



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

ALEX TIONCO y ORTEGA,
Petitioner,

G.R. No. 192284

Present:

- versus -

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 MENDOZA, *and*
 LEONEN, *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
 MAR 11 2015

Max Cabalag

x-----x

RESOLUTION

DEL CASTILLO, *J.:*

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the January 21, 2010 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR No. 31924, which affirmed the August 29, 2008 Amended Decision² of the Regional Trial Court (RTC), Manila, Branch 11 in Criminal Case No. 02-205012 finding petitioner Alex Tionco³ y Ortega (petitioner) guilty beyond reasonable doubt of violation of Section 11(3), Article II of Republic Act No. 9165 (R.A. 9165) or The Comprehensive Dangerous Drugs Act of 2002. Also questioned is the CA's May 13, 2010 Resolution⁴ denying the motion for reconsideration thereto.

McM

¹ CA *rollo*, pp. 94-110; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Marlene Gonzales-Sison and Florito S. Macalino.
² Records, pp. 247-248; penned by Judge Cicero D. Jurado, Jr.
³ Spelled Tionco in other portions of the records.
⁴ CA *rollo*, p. 134.

Factual Antecedents

In an Amended Information⁵ dated September 4, 2002, petitioner was charged with violation of Section 11(3), Article II of R.A. 9165, the pertinent portions of which read:

That on or about July 24, 2002, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control white crystalline substance known as shabu placed in one (1) heat-sealed transparent plastic sachet weighing ZERO AND POINT ZERO FOUR SEVEN (0.047) GRAM, containing methylamphetamine hydrochloride, a dangerous drug, without the corresponding license or prescription thereof.

Contrary to law.⁶

Petitioner entered a plea of not guilty to the charge upon his arraignment on December 9, 2002.

During the pre-trial, the prosecution dispensed with the testimony of Forensic Chemist P/Insp. Judycel Macapagal (P/Insp. Macapagal) of the Western Police District (WPD) Crime Laboratory after the defense admitted that the drug specimen, together with the letter-request for laboratory examination, were personally delivered by PO1 Elymar Garcia (PO1 Garcia) to P/Insp. Macapagal and that the said specimen weighing 0.047 gram tested positive for *shabu* per her Chemistry Report.⁷ Likewise dispensed with after a stipulation during the trial was the testimony of the case investigator, PO1 Garcia.

Version of the Prosecution

At around 3:45 in the afternoon of July 24, 2002, PO1 Joel G. Sta. Maria (PO1 Sta. Maria) and PO1 Fernando Reyes were conducting an anti-criminality patrol in Parola Compound, Tondo, Manila. From a distance of about three meters, they saw petitioner holding and examining a plastic sachet with white crystalline substance believed to be *shabu*. They approached petitioner and after ascertaining the contents of the plastic sachet, confiscated the same. Petitioner was arrested, told of his alleged violation, and apprised of his constitutional rights. Thereupon, petitioner and the confiscated plastic sachet were brought to the police station where the seized item was marked by PO1 Sta. Maria with petitioner's initials "ATO" before turning it over to PO1 Garcia for investigation and disposition. PO1 Garcia prepared a letter request for the examination of the

⁵ Records, p. 14.

⁶ Id.

⁷ Id. at 44-45.

substance found inside the plastic sachet by the WPD Crime Laboratory. Together with PO1 Sta. Maria, PO1 Garcia then brought the seized item to the crime laboratory, which after examination by P/Insp. Macapagal, was found to be positive for methamphetamine hydrochloride or *shabu*.

Version of the Defense

Petitioner denied the charges against him. He recounted that in the morning of July 24, 2002, he was sitting in front of his uncle's house when policemen approached and arrested him. When he asked them why he was being arrested, he was merely told to follow their instructions. He was brought to Police Station 2 where he was frisked but nothing illegal was found on him. He was detained after being informed that he violated the law pertaining to drugs. PO1 Sta. Maria demanded ₱6,000.00 from him in exchange for his release but no money was forthcoming.

Ruling of the Regional Trial Court

The RTC, in its Amended Decision⁸ of August 29, 2008, convicted petitioner, *viz*:

WHEREFORE, the foregoing premises considered, the Court in Criminal Case No. 02-205012, finds accused Alex Tionco y Ortega GUILTY beyond reasonable doubt of the crime of violation of Section 11(3), Art. II of R.A. 9165, and sentences him to imprisonment of twelve (12) years and one (1) day to fifteen (15) years and to pay a fine of ₱300,000.00.

SO ORDERED.⁹

Ruling of the Court of Appeals

On appeal, the CA found the elements of illegal possession of dangerous drug present in the case. Moreover, it accorded the police officers the presumption of regularity in the performance of their duties since they were not impelled by improper motive in imputing the crime against petitioner. The CA also upheld the integrity and evidentiary value of the confiscated item after observing that its chain of custody was duly established. On the other hand, it did not give merit to petitioner's assertion that it was highly improbable for him to openly display the sachet of *shabu* in broad daylight and for the police officers to see the same at a distance of three meters. This is in light of PO1 Sta. Maria's positive identification of petitioner as the person who unlawfully possessed the illegal drug. Anent the

⁸ Id. at 247-248.

⁹ Id. at 248.

alleged inconsistency in the testimony of the said police officer with respect to petitioner's position at the time he was arrested, *i.e.*, whether he was facing his companion or leaning on the wall, the CA ratiocinated that the same is a peripheral matter which is inconsequential to the determination of petitioner's guilt. Thus, the dispositive portion of the CA's January 21, 2010 Decision:¹⁰

WHEREFORE, the Amended Decision dated August 29, 2008 of the trial court is affirmed.

SO ORDERED.¹¹

Petitioner filed a Motion for Reconsideration,¹² which was denied in a Resolution¹³ dated May 13, 2010.

Hence, this Petition for Review on *Certiorari*.

Issues

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE [NOTWITHSTANDING] THE APPREHENDING TEAM'S FAILURE TO PROVE THE INTEGRITY AND IDENTITY OF THE ALLEGED CONFISCATED SHABU.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE PREVAILING IRREGULARITIES IN THE APPREHENDING OFFICERS' PERFORMANCE OF THEIR OFFICIAL DUTIES.¹⁴

The Court's Ruling

The Petition is not impressed with merit.

The well-established rule is "that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings."¹⁵ "[T]he

¹⁰ CA *rollo*, pp. 94-110.

¹¹ Id. at 110.

¹² Id. at 116-121.

¹³ Id. at 134.

¹⁴ *Rollo*, p. 14.

¹⁵ *People v. Presas*, G.R. No. 182525, March 2, 2011, 644 SCRA 443, 449.

determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.”¹⁶ Here, there is no compelling reason to deviate from the findings of both the trial and appellate courts as explained hereunder.

“For illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.”¹⁷ As correctly found by the CA, the prosecution was able to establish through testimonial, documentary and object evidence the aforesaid elements. The circumstances on how petitioner was seen holding and examining a piece of plastic sachet containing white crystalline substance, how the same was confiscated from him by the police officers, and his eventual arrest were aptly narrated by PO1 Sta. Maria in a direct and consistent manner. In open court, the same witness positively identified petitioner as the person holding the plastic sachet.¹⁸ He also identified the plastic sachet marked “ATO” as the same item confiscated from petitioner.¹⁹ There is nothing on record to show that petitioner was legally authorized to possess the same. And having been caught in *flagrante delicto*, there is *prima facie* evidence that petitioner freely and consciously possessed the drug,²⁰ which he failed to rebut. Indeed, all the elements of the offense charged are obtaining in this case.

The Court finds unpersuasive petitioner’s contention that it is highly improbable and contrary to human experience that he would hold and examine the subject plastic sachet with people around and in broad daylight. It has been observed in many cases that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private as well as in public places, even during daytime. Undeniably, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. Hence, what matters is not the time or place where the violation was committed but the acts constituting the violation of the dangerous drug law.²¹

Further, the alleged inconsistency in PO1 Sta. Maria’s testimony pertaining to petitioner’s actual position when he was said to be seen holding the sachet of *shabu* is too trivial and irrelevant to the elements of the crime. This Court has ruled that “inconsistencies in the testimonies of witnesses which refer to minor and

¹⁶ *People v. Sabadlab*, G.R. No. 186392, January 18, 2012, 663 SCRA 426, 440-441.

¹⁷ *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 342-343.

¹⁸ TSN, September 12, 2003, p. 5.

¹⁹ TSN, October 9, 2007, p. 4.

²⁰ *People v. Ng Yik Bun*, G.R. No. 180452, January 10, 2011, 639 SCRA 88, 104.

²¹ *People v. Clarite*, G.R. No. 187157, February 15, 2012, 666 SCRA 306, 318, citing *Ching v. People*, 590 Phil. 724, 748 (2008).

insignificant details cannot destroy their credibility. Such minor inconsistencies even guarantee truthfulness and candor.”²²

With respect to the seized illegal substance, the presentation of the drug itself constitutes the *corpus delicti* of the offense and its existence is indispensable to a judgment of conviction. It behooves upon the prosecution to establish beyond reasonable doubt the identity of the narcotic substance. It must be shown that the item subject of the offense is the same substance offered in court as exhibit.²³ The chain of custody requirements provided for in Section 21, Article II of R.A. 9165 performs this function as it ensures the preservation of the integrity and evidentiary value of the item so that unnecessary doubts concerning the identity of the evidence are removed.²⁴

In this case, petitioner attempts to raise doubts on the identity of the item confiscated from him. He asserts that there was failure on the part of the police officers to preserve the integrity and evidentiary value of the seized item as no physical inventory thereof was conducted, or photograph of it taken, immediately upon seizure, in violation of the procedures provided by law.

Petitioner’s assertions are untenable. It is significant to note that the defense did not question the admissibility of the seized item as evidence during trial. In no instance did he intimate before the trial court that there were lapses in the handling and safekeeping of the item that might affect its admissibility, integrity and evidentiary value. It was only during the appeal to the CA that he questioned the same. Settled is the rule that no question will be entertained on appeal unless it had been raised in the court below as enunciated in *People v. Sta. Maria*²⁵ and reiterated in subsequent cases.²⁶

Besides, while there was indeed no physical inventory conducted and no photograph of the seized item was taken, the Court has already ruled in several cases that the failure of the arresting officers to strictly comply with the law is not fatal and will not render an accused’s arrest illegal or the items seized/confiscated from him inadmissible. “What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.”²⁷ Here, after petitioner was arrested and the suspected *shabu* was confiscated from him by PO1 Sta. Maria, the latter immediately brought the item to the police station where he marked the plastic sachet with petitioner’s initials “ATO,” and turned it over to

²² *People v. Mateo*, G.R. No. 179036, July 28, 2008, 582 Phil. 369, 388.

²³ *People v. Salonga*, G.R. No. 186390, October 2, 2009, 602 SCRA 783, 795.

²⁴ *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 334.

²⁵ 545 Phil. 520, 534 (2007).

²⁶ *People v. Hernandez*, 607 Phil. 617, 638 (2009); *People v. Brainer*, G.R. No. 188571, October 10, 2012, 683 SCRA 505, 523; *People v. Eyam*, G.R. No. 184056, November 26, 2012, 686 SCRA 408, 414-415.

²⁷ *People v. Abadin*, G.R. No. 179936, April 11, 2012, 669 SCRA 322, 337.

the investigator PO1 Garcia. The latter, together with PO1 Sta. Maria, then forwarded the said plastic sachet marked with "ATO" and the letter request for laboratory examination to the WPD Crime Laboratory. Forensic Chemist P/Insp. Macapagal personally received the same from PO1 Garcia and after conducting qualitative examination on the contents thereof, found the same to be positive for methamphetamine hydrochloride or *shabu*. When the prosecution presented as evidence in court the plastic sachet marked with "ATO," PO1 Sta. Maria in no uncertain terms positively identified it as the one he confiscated from petitioner. It is therefore beyond cavil that the chain of custody of the seized item was shown to not have been broken, and, hence, its integrity and evidentiary value properly preserved.

Finally, the CA correctly rejected petitioner's defenses of denial and extortion for being self-serving and uncorroborated by strong and convincing evidence. Such line of defense must fail in light of the positive testimony of the prosecution witness identifying petitioner as the unlawful possessor of the subject *shabu*.

All told, the Court sustains petitioner's conviction for violation of Section 11, Article II of R.A. 9165. There being no aggravating or mitigating circumstance, the Court likewise affirms the penalty imposed upon him which is an indeterminate sentence of twelve (12) years and one (1) day to fifteen (15) years and a fine of ₱300,000.00, the same being within the range of the penalty provided under Sec. 11(3),²⁸ Article II of R.A. 9165.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed January 21, 2010 Decision and May 13, 2010 Resolution of the Court of Appeals in CA-G.R. CR No. 31924 are **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

²⁸ Section 11. *Possession of Dangerous Drugs*. – x x x

x x x x

x x x if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

WE CONCUR:



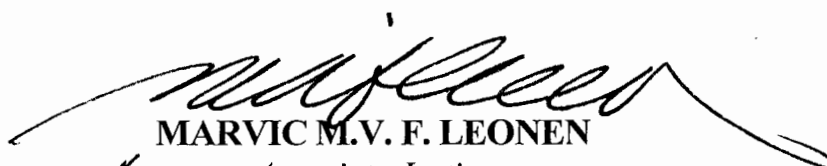
ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



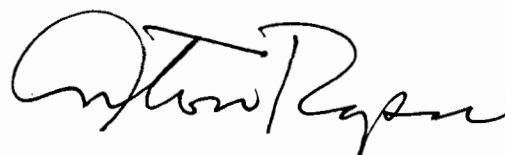
JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V. F. LEONEN
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.

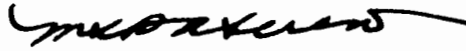


ANTONIO T. CARPIO
Associate Justice
Chairperson



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.



MARIA LOURDES P. A. SERENO

Chief Justice

