



CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 DEC 19 2016

RECEIVED
DEC 20 2016
 LCA
 3.05
 TIME:

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 208643

Present:

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

- versus -

SUSAN M. TAMAÑO and
JAFFY B. GULMATICO.
 Accused-Appellants.

Promulgated:

December 5, 2016

X-----*Wilfredo V. Lapitan*-----X

DECISION

PERALTA, J.:

This is an appeal of the Decision¹ dated August 31, 2012 of the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 00762 affirming the Decision² dated May 29, 2007 of the Regional Trial Court (RTC) of Iloilo City, Branch 36, in Criminal Case Nos. 0459517 to 0459521, convicting herein appellants Susan M. Tamaño and Jaffy B. Gulmatico of Violation of Sections 5, 11 and 12, Article II of Republic Act No. (R.A. No.) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

¹ Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 3-27.

² *Id.* at 107-139.

On July 30, 2004,³ appellants were charged with Violation of Section 5 (*Illegal Sale of Dangerous Drugs*), Section 11 (*Illegal Possession of Dangerous Drugs*) and Section 12 (*Illegal Possession of Dangerous Drug Paraphernalia*), Article II of R.A. No. 9165 in five (5) separate Informations,⁴ the accusatory portions of which read as follows:

Criminal Case No. 0459517

(Violation of Section 5 against accused Tamaño and Gulmatico)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating between themselves, working together and helping one another, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally sell/distribute/and deliver to a PNP poseur-buyer one (1) plastic sachet containing 0.220 gram of methylamphetamine hydrochloride (shabu), a dangerous drug, in consideration of ₱500.00 without the authority to sell and distribute the same; that one (1) ₱500.00 marked bill with Serial No. LL-637648 was recovered from the possession of herein accused as proceeds of the sale/buy-bust money.

Criminal Case No. 0459518


(Violation of Section 11 against accused Tamaño and Gulmatico)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously have in her possession and control three (3) small heat-sealed transparent plastic bags marked "Susan Kelly and Merriam" placed in a heat-sealed transparent plastic bag marked "B2" containing a total weight of 0.345 gram of methylamphetamine hydrochloride (shabu), a dangerous drug, without the authority to possess the same.

Criminal Case No. 0459519

(Violation of Section 12 against accused Tamaño)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, did then and there willfully, unlawfully and feloniously have in her possession and control two (2) pieces disposable lighters and four (4) pcs. empty plastic sachets, paraphernalia/equipment fit and intended for administering, consuming and introducing into the body methamphetamine hydrochloride (shabu), a dangerous drug, without the authority to possess the same.



³ *Id.* at 6.

⁴ *Id.* at 108 to 109.

Criminal Case No. 0459520
(Violation of Section 11 against accused Gulmatico)

That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously have in his possession and control twenty-four (24) small heat-sealed transparent plastic bags containing a total weight of 8.695 grams of methylamphetamine hydrochloride (shabu) and two (2) small heat-sealed transparent plastic bags of 0.192 gram of methylamphetamine hydrochloride (shabu), all with the aggregate weight of 8.887 grams of methylamphetamine hydrochloride (shabu), a dangerous drug, without the authority to possess the same.

Criminal Case No. 0459521
(Violation of Section 12 against accused Gulmatico)

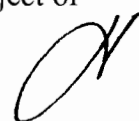
That on or about the 27th day of July 2004 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, did then and there willfully, unlawfully and feloniously have in his possession and control fifteen (15) pieces of empty plastic sachets, one (1) plastic straw used in scooping shabu, one (1) piece of blade, one (1) pair of scissors, and nine (9) sliced aluminum foils, all paraphernalia/equipment fit and intended for administering, consuming and introducing into the body methylamphetamine hydrochloride (shabu), a dangerous drug, without the authority to possess the same.

Upon arraignment on September 13, 2004, both appellants pleaded not guilty⁵ to the respective charges against them. During the pre-trial conference, the parties entered into the following stipulation of facts:

- 1) That appellants are the same persons charged in the separate Informations;
- 2) That the RTC has jurisdiction to try the cases;
- 3) That appellants were at Zone 6, Barangay Gustilo, Lapaz, Iloilo City on July 27, 004 at 12:05 noon;
- 4) That on the same date, at past 12:05 in the afternoon, appellants were brought by the members of the Philippine Drug Enforcement Agency (PDEA) at Camp Delgado, Iloilo City;
- 5) That appellants were photographed at the Iloilo City Prosecutor's Office, together with Prosecutor Espanola and other persons in the morning of on July 28, 2004;
- 6) That on July 28, 2004, the PDEA made a request for laboratory examination of dangerous drug and dangerous drug paraphernalia;
- 7) That appellants admit the existence of Chemistry Report No. D-173-04 and the expertise of Police Senior Inspector Agustina Ompoy, the Forensic Chemical Officer of the Philippine National Police (PNP) Crime Laboratory who examined the items subject of the cases.⁶

⁵ *Id.* at 110.

⁶ *Id.* at 110-111.



Thereafter, joint trial on the merits ensued. The prosecution presented the testimonies of four (4) members of the PDEA who participated in the apprehension of appellants, namely, PO3 Rudy Gepaneca, P/Sr. Inspector Leroy Rapiz, PO1 Rommel Aguenido and SPO3 Novemito Calaor. The prosecution also presented SPO4 Glicerio Gafate, Exhibit Custodian of the PDEA, who took initial custody of the items seized from appellants, and P/Insp. Agustina Ompoy, the one who examined the items subject of the cases.⁷

The evidence of the prosecution may be summed up as follows: On July 22, 2004, PO3 Gepaneca of the PDEA was informed by a confidential agent that one *alias* "Susan Kana" was selling shabu in Brgy. Gustilo, Zone 6, Lapaz, Iloilo City. The following day, PO3 Gepaneca and the agent conducted a surveillance of the said area wherein the agent pointed to a woman identified as "Susan Kana."⁸

On July 27, 2004, after confirmation from the agent that that they could purchase shabu from "Susan Kana," a buy-bust team was formed by P/Sr. Inspector Rapiz. Around 11:30 in the morning, the team proceeded to the target area in Brgy. Gustilo. After waiting for a while, appellants arrived. PO3 Gepaneca was introduced by the agent to one Susan Kana who turned out to be appellant Susan Tamaño. Then, PO3 Gepaneca took the ₱500 buy-bust money and handed it to appellant Tamaño who, in turn, told appellant Gulmatico to give a sachet of *shabu* to PO3 Gepaneca. After appellant Gulmatico handed to PO3 Gepaneca one (1) plastic sachet of *shabu* weighing 0.220 gram (*Exhibits "J-1"*), the latter took off his cap as a signal that the transaction was consummated. At that point, PO1 Aguenido immediately arrested and searched the persons of appellants. The ₱500.00 bill (*Exhibits "M-1"*) was recovered from the right hand of appellant Tamaño; and from her right pocket, a big plastic sachet was recovered containing three (3) plastic sachets of suspected *shabu* with markings "Susan", "Merriam and "Kelly" (*Exhibits "I-2", "I-3", "I-4"*) with a total weight of 0.345 gram. Also, four (4) empty plastic sachets and two (2) pieces of disposable lighters (*Exhibits "P-1" and "P-2"*), among others, were recovered from the bag of appellant Tamaño. On the other hand, PO1 Aguenido recovered from the right pocket of appellant Gulmatico twenty-four (24) sachets of suspected *shabu* (*Exhibits "K-2" to "K-25", "E-2-A"*) with a total weight of 8.695 grams and two (2) small sachets of suspected *shabu* (*Exhibits "K-27" and "K-28"*); and, from his plastic bag were recovered fifteen (15) empty plastic sachets, one (1) plastic straw (*Exhibits "L-1"*) and nine (9) sliced aluminum foils (*Exhibits "T-1" to "T-9"*). The seized items were brought to the police officers' office and were accordingly marked by SPO3 Calaor and turned over to PDEA Exhibit Custodian SPO4 Gafate. The following day, SPO3 Calaor took the same items to the Iloilo City Prosecution Office where they were all inventoried. Thereafter, SPO3 Calaor submitted some of the items, including the sachets of suspected *shabu*, to the PNP Crime Laboratory for examination. P/Insp. Ompoy, Forensic Chemical Officer,

⁷ *Id.* at 111.

⁸ *Id.* at 111-118.



examined the sachets, and the contents turned positive to the test for methamphetamine hydrochloride (*shabu*), while the plastic straw revealed traces of *shabu*, as stated in Chemistry Report No. D-17304 (*Exhibits "E" and "E-3"*).

The defense, on the other hand, presented appellants and offered a different version of what transpired on the day of the arrest. Appellants narrated that around 9:00 o'clock in the morning of July 27, 2004, appellant Tamaño was helping her aunt at the latter's "carenderia" situated at the Lapaz Public Market. She was, at the same time, waiting for appellant Gulmatico because they agreed to visit their friend, Joel Amihan, in Brgy. Gustilo, Lapaz. Appellant Tamaño's friend named Gigi arrived and requested appellant Tamaño to bring to Gigi's boyfriend, in Bo. Obrero, Iloilo City, pieces of clothing placed in a plastic bag. When appellant Gulmatico arrived, the two appellants proceeded to Brgy. Gustilo. Along the way, appellant Tamaño got suspicious of the contents of the plastic bag, so she let appellant Gulmatico carry the same. When the two were at the house of Joel Amihan, Jeffrey Valenzuela, who is a common friend, arrived. After some conversations, the four decided to leave the place. While leaving, appellants were accosted by the police officers and brought to Camp Delgado where they were searched. As a result of the search, sachets of suspected *shabu* and *shabu* paraphernalia, among others, were recovered from the plastic bag of Gigi which was then being carried by appellant Gulmatico.⁹ During the trial of the cases, two other witnesses corroborated some portions of the testimonies of appellants.¹⁰

On May 29, 2007, the RTC rendered a Decision convicting appellants of Violation of Sections 5, 11 and 12, Article II of R.A. No. 9165. The pertinent portions of the *fallo* read as follows:

WHEREFORE, judgment is hereby rendered as follows:

1. Finding accused Susan Tamaño y Marcelino and Jaffy Gulmatico y Banal GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 04-59517 and sentencing both accused to suffer the penalty of life imprisonment and to pay individually the fine of Five Hundred Thousand (₱500,000.00) Pesos;

2. Finding accused Susan Tamaño y Marcelino GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 04-59518 and sentencing said accused to suffer an indeterminate penalty of imprisonment ranging from Twelve (12) Years and One (1) Day, as minimum, to Fourteen (14) Years, as maximum, and to pay the fine of Three Hundred Thousand (₱300,000.00) Pesos;

⁹ *Id.* at 118-119

¹⁰ *Id.* at 111.

3. Finding accused Susan Tamaño y Marcelino GUILTY beyond reasonable doubt of violation of Section 12, Article II of Republic Act No. 9165 in Criminal Case No. 04-59519 and sentencing said accused to suffer an indeterminate penalty of imprisonment ranging from Six (6) Months and One (1) Day, as minimum, to Two (2) Years as maximum, and to pay the fine of Ten Thousand (₱10,000.00) Pesos;

4. Finding accused Jaffy Gulmatico y Banal GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 04-59520 and sentencing said accused to suffer an indeterminate penalty of imprisonment ranging from Twenty (20) Years and One (1) Day, as minimum, to Life Imprisonment, as maximum, and to pay the fine of Three Hundred Thousand (₱300,000.00) Pesos;

5. Finding accused Jaffy Gulmatico y Banal GUILTY beyond reasonable doubt of violation of Section 12, Article II of Republic Act No. 9165 in Criminal Case No. 04-59521 and sentencing said accused to suffer an indeterminate penalty of imprisonment ranging from Six (6) Months and One (1) Day, as minimum, to Two (2) Years, as maximum, and to pay the fine of Ten Thousand (₱10,000.00) Pesos;

Insofar as Criminal Case Nos. 04-59518 to 04-59521 both accused are entitled to the full benefits of their preventive detention provided they voluntarily agree in writing to abide by the conditions imposed on convicted prisoners pursuant to the provision of Article 29 of the Revised Penal Code.¹¹

Aggrieved, appellants appealed the aforesaid Decision to the CA *via* a Notice of Appeal.

On August 31, 2012, the CA affirmed the appellants' conviction. The *fallo* of the Decision reads, thus:

WHEREFORE, in view of the foregoing premises, the Decision of the Regional Trial Court convicting both appellants is hereby **AFFIRMED** *in toto*.¹²

Still unsatisfied, appellants elevated the aforesaid Decision of the CA to this Court *via* a Notice of Appeal.

In a Resolution dated October 9, 2013, this Court required the parties to submit their respective Supplemental Briefs if they so desire.¹³ Both parties manifested that they are no longer filing a Supplemental Brief.



¹¹ *Id.* at 136-137.

¹² *Id.* at 26. (Emphasis in the original)

¹³ *Id.* at 34.

In their Brief,¹⁴ appellants stated that the trial court has “misapplied some facts of value which if considered could probably alter the result of the decision convicting both accused-appellants of the crime/crimes as charged, such as:”

- A. THAT THE PROSECUTION WITNESSES COMMITTED CONTRADICTION AS TO THE IDENTITY OF THEIR SUBJECT PERSON WHICH POINTS TO THE FACT THAT THERE WAS NO BUY-BUST OPERATION AT ALL;
- B. THE TIME OF THE RECORDING OF THE BUY-BUST MONEY CAME LATER THAN THE TIME OF ARREST;
- C. THAT NO INVENTORY OF THE RECOVERIES WERE MADE AT THE PLACE WHERE THE ALEGED BUY-BUST WAS HELD;
- D. THAT THERE IS NO CLEAR STATEMENT AS TO WHO ACTUALLY CARRIED THE ARTICLES SEIZED FROM THE PLACE OF THE ALLEGED BUY-BUST OPERATION;
- E. THAT THE EXAMINATION CONDUCTED BY THE FORENSIC OFFICER OF THE SPECIMEN SUBJECT OF THE CASE IS NOT SUFFICIENT COMPLIANCE UNDER SECTION 21 OF R.A. 9165.

We dismiss the appeal. From the issues raised by the appellants, they are basically questioning the validity of the buy-bust operation and the compliance with the chain of custody rule.

In every prosecution for illegal sale of dangerous drugs, like *shabu* in this case, the following elements must be sufficiently proved to sustain a conviction therefor: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence. The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.¹⁵

In Criminal Case No. 04-59517, We agree with the lower courts that the aforesaid elements of illegal sale of dangerous drugs were adequately and satisfactorily established by the prosecution.



¹⁴ *Id.* at 63-106.

¹⁵ *People v. Villarta*, G.R. No. 205610, July 30, 2014, 731 SCRA 497, 509.

The appellants who were caught *in flagrante delicto* were positively identified by the prosecution witnesses as the same persons who sold one (1) plastic sachet containing 0.220 gram of white crystalline substance, later confirmed as *shabu*, for a consideration of ₱500.00. The said plastic sachet of *shabu* was presented in court, which the prosecution identified to be the same object sold by appellants. Likewise, the testimonies of the prosecution witnesses established how the transaction with appellants happened from the moment the informant introduced PO3 Gepaneca, the poseur-buyer, to appellants, as someone interested in buying their stuff, up to the time PO3 Gepaneca handed to appellant Tamaño the ₱500.00 bill and, in turn, appellant Gulmatico handed to him the plastic sachet of suspected *shabu*, thus, consummating the sale transaction between them. SPO3 Calaor caused the plastic sachet of suspected *shabu* be examined at the PNP Crime Laboratory. The item weighing 0.220 gram was tested positive to the test for methamphetamine hydrochloride (*shabu*), as evidenced by Chemistry Report No. D-17304 prepared by P/Insp. Ompoy, the Forensic Chemical Officer. It must be noted that the defense admitted the expertise of P/Insp. Ompoy who examined the drug specimens.

Thus, the collective evidence presented during the trial by the prosecution adequately established that a valid buy-bust operation was conducted. Appellants conspired and confederated with each other to sell *shabu*. Appellant Tamaño received the ₱500 bill, while appellant Gulmatico handed the *shabu* to the buyer. Their respective acts lead to no other conclusion except that they have a common design and purpose – to sell *shabu*.

Appellants argue that the prosecution witnesses committed contradiction as to the identity of their subject person which was identified as one Susan Kana, and which allegedly points to the fact that there was no buy-bust operation at all. This argument is flawed. The fact that appellants were caught *in flagrante delicto* makes the discrepancies between the names of the suspects in the surveillance reports and the names of the accused immaterial. What is material is that the transaction or sale actually took place, as in this case. What matters is not the existing familiarity between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.¹⁶

With respect to the prosecution for illegal possession of dangerous drugs, the following facts must be proved: (a) the accused was in possession of dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.¹⁷

¹⁶ *People v. Dela Rosa*, G.R. No. 185166, January 26, 2011, 640 SCRA 635.

¹⁷ *Valencia v. People*, 725 Phil. 268, 277 (2014); *People v. Abedin*, 685 Phil. 552, 563 (2012); *Asiatico v. People*, 673 Phil. 74, 81 (2011).

In the cases under consideration specifically Criminal Case Nos. 04-595118 and 04-59520, We also conform to the lower courts' findings that all the elements of illegal possession of dangerous drugs were adequately proven by the prosecution. When an accused is caught *in flagrante delicto* in accordance with Section 5(a) of Rule 113 of the Revised Rules on Criminal Procedure, the police officers are not only authorized, but are duty-bound, to arrest him even without a warrant.¹⁸ Thus, since appellants' arrest was legal, the search and seizure that resulted from it were likewise lawful.¹⁹

As a result of the lawful search on the persons of appellants, appellant Tamaño was found to be in possession of a big plastic sachet containing three (3) plastic sachets of *shabu*, a dangerous drug, with markings "Susan", "Merriam and "Kelly", and with a total weight of 0.345 gram (*Exhibits "I-2", "I-3", "I-4"*). On the other hand, appellant Gulmatico was found to be in possession of twenty-four (24) sachets of *shabu* with a total weight of 8.695 grams (*Exhibits "K-2" to "K-25", "E-2-A"*) and two (2) small sachets of *shabu* (*Exhibits "K-27" and "K-28"*). Both could not present any proof or justification that they were fully authorized by law to possess the same. The mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* (intent to possess) sufficient to convict an accused in the absence of any satisfactory explanation.²⁰ Both appellants were found in possession of dangerous drugs.

We find untenable the contention of appellants that since the provision of Section 21, Article II of Republic Act No. 9165 was not strictly complied with, the prosecution allegedly failed to prove the identity and integrity of the seized prohibited drugs.

Section 21, paragraph 1, of Article II of R.A. No. 9165 reads:

Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essentials 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 officer/team having initial custody and control of the drugs shall immediately, after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the

¹⁸ *People v. Pavia*, G.R. No. 202687, January 14, 2015, 746 SCRA 216, 221.

¹⁹ *People v. Enrique Hindoy*, 410 Phil. 6, 21 (2001).

²⁰ *People v. Tancinco*, 736 Phil. 610, 623 (2014).

media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

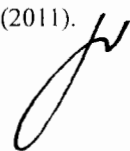
Further, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 similarly provides that:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: x x x 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.

In the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for illegal possession of dangerous drugs under R.A. No. 9165 fails.²¹ In this regard, the aforesaid provisions outline the procedure to be observed by the apprehending officers in the seizure and custody of dangerous drugs.

Similarly, in the prosecution of illegal sale of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence beyond reasonable doubt, plus the fact of its delivery and/or sale, are both vital and essential to a judgment of conviction. And more than just the fact of sale, of prime importance is that the identity of the dangerous drug be likewise established beyond reasonable doubt. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement

²¹ *Fajardo v. People*, 691 Phil. 752, 758-759 (2012); *People v. Alcuizar*, 662 Phil. 794, 801 (2011).



performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.²²

However, under the same proviso aforesaid, non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.²³ While nowhere in the prosecution's evidence would show the "justifiable ground" which may excuse the police operatives involved from making an immediate physical inventory of the drugs confiscated and/or seized, such omission shall not render appellants' arrest illegal or the items seized/confiscated from them as inadmissible in evidence. Said "justifiable ground" will remain unknown in the light of the apparent failure of appellants to specifically challenge the custody and safekeeping or the issue of disposition and preservation of the subject drug before the trial court. They cannot be allowed too late in the day to question the police officers' alleged non-compliance with Section 21 for the first time on appeal.²⁴

Moreover, the rule on chain of custody under the foregoing enactments expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs from the time they are seized from the accused until the time they are presented in court.²⁵ The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.²⁶

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing R.A. No. 9165, defines chain of custody as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, 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

²² *People v. Havana*, G.R. No. 198450, January 11, 2016.

²³ *People v. Ventura*, 619 Phil. 536, 552 (2009).

²⁴ *Saraum v. People*, G.R. No. 205472, January 25, 2016, citing *People v. Campomanes, et al.*, 641 Phil. 610, 623 (2010).

²⁵ *People v. Bautista*, 682 Phil. 487, 501 (2012).


²⁶ *People v. Dela Rosa*, *supra* note 16.

person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In the cases at bar, PO1 Aguenido immediately searched the persons of appellants. From the right pocket of appellant Tamaño, a big plastic sachet was recovered containing three (3) plastic sachets of *shabu* with a total weight of 0.345 gram. On the other hand, PO1 Aguenido recovered from the right pocket of appellant Gulmatico twenty-four (24) sachets of *shabu* with a total weight of 8.695 grams and two (2) small sachets of *shabu*. The seized items were brought to the police officers' office and were accordingly marked by SPO3 Calaor and turned over to PDEA Exhibit Custodian SPO4 Gafate. The following day, SPO3 Calaor took the same items to the Iloilo City Prosecution Office where they were all inventoried. Thereafter, SPO3 Calaor submitted some of the items including the sachets of *shabu* to the PNP Crime Laboratory for examination. P/Insp. Ompoy, Forensic Chemical Officer, examined the sachets and the contents were positive to the test for methamphetamine hydrochloride (*shabu*). During the trial of the cases, PO3 Gepaneca, P/Sr. Inspector Rapiz, PO1 Aguenido, SPO3 Calaor, SPO4 Gafate and P/Insp. Ompoy testified for the prosecution. They properly identified the Chemistry Report and the subject specimens when presented in court.

From the foregoing, the prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drugs had not been compromised because it established the crucial link in the chain of custody of the seized item from the time it was first discovered until it was brought to the court for examination.²⁷ The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court.²⁸

In these subject cases, the facts persuasively proved that the sachets of *shabu*, including the drug paraphernalia presented in court, were the same items sold/seized from appellants. The integrity and evidentiary value thereof were duly preserved. The marking and the handling of the specimens were testified to by PO1 Aguenido, SPO3 Calaor, SPO4 Gafate and P/Sr. Inspector Agustina Ompoy. It must be noted that appellants admitted the expertise of Police Senior Inspector Ompoy, the chemist who conducted the laboratory tests. Hence, the aforesaid prosecution witnesses testified about every link in the chain, from the moment the seized items were picked up to the time they were offered into evidence in court.



²⁷ *People v. Pavia*, *supra* note 18, at 224.

²⁸ *People v. Alivio, et al.*, 664 Phil. 565, 577-578 (2011).

To reiterate, We discussed in the case of *Mallillin v. People*²⁹ how the chain of custody of seized items should be established, thus:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.³⁰

However, while the procedure on the chain of custody should be perfect and unbroken, in reality, it is almost always impossible to obtain an unbroken chain.³¹ Thus, failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. The most important factor is the preservation of the integrity and evidentiary value of the seized item.³²

In a number of cases³³ We held that with the implied judicial recognition of the difficulty of complete compliance with the chain of custody requirement, substantial compliance is sufficient as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending officers. We ruled that the failure to photograph and conduct physical inventory of the seized items are not fatal to the case against the accused, and do not *ipso facto* render inadmissible in evidence the items seized. What is important is that the seized item marked at the police station is identified as the same item produced in court.³⁴

Therefore, in the cases under consideration, even though there was no inventory of the items at the place where the buy bust was held, this will not render appellants' arrest illegal or the items seized from them inadmissible. There is substantial compliance by the police officers as to the required procedure on the custody and control of the confiscated items. The succession of events established by evidence and the overall handling of the

²⁹ 576 Phil. 576 (2008).

³⁰ *Mallillin v. People*, *supra*, at 587. (Citations omitted)

³¹ *Zalameda v. People*, 614 Phil. 710, 741 (2009).

³² *Id.*

³³ *People v. Marate*, G.R. No. 201156, January 29, 2014, 715 SCRA 115; *People v. Cerdon*, G.R. No. 201111, August 6, 2014, 732 SCRA 335.

³⁴ *People v. Yable*, G.R. No. 200358, April 7, 2014, 721 SCRA 91, 99.

seized items by the prosecution witnesses all show that the items seized were the same evidence subsequently identified and testified to in open court.³⁵

Specifically, in *People v. Padua*,³⁶ We stated that the purpose of the procedure outlined in the implementing rules is centered on the preservation of the integrity and evidentiary value of the seized items. We also reiterated in *People v. Hernandez, et al.*³⁷ that non-compliance with Section 21 would 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.

We now go to the charge of illegal possession of drug paraphernalia. The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II of R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.³⁸

In Criminal Case Nos. 04-59519 and 04-59521, the prosecution has convincingly established that appellants were in possession of drug paraphernalia, particularly (2) pieces of disposable lighters, plastic straw and nine (9) sliced aluminum foils, all of which were offered and admitted in evidence.

To reiterate, considering that appellants' arrest was legal, the search and seizure that resulted from it were likewise lawful. The various drug paraphernalia that the police officers found and seized from appellants are, therefore, admissible in evidence for having proceeded from a valid search and seizure. The confiscated drug paraphernalia are the very *corpus delicti* of the crime charged.³⁹

However, the four (4) empty plastic sachets recovered from appellant Tamaño and the fifteen (15) empty plastic sachets recovered from appellant Gulmatico are not drug paraphernalia. They are not instruments or equipment which could be used to inject, administer or introduce into the body any dangerous drug as defined in Section 12 of Article II. As correctly held by the RTC, they could be merely used to pack or repack *shabu* for safekeeping. Nor are scissors and the blade considered drug paraphernalia in

³⁵ *Saraum v. People*, *supra* note 24; *People v. Mark Lester Dela Rosa*, *supra* note 16, at 650.

³⁶ 639 Phil. 235, 248 (2010).

³⁷ 607 Phil. 617, 638 (2009).

³⁸ *Saraum v. People*, *supra* note 24.

³⁹ *Id.*

view of the limited explanation made by the prosecution, and they do not appear to be instruments that could be directly used to introduce *shabu* into the body.

All told, We therefore sustain the judgment of conviction of herein appellants. Their mere denial cannot prevail over the positive and categorical identification and declarations of the police officers. The defense of denial, frame-up or extortion, like *alibi*, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act.⁴⁰ As evidence that is both negative and self-serving, this defense of *alibi* cannot attain more credibility than the testimony of the prosecution witness who testified clearly, providing thereby positive evidence on the crime committed.⁴¹ One such positive evidence, in this case, is the result of the laboratory examination conducted on the drugs recovered from the appellants which revealed that the plastic sachets tested positive for the presence of "*shabu*."⁴²

Furthermore, the defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. The presumption that official duty has been regularly performed can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.⁴³

In the present cases, appellants failed to overcome such presumption. The bare denial of the appellants cannot prevail over the positive testimony of the prosecution witnesses⁴⁴ that appellants are the persons who sold *shabu*. As correctly stated by the RTC, the version of the appellants appeared to be a well-rehearsed prefabricated story, not worthy of credence. It is not natural that the friends of appellants would simply walk away while appellants were accosted for no apparent reason. If indeed appellants were accosted for no apparent reason, it was easy for their friends to intervene, as it happened in a busy place and around noontime. They could have even reported the incident to the barangay officials or to the nearest police station. It is hard to believe that appellant Tamaño would simply receive a plastic bag from a friend without knowing or verifying its contents, considering that the bag could be easily opened and somewhat transparent. And that it was

⁴⁰ *People v. Mariano*, 698 Phil. 772, 785 (2012); *Ambre v. People*, 692 Phil. 681, 697 (2012); *People v. Villahermosa*, 665 Phil. 399, 418 (2011); *Zalameda v. People*, 614 Phil. 710, 729 and 733 (2009).

⁴¹ *People v. Nicart*, 690 Phil. 263, (2012).

⁴² *People v. Pavia*, *supra* note 18.

⁴³ *Miclat, Jr. v. People*, 672 Phil. 191, 210 (2011); *People v. Pagkalinawan*, 628 Phil. 101, 118 (2010).

⁴⁴ *People v. Mariano*, 698 Phil. 772, 785 (2012); *People v. Villahermosa*, 665 Phil. 399, 418 (2011); and *People v. Saulo*, G.R. No. 201450, April 7, 2014.

harder to believe that appellant Tamaño would continue to hold on to the bag even if she already suspected that the contents thereof are illegal.⁴⁵

Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying.⁴⁶ The rule finds an even more stringent application where said findings are sustained by the CA as in these cases.⁴⁷ Hence, We find no compelling reason to deviate from the CA's findings that, indeed, the appellants' guilt were sufficiently proven by the prosecution beyond reasonable doubt.

Turning now to the imposable penalty, We sustain the penalty imposed by the RTC and affirmed by the CA in Criminal Case Nos. 04-59517 to 04-59519 and 04-59521. But, We modify the penalty imposed in Criminal Case No. 04-59520.

The penalty for illegal sale of *shabu* regardless of its quantity and purity, as provided for in Section 5, Article II of R.A. No. 9165, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. With the enactment of R.A. No. 9346, only life imprisonment and fine shall be the imposed. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed on the appellants in Criminal Case No. 04-59517 is proper.

The penalty for illegal possession of dangerous drug paraphernalia, as provided for in Section 12, Article II of the same law, is imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00). Hence, the indeterminate penalty of imprisonment ranging from six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and a fine of ₱10,000.00 was correctly imposed on both appellants in Criminal Case Nos. 04-59519 and 04-59521.

For illegal possession of dangerous drugs, Section 11, Article II of R.A. No. 9165 provides:

Section 11. *Possession of Dangerous Drugs.*- The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand

⁴⁵ *Id.* at 119.

⁴⁶ *People v. Villahermosa*, *supra* note 44, at 420; *People v. Campomanes*, 641 Phil. 621, 622 (2010); *People v. Canaya*, G.R. No. 212173, February 25, 2015 (Third Division Resolution).

⁴⁷ *People v. Villahermosa*, *supra* note 44, at 420.

Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

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

x x x x

(2) **Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four Hundred Thousand Pesos (₱400,000.00) to Five Hundred Thousand Pesos (₱500,000.00)**, if the quantities of dangerous drugs are **five (5) grams or more but less than ten (10) 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 three hundred (300) grams or more but less than five hundred (500) grams of marijuana. (Emphasis supplied).

(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 three hundred (300) grams or more but less than five hundred (500) grams of marijuana.⁴⁸

From the aforecited provision, if the quantity of the dangerous drug is less than five (5) grams, the penalty for illegal possession of dangerous drugs is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00. In Criminal Case No. 04-59518, appellant Tamaño was found to have been in illegal possession of 0.345 gram of *shabu*. She was properly meted the penalty of imprisonment ranging from twelve (12) years and one (1) day to 14 years and to pay a fine of ₱300,000.00.


Moreover, if the quantity of the dangerous drug is five (5) grams or more but less than ten (10) grams, the penalty for illegal possession of dangerous drugs is imprisonment of twenty (20) years and one (1) day to life

⁴⁸ Emphasis ours.


imprisonment and a fine ranging from Four Hundred Thousand Pesos (₱400,000.00) to Five Hundred Thousand Pesos (₱500,000.00). In Criminal Case No. 04-59520, appellant Gulmatico was found to have been in illegal possession of twenty-four (24) sachets of *shabu* with a total weight of 8.695 grams and two (2) small sachets of *shabu* weighing 0.192 gram, all with the aggregate weight of 8.887 grams. He was correctly sentenced to imprisonment ranging from twenty (20) years and one (1) day to life imprisonment.⁴⁹ But the imposed fine of ₱300,000.00 is not in accord with law. Therefore, for the illegal possession of *shabu* in the amount of 8.887 grams, the fine that must be imposed is Four Hundred Thousand Pesos (₱400,000.00).

WHEREFORE, the appeal is **DISMISSED** and the Decision of the Court of Appeals dated August 31, 2012 in CA-G.R. CEB-CR-H.C. No. 00762 is **AFFIRMED with MODIFICATION** on the fine imposed in Criminal Case No. 04-59520. For Violation of Section 11, Article II of Republic Act No. 9165, **JAFFY B. GULMATICO** is hereby sentenced to suffer a penalty of imprisonment of **TWENTY (20) YEARS and ONE (1) DAY TO LIFE IMPRISONMENT** and a fine of **FOUR HUNDRED THOUSAND PESOS (₱400,000.00)**.

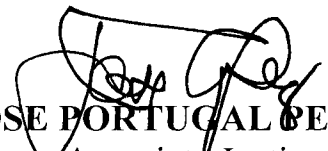
SO ORDERED.


DIOSDADO M. PERALTA
 Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson


MARIANO C. DEL CASTILLO
 Associate Justice



JOSE PORTUGAL PEREZ
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

⁴⁹ *People v. Dela Rosa*, *supra* note 26; *People v. Tancinco*, G.R. No. 200598, June 18, 2014. 726 SCRA 659, 674.


ATTESTATION

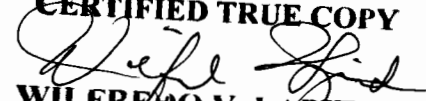
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision 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

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

DEC 19 2016