Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 199735**
	Present:
- versus -	VELASCO, JR., *J.*, Chairperson, BERSAMIN,* ABAD, VILLARAMA,** and MENDOZA, *JJ.*
AISA MUSA y PINASILO, ARA MONONGAN y PAPAO, FAISAH ABAS y MAMA, and MIKE SOLALO y MLOK, Accused-Appellants.	Promulgated: 24 October 2012

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DECISION

VELASCO, JR., *J.*:

This is an appeal seeking to nullify the February 28, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03758, which affirmed the October 7, 2008 Decision[2] in Criminal Case No. 13536-D of the Regional Trial Court (RTC), Branch 163 in Taguig City. The RTC convicted accused-appellants of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002* for selling dangerous drugs.

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* Designated additional member per Special Order No. 1328 dated October 9, 2012.

** Designated acting member per Special Order No. 1299-H dated August 28, 2012.

[1] Penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Manuel M. Barrios.

[2] Penned by Judge Leili Cruz Suarez.

The Facts

An Information charged the accused Aisa Musa y Pinasilo (Musa), Ara Monongan y Papao, Faisah Abas y Mama (Abas), and Mike Solano y Mlok (Solano) with the following:

> That, on or about the 1st day of June, 2004 in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another and acting as an organized or syndicated crime group, without being authorized by law, did, then and there willfully, unlawfully and knowingly sell and give away to one PO1 Rey Memoracion one (1) heat sealed transparent plastic sachet containing 4.05 grams of white crystalline substance, which was found positive for Methamphetamine hydrochloride also known as "shabu", a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.[3]

Version of the Prosecution

The prosecution's version of facts was anchored heavily on the testimony of Police Officer 1 Rey Memoracion (PO1 Memoracion). From the findings of the trial and appellate courts, We synthesize his testimony, as follows:

On June 1, 2004, at or about 9:00 p.m., the Station Anti-Illegal Drugs-Special Operating Task Force of the Taguig City Police received a report from an informant about the selling of prohibited drugs by Musa and her cohorts at Maharlika Village, Taguig City. The police immediately organized a buy-bust operation which included PO1 Danilo Arago (PO1 Arago) and PO1 Memoracion as team members. The police agreed that PO1 Memoracion was the designated poseur-buyer; that five one-thousand peso (PhP 1000) bills with Memoracion's initials were to be used as marked money; and that Memoracion's lighting of the cigarette was the pre-arranged signal to signify the consummation of the transaction. The buy-bust team

[3] *Rollo*, p. 5; records, p. 1.

submitted a pre-operation report to the Philippine Drug Enforcement Agency and entered it in the police blotter. Thereafter, the buy-bust team, along with the informant, proceeded to a nearby shopping mall (Sunshine Mall) where the police had arranged PO1 Memoracion and the informant to meet with the alleged drug dealers.

The buy-bust team arrived at the mall at around 9:45 p.m. The informant and Memoracion alighted from the vehicle while the rest of the buy-bust team waited at the parking lot. The informant then introduced Memoracion, as a potential buyer, to Abas and Solano. PO1 Memoracion then told Abas and Solano that he wanted to score *shabu* worth five-thousand pesos (PhP 5,000) but the two replied that they do not have available stocks on hand. Abas and Solano offered to accompany PO1 Memoracion to Musa who was at a nearby condominium unit at Building II, Maharlika Village. Memoracion agreed and pretended to go to the comfort room in order to inform PO1 Arago regarding the change of venue. PO1 Memoracion also changed the pre-arranged signal from lighting a cigarette to a phone ring or "missed call" and asked the rest of the buy-bust team to follow them.

Thereafter, the informant, Memoracion, Abas and Solano boarded a tricycle to Musa's place. They arrived at the condominium at around 10:30 in the evening and went to the 4th floor of the building while the rest of the buy-bust team remained at the ground floor while waiting for Memoracions's call. The four met Musa at the hallway outside Unit 403. Abas introduced Memoracion to Musa as the buyer. Musa then ordered Ara Monongan (Monongan) to count the money. Afterwards, Musa took from her pocket one (1) heat sealed plastic sachet of *shabu* and gave it to PO1 Memoracion. The latter immediately made the call to PO1 Arago who, together with two (2) other police officers,[4] proceeded right away to PO1

[4] PO1 Alexander Saez and PO3 Edgar Orias, records, p. 120; TSN, May 20, 2005, pp. 31-32, 37.

Memoracion's location, which was about 15 meters away from the ground floor.[5]

Upon seeing accused-appellants, the police officers made the arrest. PO1 Arago confiscated from Monongan the marked money of five PhP 1000 bills with Memoracion's initials. PO1 Memoracion, on the other hand, marked the seized sachet of shabu with "APM" or the initials of accused Aisa Pinasilo Musa. He then delivered the confiscated item to the Philippine National Police (PNP) Crime Laboratory, Fort Bonifacio, Taguig City and requested an examination of the substance. The PNP Crime Lab Report showed that the indicated substance weighing 4.05 grams tested positive for *shabu*.[6]

The prosecution likewise presented PO1 Arago, who stood as PO1 Memoracion's back-up during the buy-bust operation,[7] to corroborate the foregoing version of events.

Version of the Defense

In defense, each of accused-appellants denied the accusations against them and submitted their respective alibis, as follows:

> Accused Aiza Musa claimed that on June 1, 2004, she and her husband, Bakar Musa, went to their friend Sonny Sagayno's house, located at Unit 512, Building 2, Maharlika Village, Taguig City, to discuss [their] forthcoming travel to Saudi Arabia and that while they were inside Sonny's house, two police officers barged into the house, while their companions stood outside, and searched for prohibited drugs, but found no shabu. Aside from saying that Ara [Monongan] was her neighbor, [she] denied knowing [her] and Faisah [Abas] that well.
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> Accused Ara Monongan averred that from the morning up to 12:00 noon of June 1, 2004, she was with her aunt Habiba's house at Unit 403, Building 2, Maharlika Village, Taguig City, washing clothes and looking over her aunt's children; that at about 12:00 noon of the same day, a visitor, whose name was Norma, arrived and that at around 1:00 o'clock in the afternoon, Sonny [Sagayno], Faisah [Abas] and the latter's textmate,

[5] TSN, May 28, 2007, p. 9.
[6] *Rollo*, pp. 3-5; CA *rollo*, p. 17; TSN, May 28, 2007.
[7] Records, pp. 90-140; TSN, May 20, 2005.

Angie, arrived; that at about 3:00 or 4:00 o'clock in the afternoon, policemen in civilian clothes barged into the house, searched for illegal drugs, but found none, and arrested her; that she went to stay in her aunt's place only for a vacation; and that it was the first time she saw Faisah and Angie. She testified that Aiza was her neighbor but disclaimed knowing her; that she was 17 years old at the time of the complained incident; and that her real name was Ara Nonongan and not Ara Monongan.

Accused Mike Solano alleged that on June 1, 2004 at around 11:00 o'clock in the morning, his cousin Faisah [Abas] requested him to accompany to Sunshine Mall to meet her textmate, Angie; that while Faisah waited for Angie, Mike went to the 2nd floor of the mall for window shopping; that Angie arrived together with two pregnant women but left at 12:00 o'clock noon to go to a condominium in Maharlika Village; that after he and the two pregnant women had eaten in Jollibee, a big man sat beside him, introduced himself as a policeman and ordered him to come with him peacefully and to just explain in his office. He claimed not knowing Aiza [Musa] and Ara [Monongan] and that he saw them for the first time only when they boarded in the same vehicle.

And, finally, accused Faisah Abas claimed that on that particular day, she and her cousin Mike [Solano] proceeded to Sunshine Mall to meet Angie; that she accompanied Angie to Building 2 of Maharlika Village where they met Angie's cousin, Sonny [Sagayno], at the 5th floor and that they all proceeded to the 4th floor; that when they were inside Sonny's house, she saw Ara [Monongan], another female person and three children; that after they had eaten their lunch, she heard a gunshot and discovered that Sonny was not there anymore; that shortly thereafter, three persons in civilian clothes barged into the house, introduced themselves as policemen, poked a gun at her and frightened and handcuffed her; that two of the operatives went inside the room and ransacked some of Ara's belongings; that the policemen accused her of selling illegal drugs; that no shabu was found in her possession.[8]

Ruling of the RTC

The RTC found all the accused guilty as charged, to wit:

WHEREFORE, accused Aiza *Musa* y Pinasilo, Faisah *Abas* y Mama and Mike *Solano* y Mlok, are found GUILTY beyond reasonable doubt of the crime of Violation of Section 5, 1st paragraph Article II, RA 9165 in relation to Article 62, 2nd paragraph of the Revised Penal Code and are sentenced to suffer the penalty of life imprisonment and a fine of Ten Million Pesos (PhP 10, 000, 000.00) and to pay the costs.

Accused Ara *Monongan* y Papao is likewise found GUILTY beyond reasonable doubt of the crime charged and, there being no mitigating or aggravating circumstance, is sentenced to suffer the indeterminate penalty of from fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as minimum, to sixteen (16) years of reclusion temporal, as maximum, and to pay a fine of PhP 500, 000.00 and

[8] CA *rollo*, p. 18.

> to pay the costs. The period of preventive suspension is credited in her favor.[9]

The RTC gave credence to the testimony of PO1 Memoracion. It found his testimony as "candid, straightforward, firm, unwavering, nay credible," since it was not shown that PO1 Memoracion was "ill-motivated in testifying as he did in Court against all accused."[10] On the other hand, the RTC rejected accused-appellants' defenses of alibi and denial because they failed to present clear and convincing evidence to establish that it was impossible for them to be at the *locus criminis* at the time of the buy-bust operation.[11]

As regards the penalty imposed, the RTC declared each of the accused liable as principal because it found the presence of conspiracy among all four accused.[12] Citing Article 62 of the Revised Penal Code,[13] it likewise imposed the maximum penalty of life imprisonment and a fine of PhP 10 million because of its finding that the offense was committed by an organized/syndicated crime group. However, it reduced the penalty imposed against Monongan because she was a minor at the time of the commission of the offense.

Ruling of the CA

On appeal, all of the accused assailed their conviction and faulted the RTC in finding them guilty beyond reasonable doubt for the sale of dangerous drugs. In their Brief, accused-appellants raised doubts on the credibility of the testimonies of the prosecution witnesses, and questioned the ruling of RTC for rejecting their alibis. They also averred that the prosecution failed to establish the *corpus delicti* of the offense and that the

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[9] CA *rollo*, pp. 19-20; 57-58.
[10] Id. at 19, 57.
[11] Id.
[12] Id.
[13] REVISED PENAL CODE, Art. 62. x x x The *maximum penalty* shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.
An **organized/syndicated crime group** means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime. (Emphasis supplied.)

chain of custody rule under RA 9165 was not complied with since no physical inventory and photograph of the seized items were taken in their presence or in the presence of their counsel, a representative from the media and the Department of Justice and an elective official. Furthermore, they refuted the findings of the RTC that conspiracy existed among them, and that they were members of an organized/ syndicated crime group.[14]

Notwithstanding, the CA affirmed the findings of the RTC but modified the penalty imposed on Monongan, to wit:

> WHEREFORE, the appealed Decision dated October 7, 2008 of the trial is affirmed, with modification that the penalty meted upon accused-appellant Ara Monongan is life imprisonment and fine of P10,000,000, but the case is hereby remanded to trial court for appropriate disposition under Section 51, RA No. 9344 with respect to said accused – appellant.
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> The Decision is affirmed in all other respects.[15]

The CA ruled that the RTC erred in reducing the penalty of *reclusion temporal* in favor of Monongan. It reasoned that the penalty of life imprisonment as provided in RA 9165 cannot be lowered because **only** the penalties provided in the Revised Penal Code, and not in special laws, may be lowered by one or two degrees.[16]

The Issues

I

Whether the Court of Appeals erred in affirming the credibility of the testimonies of the prosecution witnesses?

II

Whether the Court of Appeals erred in upholding the ruling of the RTC in rejecting accused-appellants denials and alibis?

III

Whether the Court of Appeals erred in ruling that there was compliance with the chain of custody rule as required by RA 9165?

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[14] *Rollo*, p. 7.
[15] Id. at 34.
[16] Id. at 33.

IV

Whether the Court of Appeals erred in imposing the maximum penalty of life imprisonment and a fine of ten million pesos (Php 10,000,000) against ALL of the accused?

The Ruling of this Court

We sustain the conviction of accused-appellants.

In determining the guilt of the accused for the sale of dangerous drugs, the prosecution is obliged to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. There must be proof that the transaction or sale actually took place and that the *corpus delicti* be presented in court as evidence.[17]

In finding the existence of these elements, the trial and appellate courts in the present case upheld the credibility of the testimony of PO1 Memoracion, as supported by the testimony of PO1 Arago. In this regard, We find no sufficient reason to interfere with the findings of the RTC on the credibility of the prosecution witnesses pursuant to the principle that the trial court's assessment of the credibility of a witness is entitled to great weight and sometimes, even with finality.[18] Where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, the Court will not disturb the trial court's assessment of the facts and the credibility of the witnesses since the RTC was in a better position to assess and weigh the evidence presented during trial.[19] The rationale behind this principle was explained by the Court in *People v. Dinglasan*,[20] to wit:

> In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. **The judge a quo was in a better position to pass judgment on the credibility of witnesses, having personally heard**

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[17] *People v. Pascua*, G.R. 194580, August 31, 2011.
[18] *People v. Bautista*, G.R. No. 191266, June 6, 2011.
[19] Id.; citing *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797.
[20] G.R. No. 101312, January 28, 1997, 267 SCRA 26, 39.

> **them when they testified and observed their deportment and manner of testifying. It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect, because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth**. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case. (Emphasis supplied.)

Moreover, the factual findings of the RTC are strengthened by an affirmatory ruling of the CA. Settled is the rule that the factual findings of the appellate court sustaining those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[21] Absent any indication that the courts *a quo* committed misinterpretation of antecedents or grave abuse of discretion, the facts as established by the trial and appellate courts deserve full weight and credit, and are deemed conclusive.[22]

As regards accused-appellants' denial and claim of frame-up, the trial and appellate courts correctly ruled that these defenses cannot stand unless the defense could show with clear and convincing evidence that the members of the buy-bust team were inspired with ill motives or that they were not properly performing their duties. The defenses of denial and frame-up are invariably viewed with disfavor because such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs.[23] Here, in the absence of evidence showing ill motives on the part of the members of the buy-bust team, accused-appellants' denials and plea of frame-up deserve scant consideration in light of the positive identification made by PO1 Memoracion and PO1 Arago.

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[21] *Asiatico v. People*, G.R. No. 195005, September 12, 2011; citing *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011 and *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-709.

[22] *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187 and *People v. Combate*, supra note 19.

[23] *People v. Andres*, G.R. No. 193184, February 7, 2011.

Similarly, accused-appellants' alibis failed to fortify their claim of innocence because, while they insist on their own version of events, they failed to demonstrate compliance with the requisites of the defense of alibi. In *People v. Apattad*,[24] the Court reiterated the jurisprudential rules and precepts in assessing the defense of alibi:

> *One*, alibis and denials are generally disfavored by the courts for being weak. *Two*, they cannot prevail over the positive identification of the accused as the perpetrators of the crime. *Three*, for alibi to prosper, the accused must prove not only that they were somewhere else when the crime was committed, but also that it was physically impossible for them to be at the scene of the crime at the time of its commission. *Fourth*, alibi assumes significance or strength only when it is amply corroborated by credible and disinterested witnesses. *Fifth*, alibi is an issue of fact that hinges on the credibility of witnesses, and the assessment made by the trial court — unless patently and clearly inconsistent — must be accepted.

It is clear, therefore, that in order for the defense of alibi to prosper, the accused should demonstrate, by clear and convincing evidence, that he or she **was somewhere else** when the buy-bust operation was conducted, and that it was **physically impossible** for him or her to be present at the scene of the crime either **before**, **during**, or **after** the offense was committed.[25] It is on this thrust that the alibis made by accused-appellants failed to convince since all of them admitted that they were within the vicinity of Building 2, Maharlika Village, Taguig City, which, apparently, was the *locus criminis* of the offense. Furthermore, considering that alibi as evidence is negative in nature and self-serving, it cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence.[26]

Anent the third issue, accused-appellants demand their acquittal on the ground that the chain of custody rule under Section 21 of RA 9165 or the *Comprehensive Dangerous Drugs Act of 2002* was not complied with. The said section states:

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[24] G.R. No. 193188, August 10, 2011; citing *People v. Estoya*, G.R. No. 153538, May 19, 2004, 428 SCRA 544.

[25] *People v. Sancholes*, G.R. Nos. 110999 & 111000, April 18, 1997 citing *People vs. Baniaga*, et al., G.R. No. L-14905, January 28, 1961, 1 SCRA 283; See also Herrera, Oscar M., Remedial Law, Book VI, Revised Rules on Evidence, 1999 ed. p. 378 citing *Arceno v. People*, G.R. No. 116098, April 26, 1996;

[26] *People vs. Apattad*, supra note 24.

> Section 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.

Corollarily, the law's Implementing Rules and Regulations provides:

> SECTION 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:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (Emphasis supplied.)

At this juncture, We reiterate that the essence of the chain of custody rule is to ensure that the dangerous drug presented in court as evidence against the accused is the same dangerous drug recovered from his or her possession.[27] As explained in *Castro v. People*:[28]

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[27] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.
[28] G.R. No. 193379, August 15, 2011.

> As a **mode of authenticating evidence**, the chain of custody rule requires that the presentation and admission of the seized prohibited drug as an exhibit be preceded by evidence to support a finding that the matter in question is what the proponent clams it to be. **This requirement is essential to obviate the possibility of substitution as well as to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements and custody of the seized prohibited item, from the accused, to the police, to the forensic laboratory for examination, and to its presentation in evidence in court**. Ideally, the custodial chain would include testimony about every link in the chain or movements of the illegal drug, from the moment of seizure until it is finally adduced in evidence. **It cannot be overemphasized, however, that a testimony about a perfect chain is almost always impossible to obtain.** (Emphasis supplied.)

Since the "perfect chain" is almost always impossible to obtain, non-compliance with Sec. 21 of RA 9165, as stated in the Implementing Rules and Regulations, does not, without more, automatically render the seizure of the dangerous drug void, and evidence is admissible as long as the **integrity** and **evidentiary** value of the seized items are properly preserved by the apprehending officer/team.[29]

In the present case, accused-appellants insist on the police officer's non-compliance with the chain of custody rule since there was "no physical inventory and photograph of the seized items were taken in their presence or in the presence of their counsel, a representative from the media and the Department of Justice and an elective official."

We, however, find these observations insignificant since a review of the evidence on record shows that the chain of custody rule has been sufficiently observed by the apprehending officers. Thru the testimonies of the PO1 Memoracion and PO1 Arago, the prosecution was able to prove that the *shabu* seized from Musa was the very same *shabu* presented in evidence as part of the *corpus delicti*. The factual findings of the CA, affirming those of the RTC, are elucidating:

> Here, the testimonial and documentary evidence presented by the prosecution showed that the integrity and evidentiary value of the "shabu"

[29] *People v. Pambid*, G.R. No. 192237, January 26, 2011; *People v. De Mesa*, G.R. No. 188570, July 6, 2010, 624 SCRA 248; and *People v. Mariacos*, G.R. No. 188611, June 21, 2010, 621 SCRA 327.

was preserved. Contrary to the accused-appellants allegations, ***the shabu specimen presented in court by the prosecution was the same item received from accused-appellant Aiza Musa by PO1 Memoracion.*** The *buy-bust operation was conducted about 10:30 in the evening* of June 1, 2004. Immediately thereafter, **PO1 Memoracion marked the seized sachet of shabu with his initials "APM"** at the masking tape, and the ***accused-appellants were turned over to the police station for investigation*.** At *1:55H of June 2, 2004*, **PO1 Memoracion delivered to the PNP Crime Laboratory Service, SPD Fort Bonifacio, Taguig, a Request for Laboratory Examination dated June 2, 2004, together with the sachet of shabu seized form accused-appellant Aiza Musa.** Stamped on the right portion of the Request for Examination shows the time and *date of delivery at "01:55H 02 June 04", "RECEIVED BY: Nup Bacayan" and "DELIVERED BY: PO1 Memoracion."* Thus:

> e) Evidence Submitted
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> One (1) transparent plastic sachet (heat sealed) containing white crystalline substance suspected to be Methylamphetamine Hydrochloride or shabu marked "APM". (item purchased from Aiza Musa)

At *0300H 02 June 2004*, the *PNP Crime Laboratory* Southern Police District Crime Laboratory, Fort A. Bonifacio, Taguig Metro Manila **issued Physical Science Report No. D-439-04S stating that the heat salad plastic sachet with markings "APM" containing 4.05 grams of crystalline substance yielded positive for shabu.**

Also it bears stressing that during the hearing on May 28, 2007, **accused-appellants, thru their counsel, stipulated on the testimony of the forensic chemist, Police Inspector Richard Allan Manganib, with respect to his forensic examination of the subject sachet of shabu.** Clearly, ***the integrity of the sachet of "shabu" was duly preserved as it was duly marked by PO1 Rey Memoracion and it was the very same item transmitted to and examined by the PNP Crime Laboratory***.[30] (Emphasis supplied.)

It is likewise significant to note that a similar conclusion was reached in *People v. Presas*[31] where the Court disposed, as follows:

> In this case, the **failure on the part of the MADAC operatives to take photographs and make an inventory of the drugs seized from the appellant was not fatal because the prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs.** The concurrence of all elements of the illegal sale of shabu was proven by the prosecution. The chain of custody did not appear to be broken. The recovery and handling of the seized drugs were satisfactorily established. Fariñas was able to **put the necessary markings on the plastic sachet of shabu bought from appellant immediately after the consummation of the drug sale.** This was **done in the presence of appellant and the other operatives**, **and while in the crime scene**. **The seized items were then**

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[30] *Rollo*, pp. 23-24.
[31] G.R. No. 182525, March 2, 2011.

> **brought to the PNP Crime Laboratory for examination on the same day.** Both **prosecution witnesses were able to identify and explain said markings in court.** (Emphasis supplied.)

Hence, the fact that the PO1 Memoracion and PO1 Arago did not make an inventory of the seized items or that they did not take photographs of them is not fatal considering that the prosecution in this case was able to establish, with moral certainty, that the identity, integrity, and evidentiary value of the *shabu* was not jeopardized from the time of its seizure until the time it was presented in court.

Furthermore, We find enlightenment in *People v. Vicente, Jr.*:[32]

> **Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.** Oft-repeated is the rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, **credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.** Absent any indication that the police officers were ill-motivated in testifying against the accused, full credence should be given to their testimonies.[33] (Emphasis supplied.)

As stated, the records are bereft of any showing that PO1 Memoracion and PO1 Arago were ill motivated in testifying against accused-appellants. Neither was there any indication that they were in bad faith nor had digressed from their ordinary tour of duty. There is, therefore, no cogent basis to taint their testimonies with disbelief. Hence, We submit to the presumption that both of them and the other police officers involved in the buy-bust operation had performed faithfully the matters with which they are charged, and that they acted within the sphere of their authority. *Omnia praesumumtur rite esse acta* (All things are presumed to have been done regularly).

In view of the foregoing considerations, the Court finds no reversible error on the part of the RTC and CA in finding accused-appellants guilty

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[32] G.R. No. 188847, January 31, 2011.

[33] Citing *People v. Tamayo*, G.R. No. 187070, February 24, 2010, 613 SCRA 556, 564; *People v. Villamin*, G.R. No. 175590, February 9, 2010, 612 SCRA 91, 106; and *People v. Gum-Oyen*, G.R. No. 182231, April 16, 2009, 585 SCRA 668, 678.

beyond reasonable doubt of violating of Sec. 5, RA 9165 for selling dangerous drugs.

Notwithstanding, We rule that the penalty imposed against the accused-appellants must be modified.

With reference to accused-appellant Monongan, the RTC found her to be a minor or 17 years old at the time of the commission of the offense.[34] Accordingly, it imposed the indeterminate penalty of imprisonment of fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as minimum, to sixteen (16) years of *reclusion temporal*, as maximum.[35] On appeal, the CA increased the penalty of Monongan to life imprisonment.[36]

However, We find these impositions contrary to prevailing jurisprudence. In the recent *People v. Mantalaba*,[37] where the accused was likewise 17 years old at the time of the commission of the offense, the Court held, *inter alia*, that: (a) pursuant to Sec. 98 of RA 9165, the penalty for acts punishable by life imprisonment to death provided in the same law shall be *reclusion perpetua* to death when the offender is a minor; and (b) that the penalty should be graduated since the said provision adopted the technical nomenclature of penalties provided for in the Revised Penal Code.[38] The Court in the said case established the rules as follows:

> Consequently, the privileged mitigating circumstance of minority can now be appreciated in fixing the penalty that should be imposed. The RTC, as affirmed by the CA, imposed the penalty of reclusion perpetua without considering the minority of the appellant. Thus, applying the rules stated above, the **proper penalty should be one degree lower than reclusion perpetua, which is reclusion temporal,** the privileged mitigating circumstance of minority having been appreciated. Necessarily, also applying the Indeterminate Sentence Law (ISLAW), **the minimum penalty should be taken from the penalty next lower in degree which is prision mayor** and **the maximum penalty shall be taken from the medium period of reclusion temporal, there being no other mitigating circumstance nor aggravating circumstance.** The **ISLAW is applicable**

[34] CA *rollo*, pp. 19-20; 57-58.
[35] Id. at 20, 58.
[36] *Rollo*, p. 34.
[37] G.R. No. 186227, July 20, 2011, 654 SCRA 188.
[38] Adopting the principle in *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555.

> in the present case because *the penalty which has been originally an indivisible penalty (reclusion perpetua to death), where ISLAW is inapplicable, became a divisible penalty (reclusion temporal) by virtue of the presence of the privileged mitigating circumstance of minority.* Therefore, **a penalty of six (6) years and one (1) day of prision mayor, as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, would be the proper imposable penalty.** (Emphasis supplied.)

Therefore, the penalty of imprisonment imposed against Monongan should mirror the ruling of the Court in *Mantalaba* in the absence of any mitigating circumstance or aggravating circumstance other than the minority of Monongan. Consequently, the penalty of imprisonment imposed on Monongan should be six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

As regards the fine imposed, the RTC sentenced accused-appellants the maximum fine of PhP 10 million on the ground that accused-appellants sold *shabu* as members of an organized crime group[39] or a **drug syndicate**. It ruled that Article 62 of the Revised Penal Code, as amended by Sec. 23 of RA 7659, mandates that the maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.[40] These findings were eventually affirmed by CA.[41]

The records, however, are bereft of any proof that accused-appellants operated as members of a drug syndicate. By definition, a drug syndicate is any organized group of two (2) or more persons forming or joining together with the intention of committing any offense prescribed under RA 9165.[42] In determining whether or not the offense was committed by any person belonging to an organized/syndicated crime group, We are guided by the ruling in *People v. Alberca*[43] where the Court, after scrutinizing the

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[39] CA *rollo*, pp. 19, 57.
[40] Id.
[41] *Rollo*, p. 34.
[42] RA 9165, Sec. 3(o).
[43] 327 Phil. 398 (1996).

deliberations held by Congress on what is now Art. 62, paragraph 1(a) of the Revised Penal Code, held:

> We hold that the trial court erred in finding that accused-appellant and his companions constituted a syndicated or an organized crime group within the meaning of Article 62, as amended. **While it is true they confederated and mutually helped one another for the purpose of gain, there is no proof that they were a group organized for the general purpose of committing crimes for gain, which is the essence of a syndicated or organized crime group.**
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> x x x x
>
> What emerges from this discussion is the idea of **a group of persons; at least two in number, which is organized for the purpose of committing crimes for gain**." (Emphasis supplied.)

Applying this principle in *Alberca*, the Court held in *People v. Santiago*:[44]

> Article 62 of the Revised Penal Code, as amended by Section 23 of Republic Act No. 7659, mandates that the maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group. The same article defines an organized/syndicated crime group as a group of two or more persons collaborating, confederating, or mutually helping one another for the purposes of gain in the commission of any crime.
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> x x x x
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> **While the existence of conspiracy among appellants in selling shabu was duly established, there was no proof that appellants were a group organized for the general purpose of committing crimes for gain, which is the essence of the aggravating circumstance of organized/syndicated group under Article 62 of the Revised Penal Code.** (Emphasis supplied.)

We find the present case similar to *Santiago*. The existence of conspiracy among accused-appellants in selling *shabu* was duly established, but the prosecution failed to provide proof that they operated as an organized group or as a drug syndicate. Consequently, the aggravating circumstance that "the offense was committed by an organized/syndicated group" cannot be appreciated. Thus, the maximum PhP 10 million imposed by the trial and appellate courts upon each of accused-appellants should be modified accordingly.

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[44] G.R. No. 175326, November 28, 2007, 539 SCRA 198.

This is in consonance with the dictum in Criminal Law that the existence of aggravating circumstances must be based on positive and conclusive proof, and not merely on hypothetical facts no matter how truthful the suppositions and presumptions may seem.[45] Aggravating circumstances which are taken into consideration for the purpose of increasing the degree of the penalty imposed must be proved with equal certainty as the commission of the act charged as criminal offense.[46]

Incidentally, a survey of recent jurisprudence[47] shows that the Court has consistently imposed a fine of five hundred thousand pesos (PhP 500,000) for violation of Sec. 5, Art. II, RA 9165 in the absence of any aggravating circumstance.

WHEREFORE, the February 28, 2011 CA Decision in CA-G.R. CR-H.C. No. 03758 finding accused-appellants guilty of violating Sec. 5, Art. II of RA 9165 is hereby **AFFIRMED** with **MODIFICATIONS** that: **(a)** accused-appellant Ara Monongan y Papao is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum; and **(b)** each of the accused-appellants shall pay a fine in the amount of five hundred thousand pesos (PhP 500,000).

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

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[45] *People v. Mongado*, No. L-24877, June 30, 1969, 28 SCRA 642.
[46] *People v. Rabanal*, G.R. No. 146687, August 22, 2002, 387 SCRA 685.
[47] *People v. Nicart*, G.R. No. 182059, July 4, 2012; *People v. Abedin*, G.R. No. 179936, April 11, 2012; *People v. Cardenas*, G.R. No. 190342, March 21, 2012; *People v. Bautista*, G.R. No. 177320, February 22, 2012; *People v. Arriola*, G.R. No. 187736, February 8, 2012; *People v. Ulama*, G.R. No. 186530, December 14, 2011; *People v. Amansec*, G.R. No. 186131, December 14, 2011; *People v. Buenaventura*, G.R. No. 184807, November 23, 2011; *People v. Legaspi*, G.R. No. 173485, November 23, 2011; *People v. Bara*, G.R. No. 184808, November 14, 2011.

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

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

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice