

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORIE VILLAHERMOSA Y LECO, ACCUSED-APPELLANT.

G.R. No. 186465. June 01, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

On appeal is the Decision[1] dated 23 April 2008 of the Court of Appeals in CA-G.R. CR HC No. 02598, affirming in toto the Decision[2] dated 3 October 2006 of the Regional Trial Court (RTC) of Makati City, Branch 65, in Criminal Case Nos. 02-3170 to 02-3172, finding herein appellant Lorie Villahermosa y Leco guilty beyond reasonable doubt of violating Sections 5,[3] 11[4] and 12,[5] Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

In three separate Informations[6] all dated 4 November 2002, appellant Lorie Villahermosa y Leco was charged with violation of Sections 5, 11 and 12, Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 02-3170, Criminal Case No. 02-3171 and Criminal Case No. 02-3172. The Informations read as follows:

Criminal Case No. 02-3170

That on or about the 31[st] day of October, 2002, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named [appellant], did then and there willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero gram (sic) (0.06) and zero point zero three gram (0.03) or a total of zero point zero nine gram (0.09) of Methamphetamine Hydrochloride (shabu) a dangerous drug, in violation of the above-cited law.[7] [Emphasis supplied].

Criminal Case No. 02-3171

That on or about the 31[st] day of October, 2002, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named [appellant], not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his (sic) possession, direct custody and control Methylamphetamine Hydrochloride (shabu) weighing zero point fifty four gram (0.54), zero point zero two gram (0.02), zero point zero five gram (0.05), zero point zero three gram (0.03), traces and zero point zero three gram (0.03) or a total of zero point sixty seven gram (0.67) which is a dangerous drug, in violation of the above-cited law.[8] [Emphasis supplied].

Criminal Case No. 02-3172

That on or about the 31[st] day of October, 2002, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named [appellant], not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously use and possess one (1) improvised glass tooter, five (5) strips of aluminum foil, fourteen (14) pieces of transparent plastic sachets and three (3) pieces disposable lighters, in

violation of the aforesaid law.[9] [Emphasis supplied].

Upon arraignment, appellant, assisted by counsel de oficio, pleaded NOT GUILTY to all charges.[10]

By agreement of the parties, the pre-trial was terminated for their failure to agree to any stipulation.[11] Trial on the merits thereafter followed.

The prosecution presented the testimonies of the following witnesses: Police Inspector Miladenia O. Tapan (P/Insp. Tapan), forensic chemical officer assigned at the Philippine National Police Headquarters, Philippine National Police (PNP) Crime Laboratory, Camp Crame, Quezon City; Amado Silverio (Silverio), Makati Anti Drug Abuse Council (MADAC) operative who acted as the poseur-buyer in the buy-bust operation against appellant; Police Officer 2 Rolando Tizon (PO2 Tizon), member of the Philippine Drug Enforcement Agency (PDEA) who served as the arresting officer of the buy-bust operation against appellant; and Police Senior Inspector Helson B. Walin (P/Sr. Insp. Walin), assigned with the Special Enforcement Group of the Metro Manila Regional Office of PDEA and the team leader of the buy-bust team formed against appellant.

The facts as culled from the records and testimonies of the aforesaid prosecution witnesses are as follows:

On or about 5:00 p.m. of 31 October 2002, PDEA received a telephone call from a concerned citizen that a certain Tomboy,[12] whose name was later known to be Lorie Villahermosa y Leco, the herein appellant,[13] was engaged in the rampant selling of illegal drugs inside the Manila South Cemetery in Barangay Sta. Cruz, Makati City.[14] On the strength of that information, P/Sr. Insp. Walin and PO2 Tizon of PDEA proceeded to MADAC Cluster 3 Office at the barangay hall of Barangay Sta. Cruz, Makati City, to seek assistance in the conduct of their buy-bust operation against appellant.[15]

Upon arrival thereat at around 5:30 p.m., P/Sr. Insp. Walin talked to MADAC Cluster 3 Head, Barangay Chairman Vic Del Prado (Brgy. Chairman Del Prado) and requested the latter if PDEA can utilize one of the MADAC Cluster 3 operatives to act as the poseur-buyer in the buy-bust operation that they will be conducting against appellant, who was reportedly selling illegal drugs inside the Manila South Cemetery. Silverio, one of the MADAC Cluster 3 operatives was volunteered by Brgy. Chairman Del Prado to act as the poseur-buyer in the planned buy-bust operation.[16]

Thereafter, P/Sr. Insp. Walin formed a buy-bust team composed of himself, PO2 Tizon, Silverio, Brgy. Chairman Del Prado and the other members of MADAC Cluster 3.[17] A briefing on how to carry out their buy-bust operation against appellant was then conducted by P/Sr. Insp. Walin, being the team leader thereof. In the said briefing, Silverio and PO2 Tizon were designated as the poseur-buyer and arresting officer, respectively, while the rest of the buy-bust team will serve as back-up. Their pre-arranged signal would be the taking off of Silverio's hat.[18] The buy-bust money consisting of four pieces of P100 peso bills[19] was also prepared with markings "ASSJR" placed thereon by Silverio. The latter marked the same while the buy-bust team was still at the office of MADAC Cluster 3 at the barangay hall of Barangay Sta. Cruz, Makati City. The markings of the buy-bust money were witnessed by P/Sr. Insp. Walin and PO2 Tizon, both of whom were just beside Silverio while the latter was putting the markings thereon.[20]

After the briefing, at around 6:20 p.m. of 31 October 2002, the buy-bust team headed on to the target area, i.e., Manila South Cemetery in Barangay Sta. Cruz, Makati City. Upon arrival, Silverio already spotted appellant beside a store located inside the Manila South Cemetery. Silverio immediately recognized appellant because of the latter's picture provided him by PDEA during the briefing. Once inside the Manila South Cemetery, the other members of the buy-bust team positioned themselves strategically within the vicinity of the target area by hiding themselves among the niches.[21] Silverio, on the other hand, immediately approached appellant in a casual

manner. At this juncture, the rest of the members of the buy-bust team, particularly P/Sr. Insp. Walin and PO2 Tizon, were only 10 to 15 meters away from appellant. Silverio then asked appellant, "pare meron ka bang bato?" Appellant replied, "ilan ba ang kukunin mo?" Silverio, in turn, responded, "kwatro lang," which means P400.00 worth of shabu.[22] Appellant then took out two small plastic sachets from her pocket containing white crystalline substance and handed the same to Silverio. Silverio, in turn, handed to appellant the amount agreed upon, i.e., P400.00, which consists of four pieces of P100 peso bills marked money.[23]

After the consummation of the sale, Silverio gave their pre-arranged signal, which is the taking off of his hat. PO2 Tizon subsequently approached appellant. The other members of the buy-bust team followed thereafter. PO2 Tizon then introduced himself to appellant as PDEA officer and subsequently effected her arrest for selling prohibited drugs. He also apprised appellant of her constitutional rights and, thereafter, frisked her for she might be carrying a deadly weapon. PO2 Tizon similarly ordered appellant to empty her pockets, as well as the plastic bag she was carrying at that moment. PO2 Tizon then recovered from appellant six (6) more small plastic sachets containing white crystalline substance, the buy-bust money consisting of four pieces of P100.00 peso bills amounting to P400.00 and the following drug paraphernalia that were inside the plastic bag appellant was carrying at the time of her arrest, to wit: 14 pieces of unused transparent plastic sachets, three disposable lighters, an improvised tooter and five strips of aluminum foil.[24]

Afterwards, appellant was brought to MADAC Cluster 3 Office at the barangay hall of Barangay Sta. Cruz, Makati City, for investigation. The items recovered from appellant were all marked by PO2 Tizon at the MADAC Cluster 3 Office as the same cannot be done at the place of appellant's arrest, i.e., at the nearby Manila South Cemetery, due to the number of people visiting thereat in light of the upcoming celebration of the All Saints Day. PO2 Tizon marked the two (2) plastic sachets containing white crystalline substance, which was the subject of the sale in the buy-bust operation against appellant, by placing thereon the initials of the poseur-buyer, i.e., ASSJR. PO2 Tizon likewise marked the recovered six (6) more small plastic sachets containing white crystalline substance from appellant with the initials of the poseur-buyer, as well as the date of the buy-bust operation, i.e., ASSJR 31 Oct. '02. The recovered drug paraphernalia was correspondingly marked by PO2 Tizon with the initials of the poseur-buyer, i.e., ASSJR.[25]

After all the items seized from appellant were marked, a video of the same was taken by Jose Quibro and Susan Enriquez, both of whom were cameraman and reporter, respectively, of GMA-7. An inventory[26] of the same was also prepared by PO2 Tizon at MADAC Cluster 3 Office in the presence of all MADAC Cluster 3 operatives, including Silverio, P/Sr. Insp. Walin, Jose Quibro and Susan Enriquez of GMA-7, MADAC Cluster 3 Head, Brgy. Chairman Del Prado, and the Chief of MADAC Pedro Opoc. The MADAC Cluster 3 operatives likewise photographed the items seized from appellant, which was done also at the barangay hall of Barangay Sta. Cruz, Makati City.[27]

Appellant was, thereafter, brought by the members of the buy-bust team to the PNP Crime Laboratory at Camp Crame for drug testing,[28] as well as for physical and medical examinations.[29] PO2 Tizon, on the other hand, brought the seized items[30] also to the PNP Crime Laboratory for examination.[31]

The results of appellant's drug test[32] yielded positive result while her physical examination[33] revealed that she has not been forced as there was no sign of bruises on her body. As regards the items seized from appellant, they were all found positive[34] for methamphetamine hydrochloride or shabu.[35]

For its part, the defense presented the lone testimony of the appellant who offered a different version of what transpired on the day of her arrest.

Appellant denied all the charges against her. She claimed that prior to her arrest, she was a caretaker of certain

niches at the Manila South Cemetery in Barangay Sta. Cruz, Makati City. As such caretaker, she was the one responsible for the cleaning and painting of the tombs. In doing so, she carried with her a "karet," which is a bladed instrument used in cleaning the niches. She was being paid regularly on a monthly basis by the relatives of the deceased.[36]

Appellant recounted that on 31 October 2002, eve of All Saints Day, at around 6:30 p.m., while she was inside the Manila South Cemetery painting one of the niches therein; a man suddenly tapped her shoulder from behind. She then asked him if there was any niche he wanted her to clean up or paint. But the man simply told her that she has to go with him to the barangay hall. When she asked for the reason therefor, the man just told her that she has to explain something at the barangay hall. She then thought that she was being taken for carrying a "karet" at that time.[37]

At the barangay hall, appellant was asked what her name is and was then informed her that she has a case. However, she was not informed about the charge or charges against her. Appellant was then brought to an office where she was forced to urinate. When she failed to do so, she was ordered to scoop some water from the toilet bowl to which she acceded. She gave it to the person who directed her to urinate and the same was submitted as her urine sample. Appellant was detained thereafter.[38]

After a meticulous evaluation of all the documentary, as well as testimonial evidence offered by both parties, the trial court concluded that the prosecution has sufficiently proven all the elements of the offenses charged against appellant. Thus, in its Decision dated 3 October 2006, the trial court held appellant guilty beyond reasonable doubt of violating Sections 5, 11 and 12, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

WHEREFORE, in view of the foregoing, judgment is rendered as follows:

1. In Criminal Case No. 02-3170, the Court finds [appellant] LORIE VILLAHERMOSA y LECO GUILTY of the charge for violation of [Section] 5, [Article] II, [Republic Act No.] 9165 and sentences her to suffer LIFE imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) pesos;
2. In Criminal Case No. 02-3171, the Court finds [appellant] LORIE VILLAHERMOSA y LECO GUILTY of the charge for violation of [Section] 11, [Article] II, [Republic Act No.] 9165 and sentences her to suffer the indeterminate sentence of Twelve (12) years and one (1) day as minimum to Fourteen (14) years and (1) day as maximum and to pay a fine of Three Hundred Thousand (P300,000.00);
3. In Criminal Case No. 02-3172, the Court finds [appellant] LORIE VILLAHERMOSA y LECO GUILTY of the charge for violation of [Section] 12, [Article] II, [Republic Act No.] 9165 and sentences her to suffer the indeterminate sentence of Six (6) months [and] one (1) day as minimum to Four (4) years as maximum and to pay a fine of Ten Thousan (sic) (P10,000.00) pesos.

In all cases, the period during which the [appellant] was under detention shall be considered in her favor pursuant to existing rules.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the zero point zero six gram (0.06), zero point zero three (0.03), zero point fifty four (0.54), zero point zero two (0.02) gram, zero point zero five (0.05) gram, zero point zero three gram (0.03), traces and zero point zero three (0.03) gram or a combined weight of zero point seventy six gram (0.76) of Methamphetamine Hydrochloride, one (1) improvised glass tooter, five (5) strips of aluminum foil, fourteen (14) pieces of transparent plastic sachets and three (3) pieces of disposable lighters subject matter of Criminal Cases Nos. 02-3170, 02-3171, 02-3172 for said agency's appropriate disposition.[39] [Emphasis supplied].

Aggrieved, appellant appealed the aforesaid 3 October 2006 Decision of the trial court to the Court of Appeals via

Notice of Appeal.[40]

In her brief, appellant's lone assignment of error was: the trial court gravely erred in convicting the [appellant] of the crimes charged notwithstanding the failure of the prosecution to prove her guilt beyond reasonable doubt.[41]

After a thorough study of the records, the Court of Appeals rendered its assailed Decision dated 23 April 2008, affirming in toto appellant's conviction for violation of Sections 5, 11 and 12, Article II of Republic Act No. 9165. The decretal portion reads:

WHEREFORE, the Decision of the Regional Trial Court of Makati City, Branch 65 in Criminal Cases Nos. 02-3170-72, finding appellant Lorie Villahermosa y Leco, guilty beyond reasonable doubt of violation of Sections 5, 11 and 12, Article II of [Republic Act No.] 9165 is hereby AFFIRMED in toto.[42]

Appellant appealed to this Court contending that the trial court gravely erred in giving credence to the testimonies of the prosecution witnesses, i.e., as to when they received the information regarding the alleged selling of shabu inside the Manila South Cemetery and whether surveillance was conducted prior to the actual buy-bust operation against appellant, which are replete with material inconsistencies and discrepancies. As such, their testimonies should not be given any weight or credit.

Appellant further argues that the pieces of evidence obtained from her were planted and this was bolstered by the fact that when she was brought to an office she was forced to urinate or gave urine samples.

Appellant finally asserts that she was denied the right to counsel during her investigation at the barangay hall, which is in clear violation of the provisions of Republic Act No. 7438.[43]

This Court finds no merit in appellant's contentions.

Essentially, in a prosecution for illegal sale of dangerous drugs, like shabu in this case, the following elements must concur: (1) the identity of the buyer and the seller, the object and the consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[44] The commission of the offense of illegal sale of prohibited drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.[45] Thus, what is material to a prosecution for illegal sale of dangerous drugs is proof that the illicit transaction took place, coupled with the presentation in court of the corpus delicti or the illicit drug as evidence.[46] Such proof is present in this case.

Silverio, the poseur-buyer, positively identified appellant,[47] who was caught in flagrante delicto, to be the same person whom he saw and approached beside a store inside the Manila South Cemetery in Barangay Sta. Cruz, Makati City, and who later on sold to him two (2) small plastic sachets containing white crystalline substance for a consideration of P400.00. Such white crystalline substance contained inside the two (2) small plastic sachets handed to Silverio by appellant was confirmed to be methamphetamine hydrochloride or shabu per Chemistry Report No. D-599-02 dated 1 November 2002 issued by the PNP Crime Laboratory. During trial, the two (2) small plastic sachets containing white crystalline substance were presented in court, which Silverio identified to be the same object sold to him by appellant as shown by the markings found thereon representing his initials written by PO2 Tizon in his presence. Silverio also identified in court the recovered buy-bust money from appellant, which consists of four (4) pieces of P100 peso bills in the total amount of P400.00 with markings "ASSJR" on the right collar of former President Manuel A. Roxas.[48]

Furthermore, the testimony of Silverio clearly established in detail how his transaction with appellant came about commencing from the moment he approached appellant and expressed his intention of buying the goods appellant was selling, i.e., shabu, until the time appellant handed him the two (2) small plastic sachets containing white crystalline substance, which upon examination yielded positive results to the presence of methamphetamine

hydrochloride or shabu, and in exchange to that he handed appellant four (4) pieces of P100.00 peso bills marked money amounting to P400.00 that consummated the sale transaction between him and appellant.

Beyond cavil, the prosecution clearly established beyond reasonable doubt appellant's guilt for the offense of illegal sale of shabu, a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165.

In a prosecution for illegal possession of dangerous drugs, e.g., shabu, on the other hand, it must be shown that: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. These circumstances of illegal possession are obtaining in the present case.[49]

The aforesaid elements were undeniably substantiated by the prosecution. Incident to her lawful arrest resulting from the buy-bust operation, appellant was further found to have in her possession six (6) more small plastic sachets of shabu with a total weight of 0.67 gram, which were the same kind of dangerous drug she was caught selling in flagrante delicto. The said six (6) small plastic sachets of shabu were similarly presented in court, which Silverio and PO2 Tizon both identified to be the same objects recovered from appellant while she was being frisked by PO2 Tizon on the occasion of her arrest for illegally selling shabu.

In addition, the record is bereft of any evidence to show that appellant had the legal authority to possess the six (6) small plastic sachets of shabu recovered from her. 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. Hence, the burden of evidence is shifted to the accused to explain the absence of knowledge or animus possidendi.[50] In this case, appellant miserably failed to explain her absence of knowledge or animus possidendi of the shabu recovered from her.

Thus, appellant's guilt for the crime of illegal possession of shabu, a dangerous drug, in clear violation of Section 11, Article II of Republic Act No. 9165, has also been duly proven by the prosecution beyond reasonable doubt.

In the same vein, it cannot be denied that on the occasion of her arrest for having been caught in flagrante delicto selling shabu, a plastic bag was also recovered in her possession containing the following drug paraphernalia, to wit: 14 pieces of unused transparent plastic sachets, three disposable lighters, an improvised tooter and five strips of aluminum foil. Possession of the same was in clear violation of Section 12, Article II of Republic Act No. 9165.

It bears stressing that violation of Section 12, Article II of Republic Act No. 9165 was already consummated the moment appellant was found in possession of the said articles without the necessary license or prescription. What is primordial is the proof of the illegal drugs and paraphernalia recovered from the petitioner.[51]

Along with the charges against her, supported by the proof of the prosecution, all that appellant could offer was the defense of bare denial. Time and again, this Court held that the defense of denial, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act. To merit consideration, it has to be substantiated by clear and convincing evidence, which appellant failed to do.[52]

As regards appellant's contention that the testimonies of the prosecution witnesses, particularly PO2 Tizon and P/Sr. Insp. Walin, should not be given any weight or credit since their testimonies were replete with inconsistencies, this Court finds the same to be not well-founded.

The inconsistencies referred to by appellant in the testimonies of PO2 Tizon and P/Sr. Insp. Walin, were: (1) as to when they received the information regarding the alleged selling of shabu by appellant inside the Manila South

Cemetery; and (2) whether surveillance was conducted prior to the actual buy-bust operation against appellant.

PO2 Tizon testified that they received the information regarding appellant's illegal activity, i.e., selling of shabu inside the Manila South Cemetery, on 31 October 2002. P/Sr. Insp. Walin, on the other hand, stated that their office received such information three days before 31 October 2002. P/Sr. Insp. Walin likewise claimed that they conducted surveillance against appellant but, PO2 Tizon denied the same.

As the Court of Appeals had observed, the aforesaid inconsistencies are more apparent than real. Such inconsistencies are merely trivial, minor and immaterial. They refer only to irrelevant and collateral matters, which have nothing to do with the elements of the crime.[53] It has been established that where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to. Inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility.[54] More so, an inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.[55]

Moreover, there is no requirement that prior surveillance should be conducted before a buy-bust operation can be undertaken. Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation, there being no fixed or textbook method for conducting one.[56] It is enough that the elements of the crime are proven by credible witnesses and other pieces of evidence.[57]

As such, though there are inconsistencies or discrepancies in the testimonies of P/Sr. Insp. Walin and that of PO2 Tizon on the matter of when they received the information concerning appellant's illegal activity inside the Manila South Cemetery, as well as the existence of a prior surveillance on her, the same cannot affect the credibility of their testimonies since those inconsistencies have nothing to do with the elements of any of the offense charged against appellant. Despite the presence of those inconsistencies, the fact still remains that there was indeed, a consummated sale of illegal drugs, i.e., shabu, between appellant and Silverio, the poseur-buyer, for which appellant was arrested. And, on the occasion of appellant's arrest thereof, she was similarly found to have been in possession of six (6) more small plastic sachets of shabu, as well as drug paraphernalia. To reiterate, all the elements of illegal sale of shabu, illegal possession of shabu and illegal possession of drug paraphernalia had been satisfactorily proven by the prosecution. Thus, the inconsistencies pointed to by appellant cannot and will not in any way discredit the testimonies of the prosecution witnesses' above-mentioned. The same cannot cause her acquittal of the charges against her.

Besides, the rule has been settled that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify. This Court will not usually disturb said findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court. This arises from the fact that the lower courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals as in this case.[58]

Moreover, it may be noted that there is nothing on record to indicate that the prosecution witnesses harbored ill-motives against appellant. In several drug cases, this Court has consistently held that in the absence of proof to the contrary, law enforcers are presumed to have regularly performed their duty.[59]

In appellant's effort to exonerate herself from the charges against her, she similarly claimed that the pieces of evidence obtained from her were planted, bolstered by the fact that when she was brought to an office she was forced to urinate or gave urine samples. This assertion cannot be accepted.

Noticeably, appellant's testimony remained uncorroborated. She never adduced any evidence to support her self-serving allegation. Indeed, as noted by the Court of Appeals in its decision, the result of appellant's urine samples was not even considered by the trial court in determining her guilt for violation of the provisions of Republic Act No. 9165. Otherwise stated, even without her urine samples, she can still be convicted of the charges against her, i.e., illegal sale of shabu (violation of Section 5, Article II of Republic Act No. 9165), illegal possession of shabu (violation of Section 11, Article II of Republic Act No. 9165) and illegal possession of drug paraphernalia (violation of Section 12, Article II of Republic Act No. 9165). The result of appellant's urine samples is not an element of any of the offense charged against her. As such, the result of the same is not necessary for her conviction.

Appellant's final assertion that she was denied the right to counsel during her investigation at the barangay hall, which is in violation of the provisions of Republic Act No. 7438 deserves scant consideration. Here, we quote with conformity appellate court's pronouncement on this matter:

Likewise, appellant's late assertion that she was allegedly denied the right to counsel during the time when she was inside the barangay hall is not an issue in the present case. As correctly pointed by the People, no extrajudicial statement was taken from her, hence her right to counsel was not violated. The trial court relied on the testimonies of the prosecution witnesses and not on any extrajudicial statement in the determination of appellant's culpability of the charges against her.[60] [Emphasis supplied].

This Court will now determine the imposable penalties upon appellant.

Section 5, Article II of Republic Act No. 9165 explicitly provides the penalty for the illegal sale of dangerous drugs, like shabu, viz.:

SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute[,] dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. [Emphasis supplied].

It is clear from the afore-quoted provision of law that the sale of any dangerous drug, like shabu, notwithstanding its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00.[61] In light, however, of the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed.[62] Ergo, the penalty applicable to appellant shall only be life imprisonment and fine without eligibility for parole. This Court, thus, sustains the penalty of imprisonment and fine imposed upon appellant by the trial court, which later on affirmed by the Court of Appeals, in Criminal Case No. 02-3170 for illegal sale of shabu in violation of Section 5, Article II of Republic Act No. 9165.

Illegal possession of dangerous drugs, like shabu, on the other hand, is penalized under Section 11, Article II of Republic Act No. 9165, to wit:

SEC. 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) 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:

(1) x x x

(2) x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. [Emphasis supplied].

The afore-quoted provision unequivocally states that illegal possession of less than five grams of shabu, a dangerous drug, is penalized with imprisonment of 12 years and 1 day to 20 years and a fine ranging from P300,000.00 to P400,000.00.[63]

The evidence adduced by the prosecution in Criminal Case No. 02-3171 established beyond reasonable doubt that appellant, without any legal authority, had in his possession 0.67 grams of shabu or less than five grams thereof.

Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law.[64] With this, the penalty of 12 years and 1 day to 14 years and 1 day and fine of P300,000.00 imposed by the trial court and affirmed by the appellate court is proper.

The penalty for illegal possession of drug paraphernalia is provided for under Section 12, Article II of Republic Act No. 9165, thus:

SEC 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof. [Emphasis supplied].

On the basis of the foregoing provision, possession of drug paraphernalia without any authority is punishable by imprisonment ranging from 6 months and 1 day to 4 years and a fine of P10,000.00 to P50,000.00.

Again, applying the Indeterminate Sentence Law, the penalty of 6 months and 1 day to 4 years and a fine of P10,000.00 imposed upon appellant by both lower courts in Criminal Case No. 02-3172 is likewise correct.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR HC No. 02598 dated 23 April 2008 finding herein appellant guilty beyond reasonable doubt of violation of Sections 5, 11 and 12, Article II of Republic Act No. 9165 is hereby AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Peralta,[*] JJ., concur.

[*] Per Special Order No. 994, Associate Justice Diosdado M. Peralta is designated as Additional Member of the First Division in place of Associate Justice Mariano C. Del Castillo who is on official leave.

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Lucenito N. Tagle and Monina Arevalo Zenarosa, concurring. Rollo, pp. 2-13.

[2] Penned by Pairing Judge Delia H. Panganiban. CA rollo, pp. 20-31.

[3] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute[,] dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[4] SEC. 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) 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:

(1) x x x

(2) x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[5] SEC 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the

purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

[6] CA rollo, pp. 10-12.

[7] Id. at 10.

[8] Id. at 11.

[9] Id. at 12.

[10] As evidenced by a Certificate of Arraignment dated 3 December 2002. Records, p. 27.

[11] RTC Order dated 6 February 2003. Id. at 31.

[12] Testimony of PO2 Rolando L. Tizon, TSN, 1 February 2005, p. 6 and TSN, 13 April 2005, p. 26.

[13] Testimony of Amado Silverio, TSN, 11 March 2004, p. 15; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, p. 6.

[14] Testimony of PO2 Rolando L. Tizon, TSN, 1 February 2005, p. 6 and TSN, 13 April 2005, p. 26.

[15] Testimony of Amado Silverio, TSN, 3 April 2003, p. 4 and TSN, 11 March 2004, p. 14.

[16] Id. and id. at 13-15.

[17] Id. and id. at 15-17; Testimony of PO2 Rolando L. Tizon, TSN, 1 February 2005, p. 6; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, p. 12.

[18] Id. at 4-6 and id. at 15-18; Testimony of PO2 Rolando L. Tizon, id. at 7-8; Testimony of Rolando L. Tizon, TSN, 13 April 2005, p. 5; Testimony of P/Sr. Insp. Helson B. Walin, id. at 12-13.

[19] With Serial Nos. CX839476, DF 922642, DM524105 and HB182496 and have been respectively marked as Exhibits "U," "V," "W" and "X." Records, p. 125.

[20] Testimony of Amado Silverio, TSN, 3 April 2003, p. 4 and pp. 8-9; Testimony of PO2 Rolando L. Tizon, TSN, 13 April 2005, p. 11; Testimony of P/Sr. Insp. Walin. TSN, 18 January 2006, p. 14.

[21] Id. at 4-5 and 17; Id. at 4; Id. at 17-18.

[22] Id. at 5-6; Testimony Amado Silverio, TSN, 11 March 2004, p. 18; Testimony of PO2 Rolando L. Tizon, id. at 4; Testimony of P/Sr. Insp. Helson B. Walin, id. at 18-19.

[23] Testimony of Amado Silverio, TSN, 3 April 2003, pp. 5-6; Testimony of PO2 Rolando L. Tizon, id. at 5.

[24] Id. at 6-7; Testimony of Amado Silverio, TSN, 11 March 2004, p. 20; Testimony of PO2 Rolando L. Tizon, id. at 5-21; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, pp. 20-25.

[25] Testimony of Amado Silverio, id. at 7; Testimony of PO2 Rolando L. Tizon, id. at 7; Testimony of PO2 Rolando L. Tizon, TSN, 11 March 2004, pp. 4-7; Testimony of P/Sr. Insp. Helson B. Walin, id. at 25.

[26] As evidenced by an Inventory of the Property Seized Report dated 31 October 2002, which was marked as Exhibit "Z." Records, p. 127.

[27] Testimony of Amado Silverio, TSN, 11 March 2004, pp. 11-13 and 22; Testimony of PO2 Rolando L. Tizon, TSN, 13 April 2005, p. 33; Testimony of P/Sr. Insp. Helson B. Walin, 18 January 2006, p. 26.

- [28] As evidenced by Request for Drug Test dated 31 October 2002. Records, p. 20.
- [29] As evidenced by Request for Medical/Physical Examination dated 31 October 2002. Id. at 19.
- [30] As evidenced by Request for Laboratory Examination dated 31 October 2002, id. at 120; Testimony of P/Insp. Miladenia O. Tapan, TSN, 6 February 2003, p. 6.
- [31] Testimony of Amado Silverio, TSN, 3 April 2003, p. 7 and TSN, 11 March 2004, p. 10; Testimony of PO2 Rolando L. Tizon, TSN, 13 April 2005, p. 8; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, p. 31
- [32] As evidenced by Chemistry Report No. DT-341-02 dated 1 November 2002. Records, p. 124.
- [33] As evidenced by Physical Examination Report dated 1 November 2002. Id. at 129.
- [34] As evidenced by Chemistry Report No. D-599-02 dated 1 November 2002, id. at 122; Testimony of P/Insp. Miladenia O. Tapan, TSN, 6 February 2003, p. 14.
- [35] Testimony of PO2 Rolando L. Tizon, TSN, 13 April 2005, pp. 8-9; Testimony of P/Sr. Insp. Helson B. Walin, TSN, 18 January 2006, pp. 31-32.
- [36] Testimony of appellant Lorie Villahermosa, TSN, 23 August 2006, pp. 3-4 and 8.
- [37] Id. at 4-6.
- [38] Id. at 6-8.
- [39] CA rollo, pp. 30-31.
- [40] Id. at 32.
- [41] Brief for the Accused-Appellant. Id. at 39.
- [42] Rollo, p. 12.
- [43] "An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof." This was approved on 27 April 1992.
- [44] *People v. Uy*, 392 Phil. 773, 783 (2000).
- [45] *People v. Julian-Fernandez*, 423 Phil. 895, 911-912 (2001); *People v. Bandang*, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 579.
- [46] *People v. Astudillo*, 440 Phil. 203, 224 (2002); *People v. Concepcion*, 414 Phil. 247, 264 (2001); *People v. Domingcil*, 464 Phil. 342, 351 (2004).
- [47] Testimony of Amado Silverio, TSN, 3 April 2003, p. 8.
- [48] Id. at 8-10; Testimony of Amado Silverio, TSN, 11 March 2004, p. 7.
- [49] *People v. Concepcion*, supra note 46 at 255; *People v. Khor*, 366 Phil. 762, 795 (1995).
- [50] *People v. Pendatun*, 478 Phil. 201, 212 (2004).
- [51] *Arcilla v. Court of Appeals*, 463 Phil. 914, 926 (2003).
- [52] *People v. Libnao*, 443 Phil. 506, 520 (2003).

[53] *People v. Ignas*, 458 Phil. 965, 987-988 (2003).

[54] *People v. Sabardan*, G.R. No. 132135, 21 May 2004, 429 SCRA 9, 19 citing *People v. Monieva*, G.R. No. 123912, 8 June 2000, 333 SCRA 244, 252.

[55] *People v. Ignas*, *supra* note 53 at 988.

[56] *People v. Eugenio*, 443 Phil. 411, 422-423 (2003).

[57] *Id.*

[58] *People v. Campomanes*, G.R. No. 187741, 9 August 2010, 627 SCRA 494, 504.

[59] *People v. Sy Bing Yok*, 368 Phil. 326, 340 (1999).

[60] *Rollo*, p. 12.

[61] *People v. Sembrano*, G.R. No. 185848, 16 August 2010, 628 SCRA 328, 343-344 citing *People v. Serrano*, G.R. No. 179038, 6 May 2010, 620 SCRA 327, 345.

[62] *People v. Sembrano*, *id.* at 344.

[63] *Id.* at 345.

[64] *Id.*

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