



**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,**

**G.R. No. 196966**

**Present:**

**SERENO, CJ.,  
Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.**

**- versus -**

**MICHAEL MAONGCO y  
YUMONDA and PHANS BANDALI  
y SIMPAL,  
Accused-Appellants.**

**Promulgated:**

**OCT 23 2013**

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**DECISION**

**LEONARDO-DE CASTRO, J.:**

On appeal is the Decision<sup>1</sup> dated September 6, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03505, which affirmed *in toto* the Decision<sup>2</sup> dated June 11, 2008 of the Regional Trial Court (RTC), Branch 82, Quezon City, in Criminal Case Nos. Q-04-127731-32, finding accused-appellants Michael Y. Maongco (Maongco) and Phans S. Bandali (Bandali) guilty beyond reasonable doubt of violating Article II, Section 5 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

Accused-appellants were separately charged for illegally dispensing, delivering, transporting, distributing, or acting as brokers of dangerous drugs under the following amended Informations:

<sup>1</sup> *Rollo*, pp. 2-21; penned by Associate Justice Ruben C. Ayson with Associate Justices Amelita G. Tolentino and Normandie B. Pizarro, concurring.

<sup>2</sup> Records, pp. 173-180; penned by Presiding Judge Severino B. de Castro, Jr.

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**[Criminal Case No. Q-04-127731]**

The undersigned accuses MICHAEL MAONGCO y YUMONDA for Violation of Section 5, Article II, R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002), committed as follows:

That on or about the 19<sup>th</sup> day of June, 2004 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully dispense, deliver, transport, distribute or act as broker in the said transaction, four point fifty (4.50) grams of Methylamphetamine hydrochloride, a dangerous drug.<sup>3</sup>

**[Criminal Case No. Q-04-127732]**

The undersigned accuses PHANS BANDALI y SIMPAL for Violation of Section 5, Article II, R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002), committed as follows:

That on or about the 19<sup>th</sup> day of June, 2004 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there wilfully and unlawfully dispense, deliver, transport, distribute or act as broker in the said transaction, four point forty[-]five (4.45) grams of Methylamphetamine hydrochloride, a dangerous drug.<sup>4</sup>

When arraigned on September 13, 2004, both accused-appellants pleaded not guilty.<sup>5</sup>

During trial, the prosecution presented the testimonies of Police Officer (PO) 1 Dominador Arugay (Arugay)<sup>6</sup> and PO2 Vener Ong (Ong),<sup>7</sup> who arrested accused-appellants. The testimonies of Police Inspector (P/Insp.) Erickson Calabocal (Calabocal),<sup>8</sup> the forensic chemist, and Senior Police Officer (SPO) 1 Adonis Sugui (Sugui),<sup>9</sup> the post investigating officer, were dispensed with after the defense agreed to a stipulation of the substance of the two witnesses' testimonies, but with the qualification that said witnesses had no personal knowledge of the circumstances surrounding accused-appellants' arrest and the source of the plastic sachets of *shabu*.

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<sup>3</sup> Id. at 108-111.

<sup>4</sup> Id. at 112-115.

<sup>5</sup> Id. at 23-24.

<sup>6</sup> TSN, February 1, 2006.

<sup>7</sup> TSN, May 3, 2006.

<sup>8</sup> Records, p. 41.

<sup>9</sup> Id. at 96.

The object and documentary evidence of the prosecution, all admitted by the RTC,<sup>10</sup> consisted of the Request for Laboratory Examination;<sup>11</sup> an Improvised Envelope containing the plastic sachets of suspected methamphetamine hydrochloride, more popularly known as *shabu*;<sup>12</sup> P/Insp. Calabocal's Chemistry Report No. D-360-04;<sup>13</sup> P/Insp. Calabocal's Certification<sup>14</sup> stating that the contents of the plastic sachets tested positive for methamphetamine hydrochloride; PO1 Arugay's *Sinumpaang Salaysay*;<sup>15</sup> PO2 Ong's *Sinumpaang Salaysay*;<sup>16</sup> and the Referral of the case to the Prosecutor's Office of Quezon City.<sup>17</sup>

The prosecution's evidence presented the following version of the events leading to accused-appellants' arrests.

Based on a tip from a confidential informant, the Station Anti-Illegal Drugs of the Navotas City Police conducted a special operation on June 18, 2004, which resulted in the arrest of a certain Alvin Carpio (Carpio) for illegal possession of dangerous drugs and seizure from Carpio's possession of 15 heat-sealed plastic sachets containing *shabu*. When questioned by the police, Carpio admitted that the *shabu* came from accused-appellant Maongco. Consequently, the police planned an operation to apprehend accused-appellant Maongco and formed a team for this purpose, composed of PO1 Arugay, PO2 Ong, PO2 Geoffrey Huertas (Huertas), and PO1 Jesus del Fierro (Del Fierro).

On June 19, 2004, after coordination with the Philippine Drug Enforcement Agency (PDEA), the police team was briefed about the operation. The police team allowed Carpio to talk to accused-appellant Maongco on the cellphone to arrange for a sale transaction of *shabu*. At around 10:30 in the morning, the police team, accompanied and guided by Carpio, proceeded to the vicinity of Quezon corner Roces Avenues in Quezon City frequented by accused-appellant Maongco. PO1 Arugay, PO2 Ong, and Carpio rode a taxi, while PO1 Del Fierro and PO2 Huertas followed in an owner-type jeep. Carpio spotted accused-appellant Maongco at a waiting shed and pointed out the latter to the police. PO2 Arugay alighted from the taxi and approached accused-appellant Maongco. PO2 Arugay introduced himself to accused-appellant Maongco as Carpio's cousin, and claimed that Carpio was sick and could not be there personally. PO2 Arugay then asked from accused-appellant Maongco for Carpio's order

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<sup>10</sup> Id. at 121.

<sup>11</sup> Id. at 191; Exh. A.

<sup>12</sup> Id. at 196; Exh. B and submarkings.

<sup>13</sup> Id. at 192; Exh. C and submarkings.

<sup>14</sup> Id. at 193; Exh. D and submarkings.

<sup>15</sup> Id. at 12; Exh. E and submarkings.

<sup>16</sup> Id. at 195; Exh. G and submarkings.

<sup>17</sup> Id. at 11; Exh. F.

of “*dalawang bulto*.” Accused-appellant Maongco drew out from his pocket a sachet of *shabu* and showed it to PO2 Arugay. When PO2 Arugay got hold of the sachet of *shabu*, he immediately revealed that he was a police officer, arrested accused-appellant Maongco, and apprised the latter of his constitutional rights.

When the police team questioned accused-appellant Maongco as to the other “*bulto*” of *shabu* Carpio had ordered, accused-appellant disclosed that the same was in the possession of accused-appellant Bandali, who was then at Jollibee Pantranco branch along Quezon Avenue. The police team, with Carpio and accused-appellant Maongco, went to the said restaurant where accused-appellant Maongco identified accused-appellant Bandali to the police team as the one wearing a blue shirt. PO2 Ong approached accused-appellant Bandali and demanded from the latter the other half of the drugs ordered. Accused-appellant Bandali voluntarily handed over a sachet of *shabu* to PO2 Ong. Thereafter, PO2 Ong apprised accused-appellant Bandali of his constitutional rights and arrested him.

The police team first brought accused-appellants to the East Avenue Medical Center for medical examination to prove that accused-appellants sustained no physical injuries during their apprehension. Afterwards, the police team brought accused-appellants to the police station in Navotas City. At the police station, PO1 Arugay marked the sachet of *shabu* from accused-appellant Maongco with the initials “MMY,” while PO2 Ong marked the sachet of *shabu* from accused-appellant Bandali with the initials “PBS.” PO1 Arugay and PO2 Ong turned over the two sachets of *shabu* to the custody of PO1 Del Fierro and SPO1 Sugui. The sachets of *shabu* were then inventoried, photographed in the presence of accused-appellants, and submitted for laboratory examination.

P/Insp. Calabocal received the sachets of *shabu* for chemical analysis. P/Insp. Calabocal’s examination revealed that the contents of the sachets marked “MMY” and “PBS” weighed 4.50 grams and 4.45 grams, respectively, and both tested positive for methamphetamine hydrochloride.

When the defense’s turn to present evidence came, the accused-appellants took the witness stand.<sup>18</sup> Accused-appellants asserted that they did not know each other prior to their arrests and they were illegally arrested, extorted for money, physically beaten, and framed-up by the police.

On June 11, 2008, the RTC promulgated its Decision finding accused-appellants guilty beyond reasonable doubt of illegally selling *shabu*, penalized under Article II, Section 5 of Republic Act No. 9165, to wit:

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<sup>18</sup>

TSN, December 12, 2007 and June 2, 2008.

**WHEREFORE**, premises considered, judgment is hereby rendered finding accused **MICHAEL MAONGCO y YUMONDA**, accused in Ciminal Case No. Q-04-127731 and **PHANS BANDALI y SIMPAL**, accused in Ciminal Case No. Q-04-127732, both **guilty** beyond reasonable doubt of violations of Section 5, Article II of R.A. No. 9165. Accordingly, they are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and each to pay a fine in the amount of **Five Hundred Thousand (₱500,000.00) Pesos**.<sup>19</sup>

Accused-appellants appealed to the Court of Appeals. In their Brief,<sup>20</sup> accused-appellants imputed the following errors on the part of the RTC:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE SHABU ALLEGEDLY SEIZED.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT[S] DESPITE THE FAILURE TO COMPLY WITH THE "OBJECTIVE TEST" IN BUY-BUST OPERATIONS.

III

THE TRIAL COURT ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY THE POLICE OFFICERS DESPITE THE PATENT IRREGULARITIES IN THE BUY-BUST OPERATION.

IV

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT[S] DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.<sup>21</sup>

Plaintiff-appellee countered in its Brief<sup>22</sup> that:

I.

THE COURT A *QUO* PROPERLY ADMITTED THE SHABU IN EVIDENCE.

II.

THERE WAS A LEGITIMATE "BUY-BUST" OPERATION IN THE CASE AT BAR WHICH RESULTED IN THE LAWFUL ARREST, PROSECUTION AND CONVICTION OF APPELLANTS.

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<sup>19</sup> Records, p. 180.

<sup>20</sup> CA *rollo*, pp. 41-61.

<sup>21</sup> Id. at 43-44.

<sup>22</sup> Id. at 83-124.

## III.

THE COURT A *QUO* PROPERLY FOUND APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.<sup>23</sup>

In its Decision dated September 6, 2010, the Court of Appeals found no palpable error in the judgment of conviction rendered by the RTC against accused-appellants and rejected accused-appellants' argument that the prosecution failed to establish the factual details constituting the essential elements of an illegal sale of dangerous drugs. According to the appellate court, Article II, Section 5 of Republic Act No. 9165 penalizes not only those who sell dangerous drugs, but also those who "trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug," without being authorized by law. In this case, the prosecution was able to prove with moral certainty that accused-appellants were caught in the act of illegally delivering, giving away to another, or distributing sachets of *shabu*. In the end, the Court of Appeals decreed:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed decision of the Regional Trial Court of Quezon City, Branch 82 dated June 11, 2008 convicting appellants for violation of Section 5, Article II of Republic Act No. 9165 is hereby **AFFIRMED**. No costs.<sup>24</sup>

Hence, this appeal.

Since accused-appellants had opted not to file any supplemental briefs, the Court considers the same issues and arguments raised by accused-appellants before the Court of Appeals.

Accused-appellants stress that for a judgment of conviction for the illegal sale of dangerous drugs, the identities of the buyer and seller, the delivery of the drugs, and the payment in consideration thereof, must all be duly proven. However, accused-appellants lament that in their case, the prosecution failed to establish by evidence these essential elements of the alleged sale of *shabu*. Accused-appellants add that the prosecution was also unable to show that the integrity and evidentiary value of the seized *shabu* had been preserved in accordance with Section 21(a) of the Implementing Rules of Republic Act No. 9165. Accused-appellants point out that PO1 Arugay did not mention the time and place of the marking of the sachet of *shabu* purportedly sold to him by accused-appellant Maongco; while PO2 Ong admitted that he marked the sachet of *shabu* he received from accused-appellant Bandali only at the police station. Both PO1 Arugay and PO2 Ong merely provided an obscure account of the marking of the sachets of *shabu*,

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<sup>23</sup> Id. at 92-93.

<sup>24</sup> *Rollo*, p. 21.

falling short of the statutory requirement that the marking of the seized drugs be made immediately after seizure and confiscation.

The appeal is partly meritorious.

In the case of accused-appellant Maongco, the Court finds that the RTC and the Court of Appeals both erred in convicting him in **Criminal Case No. Q-04-127731** for the **illegal sale of *shabu*** under Article II, Section 5 of Republic Act No. 9165. The evidence on record does not support accused-appellant Maongco's conviction for said crime, especially considering the following answers of prosecution witness PO1 Arugay during the latter's cross-examination, practically admitting the lack of consideration/payment for the sachet of *shabu*:

Q. What did you tell Michael Maongco?

A. I introduced myself as the cousin of Alvin, sir.

Q. After that, you immediately arrested him?

A. Yes, sir. I first asked my order [of] *shabu*.

Q. In your affidavit, you testified that you asked one "bulto" of *shabu*?

A. More or less five grams of *shabu*, sir.

**Q. Did the accused ask any in exchange of that *shabu*?**

**A. No, sir.**

Q. Immediately, you arrested him already?

A. After I got my order from him, I introduced myself as policeman, sir.

COURT:

Who gave you that one "bulto" of *shabu*?

**A. I have the money but he did not ask it from me, your Honor.**

**Q. Was there any arrangement between you and Maongco as to how much this one "bulto" cost?**

**A. Alvin and Maongco were the ones who talked.**

x x x x

Q. Meaning to say, it was Maongco and Alvin who talked in Quezon Avenue?

A. They talked over the cellphone.

x x x x

**Q. But you did not hear the conversation?**

**A. No, sir.**<sup>25</sup> (Emphases supplied.)

Inarguably, consideration/payment is one of the essential elements of illegal sale of dangerous drugs, without which, accused-appellant Maongco's conviction for said crime cannot stand.

Nonetheless, accused-appellant Maongco is still not absolved of criminal liability.

A review of the Information in Criminal Case No. Q-04-127731 readily reveals that accused-appellant Maongco was not actually charged with illegal sale of *shabu*. Said Information specifically alleged that accused-appellant Maongco "willfully and unlawfully dispense[d], deliver[ed], transport[ed], distribute[d] or act[ed] as broker" in the transaction involving 4.50 grams of *shabu*. These acts are likewise punishable under Article II, Section 5 of Republic Act No. 9165.

Article II, Section 5 of Republic Act No. 9165 provides:

SECTION 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 (₱500,000.00) to Ten million pesos (₱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. (Emphasis supplied.)

Several of the acts enumerated in the foregoing provision have been explicitly defined under Article I, Section 3 of the same statute, *viz*:

Section 3. *Definitions.* As used in this Act, the following terms shall mean:

(a) *Administer.* – Any act of introducing any dangerous drug into the body of any person, with or without his/her knowledge, by injection, inhalation, ingestion or other means, or of committing any act of indispensable assistance to a person in administering a dangerous drug to himself/herself unless administered by a duly licensed practitioner for purposes of medication.

X X X X

<sup>25</sup>

TSN, February 1, 2006, pp. 13-14.



**(k) *Deliver.* – Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.**

X X X X

**(m) *Dispense.* – Any act of giving away, selling or distributing medicine or any dangerous drug with or without the use of prescription.**

X X X X

**(ii) *Sell.* – Any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.**

**(jj) *Trading.* – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act. (Emphasis supplied.)**

As for the illegal delivery of dangerous drugs, it must be proven that (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Worthy of note is that the delivery may be committed even without consideration.

It is not disputed that accused-appellant Maongco, who was working as a taxi driver at the time of his arrest,<sup>26</sup> had no authority under the law to deliver any dangerous drug. The existence of the two other elements was established by PO1 Arugay's testimony that provided the following details:

FISCAL ANTERO:

Q. Why did you arrest this certain Alvin?

A. For violation of R.A. 9165, sir.

Q. What happened when you arrested this alias Alvin?

A. We investigated on where the shabu he was selling came from.

Q. What was the result of your inquiry as to the source of the shabu?

A. We learned that the source came from a certain Michael, sir.

Q. When you found out that the source came from a certain Michael, what did you do, Mr. Witness?

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<sup>26</sup>

TSN, December 12, 2007, pp. 12-14.

- A. We formed a team and we made a Pre-Operation Report, sir.
- Q. Aside from mentioning about the source as Michael, what are the other details?
- A. No more, sir. On June 19, 2004 at about 10:30 a.m., our group was dispatched in Quezon [Avenue] corner Roces Avenue.

x x x x

- Q. What happened when you arrived in that area?
- A. We went to the place where Michael is always staying and when he arrived he was pointed by Alvin, sir.
- Q. **What did you do when Alvin pointed to Michael?**
- A. **I pretended to be the cousin of Alvin who was going to get the order.**
- Q. **What happened when you approached this Michael?**
- A. **I asked from him my order of “dalawang bulto” and he asked me who am I and I told him that I am the cousin of Alvin and that Alvin cannot come because he was sick, sir.**
- Q. **What happened after you said that?**
- A. **I asked from him my order and then he took something out from his pocket and he showed it to me. It was a *shabu*, sir.**
- Q. What happened next?
- A. After I got the order we arrested Michael, sir.

x x x x

ATTY. BARTOLOME:

- Q. What was Maongco doing at that time?
- A. He was staying in a waiting shed along Quezon Avenue, sir.
- Q. What was he doing there?
- A. He was waiting for somebody, sir.
- Q. Immediately you approached Maongco?
- A. He was pointed by Alvin, sir. I alighted from the taxi.
- Q. What was his reaction when you approached him?
- A. He was a bit surprise[d], sir.
- Q. What did you tell Michael Maongco?
- A. I introduced myself as the cousin of Alvin, sir.
- Q. **After that, you immediately arrested him?**
- A. **Yes, sir. I first asked my order my *shabu*.**

**Q. In your Affidavit, you testified that you asked one “bulto” of shabu?**

**A. More or less five grams of shabu, sir.**<sup>27</sup> (Emphases supplied.)

There was a prior arrangement between Carpio and accused-appellant Maongco. When PO1 Arugay appeared for his purportedly indisposed cousin, Carpio, and asked for his order of *shabu*, accused-appellant Maongco immediately understood what PO1 Arugay meant. Accused-appellant Maongco took out a sachet of *shabu* from his pocket and handed over possession of said sachet to PO1 Arugay.

Based on the charges against accused-appellant Maongco and the evidence presented by the prosecution, accused-appellant Maongco is guilty beyond reasonable doubt of **illegal delivery of *shabu*** under Article II, Section 5 of Republic Act No. 9165.

For the same reasons cited in the preceding paragraphs, the RTC and the Court of Appeals also erred in convicting accused-appellant Bandali for the crime of **illegal sale of *shabu*** in **Criminal Case No. Q-04-127732**.

The Information against accused-appellant Bandali, same as that against accused-appellant Maongco, charged him with “willfully and unlawfully dispens[ing], deliver[ing], transport[ing], distribut[ing] or act[ing] as broker” in the transaction involving 4.45 grams of *shabu*. However, unlike accused-appellant Maongco, accused-appellant Bandali cannot be convicted for illegal delivery of *shabu* under Article II, Section 5 of Republic Act No. 9165, given that the circumstances surrounding the arrest of the latter were radically different from those of the former.

PO2 Ong testified:

**Q. How did this Arugay arrest this Michael?**

**A. I was only a back-up of Arugay, sir.**

**Q. What did you see, if any?**

**A. I saw that he recovered one (1) heat-sealed transparent plastic sachet, sir.**

**Q. He recovered it from whom?**

**A. From Michael Maongco, sir.**

x x x x

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<sup>27</sup> TSN, February 1, 2006, pp. 4-5, 12-13.

- Q. What happened when this man was arrested by Arugay?  
A. We looked for the other “bulto” because according to Michael there were two and it was in the possession of Phans, sir.

THE COURT:

- Q. Where did you look for him?  
A. At Jollibee, Pantranco, your Honor.

x x x x

- Q. Did you find him in Jollibee?  
A. Yes, your Honor, because according to Michael Maongco he was wearing blue T-shirt.

- Q. What did you do when you found him at Jollibee?**  
**A. I went near him and asked him to put out the other shabu in his possession, your Honor.**

- Q. You yourself?  
A. My companions were just there, your Honor.

- Q. You yourself approached him?  
A. Yes, your Honor.

- Q. When you demanded the production of what?**  
**A. One (1) bulto of *shabu*, your Honor.**

PROS. ANTERO:

- Q. Why do you know that he was Bandali?  
A. Because Michael Maongco was pointing to him that he was Phans Bandali, sir.

- Q. Was Michael with you when you went to that Jollibee?  
A. Yes, sir.

- Q. What happened when you demanded from Bandali this shabu?**  
**A. He voluntarily put out the shabu, sir.**

- Q. What happened next, Mr. Witness?  
A. I told him of his violation and his rights, sir.<sup>28</sup>

PO2 Ong further confirmed during his cross-examination:

- Q. Now, Mr. Witness, you mentioned a while ago that you arrested Phans Bandali inside Jollibee, Pantranco. Is that correct?  
A. Yes, sir.

Q. And you did not buy from him a shabu, Mr. Witness?

A. No, sir.

Q. You just demanded from him a plastic sachet?

A. Yes, sir.<sup>29</sup> (Emphases supplied.)

In accused-appellant Bandali's case, it cannot be said that he knowingly passed on the sachet of *shabu* in his possession to PO2 Ong. PO2 Ong approached accused-appellant Bandali as a police officer, absent any pretense, and demanded that the latter bring out the other sachet of *shabu*. Accused-appellant Bandali's voluntary production of the sachet of *shabu* in his possession was in subservience to PO2 Ong's authority. PO2 Ong then acquired the sachet of *shabu* from accused-appellant Bandali by seizure, not by delivery. Even if there may be doubt as to whether or not accused-appellant Bandali was actually aware at that moment that PO2 Ong was a police officer, the ambiguity would still be resolved in accused-appellant Bandali's favor.

This does not mean though that accused-appellant Bandali goes scot-free. The evidence for the prosecution did establish that accused-appellant Bandali committed **illegal possession of dangerous drugs**, penalized under Article II, Section 11 of Republic Act No. 9165.

For the 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.<sup>30</sup> Accused-appellant Maongco informed the police officers that the other sachet of *shabu* was in the possession of accused-appellant Bandali. Accused-appellant Bandali herein was in possession of the sachet of *shabu* as he was sitting at Jollibee Pantranco branch and was approached by PO2 Ong. Hence, accused-appellant Bandali was able to immediately produce and surrender the said sachet upon demand by PO2 Ong. Accused-appellant Bandali, admittedly jobless at the time of his arrest,<sup>31</sup> did not have any authority to possess *shabu*. And as to the last element, the rule is settled that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession.<sup>32</sup>

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<sup>29</sup> Id. at 13.

<sup>30</sup> *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 326.

<sup>31</sup> TSN, June 2, 2008, p. 5.

<sup>32</sup> *People v. Unisa*, supra note 30 at 327.

But can accused-appellant Bandali be convicted for illegal possession of dangerous drugs under Article II, Section 11 of Republic Act No. 9165 when he was charged with illegal dispensation, delivery, transportation, distribution or acting as broker of dangerous drugs under Article II, Section 5 of the same statute? The Court answers in the affirmative.

Rule 120, Section 4 of the Rules of Court governs situations where there is a variance between the crime charged and the crime proved, to wit:

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.

Well-settled in jurisprudence that the crime of illegal sale of dangerous drugs necessarily includes the crime of illegal possession of dangerous drugs.<sup>33</sup> The same ruling may also be applied to the other acts penalized under Article II, Section 5 of Republic Act No. 9165 because for the accused to be able to trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drug, he must necessarily be in possession of said drugs.

At the outset of the trial, both parties had admitted the laboratory results showing that the contents of the two sachets tested positive for *shabu*, although accused-appellants contest the identity and integrity of the sachets and contents actually tested since the chain of custody of the same was not satisfactorily established in accordance with Republic Act No. 9165 and its implementing rules.

The Court disagrees with accused-appellants as the police officers had substantially complied with the chain of custody rule under Section 21(a) of the Implementing Rules of Republic Act No. 9165. The Court had previously held that in dangerous drugs cases, the failure of the police officers to make a physical inventory, to photograph, and to mark the seized drugs at the place of arrest do not render said drugs inadmissible in evidence or automatically impair the integrity of the chain of custody of the same.<sup>34</sup> The Court had further clarified, in relation to the requirement of marking the drugs “immediately after seizure and confiscation,” that the marking may be undertaken at the police station rather than at the place of arrest for as long

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<sup>33</sup> *People v. Posada*, G.R. No. 194445, March 12, 2012, 667 SCRA 790, 812.

<sup>34</sup> *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 834-835.

as it is done in the presence of the accused and that what is of utmost importance is the preservation of its integrity and evidentiary value.<sup>35</sup>

The Court finds no fault on the part of both the RTC and the Court of Appeals in giving more weight and credence to the testimonies of the police officers vis-à-vis those of the accused-appellants. Questions as to the credibility of witnesses are matters best left to the appreciation of the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the reviewing tribunal.<sup>36</sup>

Moreover, accused-appellants' uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the *corpus delicti*. The testimonies of police officers who caught the accused-appellants *in flagrante delicto* are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence,<sup>37</sup> which accused-appellants failed to present in this case.

Lastly, the Court determines the proper penalties to be imposed upon accused-appellants.

Under Article II, Section 5 of Republic Act No. 9165, the penalties for the illegal delivery of dangerous drugs, regardless of the quantity thereof, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Hence, accused-appellant Maongco, for his illegal delivery of *shabu* in Criminal Case No. Q-04-127731, is sentenced to life imprisonment and ordered to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

Article II, Section 11 of Republic Act No. 9165 prescribes the penalty, for possession of less than five grams of dangerous drugs, of imprisonment of twelve (12) years and one (1) day to twenty (20) years, plus a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). Applying the Indeterminate Sentence Law, the maximum term shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term as prescribed by the same

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<sup>35</sup> *People v. Resurreccion*, G.R. No. 186380, October 12, 2009, 603 SCRA 510, 518-519.

<sup>36</sup> *People v. Go*, 406 Phil. 804, 815 (2001).

<sup>37</sup> *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

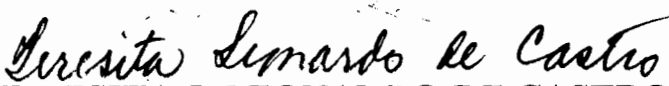
law. Resultantly, accused-appellant Bandali, for his illegal possession of 4.45 grams of *shabu* in Criminal Case No. Q-04-127732, is sentenced to imprisonment of twelve (12) years and one (1) day, as the minimum term, to twenty (20) years, as the maximum term, and ordered to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

**WHEREFORE**, the appealed Decision is **AFFIRMED with MODIFICATIONS**, to read as follows:

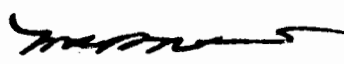
1. In Criminal Case No. Q-04-127731, accused-appellant **MICHAEL YUMONDA MAONGCO** is found **GUILTY** beyond reasonable doubt of illegal delivery of *shabu* penalized under Article II, Section 5 of Republic Act No. 9165, and is sentenced to **LIFE IMPRISONMENT** and ordered to pay a **FINE** of Five Hundred Thousand Pesos (₱500,000.00); and

2. In Criminal Case No. Q-04-127732, accused-appellant **PHANS SIMPAL BANDALI** is found **GUILTY** beyond reasonable doubt of illegal possession of *shabu* with a net weight of 4.45 grams, penalized under Article II, Section 11 of Republic Act No. 9165, and is sentenced to suffer the penalty of **IMPRISONMENT** of twelve (12) years and one (1) day, as the minimum term, to twenty (20) years, as the maximum term, and ordered to pay a **FINE** of Four Hundred Thousand Pesos (₱400,000.00).

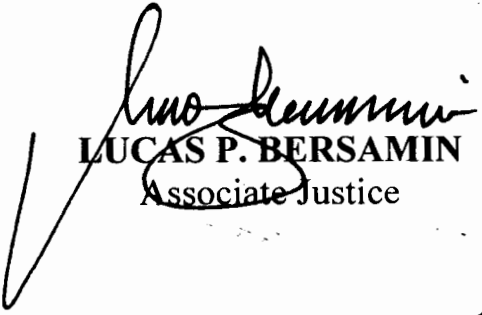
**SO ORDERED.**

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson





**LUCAS P. BERSAMIN**  
Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

#### **CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**  
Chief Justice