Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

- versus -

CHI CHAN LIU a. k. a. CHAN QUE and HUI LAO CHUNG a.k.a. LEOFE SENGLAO,
Appellants.

G.R. No. 189272

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

January 21, 2015

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DECISION

PERALTA, *J.*:

For this Court's consideration is the Decision[1] dated January 9, 2009 and Resolution[2] dated April 24, 2009 of the Court of Appeals (*CA*) in CA-G. R. CR HC No. 00657 affirming the Decision[3] dated June 21, 2004 of the Regional Trial Court (*RTC*), Branch 44, Mamburao, Occidental Mindoro, in Criminal Case No. Z-1058, finding appellants guilty beyond reasonable doubt of violating Section 14, Article III, in relation to Section 21 (a), Article IV of Republic Act (*RA*) No. 6425, otherwise known as the *Dangerous Drugs Act of 1972*, as amended by RA No. 7659.

The facts, as culled from the records, are the following:

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1 Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rebecca De Guia-Salvador and Romeo F. Barza, concurring; *rollo*, pp. 2-18.

2 CA *rollo*, p. 281.

3 Penned by Presiding Judge Inocencio M. Jaurigue, *id.* at 8-19.

At 10:00 a.m. of December 3, 1998, SPO2 Lazaro Paglicawan and SPO3 Isagani Yuzon, the officers-on-duty at the Philippine National Police (*PNP*) Station, Looc, Occidental Mindoro, received a radio message from the Barangay Captain of Ambil Island, Looc, Maximo Torreliza, that a suspicious looking boat was seen somewhere within the vicinity of said island.[4] Immediately thereafter, the police officers headed towards the specified location wherein they spotted two (2) boats anchored side by side, one of which resembled a fishing boat and the other, a speedboat. They noticed one (1) person on board the fishing boat and two (2) on board the speed boat who were transferring cargo from the former to the latter. As they moved closer to the area, the fishing boat hurriedly sped away. Due to the strong waves, the police officers were prevented from chasing the same and instead, went towards the speed boat, which seemed to be experiencing engine trouble. On board the speed boat, the officers found the appellants Chi Chan Liu a.k.a. Chan Que and Hui Lao Chung a.k.a. Leofe Senglao with several transparent plastic bags containing a white, crystalline substance they instantly suspected to be the regulated drug, methamphetamine hydrochloride, otherwise known as "shabu." They requested the appellants to show their identification papers but appellants failed to do so.[5] Thus, the police officers directed appellants to transfer to their service boat and thereafter towed appellants' speed boat to the shore behind the Municipal Hall of Looc, Occidental Mindoro. On their way, the police officers testified that appellant Chi Chan Liu repeatedly offered them "big, big amount of money" which they ignored.[6]

Upon reaching the shore, the police officers led the appellants, together with the bags containing the crystalline substance, to the police station. In the presence of the appellants and Municipal Mayor Felesteo Telebrico, they conducted an inventory of the plastic bags which were forty-five (45) in number, weighing about a kilo each.[7] Again, SPO3 Yuson requested proper documentation from the appellants as to their identities as well as to the purpose of their entry in the Philippine territory.[8] However, the appellants did not answer any of SPO3 Yuson's questions.[9] Immediately thereafter, SPO3 Yuson reported the incident to their superiors, PNP Provincial Command in San Jose, Occidental Mindoro and PNP Regional Command IV in Camp Vicente Lim, Calamba, Laguna. The PNP Regional Director General Reynaldo Acop advised them to await his arrival the following day.[10]

On December 4, 1998, General Acop arrived together with Colonel Damian on a helicopter. They talked with Mayor Telebrico and the arresting

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4 *Rollo*, p. 4.
5 CA *rollo*, p. 9.
6 *Rollo*, p. 5, citing TSN, March 23, 1999, pp. 2-12; and TSN, May 19, 1999, pp. 12-24.
7 *CA rollo*, p. 10.
8 TSN, March 23, 1999, p. 13.
9 *Id*.
10 *Rollo*, p. 5, citing TSN, March 23, 1999, pp. 12-14; and TSN, May 19, 1999, pp. 24-26, 28.

officers and then brought the appellants with the suspected illegal drugs to Camp Vicente Lim, Calamba, Laguna, for further investigation.[11] There, the appellants and the suspected prohibited drugs were turned over to Police Inspector Julieto B. Culili, of the Intelligence and Investigation Division, PNP, Regional Office IV, who attempted to communicate with the appellants using "broken" English. According to Inspector Culili, appellant Chi Chan Liu only kept saying the phrase "call China, big money," giving him a certain cellular phone number.[12] He allowed appellants to call said number in which they spoke with someone using their native language, which he could not understand.[13] Because of this difficulty, Inspector Culili sought the assistance of Inspector Carlito Dimalanta in finding an interpreter who knew either Fookien or Cantonese.

On December 5, 1998, the interpreter arrived. With the assistance of said interpreter, Inspector Culili informed and explained to the appellants their rights under Philippine laws inclusive of the right to remain silent, the right to counsel, as well as the right to be informed of the charges against them, and the consequences thereof.[14] Inspector Culili also requested the interpreter to ask the appellants whether they wanted to avail of said constitutional rights. However, appellants only kept repeating the phrase "big money, call China." Apart from their names, aliases and personal circumstances, the appellants did not divulge any other information.[15] Inspector Culili, with the assistance of the arresting officers, then prepared the Booking Sheet and Arrest Report of the appellants, requested for their physical and medical examination, as well as the laboratory examination of the white, crystalline substance in the bags seized from them.[16] He also assisted the arresting officers in the preparation of their affidavits.[17] According to Inspector Culili, moreover, he was able to confirm that the appellants are Chinese nationals from Guandong, China, based on an earlier intelligence report that foreign nationals on board extraordinary types of vessels were seen along the sealine of Lubang Island in Cavite, and Quezon Province.[18]

Thereafter, Police Inspector Mary Jean Geronimo, PNP Chief Forensic Chemist/Physical Examiner assigned at the PNP Regional Crime Laboratory Service Office, Camp Vicente Lim, Laguna conducted an examination of the white, crystalline substance in the forty-five (45) bags seized from the appellants.[19] After performing three (3) tests thereon, she

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11 *Id.*, citing TSN, March 23, 1999, pp. 14-15; 26-29.
12 *Id.*, citing TSN, May 20, 1999, pp. 5-14.
13 CA *rollo*, p. 11.
14 *Id.*
15 *Rollo* p. 5, citing TSN, May 20, 1999, pp. 14-17.
16 *Id.*, citing TSN, May 20, 1999, pp. 17-25.
17 CA *rollo*, p. 12.
18 *Rollo*, p. 5, citing TSN, May 20, 1999, p. 36.
19 *Id.* at 6, citing TSN, August 25, 1999, pp. 7-28.

positively confirmed in her Chemistry Report that the same is, indeed, methamphetamine hydrochloride, otherwise known as "shabu."[20]

On December 8, 1998, the Office of the Provincial Prosecutor of Occidental Mindoro filed an Information[21] with the RTC of Mamburao, Occidental Mindoro, against appellants for violation of Section 14, Article III, in relation to Section 21 (a), Article IV of RA No. 6425 as amended by RA No. 7659, committed as follows:

> That on or about 1:00 o'clock in the afternoon of December 3, 1998 at the coast of Brgy. Tambo, Ambil Island in the Municipality of Looc Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then the persons not authorized by law conspiring and mutually helping one another, did then and there wilfully, unlawfully, feloniously import and bring through the use of sea vessel into the above-mentioned place, Methamphetamine Hydrochloride known as Shabu contained in forty-five (45) heat-sealed transparent plastic bags having a total weight of 46,600 grams (46.60 kilograms) placed inside another forty-five (45) separate self-seling (sic) transparent plastic bags which is prohibited by law, to the damage and prejudice of public interest.

Appellants pleaded not guilty to the charges against them. Thereafter, trial on the merits ensued, where the facts earlier stated were testified to by the witnesses for the prosecution, specifically: SPO2 Paglicawan, SPO3 Yuson, Police Inspector Culili, and Police Inspector Geronimo.

The testimonies of the witnesses for the defense, namely: Jesus Astorga and Fernando Oliva, both residents of Ambil Island, Leopoldo S. J. Lozada, a former Supervising Crime Photographer of the PNP, and Godofredo de la Fuente Robles, a Member of the Looc Municipal Council, essentially maintain that the subject crystalline substance was merely recovered by the apprehending police officers from the house of Barangay Captain Maximo Torreliza and not actually from the speed boat the appellants were on.[22]

The trial court found appellants guilty beyond reasonable doubt in its Decision dated June 21, 2004, the dispositive portion of which reads:

> WHEREFORE, finding both accused CHI CHAN LIU @ "CHAN QUE" AND HIU LAO CHUNG @ "LEOFE SENG LAO" GUILTY BEYOND REASONABLE DOUBT OF VIOLATING Section 14, Article III, in relation to Section 21 (a), Article IV as amended by R. A. 7659 known as the Dangerous Drugs Act of 1972, as amended, the Court hereby

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20 *Id*., citing TSN, August 25, 1999, pp. 38-73.
21 CA *rollo*, p. 6.
22 *Id*. at 16.

> sentences each of them to suffer the penalty of IMPRISONMENT OF RECLUSION PERPETUA and to each pay the FINE of One Million (Php1,000,000.00) Pesos Philippine Currency, with cost *de officio*.
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> SO ORDERED.[23]

On appeal, the CA affirmed *in toto* the Decision of the RTC in its Decision dated January 9, 2009. On April 24, 2009, it further denied the appellants' Motion for Reconsideration in its Resolution finding no cogent reason to make any revision, amendment, or reversal of its assailed Decision. Hence, the present appeal raising the following issues:

> I.
> WHETHER OR NOT ALL THE ELEMENTS OF THE CRIME OF IMPORTATION OF REGULATED DRUGS PUNISHABLE UNDER SECTION 14, ARTCILE III, IN RELATION TO SECTION 21 (A), ARTICLE IV OF REPUBLIC ACT 6425, AS AMENDED BY REPUBLIC ACT 7659, ARE PRESENT IN THIS CASE.
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> II.
> WHETHER OR NOT THE CORPUS DELICTI OF THE CRIME CHARGED HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT.
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> III.
> WHETHER OR NOT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES CAN PREVAIL OVER THE GUARANTEES ENSHRINED AND KEPT SACRED BY THE PHILIPPINE CONSTITUTION IN THIS CASE.
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> IV.
> WHETHER OR NOT THE ARRAIGNMENT OF ACCUSED-APPELLANTS IS VALID.
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> V.
> WHETHER OR NOT THE GUILT OF ACCUSED-APPELLANTS WAS PROVEN BEYOND REASONABLE DOUBT.[24]

Appellants maintain that there is no importation of regulated drugs in the instant case since the elements of the crime of importation, namely: (1) the importation or bringing into the Philippines of any regulated or prohibited drug; and (2) the importation or bringing into the Philippines of said drugs was without authority of law, were not established herein. Appellants assert that unless there is proof that a ship on which illegal drugs came from a foreign country, the offense does not fall within the ambit of illegal importation of said drugs. Thus, considering the prosecution's failure to prove the place of origin of the boat on which appellants were apprehended, appellants cannot be convicted of the crime charged herein.

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23 *Id.* at 19.

24 *Rollo*, pp. 63-64.

Appellants also claim that the prosecution failed to substantiate beyond reasonable doubt the *corpus delicti* of the crime charged for the chain of custody of the illegal drugs subject of this case was not sufficiently established. In addition, they emphasize the irregularities attendant in their arrest and seizure of the illegal drugs in violation of their constitutionally protected rights. Appellants further call attention to the invalidity of their arraignment for they were not represented by a counsel of their choice.

This Court finds merit on appellants' first argument.

The information filed by the prosecutor against appellants charged appellants with violation of Section 14, Article III, in relation to Section 21 (a), Article IV of RA No. 6425, otherwise known as the *Dangerous Drugs Act of 1972*, as amended by RA No. 7659, which provide:

> ARTICLE III
> Regulated Drugs
>
> Section 14. Importation of Regulated Drugs. The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who, unless authorized by law, shall import or bring any regulated drug into the Philippines.
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> x x x x
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> ARTICLE IV
> Provisions of Common Application to Offenses Penalized under Articles II and III
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> x x x x
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> Section 21. Attempt and Conspiracy. The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any attempt or conspiracy to commit the same in the following cases:
>
> a) importation of dangerous drugs;

On the basis of the foregoing provisions, the crime of importation of regulated drugs is committed by importing or bringing any regulated drug into the Philippines without being authorized by law. According to appellants, if it is not proven that the regulated drugs are brought into the Philippines from a foreign origin, there is no importation. In support of this, they cite our ruling in *United States v. Jose*,[25] wherein We said that:

> There can be no question that, **unless a ship on which opium is alleged to have been illegally imported comes from a foreign country,**

[25] G.R. No. L-11737, August 25, 1916.

> **there is no importation. If the ship came to Olongapo from Zamboanga, for example, the charge that opium was illegally imported on her into the port of Olongapo, i.e., into the Philippine Islands, could not be sustained no matter how much opium she had on board or how much was discharged. In order to establish the crime of importation as defined by the Opium Law, it must be shown that the vessel from which the opium is landed or on which it arrived in Philippine waters came from a foreign port.** Section 4 of Act No. 2381 provides that:
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> > Any person who shall unlawfully import or bring any prohibited drug into the Philippine Islands, or assist in so doing, shall be punished . . . .
>
> **It is clear that a breach of this provision involves the bringing of opium into the Philippine Islands from a foreign country. Indeed, it is a prime essential of the crime defined by that section. Without it, no crime under that section can be established**.[26]

Moreover, the Black's Law Dictionary defines importation as "the act of bringing goods and merchandise into a country from a foreign country."[27] As used in our tariff and customs laws, imported articles, those which are brought into the Philippines from any foreign country, are subject to duty upon each importation.[28] Similarly, in a statute controlling the entry of toxic substances and hazardous and nuclear wastes, importation was construed as the entry of products or substances into the Philippines through the seaports or airports of entry.[29] Importation then, necessarily connotes the introduction of something into a certain territory coming from an external source. Logically, if the article merely came from the same territory, there cannot be any importation of the same.

The CA, in finding that there was importation in the present case, stated:

> The prosecution was able to prove beyond reasonable doubt that appellants were, indeed, guilty of importing regulated drugs into the country in violation of aforesaid law. Appellants were caught by police authorities in *flagrante delicto* on board a speedboat carrying forty-five (45) plastic bags of shabu. The drugs seized were properly presented and identified in court. **Appellants' admission that they were Chinese nationals and their penchant for making reference during custodial investigation to China where they could obtain money to bribe the police officers lead this Court to no other reasonable conclusion but that China is the country of origin of the confiscated drugs.** All elements of the crime of illegal importation of regulated drugs being present in this case, conviction thereof is in order.[30]

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[26] *United States v. Jose, supra*. (Emphasis ours)

[27] http://thelawdictionary.org/importation/ (last accessed November 11, 2014).

[28] Section 101, Title 1 of Book 1, Republic Act No. 1937, otherwise known as "An Act to Revise and Codify the Tariff and Customs Laws of the Philippines."

[29] Section 5(d)Republic Act No. 6969, otherwise known as "An Act to Control Toxic Substances and Hazardous and Nuclear Wastes, Providing Penalties for Violations thereof, and for Other Purposes," October 26, 1990.

[30] *Rollo*, pp. 13-14. (Emphasis ours)

We disagree. The mere fact that the appellants were Chinese nationals as well as their penchant for making reference to China where they could obtain money to bribe the apprehending officers does not necessarily mean that the confiscated drugs necessarily came from China. The records only bear the fact that the speed boat on which the appellants were apprehended was docked on the coast of Ambil Island in the Municipality of Looc, Occidental Mindoro. But it could have easily come from some other locality within the country, and not necessarily from China or any foreign port, as held by the CA. This Court notes that for a vessel which resembles a speed boat, it is rather difficult to suppose how appellants made their way to the shores of Occidental Mindoro from China. Moreover, an earlier intelligence report that foreign nationals on board extraordinary types of vessels were seen along the sealine of Lubang Island in Cavite, and Quezon Province, does not sufficiently prove the allegation that appellants herein were, in fact, importing illegal drugs in the country from an external source. This, notwithstanding, had the prosecution presented more concrete evidence to convince this Court that the prohibited drugs, indeed, came from a source outside of the Philippines, the importation contention could have been sustained.

Appellants' exoneration from illegal importation of regulated drugs under Section 14, Article III of RA No. 6425 does not, however, free them from all criminal liability for their possession of the same is clearly evident.

At the outset, appellants may argue that as We have ruled in *United States v. Jose*,[31] possession is not necessarily included in the charge of importation and thus, they cannot be held liable thereof, to wit:

> Counsel for neither of the parties to this action have discussed the question whether, in case the charge of illegal importation fails, the accused may still be convicted, under the information, of the crime of illegal possession of opium. We, therefore, have not had the aid of discussion of this proposition; but, believing that it is a question which might fairly be raised in the event of an acquittal on the charge of illegal importation, we have taken it up and decided it. Section 29 of the Code of Criminal Procedure provides that:
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> > The court may find the defendant guilty of any offense, or of any frustrated or attempted offense, the commission of which is necessarily included in the charge in the complaint or information.
>
> As will be seen from this provision, **to convict of an offense included in the charge in the information it is not sufficient that the crime *may* be included, but it must *necessarily* be included. While, the case before us, the possession of the opium by the appellants was proved beyond question and they might have been convicted of that offense if they have been charged therewith, nevertheless, such possession was not an essential element of the crime of illegal**

[31] *United States v. Jose*, *supra* note 23.

> **importation and was not necessarily included therein.** The importation was complete, to say the least, when the ship carrying it anchored in Subic Bay. It was not necessary that the opium be discharged or that it be taken from the ship. It was sufficient that the opium was brought into the waters of the Philippine Islands on a boat destined for a Philippine port and which subsequently anchored in a port of the Philippine Islands with intent to discharge its cargo. **That being the case it is clear that possession, either actual or constructive, is not a necessary element of the crime of illegal importation nor is it necessarily included therein. Therefore, in acquitting the appellants of the charge of illegal importation, we cannot legally convict them of the crime of illegal possession.**[32]

However, in our more recent ruling in *People v. Elkanish*,[33] this Court held that possession is inherent in importation. In that case, the accused, who was suspected of being the owner of sixty-five (65) large boxes of blasting caps found aboard a ship of American registry docked inside Philippine territory, was charged with illegal importation of the articles under Section 2702 of the Revised Administrative Code and illegal possession of the same articles under Section 1 of Act No. 3023, in two (2) separate informations. Ruling that double jeopardy exists in view of the fact that possession is necessarily included in importation, this Court affirmed the dismissal of the information on illegal importation, in the following wise:

> Section 9 of Rule 113 of the Rules of Court reads:
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> > When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.
>
> **With reference to the importation and possession of blasting caps, it seems plain beyond argument that the latter is inherent in the former so as to make them juridically identical. There can hardly be importation without possession. When one brings something or causes something to be brought into the country, he necessarily has the possession of it. The possession ensuing from the importation may not be actual, but legal, or constructive, but whatever its character, the importer, in our opinion, is a possessor in the juristic sense and he is liable to criminal prosecution.** If he parts with the ownership of interest in the article before it reaches Philippine territory, he is neither an importer nor a possessor within the legal meaning of the term, and he is

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32 *Id*. (Emphasis ours)

33 *People v. Elkanish*, G.R. No. L-2666, September 26, 1951.

> not subject to prosecution for either offense under the Philippine Laws. The owner of the merchandise at the time it enters Philippine water is its importer and possessor. He who puts merchandise on board a vessel and alienates the title thereto while it is in transit does not incur criminal liability. Possession on ownership of a prohibited article on a foreign vessel on the high seas outside the jurisdiction of the Philippines does not constitute a crime triable by the courts of this country. (U.S. *vs.* Look Chaw, 18 Phil., 573).[34]

As We have explained in our more recent ruling above, there is double jeopardy therein since the offense charged in the information on possession is necessarily included in the information on importation in view of the fact that the former is inherent in the latter. Thus, this Court sustained the dismissal of one of the two informations which charged the accused with importation to avoid the implications of double jeopardy for possession is necessarily included in the charge of importation.

Applying the aforequoted ruling, this Court finds that while appellants cannot be held liable for the offense of illegal importation charged in the information, their criminal liability for illegal possession, if proven beyond reasonable doubt, may nevertheless be sustained. As previously mentioned, the crime of importation of regulated drugs is committed by importing or bringing any regulated drug into the Philippines without being authorized by law. Indeed, when one brings something or causes something to be brought into the country, he necessarily has possession of the same. Necessarily, therefore, importation can never be proven without first establishing possession, affirming the fact that possession is a condition *sine qua non* for it would rather be unjust to convict one of illegal importation of regulated drugs when he is not proven to be in possession thereof.

At this point, this Court notes that charging appellants with illegal possession when the information filed against them charges the crime of importation does not violate their constitutional right to be informed of the nature and cause of the accusation brought against them. The rule is that when there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged.[35] An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter.[36]

Indeed, We have had several occasions in the past wherein an accused, charged with the illegal sale of dangerous drugs, was convicted of

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34 *Id*. (Emphasis ours)

35 Rules of Court, Rule 120, Sec. 4.

36 Rules of Court, Rule 120, Sec. 5.

illegal possession thereof. In those cases, this Court upheld the prevailing doctrine that the illegal sale of dangerous drugs absorbs the illegal possession thereof except if the seller was also apprehended in the illegal possession of another quantity of dangerous drugs not covered by or not included in the illegal sale, and the other quantity of dangerous drugs was probably intended for some future dealings or use by the accused.[37] Illegal possession of dangerous drugs is therefore an element of and is necessarily included in illegal sale. Hence, convicting the accused with the former does not violate his right to be informed of the accusation against him for it is an element of the latter.

In a similar manner, considering that illegal possession is likewise an element of and is necessarily included in illegal importation of dangerous drugs, convicting appellants of the former, if duly established beyond reasonable doubt, does not amount to a violation of their right to be informed of the nature and cause of accusation against them. Indeed, where an accused is charged with a specific crime, he is duly informed not only of such specific crime but also of lesser crimes or offenses included therein.[38]

Thus, in view of the fact that illegal possession is an element of and is necessarily included in the illegal importation of regulated drugs, this Court shall determine appellants' culpability under Section 16,[39] Article III of RA No. 6425.

The elements of illegal possession of regulated drugs are as follows: (a) the accused is in possession of an item or object which is identified to be a regulated drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the regulated drug.[40]

The evidence on record clearly established that appellants were in possession of the bags containing the regulated drugs without the requisite authority. As mentioned previously, on the date of appellants' arrest, the apprehending officers were conducting a surveillance of the coast of Ambil Island in the Municipality of Looc, Occidental Mindoro, upon being informed by the Municipality's Barangay Captain that a suspicious-looking boat was within the vicinity. Not long after, they spotted two (2) boats anchored side by side, the persons on which were transferring cargo from one to the other. Interestingly, as they moved closer to the area, one of the

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37 *People v. Manansala*, G.R. No. 175939, April 3, 2013 and *People v. Hong Yeng E*, G. R. No. 181826, January 9, 2013, citing *People v. Lacerna*, G.R. No. 109250, September 5, 1997, 278 SCRA 561.

38 *People v. Noque*, G.R. No. 175319, January 15, 2010, citing *People v. Villamar*, 358 Phil. 886, 894 (1998).

39 Section 16. *Possession or Use of Regulated Drugs.* The penalty of imprisonment ranging from six months and one day to four years and a fine ranging from six hundred to four thousand pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription.

40 *People v. Lacerna*, 344 Phil. 100, 121 (1997).

boats hurriedly sped away. Upon reaching the other boat, the police officers found the appellants with several transparent plastic bags containing what appeared to be shabu which were plainly exposed to the view of the officers. Clearly, appellants were found to be in possession of the subject regulated drugs.

Moreover, this Court is not legally prepared to accept the version of the appellants that they had nothing to do with the incident and that they were being framed up as the drugs seized from them were merely planted by the apprehending officers. At the outset, this Court observes that appellants did not provide any explanation as to how the apprehending officers were actually able to plant forty-five (45) bags of regulated drugs weighing about one (1) kilo each in the speed boat of appellants in the middle of the ocean without their knowledge. Also, as the trial court noted, they did not even give any explanation as to the purpose of their presence in the coast of Ambil, Looc, Occidental Mindoro. More importantly, aside from saying that the confiscated bags of regulated drugs were merely implanted in their speed boat, they did not provide the court with sufficient evidence to substantiate their claim. In the words of the lower court:

> Moreover, the story of defense witnesses Jesus Astorga, Fernando Oliva, and Godofredo Robles that the subject shabu were taken only by the police authority from the house of Barangay Captain Maximo Torreliza taxes only one's credulity. Their testimonies appear to be merely a product of an [afterthought]. They have not executed any prior affidavit on the matters concerning their testimonies unlike the prosecution witnesses SPO3 Yuson and SPO2 Paglicawan who executed their joint affidavit almost immediately after their arrest. It is so apparent from the testimonies of these three (3) above-named defense witnesses that they [did not] know anything about the case. What is even worse is that Atty. Evasco, the former counsel of the accused, procured the testimonies of Jesus Astorga, Fernando Oliva, and Godofredo Reyes. Clear enough their intent or motivation is not for the truth to come out but for the monetary consideration in exchange of their testimony.[41]

This Court has consistently noted that denial or frame up is a standard defense ploy in most prosecutions for violations of the Dangerous Drugs Law. This defense has been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.[42] Without proof of any intent on the part of the police officers to falsely impute to appellants the commission of a crime, the presumption of regularity in the performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of frame up by appellants.[43]

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41 CA *rollo*, p. 18.

42 *People v. Amansec*, G. R. No. 186131, December 14, 2011, 662 SCRA 574, citing *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

43 *People v. Cruz*, G.R. No. 187047, June 15, 2011, 652 SCRA 286, citing *People v. Chua*, 416 Phil. 33, 56 (2001).

Going now to appellants' arguments that their criminal liability is negated by certain irregularities in the proceedings of this case. First and foremost, appellants allege a violation of their constitutional rights against unreasonable searches and seizures. Due to the absence of probable cause, their warrantless arrest and consequent search and seizure on their persons and possession is unjustified and hence, the confiscated bags of regulated drugs therefrom are inadmissible against them.

Section 2, Article III of the Philippine Constitution provides:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

A settled exception, however, to the above guaranteed right is an arrest made during the commission of a crime, which does not require a previously issued warrant, under Section 5(a), Rule 113 of the Revised Rules on Criminal Procedure, to wit:

> Sec. 5. *Arrest without warrant; when lawful*. – A peace officer of a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

This Court has ruled that for an arrest to fall under the above exception, two (2) elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[44]

In this case, appellants were actually committing a crime and were caught by the apprehending officers *in flagrante delicto*. As previously stated, the records reveal that on the date of their arrest, the apprehending officers, while acting upon a report from the Barangay Captain, spotted appellants transferring cargo from one boat to another. However, one of the boats hastily sped away when they drew closer to the appellants, naturally arousing the suspicion of the officers. Soon after, the police officers found them with the illegal drugs plainly exposed to the view of the officers. When

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[44] *Miclat v. People*, G.R. No. 176077, August 31, 2011, 656 SCRA 539, 550, citing *People v. Tudtud*, 458 Phil. 752, 775 (2003).

they requested appellants to show proper documentation as to their identity as well as their purpose for being there, appellants refused to show them anything much less respond to any of their questions. In fact, when the officers were transporting appellants and the illegal drugs to the shore, the appellant Chi Chan Liu even repeatedly offered the arresting officers "big, big amount of money." Hence, the circumstances prior to and surrounding the arrest of appellants clearly show that they were arrested when they were actually committing a crime within the view of the arresting officers, who had reasonable ground to believe that a crime was being committed.

In addition, this Court does not find the consequent warrantless search and seizure conducted on appellants unreasonable in view of the fact that the bags containing the regulated drugs were in plain view of the arresting officers, one of the judicially recognized exceptions to the requirement of obtaining a search warrant.

Under the plain view doctrine, objects falling in the "plain view" of an officer, who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence.[45] It applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand, and its discovery inadvertent.[46]

In the case at hand, the apprehending officers were performing their duty of ascertaining whether a criminal activity was indeed happening at the time and place reported by the Barangay Captain. In broad daylight, appellants were seen in the act of transferring bags of illegal drugs from one boat to another and thereafter caught in possession of the same, which became inadvertently and immediately apparent from the point of view of the arresting officers. It is undeniably clear, therefore, that the seizure of illegal drugs conducted by the officers falls within the purview of the "plain view" doctrine. Consequently, the confiscated drugs are admissible as evidence against appellants.

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[45] *Fajardo v. People*, G. R. No. 190889, January 10, 2011, 639 SCRA 194, 209, citing *People v. Go*, 457 Phil. 885, 928 (2003), citing *People v. Musa*, G.R. No. 96177, January 27, 1993, 217 SCRA 597, 610 and *Harris v. United State*s, 390 U.S. 192, 72 L. ed. 231 (1927)

[46] *Id*., at 209-210, citing *People v. Doria*, 361 Phil. 595, 633-634 (1999).

As to appellants' assignment of failure on the part of the prosecution to substantiate beyond reasonable doubt the *corpus delicti* of the crime charged for the chain of custody of the illegal drugs was not sufficiently established, the same cannot be sustained as a review of the records of the case provides otherwise. From the time of appellants' arrest, the seized bags of regulated drugs were properly marked and photographed. Proper inventory was also conducted in the presence of the appellants and Mayor Telebrico, who signed a receipt evidencing that the confiscated drugs were turned over to the PNP Regional Headquarters.[47] There, the evidence was sent to the Regional Crime Laboratory Service Office for an examination which yielded positive results. The laboratory report, photographs, and receipts were all made part of the records of this case. In fact, the bags containing the crystalline substance were presented before the trial court during the hearing held on October 12, 1999 which was identified by SPO3 Yuson, the officer who confiscated the same. Evidently, an unbroken chain of custody of the confiscated drugs was established by the prosecution.

Appellants also assail the legality of their detention for being formally charged in an Information on December 8, 1998 or five (5) days after their arrest on December 3, 1998, beyond the thirty-six (36)-hour period in Article 125[48] of the Revised Penal Code. But while the law subjects such public officers who detain persons beyond the legal period to criminal liability, it must be remembered that the proceeding taken against the detained persons for the act they committed remains unaffected, for the two acts are distinct and separate.[49] This Court is nevertheless mindful of the difficult circumstances faced by the police officers in this case, such as the language barrier, the unresponsiveness of the appellants, the fact that one of the days fell on a Sunday, as well as the disparity in the distances between the different offices. But even assuming that the police officers intentionally delayed the filing of the Information, appellants should have taken steps to report or file charges against the officers. Unfortunately, they cannot now rely on administrative shortcomings of police officers to get a judgment of acquittal for these do not diminish the fact that illegal drugs were found in appellants' possession.[50]

Anent appellants' claim that their constitutional rights were further violated for during custodial investigation, they did not have counsel of their choice nor were they provided with one, this deserves scant consideration

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47 *CA rollo*, p. 11.

48 Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities*. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

49 *People v. Cadley*, 469 Phil. 515, 528 (2004), citing *People v. Mabong*, 100 Phil. 1069, 1071 (1957).

50 *Id*., citing *People v. Tejada*, 252 Phil. 515, 525-526 (1989).

since the same is relevant and material only when an extrajudicial admission or confession extracted from an accused becomes the basis of his conviction.[51] In this case, neither one of the appellants executed an admission or confession. In fact, as the records clearly show, appellants barely even spoke and merely kept repeating the phrase "call China, big money." The trial court convicted them not on the basis of anything they said during custodial investigation but on other convincing evidence such as the testimonies of the prosecution witnesses. Verily, there was no violation of appellants' constitutional right to counsel during custodial investigation.

In this relation, appellants further criticize the legality of the proceedings in saying that during their arraignment, they were not represented by a counsel of their choice but were merely represented by a court-appointed government lawyer. Appellants assert that the trial court likewise appointed a special interpreter, who merely understood a little Chinese language. As such, considering the absence of any assurance that the interpreter was able to explain to appellants the charges against them in the language they understood, appellants therefore did not validly enter their plea.

The facts borne by the records of the case, however, militate against the contention of the appellants. This Court does not find a violation of appellants' right to counsel for even in their own narration of facts, appellants stated that when they appeared without counsel when the case was called for arraignment on January 19, 1999, the trial court gave appellants time to secure the services of counsel of their choice. It was only when appellants again appeared without counsel on February 23, 1999 that the court appointed a counsel from the Public Attorney's Office.[52] It is clear, therefore, that appellants had ample opportunity to secure the services of a counsel of their own choice. They cannot now assign error in the proceedings conducted by the trial court for the fact remains that they were appointed with counsel in full compliance with the law.

In much the same way, appellants had every opportunity to secure the services of a Chinese interpreter with such competence at par with their standards. As pointed out by the CA, the trial court gave appellants the authorization to seek, through their counsel, the Chinese Embassy's assistance for purposes of procuring a Chinese interpreter.[53] Appellants were even given time, through several postponements, to properly secure the services of one. If appellants were unsatisfied with the competence of the court-appointed interpreter, it should have taken the opportunities given by

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51 *Ho Wai Pang v. People*, G.R. No. 176229, October 19, 2011, 659 SCRA 624, and *People v. Vinecario*, G. R. No. 141137, January 20, 2004, citing *People v. Buluran*, 382 Phil. 364, 372 (2000).

52 *Rollo*, p. 59.

53 *Id*. at 15.

the trial court. In this relation, the trial court's observations are worth mentioning, to wit:

> Another factor that militates against the accused is their failure to testify on their own behalf, the defense is trying to justify for want of Chinese interpreter. The instant case has been filed in Court since December 8, 1998 or six years more or less until now. **It is highly unbelievable that for such period of time that this case has been pending in court, accused could not still secure the services of a Chinese interpreter when as borne out by the records, they were able to secure the services of several lawyers one after the other.** The accused on two (2) occasions have even submitted written requests in English (Exhibit "N" and Exhibit "O") which were granted by the Court allowing them to call their relatives but still they failed to secure the services of an interpreter. To the mind of the Court, accused can also understand English as proven by their letters. x x x [54]

Indeed, this Court accords the highest degree of respect to the findings of the lower court as to appellants' guilt of the offense charged against them, especially when such findings are adequately supported by documentary as well as testimonial evidence. It is a settled policy of this Court, founded on reason and experience, to sustain the findings of fact of the trial court in criminal cases, on the rational assumption that it is in a better position to assess the evidence before it, having had the opportunity to make an honest determination of the witnesses' deportment during the trial.[55]

Moreover, in view of the well-entrenched rule that the findings of facts of the trial court, as affirmed by the appellate court, are conclusive on this Court, absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case, this Court finds no cogent reason to deviate from the above findings.[56] It is clear, therefore, that based on the findings of the courts below, appellants were, in fact, in possession of regulated drugs without the requisite authority.

As to the penalty imposed on appellants, Sections 16 and 17 of RA No. 7659, amending RA No. 6425, otherwise known as the Dangerous Drugs Act of 1972, provide:

> Sec. 16. Section 16 of Article III of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is amended to read as follows:
>
> Section 16. Possession or Use of Regulated Drugs. - The penalty of *reclusion perpetua* to death and a fine

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54 CA *rollo*, p. 18. (Emphasis ours)

55 *Sy v. People*, G.R. No. 182178, August 15, 2011, citing *People v. Dilao*, 555 Phil. 394, 407 (2007).

56 *Id*. at 439.

> ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.
>
> x x x x
>
> Section 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:
>
> > Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. - The penalties for offenses under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:
> >
> > x x x x
> >
> > 3. 200 grams or more of shabu or methylamphetamine hydrochloride;

From the foregoing, considering that appellants were found to have possessed forty-five (45) kilograms of methylamphetamine hydrochloride, which is more than the two hundred (200) grams stipulated above, the imposable penalty is *reclusion perpetua*, in accordance with R.A. No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines." As regards the fine, We find that the amount of One Million Pesos (₱1,000,000.00) for each appellant imposed by the RTC is proper, in view of the quantity seized from them.

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated January 9, 2009 and Resolution dated April 24, 2009 of the Court of Appeals in CA-G.R. CR HC No. 00657 are **AFFIRMED** with **MODIFICATION** that appellants herein are found **GUILTY** of the crime of illegal possession of regulated drugs.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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, Third Division

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