

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ROGER POSADAY URBANO AND EMILY POSADAY SARMIENTO, ACCUSED.

G.R. No. 194445. March 12, 2012

Ponente: REYES, J.

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REYES, J.:

As we decide this appeal involving a couple who allegedly violated Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002, we should bear in mind the words emanating from the pen of former Justice Isagani A. Cruz:

We need only add that the active support of everyone is needed to bolster the campaign of the government against the evil of drug addiction. The merchants of all prohibited drugs, from the rich and powerful syndicates to the individual street "pushers," must be hounded relentlessly and punished to the full extent of the law, subject only to the inhibitions of the Bill of Rights.[1]

The Case

Accused-appellants Roger Posada (Roger) and Emily Posada (Emily) were convicted by the Regional Trial Court (RTC), Branch 43, Virac, Catanduanes, in Criminal Case No. 3490 for selling twelve (12) pieces of transparent sealed plastic sachet, containing Methamphetamine Hydrochloride or shabu with a total weight of 0.4578 grams, in violation of Section 5, Article II of R.A. No. 9165.[2]

Roger was also convicted by the same RTC in Criminal Case No. 3489 for possession of one piece of torn plastic sachet, containing residue of a crystalline substance (allegedly shabu), a piece of small aluminum foil, a pair of small scissors, and fifteen (15) pieces of used lighter - all of which are intended to be used for smoking or introducing dangerous drugs into the body of a person, in violation of Section 12, Article II of R.A. No. 9165.[3]

Aggrieved by the RTC Decision, the accused-appellants filed an appeal before the Court of Appeals (CA) which, via a Decision⁴ dated June 17, 2010, affirmed the RTC Decision as to the accused-appellants' conviction in Criminal Case No. 3490 but acquitted Roger in Criminal Case No. 3489 on the ground of reasonable doubt.

Now, the accused-appellants ask this Court for a complete exoneration from the offense charged in Criminal Case No. 3490 on the ground that the prosecution failed to establish the chain of custody and integrity of the seized illegal items and to prove their guilt beyond reasonable doubt.

Antecedent Facts

According to the evidence of the prosecution, P/CI Gil Francis Tria (P/CI Tria), the Chief of Police of Virac Municipal Police Station and representative of the Philippine Drug Enforcement Agency (PDEA), ordered surveillance on the activities of the accused-appellants and a certain Johnjohn Urbano (Urbano).[5] As a result of the said surveillance, POI Roldan Area (POI Area) was able to buy one sachet of shabu from Emily for P250.00 on August 2, 2005.[6]

Consequently, after the August 2, 2005 test-buy yielded positive result, P/CI Tria applied for a search warrant,

which the Honorable Jaime E. Contreras granted.[7] Thus, at noontime of August 3, 2005, P/CI Tria and his team proceeded to Barangay Concepcion and coordinated with Punong Barangay Antonio Asuncion, Jr. (Asuncion) in the operation against the accused-appellants.[8]

When the team of P/CI Tria reached the place of operation, they found Emily standing in front of her house. PO1 Area, who was the poseur-buyer, called her and when she came near him, he told her that he would buy shabu. PO1 Area then handed to Emily P250.00, consisting of two pieces of P100.00 bill and one piece of P50.00 bill. After receiving the money from PO1 Area, Emily immediately went to her house and got a coin purse. When she returned at the scene of the operation, Emily gave PO1 Area one sachet of shabu, which she got from the coin purse. Subsequently, Roger appeared and handed to Emily 12 plastic sachets of shabu which Emily placed inside the coin purse. At this point, PO1 Area identified himself as a police officer while giving the signal to his team that the buy-bust turned positive. He arrested Emily while Roger ran away and went inside their house. PO1 Area informed Emily of her constitutional rights, but the latter failed to utter any word.[9]

While PO1 Area was holding the arm of Emily, who still had in her hands the coin purse where she got the sachet of shabu and the buy-bust money, P/CI Tria took pictures of the incident using his cellphone while the official photographer was also taking pictures. After the search, a coin purse containing sachets of shabu and a bundle of money was found in Emily's possession.[10] PO1 Area then prepared a Receipt for Property Seized (RPS).[11] Asuncion, Kagawad Eva Sarmiento (Sarmiento) and a certain Robert Vargas (Vargas) witnessed the preparation of the said receipt.[12]

Meanwhile, when Roger left Emily at the scene of the buy-bust operation, he went inside his house and closed the door. Armed with the search warrant, SPO1 Salvador Aldave, Jr. (SPO1 Aldave) forced the door open. SPO1 Aldave was the first person to enter the house, followed by the barangay officials and his fellow officers, SPO1 Roger Masagca (SPO1 Masagca) and PO1 Ronnie Valeza (PO1 Valeza). The search warrant was shown to Roger. In his presence and in the presence of Kagawad Jena Arcilla (Arcilla), the raiding team recovered one piece of aluminum foil, one plastic sachet containing residue of white crystalline substance, and one small pair of green scissors beside the bed inside a room, and 15 pieces of used lighters from an improvised altar on top of a wooden table. A search of Roger's pocket yielded two pieces of P50.00 bill and one piece of P100.00 bill. SPO1 Aldave as the seizing officer prepared and signed an RPS. Asuncion, Arcilla and Barangay Tanod Juan Gonzales (Gonzales) witnessed the preparation and signing of the said RPS. Roger, however, refused to sign the same. The couple was then brought to the police station.[13]

At the Virac Police Station, a body search on Emily resulted in the seizure of bills of different denominations, totaling P2,720.00. Some of these bills were identified as those bills photocopied and submitted to the Provincial Prosecution Office.[14]

On August 4, 2005, immediately after the operation and the execution of the search warrant, P/CI Tria requested for a laboratory examination of a piece of small size heat-sealed transparent plastic sachet, containing white crystalline substance marked with initial "R"; 12 pieces of small size heat-sealed transparent plastic sachets, containing white crystalline substance with sub-markings "R-1" to "R-12"; and one small size crumpled aluminum foil and small size plastic sachet. The request of P/CI Tria for laboratory examination dated August 4, 2005 was received by a certain PO2 Abanio [Abano] and Police Inspector Sta. Cruz, J. (P/Insp. Sta. Cruz). The sachet with the initial "R" was the sachet of shabu sold to PO1 Area during the buy bust operation while the sachets of shabu marked as "R-1" to "R-12" were the sachets of shabu which Roger handed to Emily and which were found in the possession of Emily after PO1 Area identified himself as a police officer.[15]

Subsequently, witness Police Senior Inspector Josephine Macura Clemen (PSI Clemen), the forensic expert,

received personally from the receiving clerk (PO2 Abanio) the above-mentioned marked pieces of evidence. She then immediately conducted laboratory examination, yielding a result that the 12 pieces of plastic sachets (with markings "R-1" to "R-12"), the one heat-sealed transparent plastic sachet with marking "R", the one aluminum foil strip, and a small size plastic sachet contained methamphetamine hydrochloride.[16]

The accused-appellants were subsequently charged in two separate Informations,[17] both dated August 5, 2005, with violation of Sections 5, 11 and 12, Article II of R.A. No. 9165, which were respectively docketed as Criminal Case No. 3490 and Criminal Case No. 3489. The Informations state as follows:

Criminal Case No. 3490

The undersigned Provincial Prosecutor accuses Roger Posada y Urbano and Emily Posada y Sarmiento of Violation of R.A. 9165 defined and penalized under Section 5 of said Law, committed as follows:

That on or about the 3rd day of August 2005 at noontime along Imelda Blvd. in barangay Concepcion, municipality (sic) of Virac, [P]rovince of Catanduanes, Philippines and within the jurisdiction of the Honorable Court, the above-named accused without the authority of law, conspiring, confederating and helping one another, did then and there willfully, unlawfully, and feloniously sell, deliver and give away to another 12 pieces of transparent sealed plastic sachet containing Methamphetamine Hydrochloride[,] locally known as shabu[,] with a total weight of 0.9 gram [-] a prohibited drug[,] and several marked money bills.[18] [Emphasis supplied]

Criminal Case No. 3489

The undersigned Provincial Prosecutor accuses Roger Posada y Urbano of Violation of R.A. 9165 defined and penalized under Section 12 of said law, committed as follows:

That on or about the 3[rd] day of August 2005 in the afternoon in Barangay Concepcion, municipality (sic) of Virac, province (sic) of Catanduanes, Philippines, within the jurisdiction of the Honorable Court, the said accused without the authority of law did then and there willfully, unlawfully and feloniously possess and in control of one (1) piece of teared plastic sachet containing residue of a crystalline substance[,] locally known as shabu, (1) piece small aluminum foil, (1) piece small scissors (sic) and 15 pieces of used lighter[,] which paraphernalia are (sic) fit or intended for smoking or introducing any dangerous drug into the body of a person.[19]

However, the Information for Criminal Case No. 3490 was later amended,[20] to reflect a change in the weight of the seized drugs from 0.9 gram to 0.4578 gram.

Meanwhile, on the part of the accused-appellants, they simply denied the accusations against them. Roger claimed that on April 3, 2005 (which was even a misleading date since the event happened on August 3, 2005), at around 12 noon, he was putting his three year-old child to sleep inside their house, while his wife Emily was washing their clothes at his parents' house. He peeped through the window jalousies when he heard his wife calling out his name. He saw a policeman, later identified as PO1 Area, pulling Emily towards the road. Roger claimed that PO1 Valeza later poked a gun at him, preventing him to move from the window. Thereafter, the door of Roger's house was forced open, allowing SPO1 Aldave, SPO1 Masagca, PO1 Valeza and Barangay Tanod Vic Vargas (Vargas) to enter his house. Inside the house, PO1 Valeza allegedly took down the jackets hanging on the wall and searched them; SPO1 Aldave took pictures while Vargas and SPO1 Masagca went inside the room and searched the cabinets where toys were kept. Roger further claims that nothing was found in his house. After the search, Roger was brought to the patrol car where his wife Emily was taken.[21]

Meanwhile, Emily testified that on that fateful day of August 3, 2005, she was washing clothes at her mother-in-law's house when a man, whom she could not identify, approached her and asked her if she was Emily

Posada. She alleged that the man immediately held her hands, shouting "Police! Police!" after which police officers Tria and Aldave arrived. Her picture was taken. Subsequently, she was brought to the patrol car where her husband Roger later joined her. Both Roger and Emily were then transported to the police station. Roger was placed behind bars while Emily was placed at the detention cell of the Bureau of Jail Management and Penology (BJMP).[22]

The couple claimed that the police officers did not inform them why they were brought to the police station and subsequently detained. Emily

denied that a buy-bust operation was conducted against her, but she was aware of the search conducted in their house because her husband informed her at the police station. Meanwhile, Roger also denied that the police officers presented to him a search warrant. Likewise, both alleged that the money taken from Emily's wallet were the proceeds of the sale of their chickens, which Roger gave to Emily. The said money amounted to more or less P3,000.00.[23]

Issues

Considering that the accused-appellants did not file a supplemental brief and that appellee People of the Philippines adopted its brief before the CA, we now rule on the matter based on the issues[24] which the accused-appellants raised in their brief before the CA, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS NOTWITHSTANDING THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGED SEIZED ILLEGAL ITEMS.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELANTS DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[25]

Our Ruling

While we give due credence to the trial court's evaluation of the credibility of witnesses absent any showing that the elements of the crime have been overlooked, misapprehended, or misapplied, we will take pains in taking a second hard look on the issues the accused-appellants raised, considering they are husband and wife whose imprisonment will greatly affect the children they will leave behind once they are declared guilty beyond reasonable doubt.

Now, we are going to discuss the case following the issues the accused-appellants raised.

The prosecution has established the chain of custody and integrity of the seized illegal items.

The accused-appellants alleged that the prosecution failed to establish the chain of custody and integrity of the seized illegal items because:

- (1) The apprehending officers allegedly failed to submit the seized illegal items to the PNP Crime Laboratory Service for a qualitative and quantitative examination within the mandatory 24-hour period from confiscation; and
- (2) There is an alleged discrepancy as to the number of plastic sachets recovered from the accused-appellants and those submitted to forensic chemist PSI Clemen.

On the first factual issue, we find that the records of the case and the testimonies of witnesses belie the accused-appellants' contention.

Based on the records, the buy-bust operation, the arrest of the accused-appellants and the confiscation of the illegal items happened at around 12 noon of August 3, 2005.[26] PO1 Area received from Emily one sachet of shabu and after PO1 Area introduced himself and arrested Emily, 12 more sachets of shabu were found in the possession of Emily. The said 12 sachets of shabu were inside a coin purse, with a bundle of money.[27] PO1 Area prepared on the same day an RPS[28] in the presence of Asuncion, Kagawad Sarmiento and Vargas.[29] On August 4, 2005, P/CI Tria requested for a laboratory examination of a piece of small size heat-sealed transparent plastic sachet, containing white crystalline substance marked with initial "R"; 12 pieces of small size heat-sealed transparent plastic sachets, containing white crystalline substance with sub-markings "R-1" to "R-12"; and one small size crumpled aluminum foil and small size plastic sachet. The request of P/CI Tria for laboratory examination dated August 4, 2005 was received by PO2 Abanio and P/Insp. Sta. Cruz on the same date.[30]

The accused-appellants wanted us to believe that a day had lapsed before P/CI Tria submitted the illegal drugs to PNP Crime Laboratory Service, contrary to the mandate of Section 21 of R.A. No. 9165. They even cited the testimony of P/CI Tria where the latter allegedly admitted submitting the subject seized items on August 4, 2005. However, a close look at the testimony of P/CI Tria[31] will reveal that nothing in it would show that he submitted the alleged illegal drugs beyond the 24-hour reglementary period. In fact, even the Laboratory Examination Request dated August 4, 2005 does not indicate violation of Section 21 of R.A. No. 9165.[32] Clearly, from the foregoing, the accused-appellants failed to adduce any evidence to prove their contention. The age-old but familiar rule that he who alleges must prove his allegation applies[33] in this case. The accused-appellants' failure to show evidence that the police officers did not comply with Section 21 of R.A. No. 9165 gives us no other recourse but to respect the findings of trial court and of the CA.

Furthermore, the CA is correct in giving credence to the testimonies of the police officers as regards the timely submission of the subject illegal drugs since they are presumed to have regularly performed their duties, unless there is evidence suggesting ill-motive on the part of the police officers.[34] In this case, the accused-appellants failed to contradict the presumption. What goes against the accused-appellants is the fact that they have not offered any evidence of ill-motive against the police officers. Emily even admitted that she did not know PO1 Area, the poseur-buyer.[35] Considering that there was no existing relationship between the police officers and the accused-appellants, the former could not be accused of improper motive to falsely testify against the accused-appellants. In *People v. Dumangay*,[36] we upheld the findings of the lower court on the presumption of regularity in the performance of official duties because there was no proof of ill-motive. Therein, the accused-appellant's self-serving and uncorroborated defenses did not prevail over the trial court's findings on the credibility of witnesses. The same may be said in the present case.

Finding the accused-appellants' arguments without a leg to stand on, the apprehending police officers are presumed to have timely submitted the seized illegal items to the PNP Crime Laboratory Service for a qualitative and quantitative examination within the mandatory 24-hour period from confiscation.

On the second factual issue, we find the accused-appellants' claim not supported by evidence.

The accused-appellants alleged that the integrity of the seized illegal items was compromised and their evidentiary value diminished because of the alleged discrepancy between the number of plastic sachets recovered from the accused-appellants and those submitted to forensic chemist PSI Clemen. They insisted that based on the Informations in Criminal Case Nos. 3489 and 3490 and the testimonies of witnesses Asuncion[37] and SPO1 Aldave,[38] only fourteen (14) plastic sachets were recovered from the accused-appellants, while PSI Clemen

allegedly testified that a total of 15 sachets were submitted for examination.[39]

However, a review of the defense-quoted testimony of PSI Clemen would show that she received one piece of small size heat-sealed transparent plastic sachet with marking "R",[40] 12 pieces small size heat-sealed marked as "R-1" to "R-12"[41] and one small size crumpled aluminum foil and small size plastic sachet[42] — totaling to 15 items. PSI Clemen's testimony tallies with the Laboratory Examination Request (Exhibit "J") of P/CI Tria. We reproduce Exhibit "J" below, to wit:

Republic of the Philippines
NATIONAL POLICE COMMISSION
PHILIPPINE NATIONAL POLICE
Virac Municipal Police Station
Virac, Catanduanes

MEMORANDUM:

FOR

:

The Chief

PNP Crime Laboratory Service Camp Gen Simeon A Ola Legaspi City

SUBJECT

:

Laboratory Examination request for

DATE

:

04 August 2005

1. Request conduct laboratory examination on the accompanying specimen to determine whether the white crystalline granules inside Thirteen (13) pcs small size transparent heat sealed (sic) plastic sachets are Methamphetamine Hydrochloride or SHABU and also whether the one (1) pc small size crumpled aluminum foil and small size transparent plastic sachet contains residue or granules of Methamphetamine Hydrochloride or Shabu.

EXHIBIT

QUANTITY/ DESCRIPTION

"A"

One (1) pc small size heat sealed transparent plastic sachet (sic) containing white crystalline substance with marking initial "R" the initial of PO1 ROLDAN AREA who acted as posuer (sic) buyer during the drug buy bust operation.

"B"

Twelve (12) pcs small size heat sealed transparent plastic sachet containing white crystalline substance with markings R1-R12 found/confiscated from the suspect during drug buy bust operation.

"C"

One (1) small size crumpled aluminum foil and small size plastic sachet confiscated/found in the possession of suspect during the execution of search warrant number 37 issued by Hon[.] Judge Jaime E[.] Contreras of RTC Branch 43.

SUSPECT/S

Roger Posada y Urbano

Emily Posada y Sarmiento

John-John Bryan Urbano y Zafe

COMPLAINANT

Officer-in-Charge

Virac MPS

FACTS OF THE CASE: Evidence submitted for laboratory examination was bought and others were confiscated by the PNP team of Virac during Buy Bust (sic) operation and the effect/execution of search warrant number 37 on August 3, 2005 in [BJarangay Concepcion Virac, Catanduanes.

2. Request acknowledge receipt (sic) and furnish this office Laboratory examination result as soon as possible for subsequent submission/filing same in court as supporting documents to this case.

GIL FRANCIS G[.] TRIA

Po1 Chief Inspector

Officer-in-Charge[43]

Based on the cited exhibit, we find that in Exhibit "A" we have the first item, marked with "R". Under Exhibit "B", we have the next 12 items marked as "R-1" to "R-12". Under Exhibit "C", we have the remaining two items submitted to the crime laboratory, namely one small size crumpled aluminum foil and small size plastic sachet confiscated and found in the possession of Roger. All these items total to 15 items - consistent with the testimony of PSI Clemen. Thus, evidence shows no discrepancy as to the number of plastic sachets recovered from the accused-appellants and those submitted to forensic chemist PSI Clemen.

Finally, we say that the prosecution has established the chain of custody and integrity of the seized illegal items.

After PO1 Area arrested Emily and confiscated the 13 sachets of shabu (one bought by PO1 Area from Emily and 12 found in Emily's coin purse after she received the same from her husband Roger),[44] P/CI Tria took pictures of the incident using his cellphone while the official photographer was also taking pictures.[45] Then PO1 Area prepared an RPS,[46] which Asuncion, Sarmiento and Vargas witnessed.[47] Meanwhile, SPO1 Aldave, seizing officer went inside the house of the accused-appellants, prepared and signed an RPS after the raiding team found a piece of aluminum foil, one plastic sachet containing residue of white crystalline substance, one small pair of green scissors beside the bed inside a room, 15 pieces of used lighters, and two pieces of P50.00 bill and one piece of P100.00 bill. Asuncion, Arcilla and Gonzales witnessed the preparation and signing of the said RPS.[48] Thereafter, on August 4, 2005, P/CI Tria requested for a laboratory examination of a piece of small size heat-sealed transparent plastic sachet, containing white crystalline substance marked with initial "R"; 12 pieces of small size heat sealed transparent plastic sachets, containing white crystalline substance with sub-markings "R-1" to "R-12"; and one small size crumpled aluminum foil and small size plastic sachet. The request of P/CI Tria for laboratory examination dated August 4, 2005 was received by a certain PO2 Abanio and P/Insp. Sta. Cruz.[49]

Subsequently, witness PSI Clemen, the forensic expert, received personally from PO2 Abanio the above-mentioned marked pieces of evidence. She then immediately conducted a laboratory examination, yielding a result that the 12 pieces of plastic sachets (with markings "R-1" to "R-12"), the one heat-sealed transparent plastic sachet with marking "R" and the one aluminum foil strip contained methamphetamine hydrochloride.[50] In open court, the above-mentioned pieces of evidence were identified and marked.[51]

From the foregoing, the prosecution, without an iota of doubt, has established the chain of custody and integrity of the seized illegal items. The Supreme Court in *People v. Sanchez*,[52] clearly discussed how chain of custody should be proven, to wit:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[53]

In the instant case, the prosecution was able to present, not only the corpus delicti, but the testimonies of the people involved in each link in the chain of custody.

The prosecution failed to prove beyond reasonable doubt that the accused-appellants sold 12 sachets of shabu, but it has proven the accused-appellants' guilt beyond reasonable doubt of possession of the same number of shabu in violation of Section 11, Article II of R.A. No. 9165.

Before we proceed in discussing the guilt of the couple, we must first take into account a discrepancy in the Information for Criminal Case No. 3490. In the said information, the accused-appellants were charged for selling 12 pieces of transparent sealed plastic sachet of shabu. However, based on the evidence which the prosecution adduced, Emily sold to PO1 Area one sachet of shabu, which was worth P250.00. Then, after she handed the one sachet of shabu to the poseur-buyer, Emily received additional 12 sachets of shabu from her husband Roger and when PO1 Area informed the couple of the buy-bust, Emily had in her possession the 12 sachets of shabu.[54] Subsequently, the confiscated sachets of shabu were marked. The one sold to PO1 Area was marked with "R", while the 12 sachets of shabu Roger handed to Emily before their arrest were marked as "R-1" to "R-12".[55]

The unfortunate fact of this case is that rather than separately charging Emily for the sale of the one sachet of shabu and charging both Emily and Roger for possession of the 12 sachets of shabu, the public prosecutor lumped the charges together to sale of 12 sachets of shabu. This is wrong. The Information is defective for charging the accused-appellants of selling 12 sachets of shabu when, in fact, they should have been charged of selling one sachet of shabu and possessing 12 sachets of shabu. From the evidence adduced, Emily and Roger never sold the 12 sachets of shabu. They possessed them. Thus, they should have not been convicted for selling the 12 sachets of shabu. However, this was exactly what was done both by the trial court and the CA. Without basis in fact, they convicted the couple for selling the 12 sachets of shabu.

Indeed, it must be pointed out that the prosecution filed a defective Information. An Information is fatally defective when it is clear that it does

not really charge an offense[56] or when an essential element of the crime has not been sufficiently alleged.[57] In the instant case, while the prosecution was able to allege the identity of the buyer and the seller, it failed to particularly allege or identify in the Information the subject matter of the sale or the corpus delicti. We must remember that one of the essential elements to convict a person of sale of prohibited drugs is to identify with

certainty the corpus delicti. Here, the prosecution took the liberty to lump together two sets of corpora delicti when it should have separated the two in two different informations. To allow the prosecution to do this is to deprive the accused-appellants of their right to be informed, not only of the nature of the offense being charged, but of the essential element of the offense charged; and in this case, the very corpus delicti of the crime.

Furthermore, when ambiguity exists in the complaint or information, the court has no other recourse but to resolve the ambiguity in favor of the accused.[58] Here, since there exists ambiguity as to the identity of corpus delicti, an essential element of the offense charged, it follows that such ambiguity must be resolved in favor of the accused-appellants. Thus, from the foregoing discussion, we have no other choice but to acquit the accused-appellants of sale of 12 sachets of shabu.

Truly, both the trial court and the CA were wrong in convicting the couple for selling 12 sachets of shabu because the prosecution failed to show that the husband and wife had indeed sold the 12 sachets of shabu. Section 5, Article II of R.A. 9165 provides:

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 ([P]500,000.00) to Ten million pesos ([P] 10,000,000.00) 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.

More, jurisprudence holds that the prosecution for illegal sale of dangerous drugs can only be successful when the following elements are established, namely:

- (1) the identity of the buyer and the seller, the object and consideration of the sale; and
- (2) the delivery of the thing sold and the payment therefore.[59]

To our minds, while there was indeed a transaction between Emily and PO1 Area, the prosecution failed to show that the subject matter of the sale to PO1 Area was the 12 sachets of shabu. Based on the testimony of PO1 Area, the 12 sachets of shabu were the sachets of shabu which Roger handed to his wife Emily and were not sold, but which PO1 Area found in her possession after the latter identified himself as a police officer.

In *People v. Paloma*,[60] we acquitted the accused for the prosecution's failure to prove the crime of illegal sale of drugs, and we have set the standard in proving the same, to wit:

Under the "objective" test set by the Court in *People v. Doria*, the prosecution must clearly and adequately show the details of the purported sale, namely, the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, and, finally, the accused's delivery of the illegal drug to the buyer, whether the latter be the informant alone or the police officer. This proof is essential to ensure that law-abiding citizens are not unlawfully induced to commit the offense.[61]

In the instant case, PO1 Area's testimony showed no evidence that the transaction as to the sale of the 12 sachets of shabu ever happened. Rather, PO1 Area adequately testified on the fact that accused-appellant Roger handed the 12 sachets of shabu to Emily who kept them in a coin purse. And after PO1 Area identified himself as a police operative, he found the 12 sachets of shabu in Emily's possession.[62] From the foregoing, while the prosecution was able to prove the sale of one sachet of shabu, it is patently clear that it never established with moral certainty all the elements of illegal sale of the 12 sachets of shabu. And failure to show that indeed there was sale means failure to prove the guilt of the accused for illegal sale of drugs, because what matters in the prosecution for

illegal sale of dangerous drugs is to show proof that the sale actually happened, coupled with the presentation in court of corpus delicti.[63] Here, the prosecution failed to prove the existence of the sale of the 12 sachets of shabu and also to prove that the 12 sachets of shabu presented in court were truly the subject matter of the sale between the accused-appellants and PO1 Area.

Notwithstanding the above-discussion, we convict both Roger and Emily of illegal possession of prohibited drugs despite the fact that they were charged for the sale of illegal drugs, because possession is necessarily included in sale of illegal drugs.

Section 4, Rule 120 of the Rules of Court provides:

Sec. 4. Judgment in case of variance between allegation and proof. - When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Since sale of dangerous drugs necessarily includes possession of the same, the accused-appellants should be convicted of possession. We have consistently ruled that possession of prohibited or dangerous drugs is absorbed in the sale thereof.[64] Then Associate Justice Artemio Panganiban logically and clearly explained the rationale behind this ruling, to wit:

The prevailing doctrine is that possession of marijuana is absorbed in the sale thereof, except where the seller is further apprehended in possession of another quantity of the prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller.

Possession is a necessary element in a prosecution for illegal sale of prohibited drugs. It is indispensable that the prohibited drug subject of the sale be identified and presented in court. That the corpus delicti of illegal sale could not be established without a showing that the accused possessed, sold and delivered a prohibited drug clearly indicates that possession is an element of the former. The same rule is applicable in cases of delivery of prohibited drugs and giving them away to another.[65] (Citations omitted)

For prosecution of illegal possession of dangerous drugs to prosper, the following essential elements must be proven, namely: "(1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug." [66]

All these elements are obtaining and duly established in this case and we will discuss them thoroughly below, since we are not ready to altogether exonerate the couple.

On Emily's Liability

To our minds, the testimony of PO1 Area is sufficient to establish concurrence of all the elements necessary to convict Emily of violating Section 11, Article II of R.A. No. 9165. PO1 Area vividly narrated the details of the buy-bust operation. He recounted how on August 3, 2005 at around 12 noon, he acted as the poseur-buyer of shabu. He approached Emily, who was then standing in front of their house, and told her that he would like to buy shabu, and then gave her the P250.00. Emily then returned to her house and got a coin purse. Upon returning, Emily handed to PO1 Area a piece of sachet containing shabu. After receiving the sachet of shabu, PO1 Area saw Roger hand the 12 sachets of shabu to Emily who kept them in a coin purse. After paying for and receiving the sachet of shabu from Emily, PO1 Area arrested the latter and found in her possession the 12 sachets of shabu.[67] From the foregoing, it is patently clear that the prosecution established with moral certainty all the elements of illegal possession of shabu, that is: PO1 Area found in Emily's physical and actual possession the 12 sachets of shabu; such possession of the 12 sachets of shabu was not authorized; and since Emily put the 12

sachets of shabu in the purse after receiving them from her husband, she possessed the same freely and consciously.

Furthermore, POI Area's testimony was corroborated by the testimonies of the following: (a) Barangay Kagawad Sarmiento who witnessed how POI Area caught Emily doing the illegal act; (b) Barangay Captain Asuncion, Jr. who testified that he was with the raiding team when the latter conducted the buy-bust operation and that he witnessed how money changed hands; (c) P/CI Tria who witnessed the buy-bust operation and was one of the arresting officers; (d) SPO1 Aldave who executed the search warrant; and (e) Barangay Kagawad Arcilla who also accompanied the raiding team in the search of the accused-appellants' house. All these witnesses completed all the angles of the buy-bust operation and the search on Emily's person up to the finding that she possessed the 12 sachets of shabu. Indeed, considering all of the above-findings of facts, we cannot have other conclusion but to find Emily guilty beyond reasonable doubt for possession of prohibited drugs.

Indeed, every accused deserves a second look before conviction. This is the essence of the constitutional presumption of innocence. In the present case, we did not only take a second look at the facts and laws of this case because the accused-appellants are both parents. We take a third, a fourth up to a seventh look to ensure that no child will be left unattended because his parents were imprisoned based on false accusations. Thus, after reviewing this case, the bare truth is Emily was found in possession of 12 sachets of shabu on August 3, 2005.

On Roger's Liability

As to Roger, can we also convict him of possession of the same 12 sachets of shabu considering that same had been found in the possession of his wife Emily?

We resolve in the affirmative.

In *United States v. Juan*,^[68] we have clarified the meaning of the words "having possession of. We said that the said phrase included constructive possession, that is, "the relation between the owner of the drug and the drug itself when the owner is not in actual physical possession, but when it is still under his control and management and subject to his disposition."^[69] In other words, in that case, we recognized the fact that a person remains to be in possession of the prohibited drugs although he may not have or may have lost physical possession of the same.

To elucidate, we must go back to the circumstances surrounding the Juan case. A Chinaman named Lee See arrived at the Bay of Calbayog, Samar through the steamer Ton-Yek. Upon disembarking, he went to the house of therein appellant Chan Guy Juan, who was living in the town of Calbayog. Lee See and Chan Guy Juan had a lengthy conversation. Chan Guy Juan then hired a certain Isidro Cabinico (Cabinico) to go alongside of the steamer with his baroto, to carry and deliver to him a sack which appellant Chan Guy Juan alleged was sugar. Cabinico went to Lee See to get the said sack. However, on his way to the house of Chan Guy Juan, Cabinico was arrested by the local authorities. Found in his possessions were a small amount of sugar and 28 cans of opium. The opium was confiscated and separate criminal charges were instituted against the two Chinamen and Cabinico. After a thorough investigation, the provincial fiscal dismissed the case against Cabinico because he had no knowledge of the content of the sack, while the two Chinamen were eventually convicted. Chan Guy Juan appealed his conviction arguing that he did not have actual physical possession or control of the 28 cans of opium. But we held that both Chinese had constructive possession of the opium and that they were both guilty as principals.^[70]

Our ruling in Juan applies to the present case. Admittedly, the 12 sachets of shabu were found in the possession of Emily. But POI Area saw Roger hand the same 12 sachets of shabu to Emily. While Roger had lost physical possession of the said 12 sachets of shabu, he had constructive possession of the same because they remain to be

under his control and management. In the Juan case, Lee See gave the physical possession of the opium to Cabinico while Chan Guy Juan had not yet received the same opium from Lee See, but both were held guilty of illegal possession of opium. Thus, we can liken the instant case to that of Juan because while Roger had lost physical possession of the 12 sachets of shabu to Emily, he maintained constructive possession of the same.

Convicting both Emily and Roger of possession of illegal drugs deprives their children of parents. But if we have to take care of our children and the family where each of us belongs, we are obligated to put in jail all those, including fathers and mothers, who peddle illegal drugs.

Finally, we cannot let this case pass us by without emphasizing the need for the public prosecutor to properly evaluate all the pieces of evidence and file the proper information to serve the ends of justice. The public prosecutor must exert all efforts so as not to deny the People a remedy against those who sell prohibited drugs to the detriment of the community and its children. Many drug cases are dismissed because of the prosecutor's sloppy work and failure to file airtight cases. If only the prosecution properly files the Information and prosecutes the same with precision, guilty drug pushers would be punished to the extent allowed under the law, as in this case.

WHEREFORE, the Decision of the Court of Appeals dated June 17, 2010 is MODIFIED. Accused-appellants ROGER POSADA and EMILY POSADA ARE FOUND GUILTY OF ILLEGAL POSSESSION OF TWELVE (12) SACHETS OF METHAMPHETAMINE HYDROCHLORIDE OR SHABU, WITH A NET WEIGHT OF 0.4578 GRAMS AND ARE HEREBY SENTENCED TO THE INDETERMINATE PENALTY OF TWELVE (12) YEARS AND ONE (1) DAY, AS MINIMUM, TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS, AS MAXIMUM AND A FINE OF P300,000.00.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ., concur.

[1] People v. Manalansan, G.R. Nos. 76369-70, September 14, 1990, 189 SCRA 619, 624.

[2] CA rollo, pp. 45 and 51.

[3] Id.

[4] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Jose C. Reyes, Jr. and Elihu A. Ybanez, concurring; rollo, pp. 2-20.

[5] CA rollo, p. 47.

[6] Id.

[7] Id.

[8] Id.

[9] Id. at 47-48.

[10] TSN, October 31, 2006, pp. 13-14.

[11] RTC records, Criminal Case No. 3490, p. 87.

[12] TSN, October 31, 2006, pp. 9-10; TSN, May 10, 2006, pp. 12-17.

- [13] RTC records, Criminal Case No. 3490, p. 110.
- [14] CA rollo, pp. 48 and 160.
- [15] RTC records, Criminal Case No. 3490, p. 89.
- [16] Id.
- [17] RTC records, Criminal Case No. 3490, pp. 1 -2 and Criminal Case No. 3489, pp. 5-6.
- [18] Id.
- Id.
- [20] RTC records, Criminal Case No. 3490, pp. 20-21.
- [21] TSN, August 28, 2007, pp. 3-6, 10, 12-18.
- [22] TSN, August 31, 2007, pp. 3-6.
- [23] Id.
- [24] CA rollo, p. 83.
- [25] Id.
- [26] RTC records, Criminal Case No. 3490, p.3; TSN, August 31, 2007, p. 3, Criminal Case No. 3489.
- [27] RTC records, Criminal Case No. 3490, p. 6
- [28] Supra note 11.
- [29] TSN, October 31, 2006, pp. 9-10.
- [30] TSN, October 31, 2006, pp. 8-9.
- [31] Accused-appellants cited TSN, October 31, 2006, p. 8.
- [32] Supra note 15.
- [33] Evangelista v. People, G.R. No. 163267, May 5, 2010, 620 SCRA 134, 148, citing Samson v. Daway, 478 Phil. 784, 795 (2004).
- [34] People v. Unisa, G.R. No. 185721, September 28, 2011.
- [35] TSN, August 31, 2007, pp. 8-10.
- [36] G.R. No. 173483, September 23, 2008, 566 SCRA 290.
- [37] TSN, May 10, 2006, p. 13-14.
- [38] TSN, May 8, 2006, p. 7.
- [39] TSN, May 19, 2006, pp. 7-8 for Criminal Case No. 3490.
- [40] Id. at p. 8.
- [41] TSN, May 19, 2006, pp. 3 and 5-6 for Criminal Case No. 3490.
- [42] Supra note 40.

- [43] Supra note 15.
- [44] Duplicate TSN, July 19, 2006, pp. 10-13, 22-24.
- [45] TSN, October 31, 2006, pp. 13-14.
- [46] Supra note 11.
- [47] TSN, October 31, 2006, pp. 9-10; TSN, May 10, 2006, pp. 12-17.
- [48] Supra note 13.
- [49] Supra note 15.
- [50] Id.
- [51] Duplicate TSN, July 19, 2006, pp. 11-12, 15, 17; TSN, May 19, 2006, pp. 3-9.
- [52] GR.No. 175832, October 15, 2008, 569 SCRA 194, 216.
- [53] Id. at 216, citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.
- [54] Supra note 44.
- [55] Supra note 15.
- [56] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 723 (2003).
- [57] *People v. Galido*, G.R. Nos. 148689-92, March 30, 2004, 426 SCRA 502.
- [58] *People v. Ng Pek*, 81 Phil. 562, 565 (1948).
- [59] Supra note 34; *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 361-362.
- [60] G.R. No. 178544, February 23, 2011.
- [61] Id.
- [62] Duplicate TSN, July 19, 2006, pp. 7-12.
- [63] Please see *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 362; *People v. Dumangay*, G.R. No. 173483, September 23, 2008, 566 SCRA 290, 298.
- [64] *People v. Lacerna*, 344 Phil. 100, 121 (1997); *People v. Tabar*, G.R. No. 101124, May 17, 1993, 222 SCRA 144, 152.
- [65] Id. at 120.
- [66] *People v. Dela Cruz*, G.R. No. 182348, November 20, 2008, 571 SCRA 469, 474-475.
- [67] Supra note 9.
- [68] Phil. 105(1912).
- [69] Id. at p. 107.
- [70] Id. at pp. 106-107.

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