



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 206229

Present:

- versus -

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ and
PERLAS-BERNABE, *JJ.*

AMY DASIGAN y OLIVA,
Accused-Appellant.

Promulgated:

FEB 04 2015

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DECISION



PEREZ, J.:


Before the Court is a notice of appeal assailing the Decision dated 23 July 2012 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04845,¹ which affirmed the Decision dated 7 January 2011 of the Regional Trial Court (RTC), La Trinidad, Benguet, Branch 8 in Criminal Case Nos. 07²-CR-6702 and 07³-CR-6703,⁴ finding accused-appellant Amy Dasigan y Oliva (accused-appellant) guilty beyond reasonable doubt of illegal possession and illegal sale of *shabu* under Sections 11 (3) and 5, Article II of Republic Act No. 9165 (R.A. No. 9165) or the *Comprehensive Dangerous Drugs Act of 2002*.

¹ *Rollo*, pp. 2-17; Penned by Associate Justice Mario V. Lopez with Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting concurring.

² Sometimes Criminal Case No. 05-CR-6702 in the RTC Decision.

³ Sometimes Criminal Case No. 05-CR-6703 in the RTC Decision.

⁴ *CA rollo*, pp. 14-25; Penned by Presiding Judge Marybelle L. Demot Mariñas.



In Criminal Case No. 07-CR-6702, the accused-appellant was charged with violation of Sec. 11 (3), Art. II of R.A. No. 9165, as follows:

That on or about the 9th day of December 2006, at Bayabas, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly have in her possession, control and custody a total of 0.28 grams (sic) of Methamphetamine Hydrochloride also known as “shabu”, a dangerous drug, in violation of the said law.⁵

In Criminal Case No. 07-CR-6703, on the other hand, the accused-appellant was charged with violation of Sec. 5, Art. II of R.A. No. 9165, to wit:

That on or about the 9th day of December, 2006, at Barangay Bayabyas, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority by law, did then and there willfully, unlawfully and knowingly deliver and sell to PO2 ARIELTINO G. CORPUZ, a member of the Philippine Drug Enforcement Agency who acted as a poseur-buyer, 0.15 grams (sic) of Methamphetamine Hydrochloride also known as “shabu”, a dangerous drug, in violation of the said law.⁶

Upon arraignment, accused-appellant, assisted by counsel, pleaded not guilty to both of the charges.⁷ Trial on the merits followed, and the two cases were heard jointly.

As comprehensively summarized by the RTC, the version of the prosecution is as follows:

On December 5, 2006, at the Philippine Drug Enforcement Agency (PDEA) office, Melvin Jones Grandstand, Harrison Road, Baguio City, a male confidential informant reported to Police Chief Inspector Luisito Meris that a certain alias “Amy” is engaged in delivering Methamphetamine Hydrochloride, also known as “Shabu” within the vicinity of the La Trinidad Trading Post at Km. 5, La Trinidad, Benguet. Those present at the office were PO2 Arieltino Corpuz, SPO2 Cabily Agbayani and SPO1 Bernardo Ventura and they all heard this piece of information. PCI Meris relayed the information to the PDEA Regional Director, Col. Inmodias and the latter formed a team tasked to conduct the

⁵ Records, Vol. II, p. 1; Information in Criminal Case No. 07-CR-6702.

⁶ Id., Vol. I, p. 1; Information in Criminal Case No. 07-CR-6703.

⁷ Id. at 15; Order dated 19 February 2007.

operation against alias “Amy” and cause her eventual arrest. PCI Meris was designated Team Leader and PO2 Corpuz, SPO2 Agbayani and SPO1 Ventura were tasked as arresting officers.

The team leader, PCI Meris then directed PO2 Corpuz and the confidential informant to conduct surveillance within the vicinity of the La Trinidad Trading Post at Km. 5, La Trinidad, Benguet and look in to the activities of alias “Amy”.

Thus, the following day, December 6, 2006, PO2 Corpuz and the confidential informant met at 4:00 o’clock in the morning within the premises of the Benguet General Hospital as the informant stated that the activities of alias “Amy” were always done in the morning. PO2 Corpuz and the confidential informant walked to the La [Trinidad] Trading Post and the former told the latter that if alias “Amy” would come, he (informant) should go near her so he (PO2 Corpuz) could meet her. Indeed at around 4:30 o’clock in the morning, a woman named “Amy” arrived and the confidential informant met and talked to her before he called PO2 Corpuz. PO2 Corpuz was introduced to “Amy” as the buyer of “shabu”. “Amy” said she had something else to do and so she just gave PO2 Corpuz her cell phone number. PO2 Corpuz then went back to their office leaving the confidential informant at the La Trinidad Trading Post.

On December 8, 2006, PO2 Corpuz called “Amy” and asked her regarding their transaction as he was willing to buy “shabu” worth two thousand pesos (PHP 2,000.00). “Amy” said she will deliver the shabu the following day, December 9, 2006 at 6:00 o’clock in the morning at the vicinity of the La Trinidad Trading Post.

On December 9, 2006 at about 4:00 o’clock in the morning, the team already designated by the Regional Director proceeded first to the La Trinidad Police Station which was just in front of the La Trinidad Trading Post at Km. 5, La Trinidad, Benguet to coordinate with the local police before going to the rendezvous area. On instruction of Team Leader PCI Meris, PO2 Corpuz called “Amy” and told her he was already at the La Trinidad Trading Post. However, “Amy” said that she could not make it as she was doing something and asked him to see her at 4:00 o’clock that afternoon. He agreed to her plan and so the team went back to their office.

At around 4:00 o’clock in the afternoon of the same day, the team went back to the La Trinidad Trading Post and again PO2 Corpuz called “Amy” through her cell phone. “Amy” answered and directed PO2 Corpuz to go to the road leading to Bayabas, La Trinidad, Benguet and she would deliver the “shabu” there. The team proceeded as directed and PO2 Corpuz as the poseur-buyer with PHP 2,000.00 in his possession positioned himself at the entrance of the road leading to Bayabas while the rest of the team stayed at a place where they could see the transaction going on. PCI Meris stationed himself at the alley beside a store and from his vantage point, he could see the arresting officers, SPO2 Agbayani and SPO1 Ventura but he could not actually see PO2 Corpuz.

Thirty minutes later, “Amy” arrived. She brought what appeared to be small transparent plastic sachets containing white crystalline substance, picked out two sachets (*Exhibits “C” and “C-1”*) and gave it to PO2 Corpuz. He asked whether the items were of good quality to which “Amy” answered that those were “first class”. He pressed the white crystals and right away it crumbled into powdery substance and he suspected that the substance was “shabu”. “Amy” then demanded the payment of Two Thousand Pesos. He was ready with the amount but he was instructed that once the “shabu” was given to him, he need not hand the money any longer. Thus, PO2 Corpuz placed the two sachets in his pant[s] pocket and held Amy’s right hand and announced “Pulis ako!” This was the pre-arranged signal and so the rest of the team rushed to the scene and SPO1 Ventura held “Amy” while SPO2 Agbayani told her her constitutional rights. PCI Meris then told “Amy” to empty her pockets. “Amy” complied and PCI Meris saw her actually bringing out her cell phone and four sealed sachets (*Exhibits “D”, “D-1”, “D-2” and “D-3”*) each containing a white substance similar to the ones she handed to PO2 Corpuz. PO2 Corpuz then got the sealed sachets and he turned over all the six sachets, the two sachets sold to him and the four sachets which “Amy” brought out from her pocket, as well as the cell phone to the team leader PCI Meris. PCI Meris then held on to the items as they went to the La Trinidad Police Station.

x x x x

“Amy” was then brought to the La Trinidad Police Station purposely for the case to be entered in the police blotter. The team with the accused in tow went back to the PDEA Office at Melvin Jones Grandstand, Harrison Road, Baguio City where she was booked and a Booking Sheet and Arrest Report (*Exhibit “F”, page 95, Rollo, Criminal Case No. 6702*) was prepared. She was then identified as Amy Dasigan, the accused in this case. PCI Meris brought out the seized items and directed his team members to put their initials on said items. When asked why the initials were not indicated on the plastic sachets at the time of the arrest, PCI Meris explained that Bayabas, La Trinidad, Benguet, is a notorious place based on his personal knowledge as he grew up in La Trinidad, Benguet as well as based on statistics of the PNP of La Trinidad, Benguet. Being a notorious place and fearing that the accused may have some back-up, he deemed it best that the marking be done in their office and so they left the place right after the arrest of the accused.

PO2 Corpuz, SPO1 Ventura and SPO2 Agbayani each placed their initials on all the plastic sachets containing suspected “shabu”. The initials CJA was for Cabily J. Agbayani; the initials AGC for Arieltino G. Corpuz and the initials BAV for Bernardo A. Ventura. “Amy” was in the office witnessing the men as they placed their initials. After placing their initials on the items seized, PCI Meris turned over the seized items to the Evidence Custodian of PDEA-CAR, SPO3 Romeo L. Abordo, Sr.

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SPO3 Romeo Abordo then prepared the inventory of the seized items (*Exhibits “B” and “B-1”, page 94, Rollo, Criminal Case No. 6702*), consisting of two small heat-sealed transparent plastic sachets containing white crystalline substance and bearing the initials CJA, AGC and BAV, four small heat-sealed transparent plastic sachets containing white crystalline substance also bearing the initials CJA, AGC and BAV and one Nokia cell phone with a SIM card. The inventory was done in the presence of Pros. Gundayao of the Benguet Provincial Prosecutor’s Office, the accused, and elected official and a member of the media. SPO3 Abordo testified that the cell phone was no longer functioning as although they tried to charge it, it could not be charged.

On December 10, 2006, SPO3 Abordo brought the request for laboratory examination (*Exhibit “G”, page 96, Rollo, Criminal Case No. 6702*) together with the confiscated items (*Exhibits “C”, “C-1”, “D”, “D-1”, “D-2”, “D-3”*) to the PNP Crime Laboratory where it was received by PO1 Joseph Andrew P. Dulnuan.

PO1 Dulnuan of the PNP Crime Laboratory received the items from SPO3 Abordo. He compared the items listed in the request with the items he received and finding it accurate, he placed a control number on the request, Control No. 329-06, logged in the request and accepted the turned-over items (*Exhibit “G-1”, page 96, Rollo, Criminal Case No. 6702*). PO1 Dulnuan then turned over these same items to Forensic Chemist PSInsp. Edward Gayados.

PSInsp. Edward Gayados is the forensic chemical officer of the PNP Crime Laboratory at Camp Dangwa, La Trinidad, Benguet. On December 10, 2006, he received from PO1 Dulnuan a request from the PDEA-CAR for the conduct of a laboratory examination on suspected “shabu”. The items turned over to him by PO1 Dulnuan were two heat-sealed transparent plastic sachets containing white crystalline substance (*Exhibits “C” and “C-1”*) and four heat-sealed transparent plastic sachets containing white crystalline substance (*Exhibits “D”, “D-1”, “D-2” and “D-3”*). All the plastic sachets contained the initials CJA, AGC and BAV.

x x x x

SPInsp. Gayados then marked each specimen submitted indicating the case number assigned by their office, the date of the examination and his initials. His findings were placed in writing under Chemistry Report No. D-056-06 (*Exhibits “I” and “I-1”, page 7, Rollo, Criminal Case No. 6703*) and his findings and conclusion state “Qualitative examination conducted on the above-stated specimens “A & B” gave POSITIVE result to the tests for the presence of Methamphetamine hydrochloride, a dangerous drug. xxx Specimens “A & B” contain Methamphetamine hydrochloride, a dangerous drug.xxx” (*Exhibit “I-2”*).⁸

The defense’s version, on the other hand, is as follows:

⁸ CA rollo, pp. 15-19; RTC Decision.

On December 8, 2006, she was at home when PDEA agents went to their house at around 10:00 o'clock in the morning. She knew them as PDEA agents as her sister-in-law Norma Domingo accompanied them when somebody was arrested in Bayabas sometime before that day. In fact, the agents even dropped by their house and so they knew where she lived. She identified the agents as Corpuz, Meris and Agbayani. These agents told her that her daughter Ghel was in their office as she was caught in possession of "shabu". She then went with the PDEA agents and she saw her daughter Ghel in the PDEA vehicle but she was not able to talk to her. She was then brought to the PNP Office at Camp Dangwa, La Trinidad, Benguet where she was shown the "shabu" after which she was brought to the PDEA Office at Melvin Jones Grandstand, Harrison Road, Baguio City. She then saw her daughter and the PDEA agents talking after which the PDEA accompanied her daughter to get her sister-in-law Norma Domingo as it was the latter who told the daughter of the accused to deliver the "shabu" to the La Trinidad Trading Post. Later that evening, her daughter came back with Norma Domingo. The accused was not able to talk to her sister-in-law before the latter was transferred to Camp Dangwa as according to the PDEA agents, they could not be together. The accused stated that her sister-in-law had always been arrested for possession of "shabu" but she was always freed. But this time, the PDEA agents told her that she was being arrested as they insisted that the "shabu" came from her. She further insists that she was arrested on December 8, 2006 and not December 9, 2006 as claimed by the PDEA agents and she was eventually brought to jail on December 11, 2006. She denies that she could not have texted PO2 Corpuz as she does not have her own cell phone and she and her husband share just one cell phone. She surmised that the PDEA agents may have sent the text messages to her daughter's cell phone.

Ghel Dasigan, the daughter of the accused is 15 years old. She testified that Norma Dasigan Domingo is her aunt, the latter being the sister of his father. On December 6, 2006, she was with her Aunt Norma at their house in Apugan, Green Valley, Baguio City as she was to go down to Manila with her aunt to buy gifts. At around 9:00 o'clock in the morning of that same day, they left Baguio City arriving in Taguig City at around 4:00 o'clock in the afternoon of the same day. They spent the night in the house of one Ruben Pasandalan but she does not know him personally. That night, her Aunt Norma said they would get "shabu" from Ruben. She saw the "shabu" weighing around 25 grams contained in a plastic sachet. Her aunt placed the "shabu" inside her bag. The following day, they left Taguig. Upon arriving in Baguio, she did not go home to La Trinidad but spent the night at her aunt's house. In the morning, her aunt gave her "shabu" to deliver to a certain Rico at the La Trinidad Trading Post. She went home first to see her mother but she never told her anything about the "shabu." She then went to the La Trinidad Trading Post and although she does not know Rico, she knows that he owns a carinderia where they usually eat. She gave the "shabu" to Rico when suddenly five men who said they were PDEA agents came and she was arrested. She alone was brought to the PDEA vehicle and although Rico was already in possession of the "shabu" at that time, he was allowed to go free.

She was brought to their residence but she was left in the van when the PDEA agents went to call for her mother. Her mother was brought to the van and the PDEA agents were insisting that it was her mother who sent her to deliver the “shabu”. She stated that it was her Aunt Norma who made her deliver the “shabu” and so she was made to point out her aunt’s house. They all went to Apugan, Green Valley, Baguio City and she showed Norma’s house. Norma was then brought to Camp Dangwa but she was released after her daughter-in-law came and gave money to the PDEA agents but it was not PO2 Corpuz who received the money.⁹

After weighing the evidence, the RTC convicted accused-appellant on both charges, *viz.*:

In Criminal Case No. 07-CR-6702

WHEREFORE, based on the foregoing premises, the court finds accused Amy Dasigan y Oliva GUILTY beyond reasonable doubt of the crime of Violation of Section 11, (3), Article II of Republic Act No. 9165 and hereby sentences her to suffer an indeterminate sentence of TWELVE (12) YEARS and ONE (1) DAY as Minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS as Maximum and to pay a fine in the amount of THREE HUNDRED THOUSAND PESOS (PHP 300,000.00) and to pay the costs.

Pursuant to Article 29 of the Revised Penal Code, the period of the preventive imprisonment of the accused shall be credited in the service of her sentence, provided the conditions prescribed in such article have been fully met.

In Criminal Case No. 07-CR-6703

WHEREFORE, based on the foregoing premises, the court finds accused Amy Dasigan y Oliva GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of FIVE HUNDRED THOUSAND PESOS (PHP 500,000.00) and to pay the costs.

Pursuant to Article 29 of the Revised Penal Code, the period of the preventive imprisonment of the accused shall be credited in the service of her sentence, provided the conditions prescribed in such article have been fully met.¹⁰

Accused-appellant appealed before the CA, assigning the following errors:

⁹ Id. at 20-21.

¹⁰ Id. at 24-25.

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE INTEGRITY AND IDENTITY OF THE SEIZED *SHABU* BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HER GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.¹¹

After a review of the records, the CA affirmed the RTC Decision. The appellate court ruled that the failure of the arresting officers to fully comply with the required immediate marking and photograph of the seized items under Section 21 of the Implementing Rules of R.A. No. 9165 is not fatal,¹² and that the testimony of every witness who handled the evidence provides a reliable assurance that the evidence presented in court is one and the same as that seized from the accused.¹³ The appellate court also ruled that all the elements for a conviction of illegal possession and illegal sale of dangerous or prohibited drugs were proven,¹⁴ and that accused-appellant's claims of denial and frame-up were unconvincing.¹⁵ Thus, the CA held:

FOR THE STATED REASONS, the instant appeal is DENIED.

The Decision of the RTC dated 7 January 2011 finding the accused Amy Dasigan y Oliva guilty of violation of Sections (5) and 11 (3) of R.A. 9165 is **AFFIRMED.**¹⁶

Accused-appellant is now before the Court, reiterating the arguments she raised before the CA.¹⁷ In particular, accused-appellant avers that the prosecution miserably failed to preserve the integrity of the seized items as well as to establish its unbroken chain of custody,¹⁸ as no photographs were taken by the apprehending officers, and as, although an inventory was conducted, it was seriously flawed because it was not conducted immediately after the accused-appellant's arrest and was not shown to have been made in the presence of selected public officials.¹⁹

The appeal is partly meritorious.

¹¹ Id. at 42; Brief for the Accused-Appellant.

¹² *Rollo*, p. 9.

¹³ Id. at 11.

¹⁴ Id. at 12-13.

¹⁵ Id. at 13.

¹⁶ Id. at 17.

¹⁷ Id. at 31; Supplemental Brief for the Accused-Appellant.

¹⁸ Id. at 32.

¹⁹ Id. at 34.

Accused-appellant harps on the supposed failure of the prosecution to prove that the integrity of the seized items was preserved.

Indeed, as we held in *People v. Torres*,²⁰ the identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. In this regard, paragraph 1, Section 21, Article II of R. A. No. 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized, to wit:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.²¹

However, this Court has, in many cases, held that while the chain of custody should ideally be perfect, in reality it is not, “as it is almost always impossible to obtain an unbroken chain.” The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. Hence, the prosecution’s failure to submit in evidence the physical inventory and photograph of the seized drugs as required under Article 21 of R. A. No. 9165, will not render the accused’s arrest illegal or the items seized from him inadmissible.²²

The chain of custody is not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the

²⁰ G. R. No. 191730, 5 June 2013, 697 SCRA 452.

²¹ Id. at 464.

²² *People v. Loks*, G. R. No. 203433, 27 November 2013, 711 SCRA 187, 196-197.

presence of the enumerated persons. The Implementing Rules and Regulations of R. A. No. 9165 on the handling and disposition of seized dangerous drugs states:

x x x 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.²³ (*Italics, emphasis, and undecoring omitted*)

In the case at bar, after the items were seized by Police Officer (PO) 2 Arieltino G. Corpuz (PO2 Corpuz)²⁴ from accused-appellant, he turned them over to Police Chief Inspector (PCI) Luisito Meris (PCI Meris)²⁵ who retained possession until they reached the Philippine Drug Enforcement Agency (PDEA) Office where the arresting officers were able to mark them (i.e., “CJA for Cabily J. Agbayani; “AGC” for Arieltino G. Corpuz, and “BAV” for Bernado A. Ventura). PCI Meris then submitted said seized items to Senior Police Officer (SPO) 3 Romeo L. Abordo, Sr. (SPO3 Abordo, Sr.), the Evidence Custodian of PDEA Cordillera Administrative Region (CAR) who, in turn, prepared the inventory and the request for laboratory examination. It was SPO3 Abordo, Sr. who brought the request for laboratory examination and the seized items to the PNP Crime Laboratory where they were received by PO1 Joseph Andrew P. Dulnuan who submitted them to Forensic Chemist Police Senior Inspector (PSI) Edward Gayados, and it was the latter who, after a full qualitative examination, confirmed that the seized items were positive for methamphetamine hydrochloride, a dangerous drug. In open court, PO2 Corpuz and SPO2 Cabily Agbayani easily identified the sachets as the ones they seized from accused-appellant as the sachets still bore their initials, together with the initials of SPO1 Bernardo Ventura.

As to the fact that the seized items were marked only at the police station and not during the actual apprehension and seizure, in *People v. Loks*,²⁶ we held that the marking of the seized substance immediately upon arrival at the police station qualified as a compliance with the marking requirement. Such can also be said here, especially in view of the explanation of PCI Meris that the place of arrest had a notorious reputation based on his personal knowledge as well as on police statistics, and that the arresting officers deemed it best that they leave said place right after the

²³ *People v. Torres*, G. R. No. 191730, 5 June 2013, supra note 20 at 465-466.

²⁴ Also referred to as “Corpus” in the records and TSNs.

²⁵ Also referred to as “Merez” and “Meres” in the records and TSNs.

²⁶ G. R. No. 203433, 27 November 2013, supra note 22 at 195.

arrest of the accused-appellant for fear that the latter might have some back-up.²⁷

Clearly, there was no hiatus or confusion in the confiscation, handling, custody and examination of the *shabu*.²⁸ The *shabu* that was seized from accused-appellant, taken to the PDEA Office and thereat duly marked, then taken to the crime laboratory and subjected to a qualitative examination, and thereafter introduced in evidence against accused-appellant was the same *shabu* confiscated from accused-appellant when she was caught *in flagrante delicto* possessing the same.

We now come to the issue of whether all the elements of the crimes charged were duly proven.

Under Section 11, Article II of R.A. No. 9165, the elements of the offense of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.²⁹

In Criminal Case No. 07-CR-6702, all these elements were proven. First, the four plastic sachets containing *shabu*, which are the subject of the charge for illegal possession of dangerous or prohibited drugs, were found on accused-appellant's person during the search conducted by the PDEA officers following accused-appellant's arrest *in flagrante delicto* for illegal sale of *shabu*. In *People v. Montevirgen*,³⁰ we reiterated the rule that a person lawfully arrested may be searched for anything which may have been used or constitute proof in the commission of an offense without warrant. Second, accused-appellant was not able to demonstrate his legal authority to possess the subject *shabu*. And third, accused-appellant's act of giving PO2 Corpuz, the poseur-buyer, one sachet and telling him "*maganda ito, first class ito,*" and then bringing out more sachets and selecting two sachets to give to PO2 Corpuz³¹ indicates that she freely and consciously possessed the subject *shabu*. Consequently, accused-appellant was correctly charged and convicted of illegal possession of *shabu*.

On the other hand, in a successful prosecution for offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. No.

²⁷ TSN, 13 May 2008, p. 15.

²⁸ *People v. Montevirgen*, G. R. No. 189840, 11 December 2013, 712 SCRA 459, 470.

²⁹ *People v. Gaspar*, G. R. No. 192816, 6 July 2011, 653 SCRA 673, 687.

³⁰ Supra note 28 at 468.

³¹ TSN, 11 September 2007, pp. 11-12.

9165, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.³²

In Criminal Case No. 07-CR-6703, the Court notes, however, that the sale was not consummated as there was no receipt of the consideration. Below is the testimony of PO2 Corpuz:

Q - Now let's go back to that time you said that Amy gave you that stuff, you did not give any money, was it not?

A - Yes, sir.

Q - In other words you did not prepare any marked money?

A - We prepared, sir.

Q - You prepared?

A - Yes, sir.

Q - But you never handed it to her?

A - Yes, sir.

Q - Why?

A - During our briefing our team leader told me that if ever the shabu will already be given to you, you just grabbed (sic) the hand and do not give already the money. It might even be lost. She might run away with it.

Q - How many of you conducted that buy-bust operation against this certain Amy?

A - We are all four, sir.

Q - And you said she was alone at that time?

A - Yes, sir.

Q - But the instruction given to you was there was no need to give the money because it might get lost, is that correct?

A - He told me that, whenever the shabu had already been given to you, grab her hand.

Q - I see. So there was no say (sic) because you did not give the money?

A - Sometimes the transaction happen (sic) when the subject person first can get the money that is the time that we have to give the money but that happened (sic) if she give first the item before she claim the money, sir.

³² *People v. Gaspar*, supra note 29 at 686.

Q - It did not occur to you that since it is an exchange of – you should have given the money before you were given the shabu?

A - No longer, sir.

Q - You immediately grabbed her?

A - Yes, sir.

Q - In other words there was no exchange of that marked money and shabu, is that what you are saying?

A - She gave shabu before I grabbed her hand.

Q - Now before you conducted the buy-bust operation you prepared marked money, was it not?

A - Yes, sir.

Q - How did you prepare that?

A - Our team leader get the money to our Regional then he gave me the money.

Q - But you did not hand the money to her?

A - Yes, sir.

Court:

Q - So Amy never touched the money?

A - No, your honor.

Q - It was in your pocket all alone (sic)? Where was the marked money?

A - In my hand, your honor.

Q - What hand?

A - My right hand.

Q - Oh, so you were holding it in a fist?

A - Yes, your honor. And then when she saw the money I returned (sic) back to my pants.

Q - Who had the money?

A - I am (sic), your honor.

Q - No, no, no, you said, so you had the money in your hand?

A - Yes, your honor.

Q - When did you put it back in your pocket?

A - Because alias Amy will show me the shabu so I put the money in my pocket.

Q - So she was going to show the shabu?

A - Yes, your honor.

- Q - You show (sic) her the money?
A - Yes, your honor.
- Q - But you put back the money in your pocket?
A - Yes, your honor.
- Q - And then you show (sic) her the shabu?
A - Yes, your honor. I told her to see first the item if it is good.
- Q - So you saw the shabu?
A - Yes, your honor.
- Q - Did she touch the shabu or you just looked at it?
A - She touched.
- Q - You touched it?
A - She gave it to me, your honor.
- Q - She gave the shabu to you?
A - Because I told her that I will see it first if it is good.
- Q - And then when she gave it to you what happened?
A - I examined.
- Q - And then what happened?
A - When I examined it at that time she was claiming the money.
- Q - And then?
A - And then I grabbed already her hand and saying PDEA ako.
- Q - So she never got the money?
A - Yes, your honor.³³

x x x x

In *People v. Hong Yeng E and Tsien Tsien Chua*,³⁴ where the marked money was also shown to accused-appellant but it was not actually given to her as she was immediately arrested when the shabu was handed over to the poseur-buyer, the Court held that it is material in illegal sale of dangerous drugs that the sale actually took place, and what consummates the buy-bust transaction is the delivery of the drugs to the poseur-buyer and, in turn, the seller's receipt of the marked money. While the parties may have agreed on the selling price of the *shabu* and delivery of payment was intended, these do not prove consummated sale. Receipt of the marked money, whether done before delivery of the drugs or after, is required.

³³ TSN, 24 September 2007, pp. 12-14.

³⁴ G. R. No. 181826, 9 January 2013, 688 SCRA 309, 314.

In the case at bar, although accused-appellant was shown the consideration before she handed over the subject *shabu* to the poseur-buyer, such is not sufficient to consummate the sale. As previously held by the Court, looking at a thing does not transfer possession of it to the beholder. Such a tenet would make window shoppers liable for theft.³⁵

Accused-appellant's exoneration from the charge of illegal sale of dangerous or prohibited drugs, however, does not spell freedom from all criminal liability as she may still be convicted for illegal possession of dangerous or prohibited drugs. It is settled that possession is necessarily included in the sale of dangerous or prohibited drugs.³⁶

Accused-appellant was correctly convicted in Criminal Case No. 07-CR-6702 for illegal possession of dangerous or prohibited drugs in the total weight of 0.28 gram (the four sachets weighing 0.06 gram, 0.07 gram, 0.07 gram, and 0.08 gram, respectively).³⁷ In Criminal Case No. 07-CR-6703, on the other hand, although illegal sale of dangerous or prohibited drugs was not proven, accused-appellant is certainly criminally liable for illegal possession of dangerous or prohibited drugs in the total weight of 0.15 gram.³⁸ A summation of the weights will yield a total of 0.43 gram, and under Sec. 11 (3), Art. II, of R.A. No. 9165, possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years plus a fine ranging from ₱300,000.00 to ₱400,000.00.

Applying the Indeterminate Sentence Law, the accused shall be sentenced to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum term shall not be less than the minimum prescribed by the same.³⁹ Thus, the penalty originally imposed by the RTC of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00), for illegal possession of *shabu* in the total weight of 0.28 gram is still proper for illegal possession of *shabu* in the total weight of 0.43 gram, it being less than five grams.

³⁵ Id.

³⁶ Id.

³⁷ Records in Criminal Case No. 07-CR-6702, p. 7; Chemistry Report No. D-056-06.

³⁸ As charged in the Information. Chemistry Report No. D-056-06, however, enumerates the respective weights at 0.1 gram and 0.14 gram.


³⁹ *People v. Resurreccion*, G. R. No. 188310, 13 June 2013, 698 SCRA 437, 451.


WHEREFORE, premises considered, the assailed Decision dated 23 July 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04845 is hereby **MODIFIED**. The Court finds Amy Dasigan y Oliva guilty of illegal possession of dangerous or prohibited drugs under Section 11, Article II of Republic Act No. 9165, and accordingly **IMPOSES**, in accordance with the Indeterminate Sentence Law, imprisonment for twelve (12) years and one (1) day, as minimum, and fourteen (14) years and eight (8) months, as maximum, and **ORDERS** her to pay a fine of ₱300,000.00.

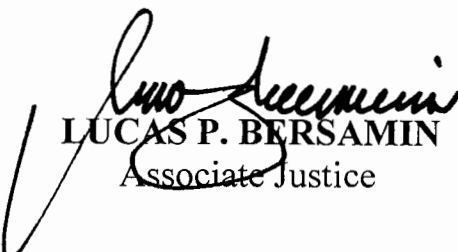
SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice,
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ESTELA M. PERLAS-BERNABE
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