THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JEROME ARCIBAL Y ALBITOS, ACCUSED-APPELLANT.

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

Before this Court is an appeal from the 6 October 2011 Decision[1] of Branch 13 of the Regional Trial Court of Lipa City for Criminal Case No. 0208-2008, wherein the accused-appellant was found guilty beyond reasonable doubt for Violation of Section 11, Article II of Republic Act No. 9165, also known as the Comprehensive Dangerous Drugs Act of 2002.

The accusatory portion of the Information[2] charging Jerome Arcibal y Albitos reads:

> "That on or about the 15[th] day of March, 2008 at about 4:45 o'clock in the afternoon at Villa Rosa Subdivision, Brgy. Antipolo del Norte, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, did then and there willfully, unlawfully and feloniously have in his custody, control and possession 0.04 gram of methamphetamine hydrochloride locally known as shabu, a dangerous drug.
>
> Contrary to law."

During the arraignment on 22 September 2008, accused-appellant, assisted by counsel de parte, entered a plea of not guilty to the charge.[3] On 11 November 2008, the pre-trial was conducted and also terminated.[4] Thereafter, trial begun on 12 January 2009.[5] The prosecution offered the testimonies of PO3 Andrew Llanes[6]; SPO1 Manolo Leyesa[7]; and PO1 Danzon Librea[8]. In its Formal Offer of Evidence[9], the prosecution offered and submitted the following: 1) Sinumpaang Salaysay of SPO1 Manolo Leyesa[10]; 2) Photocopy of the Order of Arrest[11]; 3) Request for Laboratory Examination[12]; 4) Chemistry Report No. BD-040-08[13]; 5) Inventory of Confiscated/Seized Items; 6) Shabu contained in a small rectangular transparent plastic sachet with marking AML "P" JAA; and 7) Certified xerox copy of Police Blotter[14].

On the other hand, the defense presented its lone witness herein accused-appellant Jerome Arcibal y Albitos. No other evidence of any kind was offered by the defense.

THE FACTS

The Version of the Prosecution[15]

Around 4:45 in the afternoon of 15 March 2008, PO3 Andrew Llanes (PO3 Llanes), together with Police Inspector Joel Laraya (P/Insp. Laraya), SPO1 Manolo Leyesa (SPO1 Leyesa) and SPO1 Gerry Mendoza (SPO1 Mendoza), was conducting a routine patrol in Villarosa Subdivision, Lipa City when he saw herein accused-appellant with his live-in partner, Carissa Myka Viola walking at the corner of the same subdivision. Upon seeing herein accused-appellant, PO3 Llanes' attention was caught because he was previously informed by SPO2 Alex Yema (SPO2 Yema) that accused-appellant has a pending warrant of arrest for the crime of theft. PO3 Llanes knew accused-appellant because the latter's mother is a resident of Villarosa Subdivision and he had

previously seen accused-appellant in the subdivision.

After recognizing accused-appellant, PO3 Llanes immediately alighted from a patrol car and approached him. P/Insp. Laraya and SPO1 Leyesa followed him. PO3 Llanes arrested accused-appellant and informed him of his constitutional rights. As part of the standard operating procedure for police officers, he also handcuffed and searched accused-appellant. As a result, PO3 Llanes recovered from accused-appellant's right pocket a small heat-sealed rectangular transparent plastic believed to contain “shabu”.

The police officers brought accused-appellant to the police station on board the patrol vehicle and entered the incident in the blotter. Thereafter, the police officers proceeded to the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) Office for the preparation of the request for laboratory examination of the seized item and other necessary documents for the filing of the case. PO3 Llanes also marked the seized item with AML “P” JAA.

Thereafter, PO1 Danzon Librea delivered the seized plastic sachet to the Batangas Provincial Crime Laboratory for forensic examination which was received by SPO2 Lito Vargas. The specimen was turned over to Jupri Delantar for examination.

The qualitative examination conducted on the specimen showed that the seized item contains methamphetamine hydrochloride, commonly known as “shabu”.

The Version of the Defense[16]

On 15 March 2008 at around 4:00 o'clock in the afternoon, accused-appellant Jerome Arcibal was walking inside Villarosa Subdivision coming from a barbeque stand at the corner of Villarosa Street with his girlfriend Carissa Myka Viola. They were on their way home when a police patrol arrived and stopped in front of them. Suddenly, PO3 Llanes alighted from the patrol car, grabbed his arm and told him that he is being arrested.

Accused-appellant asked PO3 Llanes what his offense was and the latter told him that he has a warrant for his arrest. Accused-appellant asked that the warrant be shown to him, but instead, he was told to just come with them to the precinct. Thereafter, he was handcuffed and was forced to ride in the patrol car. He was seated at the rear part of the Revo together with PO3 Llanes. There were four (4) other police officers inside the patrol car. While they were traveling towards the headquarters, he was boxed by PO3 Llanes in his neck and was told to keep quiet as he was asking for what offense he was arrested. PO3 Llanes also pulled down his shorts and brief and tried to look for something. He was also bodily searched and his handkerchief and wallet were taken. He told them that he was not hiding anything.

Upon arrival at the headquarters, the police officers brought him to the office of SPO2 Yema who asked him if he knows Marco Paz, Gary Latag and a certain Omar. Accused-appellant told them that he knew these people.

Thereafter, he saw SPO2 Pera fixing a plastic sachet and typing something in the computer. After typing, he was asked to sign an inventory which he refused because the contents thereof are not true. Pera insisted for him to sign, but he still refused. He was asked if he has a counsel and he said that his counsel was Atty. Octavio Macatangay. Afterwhich, he was incarcerated.

On his first night in jail at around 11:00 o'clock in the evening, PO3 Llanes made him undergo unnecessary punishment. The next day, PO3 Llanes ordered the jail “mayor” to order the accused to do push-ups because he wanted to see the latter suffer and perspire. While he was doing push-ups, PO3 Llanes was watching him in front of the jail. He stayed there for at least five (5) minutes watching him do push-ups.

His family visited him while he was in jail. His sister engaged the services of Atty. Balderama who stood as his counsel. He told Atty. Balderama what was being done to him by PO3 Llanes. Thus, it was blottered in the same

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police precinct.

Prior to his arrest, the accused-appellant knows PO3 Llanes because he is his neighbor. Their house is just four (4) houses away from the PO3 Llanes' house and he sees him almost everyday.

In addition, he testified that they filed a case against PO3 Llanes before the Office of the Ombudsman for planting of evidence and for the unnecessary punishment he suffered in the hands of the police officer.

Likewise, accused-appellant denied the accusations against him. He alleged that the illegal drug was merely planted by PO3 Llanes. He is not aware of any reason why PO3 Llanes is very mad at him.

Thereafter, the assailed 16 February 2011 Judgment was rendered by the court a quo convicting herein accused-appellant of the crime charged. The dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, the Court finds the accused Jerome Arcibal y Albitos GUILTY beyond reasonable doubt for Violation of Section 11, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and applying the Indeterminate Sentence Law, hereby sentences him to suffer the penalty of imprisonment of Twelve (12) years and One (1) day as minimum to Fourteen (14) years and One (1) day as maximum and to pay a fine of Three Hundred Thousand Pesos (Php 300,000.00) without subsidiary imprisonment in case of insolvency.
>
> The period which the accused has undergone preventive imprisonment during the pendency of this case shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.
>
> SO ORDERED."

Aggrieved by the decision of the court a quo, the accused-appellant is now before this Court interposing this appeal and assigning the following errors[17]:

> I.
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> THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY.
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> II.
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> THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESS.
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> III.
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> THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.
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> IV.
>
> THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.

THIS COURT'S RULING

Credibility of witnesses

The well-known rule, though subject to certain recognized exceptions, is that findings of facts and assessment of

credibility of witnesses are matters best left to the trial court.[18] The investigating judge is in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.[19] Hence, "[u]nless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected."[20]

In the present case, the trial court believed the prosecution witnesses. This Court concurs with the court a quo particularly in its finding that there is nothing on the record, after a review thereof, which indicates that the prosecution witnesses, particularly the police officers who arrested the accused-appellant harbored ill-motives against the latter. And it bears stressing at this juncture that in the absence of proof to the contrary, law enforcers are presumed to have regularly performed their duty.

Moreover, the defense averred that the alleged acts of PO3 Llanes manifest his desire to make accused-appellant suffer no matter what it takes, even to the point of inventing criminal offenses against the latter.[21] This claim, however, is negated by accused-appellant's own statement that he is not aware of any reason why PO3 Llanes made him suffer unnecessary punishment.[22]

Non-compliance Section 21 of Republic Act No. 9165
and its implementing rules and regulations.

> 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 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;

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Clearly, Section 21 of RA 9165 provides for the procedure in handling of illegal drugs during and after the arrest of accused. However, this Court cannot consider in favor of the accused-appellant the fact that there was no representative from the media and the Department of Justice (DOJ) and any elected public official who should have signed the copies of the inventory.[23] It cannot also be questioned why no photographs were taken immediately after the apprehension of the accused-appellant and the confiscation of the sachet of shabu.[24] It bears emphasis at this point that the accused-appellant was not entrapped when he was arrested. Noteworthy is the fact that the apprehending team was only patrolling the area when they saw herein accused-appellant who has been at large for the crime of theft. He was, at the outset, apprehended not because of the illegal drugs which was found in his pocket when the apprehending team bodily searched him but because of the warrant of arrest against him for the crime of theft.

Moreover, the apprehending team will definitely not coordinate with the DOJ, media, or any elected public official or bring a camera for that matter because their intention was only to patrol the area and not to entrap or arrest accused-appellant. Thus, compliance to these provisions of Section 21 of R.A. No 9165 is not expected from the apprehending team.

The Supreme Court has consistently enunciated that non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team.[25] Its non-compliance 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.

Chain of Custody

In the case of People vs. Zakaria[26] the Supreme Court ruled that – to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt, the State bears the burden of proving the corpus delicti, or the body of the crime. The Prosecution does not comply with the indispensable requirement of proving the corpus delicti either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court. That proof of the corpus delicti depends on a gapless showing of the chain of custody. As the Court has pointed out in People v. Belocura:

> xxx. The chain-of-custody requirement applied xxx by virtue of the universal need to competently and sufficiently establish the corpus delicti. It is basic under the Rules of Court, indeed, that evidence, to be relevant, must throw light upon, or have a logical relation to, the facts in issue to be established by one party or disproved by the other. The test of relevancy is whether an item of evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it would reasonably and actually tend to prove or disprove any matter of fact in issue, or corroborate other relevant evidence. The test is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved.

Accordingly, the court a quo correctly ruled that:

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> It is an established fact that herein accused was lawfully arrested by the members of the PNP Lipa City, by virtue of a Warrant of Arrest (Exhibit “B”) dated June 25, 2005, issued by Honorable Judge Jaime M. Borja of the Municipal Trial Court in Cities (MTCC), Lipa City, against the accused for the crime of Theft. Incident to such lawful arrest, accused was found to be in possession of a small plastic sachet containing 0.04 grams of shabu, as confirmed by Chemistry Report No. BD-040-08 (Exhibit “D”). Said specimen shabu (Exhibit “F”) was presented in Court and identified by PO3 Andrew Llanes and SPO1 Manolo Leyesa to be the same illegal drugs recovered from herein accused as a result of a lawful search. Incidentally, it cannot be denied that the search on the body of the accused after he was lawfully arrested is legal and in accordance with the law, as the same is recognized under Rule 126, Section 13 of the Revised Rules on Criminal Procedure.

Further, the prosecution has established by sufficient evidence that the sachet of shabu found in the pocket of the accused-appellant was confiscated by PO3 Llanes[27] which he marked with AML “P” for possession and JAA in the office of the AIDSOTF, Police Headquarters.[28] Thereafter, the said sachet was brought by prosecution witness PO1 Danson Librea to the Batangas Provincial Crime Laboratory.[29] While SPO2 Vargas received the said specimen when it was delivered by PO1 Librea.[30] While the testimony of Jupri Caballegan Delantar[31] who conducted the forensic examination on the specimen was dispensed with considering that the defense admitted the due execution and genuineness of the Chemistry Report he wrote.[32] Verily, the prosecution has shown that there has been no gap in the chain of custody of the illegal drugs from the time it was confiscated until the same was presented in court and identified by the apprehending police officers during the trial of the case.

Elements of the Violation Charged

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For the successful prosecution of an illegal drug case punished by Section 11, Article II of R.A. No. 9165, the following elements must be proved beyond reasonable doubt; (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[33]

After a careful examination of the records of this case, this Court concurs with the court a quo and commend its ruling that all the aforesaid elements of the violation charged were proven by the prosecution. The records of this case supports the finding of the court a quo when it stated in the challenged decision that -

> x x x Records of the case are bereft of any evidence to show that herein accused had the legal authority to possess the small plastic sachet of shabu recovered from him. Finally and as to the last element of the crime, it has been jurisprudentially settled that 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 of such possession (People v. Noque, G.R. No. 175319, January 15, 2010, citing People v. Tee, 443 Phil. 521, 551 (2003)). The burden of evidence is thus shifted to the accused to explain the absence of knowledge or animus possidendi (People v. Pendatun, 478 Phil. 201, 212 (2004)), but in this case, the accused did not even offer any evidence to show his absence of knowledge or animus possidendi of the shabu recovered from him.

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WHEREFORE, premises considered, the assailed Decision is hereby AFFIRMED.

Bruselas, Jr.,[*] (Acting Chairperson) and Macalino,[**]JJ., concur.

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[*] Acting Chairperson, per Office Order No. 156-14-AGT, dated April 23, 2014

[**] Acting Senior Member, per Office Order No. 156-14-AGT, dated April 23, 2014

[1] Rollo, pp. 50-54.

[2] Records, p. 1.

[3] Records, p. 45.

[4] Records, pp. 66-69.

[5] Records, p. 80.

[6] TSN, January 12 and 27, 2009

[7] TSN, August 25 and September 29, 2009.

[8] TSN, November 17, 2009.

[9] Records, p. 158.

[10]Records, pp. 159-160.

[11] Records, p. 161.

[12] Records, p. 162.

[13] Records, p. 163.

[14] Records, p. 164.

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[15] Rollo, pp. 72-73.

[16] Rollo, pp. 48-50.

[17] Rollo, pp. 44-45.

[18] People vs. Mamaruncas, G.R. No. 179497, January 25, 2012.

[19] Melecio vs. Tan, A.M. NO. MTJ-04-1566, August 22, 2005.

[20] People vs. Mamaruncas, G.R. No. 179497, January 25, 2012.

[21] Rollo, p. 53.

[22] Rollo, p. 50.

[23] Rollo, p. 57.

[24]

[25] People vs. Mateo, G.R. No. 179478, July 28, 2008.

[26] G.R. No. 181042, November 26, 2012.

[27] TSN, January 12, 2009, p. 10.

[28] TSN, January 27, 2009, p. 3.

[29] Records, p. 20; TSN, November 17, 2009.

[30] Ibid.

[31] Records, p. 19; TSN, September 29, 2009, p. 9.

[32] TSN, January 27, 2009, p. 5.

[33] People vs. De Jesus, G.R. No. 198794, February 06, 2013

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