



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

THE PEOPLE OF THE
PHILIPPINES,

Plaintiff-Appellee,

G.R. No. 247558

Present:

PERALTA, C.J., *Chairperson*,
CAGUIOA,
REYES, J. C., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

- versus -

ALLAN QUIJANO y SANDING,
Accused-Appellant.

Promulgated:

FEB 19 2020

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DECISION

LAZARO-JAVIER, J.:

The Case

This appeal¹ assails the Decision² dated December 10, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09217 entitled "*People of the Philippines v. Allan Quijano y Sanding*," affirming with modification the Judgment³ dated March 23, 2017 of the Regional Trial Court, Manila, Branch

¹ See Notice of Appeal, dated January 22, 2019, *rollo*, pp. 10-11.

² Penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Sesinando E. Villon and Edwin D. Sorongon, all members of the Seventh Division, *rollo*, pp. 3-9.

³ Penned by Judge Jean Marie A. Bacorro-Villena, record, pp. 72-84.

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28, finding appellant Allan Quijano y Sanding guilty of illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165 (RA 9165).⁴

The Proceedings before the Trial Court

The Charge

By Information⁵ dated May 11, 2016, appellant was charged with violation of Section 11, Article II of RA 9165, *viz.*:

That on or about **April 28, 2016**, in the City of Manila, Philippines, the said accused, not 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, one (1) self-sealing transparent plastic bag with markings "**ACB-2 TWO/4-28-16 with signature**" containing **SEVEN HUNDRED THIRTY FIVE POINT EIGHT (735.8)** grams of white crystalline substance, which after qualitative examination gave positive results to the tests for methamphetamine hydrochloride commonly known as "Shabu", a dangerous drug.

Contrary to law.

On arraignment, appellant pleaded not guilty.⁶ At the pre-trial, the prosecution and the defense stipulated on the trial court's jurisdiction, appellant's identity, and the proposed testimony of JO2 Joey J. Magallanes.⁷

During the trial proper, JO2 Arthur Briones testified for the prosecution, and appellant, for the defense.

Version of the Prosecution

JO2 Arthur Briones is a jail officer assigned at the Bureau of Jail Management and Penology, Manila.⁸ On April 28, 2016, around 1:20 in the afternoon, he was at the window section of the Manila City Jail.⁹ There, he noticed Marivic Tulipat (a regular visitor at the city jail) receiving a light violet bag from someone inside the city jail bakery. He became suspicious and called her attention. Tulipat appeared hesitant and he had to call her attention several times more before she finally approached him. But before she did, she handed the bag to appellant Allan Quijano y Sanding. This prompted him to also summon appellant who, just like Tulipat, appeared hesitant. Like what he

⁴ Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

⁵ Record, p. 1.

⁶ *Id.* at 18.

⁷ *Id.* at 19-20.

⁸ TSN dated January 18, 2017, p. 3.

⁹ *Id.* at 4.

did to Tulipat, he had to also call for appellant several times more before he finally came to him. He then asked appellant about the contents of the bag. Instead of responding, however, appellant turned to Tulipat and tried to give it back to her. But Tulipat refused. His suspicions grew and so he grabbed the bag and opened it. Inside, he saw another blue bag which contained a transparent bag containing white crystalline substance. He immediately arrested appellant and Tulipat and apprised them of their constitutional rights. Tulipat attempted to escape but was eventually caught at the main gate of the city jail.¹⁰

The seized items were marked, inventoried, and photographed inside the Manila City Jail, specifically in its Investigation Unit. Tulipat, appellant, JO3 Jose Rodzon Antonio, Senior Assistant City Prosecutor Maria Josefina Concepcion, Kagawad Rodelito E. Jurilla, and Police Inspector Adelo A. Natividad were all present during the marking, inventory and photographing.¹¹

JO3 Briones marked the light violet bag “ACD/4/28/16,” the blue sando bag “ACB/1/4-28-16” and the self-sealing transparent bag “ACB-2/4-28-16.” JO3 Jose Rodzon Antonio took photos of the items. He brought these items and the referral letter signed by City Jail Warden Superintendent Fermin RP Enriquez to the Philippine Drug Enforcement Agency (PDEA) at 2020H (8:20 in the evening) on April 28, 2016.¹² The same were received by Forensic Chemist Sweedy Kay L. Perez.

In her Chemistry Report No. PDEA-DD016-092, Forensic Chemist Sweedy Kay Perez certified that the seized item with a net weight of seven hundred thirty-five point eight (735.8) grams yielded positive results for *methamphetamine hydrochloride*, a dangerous drug.¹³

Documentary and Object Evidence

The prosecution offered the following exhibits: letter request for laboratory examination (Exhibit A); stamped receipt (Exhibit A-1); one (1) self-sealing transparent plastic bag containing white crystalline substance marked “ACB-2” (Exhibit B); Chemistry Report No. PDEA-DD016-092 (Exhibit C), findings and conclusions (Exhibit C-1) and signatures (Exhibit C-2); Chain of Custody of Property and Seized Items (Exhibit D) and signatures (Exhibit D-1); letter referral for inquest (Exhibit E); Booking Sheet and Arrest Report of accused Allan Quijano y Sanding (Exhibit F); Affidavit of JO2 Arthur C. Briones (Exhibit G); Inventory of Seized Items (Exhibit H) and signatures (Exhibit H-1); acknowledgement receipt (Exhibit I); Incident Report (Exhibit J); and photographs (Exhibit K).¹⁴

¹⁰ *Id.* at 9.

¹¹ *Id.* at 11-12.

¹² Record, p. 9.

¹³ *Id.* at 10.

¹⁴ TSN dated January 18, 2017, pp. 26-29.

Version of the Defense

Appellant testified that he is a detainee at the Manila City Jail.¹⁵ On April 28, 2016, around 1:20 in the afternoon, while waiting for his wife to come and visit him, there was suddenly a commotion inside the city jail. Tulipat approached and requested him to hold a light violet bag. He asked for the contents of the bag but Tulipat refused to answer. JO2 Briones inspected the bag and informed appellant that it contained *shabu*. Appellant was not aware of what the bag contained “x x x dahil pinahawakan lang sa akin yan ni Ate Marivic.” Tulipat explained that the bag was hers and she only requested appellant to hold it for her when JO2 Briones called her attention. During the inquest proceedings, Tulipat reiterated she owned the bag.¹⁶

The defense did not offer any documentary evidence.

The Trial Court’s Ruling

By Decision¹⁷ dated March 23, 2017, the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, with the foregoing, the Court finds the accused **GUILTY** beyond reasonable doubt of the crime charged. He is hereby **SENTENCED** with life imprisonment and a **FINE** of P500,000.00, subject to subsidiary imprisonment in case of insolvency.¹⁸

The trial court gave credence to the testimony of the prosecution’s eyewitness who had in his favor the presumption of regularity in the performance of official duty and rejected appellant’s denial. According to the trial court, the prosecution sufficiently established the elements of illegal possession of dangerous drugs as there was no showing that appellant had the authority to possess the seized drugs. It held that JO2 Briones’ act of intercepting Tulipat and appellant was within the purview of the stop-and-frisk doctrine. The trial court took judicial notice of the fact that items brought inside the jail facility are inspected as part of security measures. Too, the jail facility was surrounded and secured by jail officers who were, by their position, are exposed to all kinds of safety hazards.¹⁹

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite his alleged lack of *animus possidendi*. He argued that the third element of illegal possession of dangerous drugs – the accused freely

¹⁵ *Id.* at 2. The records do not state the offense for which appellant was detained.

¹⁶ *Rollo*, p. 5.

¹⁷ Record, pp. 72-84.

¹⁸ *Id.* at 83.

¹⁹ *Id.* at 77-84.

and consciously possessed the drugs in question is absent. He merely received the bag from Tulipat without actual knowledge of its contents. In fact, it only took thirty (30) seconds from the time JO2 Briones called out Tulipat to the time she handed the bag to appellant. Thereafter, the bag was immediately confiscated. He was deprived of the chance to inspect the contents of the bag. Too, the prosecution failed to establish an unbroken chain of custody. The prosecution claimed that the seven hundred forty-seven point eight (747.8) grams was the gross weight of the specimen. The Chemistry Report, however, did not specify whether the weight stated therein was the gross or net weight. The unexplained and unaccounted variance in the weight of the seized item cast doubt on its integrity and evidentiary value.²⁰

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ellaine Rose A. Sanchez-Corro and State Solicitor Lucy L. Butler-Torres defended the verdict of conviction. Appellant's contention that he had no knowledge of the contents of the bag was belied by his behavior during the incident. Appellant was fully aware that Tulipat was already then being summoned by JO2 Briones and a commotion even ensued since the latter was running after Tulipat. Despite the commotion, appellant readily accepted the bag handed by Tulipat without hesitation. When summoned by JO2 Briones, appellant did not promptly surrender the bag to the former. Thus, the prosecution had sufficiently established that appellant, through his prior and contemporaneous actions, consciously intended to possess the prohibited drug.

The chain of custody and integrity of the seized item were clearly established by the prosecution. Contrary to appellant's claim, the variance in the weight of the seized item was fully explained. As observed by Forensic Chemist Perez, the weighing scale used during the presentation of evidence was not stable enough compared to the unit used at the laboratory.²¹

The Court of Appeals affirmed with modification through its assailed Decision²² dated December 10, 2018, *viz.*:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The 23 March 2017 Decision of Branch 28 of the Regional Trial Court of Manila in Criminal Case No. 16-325138 is **AFFIRMED** with **MODIFICATION** in that the imposition of subsidiary imprisonment is **DELETED**.²³

The Court of Appeals held that appellant failed to establish his so-called lack of knowledge of the contents of the blue bag which turned out to contain the more than seven hundred (700) grams of shabu. It noted that first, appellant knew Tulipat was involved in a commotion inside the Manila City Jail and was being summoned by JO2 Briones, yet, he still readily and without

²⁰ CA rollo, pp. 36-47.

²¹ *Id.* at 75-93.

²² Rollo, pp. 3-9.

²³ *Id.* at 9.

any hesitation accepted the bag containing the subject shabu; second, appellant was reluctant to approach and surrender the bag to JO2 Briones when the latter summoned him; and third, appellant attempted to return the bag to Tulipat when he realized they were about to get caught in possession of the illegal drugs contained inside the bag.²⁴ Further, the unstable weighing scale used during the ocular inspection and the different weighing scales used during the laboratory examination accounted for the variance in the weight of the seized drugs.²⁵

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated July 22, 2019,²⁶ both appellant²⁷ and the OSG²⁸ manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for illegal possession of dangerous drugs?

Ruling

For a successful prosecution of an offense for illegal possession of dangerous drugs, the prosecution must establish the following elements: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²⁹ This crime is *mala prohibita*, as such, criminal intent is not an essential element. The prosecution, however, must prove that the accused had the intent to possess (*animus possidendi*). Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. Constructive possession, on the other hand, exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.³⁰

²⁴ *Id.* at 7.

²⁵ *Id.* at 8.

²⁶ *Id.* at 15-16.

²⁷ *Id.* at 22-23.

²⁸ *Id.* at 26-27.

²⁹ See *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370.

³⁰ See *People v. Tira*, 474 Phil. 152, 173-174 (2004).

In possession of illicit drugs cases, ownership is inconsequential. Mere possession of the illicit drugs is *malum prohibitum* and the burden of proof is upon the accused to prove that they have a permit or clearance to possess the prohibited drugs.³¹

Here, both the trial court and the Court of Appeals correctly found that the prosecution was able to sufficiently establish all the elements of illegal possession of dangerous drugs. Appellant was caught in possession of illegal drugs of considerable quantity 729.2 grams of *shabu* inside the Manila City Jail, *sans* any authority. He has not disputed this fact, albeit, he asserts that the element of *animus possidendi* was absent.

***Appellant failed to prove
absence of animus possidendi***

Animus possidendi is a state of mind. It is determined on a case-to-case basis taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances. It must be inferred from the attendant events in each particular case. A mere unfounded assertion of the accused that he or she did not know that he or she had possession of the illegal drug is insufficient, *Animus possidendi* is then presumed because he or she was thereby shown to have performed an act that the law prohibited and penalized.³² Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation. Consequently, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi*.³³

Evidence to be given credence must not only proceed from the mouth of a credible witness but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.³⁴ The issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances. There is no test to the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.³⁵

As aptly found by the trial court, appellant's prior and contemporaneous acts negate his disclaimer of *animus possidendi*, thus:

Did accused freely and consciously possess the illegal drug? He insisted otherwise. Accused, in his defense, was adamant that he did not

³¹ See *Arcilla v. Court of Appeals*, 463 Phil. 914, 926 (2003).

³² See *People v. Delos Santos*, 679 Phil. 259, 266-267 (2012).

³³ See *People v. Castro*, 667 Phil. 526, 544-545 (2011).

³⁴ See *People v. Capuno*, 655 Phil. 226, 244 (2011).

³⁵ See *Medina, Jr. v. People*, 724 Phil. 226, 238 (2014).

really know what was inside the bag and that he was only requested to hold the same while [Tulipa] responded to JO2 Briones's call.

In this particular respect, the court is confronted with JO2 Briones's own admission that it only took 30 seconds from the time he called out for [Tulipa] to the time she actually handed the bag to accused, on one hand, and accused's version that he was merely standing in the middle of the street when [Tulipa] approached him and handed the light violet bag, on the other hand. JO2 Briones insisted that accused was aware of the content while the latter claimed complete innocence. With accused's alibi that is both negative and self-serving, the court deems however that such cannot attain more credibility than the testimonies of the plaintiff's witnesses who testif[ied] clearly, providing thereby positive evidence on the various aspects of the crime committed. Conversely put, with his behavior and elusive stance, the court thus rather finds it difficult to concede that he was not "conscious" of the content of the light violet bag. It is noted as well that it was rather unusual that, at past one o'clock in the afternoon, in the month of April (when the sun is high and under scorching heat), accused's only intention for standing in the middle of the street (inside the MCJ) was to wait for his wife's visit. Likewise, had accused been unaware of the content there would not have been any hesitation to surrender the same to JO2 Briones or that there would [have] been no need to pass it on to [Tulipa]. Verily, courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it so suit his or her defense. With this, the court ultimately finds that accused's explanation was not satisfactory or enough to rebut the *prima facie* evidence [of] knowledge on his part.³⁶

In *People v. Alfonso*,³⁷ appellant was charged with transporting marijuana. He initially admitted being the owner of the sack containing the marijuana when questioned by the Narcom agent in the bus, albeit he later denied ownership in an attempt to exculpate himself. The Court held that it was improbable for appellant not to have had knowledge of the contents of the sack considering that he was in possession of it and had actually admitted his ownership thereof. And if it were true that he was not the owner but that he simply accepted the errand from one who was not even a friend, the explanation, standing by itself, is too trite and hackneyed to be accepted at its face value, it being contrary to human experience. For one, it was not clear whether the person from whom he received the sack was a stranger or someone closely known to him. The particulars under which the errand was being requested should have raised doubts about the mysterious nature of the transaction.

Here, appellant's actuations are likewise unnatural and contrary to man's common experience. His actuations in fact indicate a guilty mind. During the commotion inside the city jail involving Tulipat and the bag in question, Tulipat suddenly handed the bag to appellant who readily and unquestionably accepted it. Under normal circumstances, appellant should have already become suspicious when he saw and heard JO2 Briones calling

³⁶ Record, pp. 80-81.

³⁷ 264 Phil. 961-966 (1990).

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for Tulipat because of the bag she was holding at that time. In fact, appellant himself said Tulipat's possession of the bag already caused a commotion inside the city jail. In any event, when JO2 Briones also called for appellant himself, like Tulipat, the latter hesitated and even tried to pass on the bag back to Tulipat who refused to accept it. And when appellant finally came face to face with JO2 Briones, appellant did not immediately surrender the bag to the former nor denied his ownership of the bag or knowledge of the *shabu* found inside. Even during the investigation, appellant was not shown to have interposed any such disclaimer. Surely, these circumstances altogether negate appellant's pretense of lack of *animus possidendi*.

In *People v. Pambid*,³⁸ the Court upheld the conviction of appellant therein for the defense's failure to rebut the *prima facie* evidence that she had *animus possidendi*. Appellant was caught in actual possession of the prohibited drug without her showing any proof that she was duly authorized by law to possess it. Having been caught *in flagrante delicto*, there is *prima facie* evidence she had *animus possidendi*.

At any rate, even if we reckon with the chain of custody rule, appellant's conviction must still remain in place. Section 21(1) of RA 9165, as amended by RA 10640 provides:³⁹

SEC. 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 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.

³⁸ 655 Phil. 719, 735 (2011).

³⁹ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," July 15, 2014.



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To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the offense.⁴⁰ Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002 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 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 *People v. Havana*,⁴¹ the Court expounded the significance of the chain of custody rule, viz.:

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 in 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.

While the testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard obtains in case the evidence is susceptible of alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain or custody rule.

⁴⁰ See *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

⁴¹ 776 Phil. 462, 471-472 (2016).

In *People v. Amaro*,⁴² the Court enumerated the following links that should be established in the chain of custody of the seized item:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

First, the seized items were marked, inventoried and photographed in the Manila City Jail Investigation Unit and in the presence of appellant and the required witnesses.

The first link in the chain of custody refers to the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers. The marking of the seized drug is crucial in establishing an unbroken chain of custody because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Too, it serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized until disposal at the end of the criminal proceedings, thus preventing switching, “planting,” or contamination of evidence. In other words, the immediate marking is indispensable in the preservation of the seized items’ integrity and evidentiary value.⁴³

To repeat, JO2 Briones did the marking and inventory of the seized items in the Manila City Jail where Tulipat got arrested. The procedure was witnessed by Tulipat and appellant himself, JO3 Jose Rodzon Antonio, Senior Assistant City Prosecutor Maria Josefina Concepcion, Kagawad Rodelito E. Jurilla, and Police Inspector Adelo A. Natividad.⁴⁴ Thus, the light violet bag was marked “ACD/4/28/16,” the blue sando bag “ACB/1/4-28-16” and the self-sealing transparent bag “ACB-2/4-28-16.” On the other hand, JO3 Rodzon Antonio photographed these items.

Second, the duty investigator prepared the referral to the PDEA Laboratory Service Unit for examination.

⁴² 786 Phil. 139, 148 (2016).

⁴³ See *Derilo v. People*, 784 Phil. 679, 688 (2016).

⁴⁴ TSN dated January 18, 2017, pp. 11-12.

After the marking and inventory of the seized items, City Jail Warden Superintendent Fermin RP Enriquez signed the referral letter⁴⁵ to the PDEA Laboratory Service Unit. Although Superintendent Enriquez was not presented in court, this does not necessarily cast doubt on the integrity of the seized items. For not all people who came into contact with the seized drugs are required to testify in court. There is nothing in the law or in any rule implementing the same which imposes such requirement. Of utmost importance is the fact that the chain of custody of the seized drug clearly shown to have remained unbroken.⁴⁶

Third, the turnover of the illegal drug to the forensic chemist for laboratory examination was properly documented.

The third link in the chain of custody is the turnover of the seized drug to the forensic chemist for laboratory examination. Here, JO2 Arthur Briones brought the seized items and referral letter to the PDEA at 2020H (8:20 in the evening) on April 28, 2016.⁴⁷ The same were received by Forensic Chemist Sweedy Kay L. Perez who, per Chemistry Report No. PDEA-DD016-092, certified that the seized item with a net weight of 735.8 grams yielded positive results for *methamphetamine hydrochloride*, a dangerous drug.⁴⁸

Fourth, the slight discrepancy in the weight of the seized item as stated in Chemistry Report No. PDEA-DD016-092 and during the ocular inspection was satisfactorily explained.

The fourth link in the chain of custody refers to the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. Here, there was a slight discrepancy in the weight of the seized item stated in Chemistry Report No. PDEA-DD016-092 and the actual weight during ocular inspection. Per Chemistry Report No. PDEA-DD016-092,⁴⁹ the net weight of the seized item was 735.8 grams. During the ocular inspection, however, the weight increased to 747.8 grams or an increase of twelve (12) grams. On this score, Forensic Chemist Sweedy Kay Perez explained:

Judge Bacorro-Villena:

Ready for ocular inspection?

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⁴⁵ Record, p. 9.

⁴⁶ See *People v. Padua*, 639 Phil. 235, 251 (2010).

⁴⁷ Record, p. 9.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.*

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FC Perez:

First, I will take the gross weight of Exhibit B. The gross weight included the plastic bag, the contents itself and the masking tape, your Honor.

The gross weight of Exhibit B is 747.8 grams, your Honor.

I will now open Exhibit B to get a representative sample.

The net weight of the representative sample is 1.9 grams.

I will now proceed to weighing the remaining bulk of the evidence.

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FC Perez:

The net weight of the remaining bulk is 729.2 grams.

Atty. Nuque:

Your Honor, just for manifestation, may I manifest that as appearing in the Chemistry Report No. PDEA-DD016-092, your Honor, the weight of the alleged confiscated item is 735.8 grams, your Honor, while when it was weighed in open court, your Honor, the weight is 747.8 grams, your Honor, just for manifestation, your honor.

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Judge Bacorro-Villena:

What can you say about this?

FC Perez:

Yes, your Honor, it's because I gave some samples to our research division for quantitative analysis, which is obtaining the purity of the sample, your Honor, because it exceeded two hundred grams. It is stated in our procedure, your Honor, that when we receive[d] two hundred grams and above sample, it will automatically be examined for purity, your Honor.

Judge Bacorro-Villena:

In the information, what's the weight stated?

FC Perez:

It is the net weight, your Honor.

Atty. Nuque:

738.8 grams, your Honor.

Judge Bacorro-Villena:

The same weight stated in the chemistry report?

Atty. Nuque:

Yes, your Honor.

Judge Bacorro-Villena:

But now during the ocular inspection, the weight increased.

Atty. Nuque:

Yes, your Honor.

Judge Bacorro-Villena:

By how much?

Atty. Nuque:

By twelve grams, your Honor.

Judge Bacorro-Villena:

It increased by twelve grams. What is your explanation, because your earlier explanation is not logical, because after you gave samples to your research division for quantitative analysis, the specimen increased by twelve grams, instead of being decreased?

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FC Perez:

I obtained the gross weight, your Honor, that's why the weight is 747.8 grams and the gross weight includes the weight of the container itself and the masking tape, your Honor.

Judge Bacorro-Villena:

Now, when you weigh it during the ocular inspection?

FC Perez:

Yes, your Honor, during the ocular inspection.

Judge Bacorro-Villena:

And what is 735.8 grams, is that the net weight or the gross weight?

FC Perez:

Yes, it is the net weight, your Honor.

Atty. Nuque:

May I just manifest, your Honor, that the chemistry report, your Honor, does not specify that it is a net weight, your Honor, and considering that the said witness revealed that some portion of the item was turned over to some agency or office, your Honor, I believe, your Honor, there must also be an explanation to that effect why... (paused) may I request, your Honor, that the said item be weighed, your Honor, to get the net weight, your Honor?

Judge Bacorro-Villena:

Which item will be weighed?

Atty. Nuque:

That one specified in the chemistry report, your Honor.

Judge Bacorro-Villena:

The remaining bulk is 729.2 grams, net weight. *Para malaman natin kung twelve grams ba yung lalagyan, dahi lyun ang nangyari, timbangin natin yung lalagyan kasama yung masking tape, Exhibit B.* It should be twelve grams to account for the difference.

Atty. Nuque:

16.4 grams, your Honor.

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FC Perez:

Weight of the container.

Judge Bacorro-Villena:

Weight of the plastic container.

Atty. Nuque:

Just for manifestation, your Honor, that the weighing, including the...(paused) the gross or even the net, your Honor, does not coincide with the weight as stated in the chemistry report, your Honor, just for manifestation, your Honor.

Judge Bacorro-Villena:

The gross weight is 747.8 grams minus the weight of the plastic container which is 16.4 grams, so, it should be 731.4 grams. *Kumuha ng representative sample na 1.9 plus net weight ng remaining bulk na 729.2 grams, so 731.1. grams, kaya may difference lang na .3 gram. May difference lang na .3 gram, anong ibig sabihin ng .3 gram na difference? Nawawala ba yung .3 gram?*

Fiscal Carreon:

Anyway, your Honor, the plastic bag still contains some particles.

Judge Bacorro-Villena:

May difference na .3 gram, asan yung .3 gram?

FC Perez:

Because the container still contains some crystalline substance, your honor.

Atty. Nuque:

Eh di kung may residue yun, dapat kasama din sana timbang yun dun sa 16.4 grams, di ba? Kahit may tira-tira yun, natimbang din yun.

FC Perez:

Sir, yung condition po kasi sa lab is different from here at kanina po hindi po stable yung weighing scale, iba din po kasi yung weighing scale na ginamit naming sa lab, which is stable po yun.

Judge Bacorro-Villena:

Dito lang nawala yung .3 gram, ngayon lang nawala yung .3 gram pagkatapos matimbang. Nung tinimbang yan kanina lahat lahat, wala pang kinukuhang sample, 747.8 grams. *Nung sinalinsalin, kuhuma [kumuha] ng 1.9 representative sample, nagkaroon ng remaining net weight na 729.2, inalis ang weight ng container na may residue, 16.4 grams, pagka-add lahat, 747.5 na lang, kaya may difference na .3 gram matapos natin buksan. Hangin yun, yung .3 gram, di kaya?*

Atty. Nuque:

Anyway, your Honor, I just made my manifestation or observation, your Honor.

Fiscal Carreon:

Maybe, also, because of the difference of the weighing scale, your Honor.

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Judge Bacorro-Villena:

Yung 735.8 grams, di natin nakita yun, dahil 735.8 sa laboratory yun, nung tinimbang yung net weight. Nung nandito na kanina, ang gross weight ay 747.8 grams. Dapat pag ini-add natin lahat yung remaining net weight from bulk na 729.2 grams, i-add ang representative sample na 1.9 grams, net weight din, i-add ang timbang ng plastic na malaki na 16.4 grams, imbes na nag-total s'ya ng 747.8 grams, nagging 747.5 grams lang. Hangin yun, nabuksan yung plastic, lumabas yung hangin na .3 gram.⁵⁰

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In this regard, We quote with concurrence the Court of Appeals' disposition, thus:

The variance in the weight stated in the chemistry report *vis-à-vis* that taken during ocular inspection was sufficiently addressed by the prosecution. That a different kind of weighing scale used in the PDEA laboratory and that the weighing scale used during the ocular inspection was unstable explain the variance in the weight of the illegal drugs seized from accused-appellant. Notably, when the prosecution manifested that the weighing scale used during the ocular inspection was unstable, the defense did not raise any objection. Moreover, it must be emphasized that during the pre-trial, the defense admitted that the specimen delivered by JO2 Briones to the crime laboratory was the same specimen brought to the RTC. From the foregoing discussion, there is no reason to doubt the identity of the illegal drugs presented before the RTC.⁵¹

In *People v. Aneslag et al.*,⁵² the Court found no cause to acquit the accused by reason alone of the variance in the weight of the *shabu* as alleged in the information (240 grams) on one hand, and as determined by the forensic chemist (210 grams) on the other. The Court noted that the variance may be explained by the following circumstances: (1) the subject *shabu* packs were twice tested by two (2) different forensic chemists in order to expedite the proceedings per order of the trial court so that representative samples of the *shabu* were taken from the aforesaid packs by the first forensic chemist (P/Sr. Insp. Mag-abo) which could have affected the total weight as subsequently determined by the second forensic chemist (P/Sr. Insp. Bernido); and (2) P/Sr. Insp. Bernido testified that when she weighed each pack of *shabu*, the same was done without the packaging material thereof which could have, likewise, affected the total weight of the *shabu*.

In sum, the trial court and the Court of Appeals did not err in finding appellant guilty of violation of Section 11, Article II of RA 9165 as amended by RA 10640, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

⁵⁰ TSN dated June 21, 2016, pp. 3-9.

⁵¹ *Rollo*, p. 8.

⁵² 699 Phil. 146, 166-167 (2012).

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Penalty

The Court of Appeals correctly imposed the penalty of life imprisonment sans subsidiary imprisonment and the fine of five hundred thousand (₱500,000.00) in accordance with RA 9165 as amended by RA 10640.

ACCORDINGLY, the appeal is **DISMISSED** and the Decision dated December 10, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09217, **AFFIRMED**. Allan Quijano y Sanding is **CONVICTED** of violation of Section 11, Article II of Republic Act No. 9165 as amended by Republic Act No. 10640, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. He is sentenced to **LIFE IMPRISONMENT** and ordered to pay a **FINE** of five hundred thousand pesos (₱500,000.00).

SO ORDERED.



AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



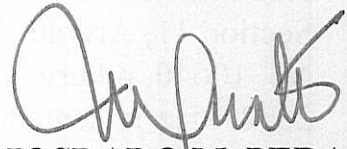
JOSE C. REYES, JR.
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice
Chairperson, First Division