup> The trial court also noted that Aragon testified that he was with Ampuan in Ayala Center.<sup>40</sup>

On appeal, Ampuan argued that he was deprived of due process for not being able to testify at the original trial. He contended that the trial court did not give any weight to his testimony and those of his witnesses in the new trial. He further claimed that the trial court erred in using evidence adduced in the original trial against him. He argued that the Regional Trial Court may only do that with respect to his co-accused who testified in the original trial.<sup>41</sup>

<sup>34</sup> Id.

<sup>35</sup> CA rollo, p. 48.

<sup>36</sup> Id. at 44–51. The Decision in Criminal Case No. CBU-52065 was penned by Judge Silvestre A. Maamo, Jr. of the Regional Trial Court, Cebu City, Branch 17.

<sup>37</sup> Id. at 51.

<sup>38</sup> Id. at 50–51.

<sup>39</sup> Id. at 50.

<sup>40</sup> Id.

<sup>41</sup> Rollo, p. 17; and CA rollo, p. 115.

The Court of Appeals, in its assailed November 19, 2015 Decision,<sup>42</sup> affirmed the conviction of all the accused. It held that the prosecution duly established all the elements of the crime and showed that the accused were caught in a buy-bust operation selling shabu.<sup>43</sup>

The dispositive portion of the Court of Appeals' Decision reads:

**WHEREFORE**, the appeal is hereby DENIED. The decision of the Regional Trial Court, Branch 17, Cebu City finding MISUG ADAPUN AMPUAN, MALIK ALLAH, OMAR DIMDIMAN ARAGON and EVELYN TUMULAK GERONGAY guilty beyond reasonable doubt of violation of Section 15, Article III of R.A. 6425, as amended by, R.A. 7659[,] is affirmed [*in*] *toto*.

**SO ORDERED.**<sup>44</sup> (Emphasis in the original)

Hence, Ampuan filed a Notice of Appeal.<sup>45</sup>

In its June 20, 2016 Resolution,<sup>46</sup> this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.

Both plaintiff-appellee, through the Office of the Solicitor General,<sup>47</sup> and accused-appellant<sup>48</sup> manifested that they would no longer file supplemental briefs.

The issues for this Court's resolution are:

First, whether or not accused-appellant Misug Adapun Ampuan was denied due process when the Regional Trial Court of Cebu City, Branch 17, considered the evidence adduced in the original trial.

Second, whether or not accused-appellant Misug Adapun Ampuan is guilty beyond reasonable doubt of violating Article III, Section 15 of Republic Act No. 6425.

We affirm the conviction of the accused-appellant.

---

<sup>42</sup> *Rollo*, pp. 6–28.

<sup>43</sup> *Id.* at 18.

<sup>44</sup> *Id.* at 28.

<sup>45</sup> *CA rollo*, pp. 269–270.

<sup>46</sup> *Rollo*, pp. 35–36.

<sup>47</sup> *Id.* at 45–46.

<sup>48</sup> *Id.* at 51–53.



## I

Accused-appellant first argues that he was deprived of his constitutional right to due process because he was unable to testify in the original trial.<sup>49</sup> He also claims that the trial court should not have used the evidence adduced in the original trial in the new trial.<sup>50</sup>

His contention is unmeritorious.

Accused-appellant was not deprived of due process. For one, he did not explain his failure to testify in the original trial. He did not show that he was prevented or disallowed from testifying for his defense. The only reason he presented was that he was allegedly told by his lawyer not to say anything.<sup>51</sup> In any case, a new trial was conducted which allowed him to testify and present his own witnesses. This cured the absence of his testimony in the original trial.

There is likewise no merit in the contention that the evidence presented in the old trial should not have been considered. Such evidence need not be taken again if it is material and competent to establish the issues. Rule 37, Section 6 of the Rules of Court states:

SECTION 6. *Effect of granting of motion for new trial.* — If a new trial is granted in accordance with the provisions of this Rule, the original judgment or final order shall be vacated, and the action shall stand for trial *de novo*; but the recorded evidence taken upon the former trial, in so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same.<sup>52</sup>

Moreover, Rule 121, Section 6 of the Rules of Criminal Procedure states that even though a new trial or reconsideration is granted, the evidence already adduced in the previous trial shall stand. It shall be considered together with the newly discovered evidence presented in the new trial:

SECTION 6. *Effects of granting a new trial or reconsideration.* — The effects of granting a new trial or reconsideration are the following:

- (a) When a new trial is granted on the ground of errors of law or irregularities committed during the proceedings and evidence affected thereby shall be set aside and taken anew. The court

<sup>49</sup> *Rollo*, p. 17 and *CA rollo*, pp. 113–115.

<sup>50</sup> *Rollo*, p. 17.

<sup>51</sup> *Id.* at 26.

<sup>52</sup> RULES OF COURT, Rule 37, sec. 6.

may, in the interest of justice, allow the introduction of additional evidence.

- (b) *When a new trial is granted on the ground of newly-discovered evidence, the evidence already adduced shall stand and the newly-discovered and such other evidence as the court may, in the interest of justice, allow to be introduced shall be taken and considered together with the evidence already in the record.*
- (c) In all cases, when the court grants new trial or reconsideration, the original judgment shall be set aside or vacated and a new judgment rendered accordingly.<sup>53</sup> (Emphasis supplied)

*Custodio v. Sandigabayan*<sup>54</sup> explained the purpose of a new trial as a remedy:

In line with the objective of the Rules of Court to set guidelines in the dispensation of justice, but without shackling the hands that dispense it, the remedy of new trial has been described as “a new invention to temper the severity of a judgment or prevent the failure of justice.” Thus, the Rules allow the courts to grant a new trial when there are errors of law or irregularities prejudicial to the substantial rights of the accused committed during the trial, or when there exists newly discovered evidence. In the proceedings for new trial, the errors of law or irregularities are expunged from the record or new evidence is introduced. Thereafter, the original judgment is vacated and a new one is rendered.<sup>55</sup> (Citations omitted)

Hence, if there are no errors of law or irregularities in the pieces of evidence already adduced in the previous trial, there is no need to expunge them from the record in the new trial. Besides, adducing new evidence would be superfluous. Thus, the Court of Appeals rightfully considered the evidence adduced in the original trial.

## II

The presence of the accused is not always necessary during trial, and may be waived by the accused themselves. Article III, Section 14 of the 1987 Constitution states:

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard

<sup>53</sup> RULES OF COURT, Rule 121, sec. 6.

<sup>54</sup> 493 Phil. 194 (2005) [Per J. Puno, En Banc].

<sup>55</sup> Id. at 203–204.

by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, *trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.* (Emphasis supplied)

In *Estrada v. People*,<sup>56</sup> this Court discussed that trial may proceed, and judgment may be rendered, despite the absence of the accused:

The holding of trial *in absentia* is authorized under Section 14 (2), Article III of the 1987 Constitution which provides that “after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.” In fact, in *People vs. Tabag*, the Court even admonished the trial court for failing to proceed with the trial of some accused who escaped from preventive detention, to wit:

Finally, the trial court also erred in not proceeding with the case against Laureño Awod and Artemio Awod after their successful escape on 19 October 1989 while in preventive detention. They had already been arraigned. Therefore, pursuant to the last sentence of paragraph (2), Section 14, Article III of the Constitution, trial against them should continue and upon its termination, judgment should be rendered against them notwithstanding their absence unless, of course, both accused have died and the fact of such death is sufficiently established. Conformably with our decision in *People v. Salas*, their escape should have been considered a waiver of their right to be present at their trial, and the inability of the court to notify them of the subsequent hearings did not prevent it from continuing with their trial. They were to be deemed to have received notice. The same fact of their escape made their failure to appear unjustified because they have, by escaping, placed themselves beyond the pale and protection of the law. This being so, then pursuant to *Gimenez v. Nazareno*, the trial against the fugitives, just like those of the others, should have been brought to its ultimate conclusion. Thereafter, the trial court had the duty to rule on the evidence presented by the prosecution against all the accused and to render its judgment accordingly. It should not wait for the fugitives’ re-appearance or re-arrest. They were deemed to have waived their right to present evidence on their own behalf and to confront and cross-examine the witnesses who testified against them.

It is obvious that the trial court forgot our rulings in *Salas* and *Nazareno*. We thus take this opportunity to admonish trial judges to

<sup>56</sup> 505 Phil. 339 (2005) [Per J. Austria-Martinez, Second Division].

abandon any cavalier stance against accused who escaped after arraignment, thereby allowing the latter to make a mockery of our laws and the judicial process. Judges must always keep in mind *Salas and Nazareno* and apply without hesitation the principles therein laid down, otherwise they would court disciplinary action.<sup>57</sup> (Emphases supplied, citations omitted)

The same principle applies if the accused waived their right to testify, as in this case. There is no showing that accused-appellant was not informed of his hearings to be denied due process. The hearings may thus proceed and the trial court may render its judgment.

In *People v. Gargoles*,<sup>58</sup> this Court held that while the accused's exercise of their right to decline to testify during trial may not be used against them, the accused may still be convicted upon consideration of other evidence presented by the prosecution:

Furthermore, We have held that an accused has the right to decline to testify at the trial without having any inference of guilt drawn from his failure to go on the witness stand. Thus, a verdict of conviction on the basis, solely or mainly, of the failure or refusal of the accused to take the witness stand to deny the charges against him is a judicial heresy which cannot be countenanced. Invariably, any such verdict deserves to be reversed.

Such situation does not obtain, however, in the case at bar. For while the trial court took note of the failure of the defendant to take the witness stand to deny the charges against him, the same was not the main reason, much less the sole basis, of the trial court in holding, as credible the testimony of the complainant, and in ultimately concluding that the crime of rape had been committed by the accused-appellant.<sup>59</sup> (Citation omitted)

Thus, while accused-appellant's refusal or failure to testify cannot be used as a reason to convict him, this act does not affect the validity of the evidence in the original proceedings.

In any case, this Court affirms the conviction of the accused-appellant.

### III

Conviction in criminal actions requires proof beyond reasonable doubt.<sup>60</sup> Rule 133, Section 2 of the Revised Rules of Evidence provides for the quantum of proof required in criminal actions:

---

<sup>57</sup> Id. at 351–352.

<sup>58</sup> 172 Phil. 632 (1978) [Per J. Santos, Second Division].

<sup>59</sup> Id. at 645.

<sup>60</sup> *People v. Que*, 824 Phil. 882, 891 (2018) [Per J. Leonen, Third Division].

SECTION 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Consistent with the due process clause of the Constitution, the prosecution must establish moral certainty that the crime was committed by the accused. In *People v. Que*:<sup>61</sup>

Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.<sup>62</sup>

In this case, accused-appellant has been charged with illegal sale of drugs under Article III, Section 15 of Republic Act No. 6425, as amended. It states:

SECTION 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

To secure a conviction for illegal sale of dangerous drugs, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and its payment. The delivery of the dangerous drug to the poseur-buyer, as well as the receipt of the marked money by the seller, consummates the buy-bust transaction. What is material is the proof that the sale was consummated, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>63</sup>

All the elements of the offense are present in this case.

---

<sup>61</sup> Id.

<sup>62</sup> Id. at 893, citing *Macayan v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

<sup>63</sup> *People v. Rom*, 727 Phil. 587, 601 (2014) [Per J. Perez, Second Division].

First, the sale by the accused-appellants of the drugs was established through a legitimate buy-bust operation.

In *People v. Doria*,<sup>64</sup> a drug case also filed in 1999, this Court discussed that in buy-bust operations, the prosecution must clearly establish the details of the transaction from the initial contact between the poseur-buyer and the drug dealer until the delivery of the drug being sold:

We therefore stress that the “objective” test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the “buy-bust” money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused’s predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.<sup>65</sup> (Citations omitted)

Here, as testified by the prosecution, a buy-bust team was created after an informant’s report of drug dealers looking for big-time buyers of shabu.<sup>66</sup> With the help of the informant, the team arranged for a meeting with the dealers the next day.<sup>67</sup> During the meeting, they were introduced to Allah and Gerongay. They then arranged for a sale after they were told that the drugs being sold is worth ₱900,000.00. They agreed to meet again to execute the exchange.<sup>68</sup> Before heading to the second meeting, the team received ₱850,000.00 worth of buy-bust money.<sup>69</sup>

When it was time for the exchange, Allah and Gerongay arrived at the meeting place. Ampuan and Aragon later joined. The sale took place in the car of PS/Insp. Daguno. When he asked about the shabu, Ampuan showed a knapsack, saying that the shabu was inside it. PS/Insp. Daguno said that he only had ₱850,000.00. Ampuan initially said that it was not enough, but

<sup>64</sup> 361 Phil. 595 (1999) [Per J. Puno, En Banc].

<sup>65</sup> Id. at 621.

<sup>66</sup> *Rollo*, pp. 7–8.

<sup>67</sup> Id. at 8.

<sup>68</sup> Id.

<sup>69</sup> Id. at 9.

eventually agreed to the sale.<sup>70</sup> The exchange was thus made. When PS/Insp. Daguno opened the knapsack, he saw 10 plastic packs of white crystalline granules packed in newspaper. Then, they arrested the accused.<sup>71</sup>

The prosecution witnesses adequately proved that a buy-bust operation took place and established the identity of the buyer and the seller, the object, and consideration. PS/Insp. Daguno, acting as poseur-buyer, purchased shabu from Allah, Gerongay, Ampuan, and Aragon for ₱850,000.00. The drugs were delivered and paid for when PS/Insp. Daguno exchanged the ₱850,000.00 for the knapsack containing the 10 plastic packs of white crystalline substance.

PS/Insp. Daguno positively identified accused-appellant in open court as the same person who sold to him the drugs.<sup>72</sup> PO1 Jalagpas, the only other police officer inside the car during the buy-bust operation, corroborated PS/Insp. Daguno's testimony.<sup>73</sup> Additionally, the inconsistent testimonies of the accused tend to strengthen the prosecution's evidence.

As to the requirement of presenting the *corpus delicti* in prosecutions involving narcotics and other illegal substances, proof of the existence of the sold drugs is vital for a conviction.<sup>74</sup> Thus, inherent in narcotics cases is the presentation in court of the traded prohibited drug.<sup>75</sup>

Proof of the integrity of the *corpus delicti* is ensured through the chain of custody rule provided under Section 21 of Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640. It stipulates the requirements for the custody and disposition of confiscated drugs or other items.<sup>76</sup>

---

<sup>70</sup> Id.

<sup>71</sup> Id.

<sup>72</sup> Id. at 19.

<sup>73</sup> Id. at 21.

<sup>74</sup> *People v. Sitco*, 634 Phil. 627, 640 (2010) [Per J. Velasco, Jr. Third Division].

<sup>75</sup> *People v. Cervantes*, 600 Phil. 819, 835 (2009) [Per J. Velasco, Jr. Second Division].

<sup>76</sup> Republic Act No. 10640 (2014), sec. 21 states in part:

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.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

“(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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

The chain of custody rule was further explained in Sec. 1(b) of the Dangerous Drugs Board Regulation No. 1 Series of 2002,<sup>77</sup> where “chain of custody” was defined as:

(b) “Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals . . . from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition[.]

Jurisprudence has also elaborated on the chain of custody rule:

There can be no such crime when nagging doubts persist on whether the specimen submitted for examination and presented in court was what was recovered from, or sold by, the accused. Essential, therefore, in appropriate cases is that the identity of the prohibited drug be established with moral certainty. This means that on top of the key elements of possession or sale, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.<sup>78</sup> (Citation omitted)

Compliance with the chain of custody rule is necessary to preserve the integrity of the seized and confiscated drugs and other items in four aspects:

. . . first, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.<sup>79</sup>

---

nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of 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 and custody over said items. . . .

“(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

<sup>77</sup> Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

<sup>78</sup> *People v. Cervantes*, 600 Phil. 819, 835 (2009) [Per J. Velasco, Jr., Second Division].

<sup>79</sup> *People v. Holgado*, 741 Phil. 78, 93 (2014) [Per J. Leonen, Third Division].



However, considering that the criminal charges were filed in 1999, before the Comprehensive Dangerous Drugs Act was enacted in 2002, the chain of custody rule can be found in Dangerous Drugs Board Regulation No. 3, series of 1979, as amended by Regulation No. 2, series of 2000. It prescribes the procedure in the seizure of dangerous drugs under Republic Act No. 6425:

SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. *Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof.* Thereafter, the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.<sup>80</sup> (Emphasis in the original)

Dangerous Drugs Board Regulation No. 2<sup>81</sup> also states:

SECTION 2. *Seizure or Confiscation of Dangerous Drugs.* — All dangerous drugs, when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized by any national, provincial or local law enforcement agency.

SECTION 3. *Inventory and Marking of Seized Drugs.* — Immediately after the seizure or confiscation of dangerous drugs, the head of the apprehending team shall have the same physically inventoried, weighed and photographed in the presence of the person found to have used or who possessed the same, if there be any, and/or his representative. The latter shall be required to sign the copies of the inventory report covering the drugs and shall be given a copy thereof.

The drugs shall be properly packed, marked and labeled by the apprehending team.

Under these issuances, the apprehending team that seized the prohibited items must immediately inventory and photograph the items after seizure, in the presence of the accused or their representative. The accused are also required to sign and be given a copy of the inventory. The seized items shall

<sup>80</sup> *Calahi v. People*, 820 Phil. 886, 901 (2017) [Per J. Martires, Third Division].

<sup>81</sup> *Custody and Disposition of Seized Dangerous Drugs and Paraphernalia* (2000).

then be immediately brought for qualitative and quantitative examination to a properly equipped government laboratory.<sup>82</sup>

Here, the prosecution was able to positively prove that the integrity of the seized drugs was properly preserved.

The Regional Trial Court, Branch 15 noted:

The four accused were then apprised of their constitutional rights in Cebuano and in Tagalog language. Then they were brought to their office and turned over to the Legal and Investigation Division. The ten plastic packs of shabu inside the knapsack were turned over to SPO3 VIVENCIO ELORDE.

**SPO3 VIVENCIO ELORDE** testified – that at about ten o'clock in the evening of September 29, 1999, P/Insp. ROGER DAGUNO arrived in the office with the four accused, who were introduced to him as MISUG ADAPUAN AMPUAN, MALIK ALLAH, EVELYN TUMULAK GERONGAY and OMAR DIMDIMAN ARAGON. The suspects were turned over to SPO3 GIDUCOS for booking purposes after they were informed of their constitutional rights. The confiscated articles together with the buy-bust money were turned over to him, he being the evidence custodian. He identified the knap sack, Exhibit "D" that was turned over to him. He placed markings on it: the place, date and time of arrest on the bag: Ayala Center Parking Lot, 9/29/99, 10:00 P.M. Aside from the place, date and time of arrest, he also placed the letters MAA which stands for MISUG ADAPUN AMPUAN. He also made markings on the plastic bag and numbered the ten plastic packs which contained white crystalline powder from one to ten. He has a steel cabinet, where he placed these articles and the said cabinet is also inside a room, the key to which is accessible only to him.

....

**PO1 JOSE ALAN JALAGPAS**, testified – that he was with P/Insp. ROMER DAGUNO in the evening at the Ayala parking lot conducting the buy bust operation with other members of the operations within the vicinity. . . . When the accused were brought to the Fiscal's office for preliminary investigation, these persons were photographed including the articles seized from them. Somebody came to represent the accused, a certain vice Mayor MACADADA who talked with then Fiscal MIRO. The accused signed a waiver, Exhibit "Z" at the Fiscal's Office. No counter affidavit was submitted by the accused. The photograph was marked as Exhibit "AA". The [P]500.00 bill with Serial No. FQ135452 was positive for ultraviolet fluorescent powder and the hands of MISUG were also found positive of ultraviolet fluorescent powder. The ten plastic packs were also positive for the presence of methamphetamine hydrochloride.<sup>83</sup>

<sup>82</sup> *Calahi v. People*, 820 Phil. 886 (2017) [Per J. Martires, Third Division].

<sup>83</sup> *CA rollo*, pp. 33–35.

The Regional Trial Court, Branch 17 found:

Misug Ampuan was finally arrested with the help of the security guards of Ayala Center. Later on the four accused were brought to the office of the PAOCTF, and were turned over to the Investigation Division. The ten plastic packs of shabu were turned over to the evidence custodian, SPO3 Vivencio Elorde, who made markings on each of the ten (10) plastic packs. Then, SPO3 Elorde placed them inside a cabinet, which was locked.<sup>84</sup>

The Court of Appeals stated:

While Police Inspector Dueñas and PO1 Jalagpas chased and arrested Misug with the help of the security guards of Ayala Center, Sr. Inspector Daguno secured the buy-bust money and the evidence. The four accused were then apprised of their constitutional rights in Cebuano and Tagalog and were brought to PAOCTF office. The accused were turned over to the Legal and Investigation Division while the ten packs of shabu inside the knapsack were turned over to SPO3 Elorde.

SPO3 Vivencio Elorde testified that at around 10:00 o'clock in the evening of September 29, 1999, Sr. Inspector Daguno arrived in the PAOCTF office with the four accused who were presented as Misug Adapun Ampuan, Malik Allah, Evelyn Tumulak Gerongay and Omar Dimdiman Aragon. The accused were then turned over to SPO3 Giducos for booking purposes after they were informed of their constitutional rights. The confiscated articles, together with the buy-bust money, were turned over to him, he being the evidence custodian.

SPO3 Elorde identified the knapsack that was turned over to him and on which he placed the markings as to date and time of arrest, that is, Ayala Center Parking Lot, 9/29/99, 10:00 P.M. as well as the letters "MAA" which stands for Misug Adapun Ampuan. PO3 Elorde likewise made markings on the plastic bag and numbered the ten plastic packs which contained white crystalline powder from 1 to 10. PO3 Elorde further testified that he has a steel cabinet where he placed the articles and that the said cabinet is inside a room, the key to which is only accessible to him.<sup>85</sup>

It is thus clear how the drugs were handled from the time of confiscation up to its presentation in court. During the arrest of the four accused, PS/Insp. Daguno took custody of the drugs while the accused were apprised of their constitutional rights. Then, they were brought to the Legal and Investigation Division,<sup>86</sup> while the evidence custodian, SPO2 Elorde, marked the knapsack and 10 plastic bags with the date and time of arrest and Ampuan's initials. The accused and the seized articles were also photographed. The accused also signed a waiver at the Fiscal's Office after a certain Vice Mayor Macadada

---

<sup>84</sup> Id. at 46.

<sup>85</sup> *Rollo*, pp. 9-10.

<sup>86</sup> Id. at 10.

arrived to represent them.<sup>87</sup> After marking, SPO3 Elorde placed the confiscated items inside a steel cabinet that only he could access.<sup>88</sup> The forensic analyst and PS/Insp. Salinas thereafter weighed and tested the 10 plastic packs of white crystalline substance. The forensic analyst certified that the substance tested positive for shabu.<sup>89</sup> PS/Insp. Salinas's color test and thin layer chromatographic test also revealed that the substances were shabu.<sup>90</sup>

The prosecution sufficiently established the integrity of the *corpus delicti*. It was able to show that no doubts can be raised on the origin of the confiscated items. The police officers properly preserved the integrity of the evidence. They proved that the chain of custody remained unbroken such that the same items seized were also the same items presented in court.

Thus, in establishing all the elements of the offense, the crime charged was proved beyond reasonable doubt. This quantum of proof having been met, this Court must convict accused-appellant.

**WHEREFORE**, the November 19, 2015 Decision of the Court of Appeals in CA G.R. CEB CR H.C. No. 00754 is **AFFIRMED**. Accused-appellant Misug Adapun Ampuan is found **GUILTY** beyond reasonable doubt of violation of Article III, Section 15 of Republic Act No. 6425, as amended, and is sentenced to suffer the penalty of reclusion perpetua and to pay a fine of One Million Pesos (₱1,000,000.00).

**SO ORDERED.**" (Dimaampao, J., designated additional Member per Special Order No. 2839)

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court *ju 12-13-21*

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

<sup>87</sup> CA rollo, pp. 33–35.

<sup>88</sup> Id.

<sup>89</sup> Id. at 34.

<sup>90</sup> Id. at 10–11.

COURT OF APPEALS  
CA G.R. CR HC No. 00754  
6000 Cebu City

Atty. Reman Manubag  
PUBLIC ATTORNEY'S OFFICE  
Regional Special & Appealed Cases Unit  
M. Fernan Memorial Hall of Justice  
Capitol Compound, Escario Street  
6000 Cebu City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 17, 6000 Cebu City  
(Crim. Case No. CBU-52065)


Mr. Misug Adapun Ampuan  
c/o The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

PHILIPPINE JUDICIAL ACADEMY  
Research Publications and Linkages Office  
Supreme Court, Manila  
[research\_philja@yahoo.com]

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. 223557** 

*ach*

  
**(101)**  
**URES**