Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

YOLANDA LUY *y* GANUELAS,
Petitioner,

G.R. No. 200087

Present:

*SERENO, *C.J.*,
LEONARDO-DE CASTRO,
Acting Chairperson,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*:

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
OCT 12 2016

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DECISION

BERSAMIN, *J.*:

This case involves the criminal attempt by the petitioner to smuggle dangerous drugs (*shabu*) inside a detention facility to her detained husband by submerging the packets of *shabu* inside a plastic jar filled with strawberry juice and cracked ice. The attempt failed because of the alacrity of the lady guard manning the entrance of the jail compound.

The Case

Under appeal is the decision promulgated on August 31, 2011,[1] whereby the Court of Appeals (CA) affirmed in CA-G.R. CR No. 33057 the judgment rendered on September 18, 2009 by the Regional Trial Court (RTC), Branch 74, in Olongapo City finding the petitioner guilty beyond reasonable doubt of illegal possession of six heat-sealed transparent plastic

* On leave.

1 *Rollo*, pp. 18-26; penned by Associate Justice Rodil V. Zalameda, with the concurrence of Associate Justice Amelita G. Tolentino (retired) and Associate Justice Normandie B. Pizarro.

sachets containing methamphetamine hydrochloride (*shabu*) with a total net weight of approximately 2.60 grams.[2]

Antecedents

The Office of the City Prosecutor in Olongapo City initiated the prosecution through the information filed in the RTC charging the petitioner with violation of Section 11, Article II, Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*), alleging:

> That on or about the twenty-fifth (25th) day of October 2004, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in her effective possession and control six (6) heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride otherwise known as 'Shabu' with an approximate total weight of Two Gram (sic) and Six Tenth (2.6) of a gram which is a dangerous drugs (sic), said accused not having the corresponding license or prescription to possess said dangerous drugs. (sic)
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> CONTRARY TO LAW.[3]

The CA narrated the factual and procedural antecedents, *viz.*:

> During the trial, the prosecution presented the lone testimony of Jail Officer 3 Myrose Joaquin, while the accused-appellant testified for the defense.
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> As part of her testimony, JO3 Joaquin claimed that on 25 October 2004, she was doing her usual duty as female guard at the gate of the Bureau of Jail Management Bureau Olongapo City. When she searched the effects of accused-appellant for possible contrabands, her attention was called on the strawberry juice placed in a white container full of cracked ice inside. When she was asked what was unusual about the juice, JO3 Joaquin answered that accused-appellant can make the juice inside if she wanted to. To quell her suspicion, JO3 Joaquin asked accused-appellant if she could transfer it in another container but accused-appellant refused. JO3 Joaquin insisted, nevertheless. They then went to the guardhouse and transferred the juice into a bowl. As the ice inside scattered, the illegal drugs were revealed. Accused-appellant allegedly pleaded for her not to report the matter to the jail warden, but JO3 Joaquin ignored her plea. After bringing accused-appellant to the jail warden, they brought the confiscated items to the laboratory for examination. The examination revealed that the confiscated items were positive for methamphetamine hydrochloride.
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> JO3 Joaquin also identified the accused-appellant in court and the confiscated items and claimed that they can identify them to be the same

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2 Id. at pp. 28-35; penned by Acting Presiding Judge Clodualdo M. Monta.
3 Id. at 19.

items seized from accused-appellant because of the markings she placed thereon.

On cross-examination, JO3 Joaquin explained that the heat-sealed plastic sachets were wrapped with a plastic and two (2)-peso coin. She also admitted that she placed accused-appellant on a close watch because even prior to the incident, accused-appellant would bring with her ready-made juice, making her think that accused-appellant was peddling illegal drugs inside the prison. Finally, she claimed that she never had a misunderstanding with accused-appellant prior to the date of the incident.

Accused-appellant, on the other hand, claimed that on 25 October 2004, she was at the BJMP to visit her husband, Nestor, a prisoner therein. As she was about to go inside the compound, a certain Melda called her and requested that she give the juice to her husband, a certain Bong, who was also a prisoner at the BJMP. Accused-appellant initially declined and advised Melda to go personally so she could talk to her husband. Melda, however, was supposedly in a hurry as she still had to fetch her child. Melda allegedly also had no identification at that time. Because of Melda's insistence, accused-appellant acceded to her request and got Melda's plastic box containing a Tupperware and a juice container. When she was asked who could corroborate this story, accused-appellant claimed that nobody saw Melda handed (sic) to her the juice container as she had no companion at that time.

Accused-appellant further stated that after receiving Melda's items, she already went inside the compound and went passed (sic) through the routine security inspection. When JO3 Joaquin transferred the juice into a bowl, she saw a plastic that contained two (2) coins. Thereafter, JO3 Joaquin brought her to the office of the BJMP. After a while, she was detained.

On cross-examination, accused-appellant admitted that her husband was convicted of a drug-related case and that she, herself, was once detained before. She did not know the full name of Melda or her husband but she had seen them in the past inside the jail. She also admitted that there can be no dispute that the drugs were found in her possession but maintained that the same came from Melda.[4]

Judgment of the RTC

After the trial, the RTC rendered judgment on September 18, 2009 convicting the petitioner as charged,[5] disposing thusly:

WHEREFORE, this Court finds accused Yolanda Luy y Ganuelas guilty beyond reasonable doubt of violation of Section 11, Article II, R.A. 9165 and is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day and to pay a fine of ₱300,000.00 with subsidiary imprisonment in case of inability to pay the fine. The illegal drug confiscated from the accused is hereby ordered to be turned over to

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4 Id. at 19-22.

5 Supra note 2.

> the Philippine Drug and (sic) Enforcement Agency (PDEA) for disposition in accordance with law.
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> SO ORDERED.[6]

Decision of the CA

The petitioner appealed, but the CA affirmed the conviction through the now assailed decision, holding:

> **WHEREFORE,** premises considered, the instant Appeal is **DENIED**. The assailed Decision of the court a quo is **AFFIRMED IN TOTO.**
>
> **SO ORDERED.**[7]

Issue

In this appeal, the petitioner insists that the CA erred in affirming her conviction despite the failure of the Prosecution to show that arresting officer JO3 Myrose Joaquin had faithfully complied with the requirement on the chain of custody under Section 21 of R.A. No. 9165; that, accordingly, the packets of *shabu* presented in court as evidence were not shown to be the same substances recovered from her; that, moreover, JO3 Joaquin claimed to have brought the substances herself to the crime laboratory for chemical examination, but did not mention the person who had received the same from her at the laboratory; and that no inventory of the seized substances was made and no any pictures of them were taken at the point of arrest.

Ruling of the Court

The appeal lacks merit.

First of all, the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions on the credibility of the witnesses on which said findings were anchored are accorded great respect. This great respect rests in the trial court's first-hand access to the evidence presented during the trial, and in its direct observation of the witnesses and their

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6 *Rollo*, p. 22.
7 Id. at 26.

demeanor while they testify on the occurrences and events attested to.[8] Absent any showing of a fact or circumstance of weight and influence that would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings on and assessment of the credibility of witnesses made by the trial court are binding on the appellate tribunal.[9] Unlike the appellate court, the trial court has the unique opportunity of such personal observation. The respect for the latter court's factual findings particularly deepens once the appellate court has affirmed such factual findings, for the latter, performing its sworn duty to re-examine the trial records as thoroughly as it could in order to uncover any fact or circumstances that could impact the verdict in favor of the appellant, is then presumed to have uncovered none sufficient to undo or reverse the conviction. As such, the lower courts' unanimous factual findings are generally binding upon the Court which is not a trier of facts.[10]

Upon review, the Court has not found any valid reason to disturb the factual findings of the RTC and the CA.

Secondly, a successful prosecution for the illegal possession of dangerous drugs in violation of Section 11 of R. A. No. 9165 requires that the following essential elements of the offense be established, namely: (1) the accused is in possession of an item or object identified as a prohibited drug; (2) her possession is not authorized by law; and (3) she freely and consciously possessed the drug.[11]

The petitioner, whose husband, Nestor, was a detainee in the Olongapo City jail, was caught in the actual illegal possession of the *shabu* involved herein as she was entering the gate of the jail compound by JO3 Joaquin, the female guard, during the latter's routine inspection of her person and personal belongings on October 25, 2004. JO3 Joaquin, as the designated searcher of female visitors, conducted the search in the presence of other jail guards. Noticing the round white-colored plastic jar labeled *Tang Orange* filled with cracked ice and strawberry juice, she insisted that the petitioner transfer the strawberry juice into another container, but the latter resisted. JO3 Joaquin and a fellow jail guard then brought the jar inside the guardhouse with the petitioner in tow, and there emptied its contents into

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[8] *Gulmatico v. People*, G.R. No. 146296 October 15, 2007 536 SCRA 82, 95; *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 314; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.*People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 219-220; *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2004, 433 SCRA 139, 153-154; *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343, 349; *People v. Pacheco*, G.R. No142887, March 2, 2004, 424 SCRA 164, 174; *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 42 3 SCRA 260, 265-266; *People v. Santiago*, G.R. No. 137542-43, January 20, 2004, 420 SCRA 248, 256.

[9] *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Bricenio v. People*, G.R. No. 157804, June 20, 2006, 491 SCRA 489, 495-496.

[10] *People v. Prajes,* G.R. No. 206770, April 2, 2014, 720 SCRA 594, 601, citing *People v. Vitero*, G.R. No. 175327, April 3, 2013, 695 SCRA 54, 64-65.

[11] *People v. Dela Cruz*, G.R. No. 182348, November 20, 2008, 571 SCRA 469, 474-475.

a bowl. Upon removing the cracked ice, the jail guards discovered the plastic material containing two ₱1 coins inside the jar. At that point, the petitioner pleaded with them not to report their discovery to the jail warden, but JO3 Joaquin ignored her. The guards immediately haled her before the warden along with the plastic material and its contents. Opening the plastic material in the presence of the petitioner, they found the six heat-sealed transparent plastic sachets with suspected *shabu* inside. Under the circumstances, the petitioner was arrested *in flagrante delicto*.

At the time of confiscation on October 25, 2004, JO3 Joaquin marked the heat-sealed plastic sachets of *shabu* with her initials "MCJ/AO".[12] Thereafter, the request for laboratory examination was prepared by P./Chief Insp. Miguel Gallardo Corpus.[13] The request and the substances were delivered to the laboratory by PO1 C.M. Ballon. Later on, the PNP Crime Laboratory Service issued Chemistry Report No. D-0181-2004 (Exhibit C) through P./Sr. Insp. Arlyn M. Dascie, Forensic Chemist, attesting to the findings on the substances indicating the presence of methylamphetamine hydrochloride, or *shabu*.[14]

The petitioner expectedly denied that the *shabu* belonged to her. Her sole explanation for why she had the *shabu* at the time was that a certain Melda had requested her to bring the jar of strawberry juice inside the jail compound for her husband, Bong, also a detainee, because Melda had supposedly forgotten to bring her identification card that day, and because she was then in a hurry to fetch her child.

The RTC after the trial and the CA on appeal rejected the petitioner's denial and explanation. We also reject them now. Denial, aside from being easily fabricated, has been the common excuse tendered by those arrested and prosecuted for the illegal possession of dangerous drugs. Under Section 11[15] of R.A. Act No. 9165, however, the mere possession of the dangerous drugs was enough to render the possessor guilty of the offense. Moreover, the denial by the petitioner, being self-serving and negative, did not prevail over the positive declarations of J03 Joaquin. In order for the denial to be accorded credence, it must be substantiated by strong and convincing evidence.[16] Alas, the petitioner did not present such evidence here. As to her explanation, she could have presented Melda herself to corroborate her story. Her word alone not enough because she had been caught in the actual

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[12] *Rollo*, p. 80.

[13] Id. at 58.

[14] Id. at 59.

[15] Section 11. *Possession of Dangerous Drugs.* - 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof**:

x x x x.

[16] *Portuguez v. People*, G.R. No. 194499, January 14, 2015, 746 SCRA 114, 125, citing *People v. Gonzaga*, G.R. No. 184952, October 11, 2010, 632 SCRA 551, 569.

possession of the *shabu* during the routinary search at the gate of the jail compound. As such, we cannot allow her denial to gain traction at all.[17]

In fine, all the essential elements of illegal possession of dangerous drugs were established. To start with, she was caught in the voluntary possession of the *shabu*. And, secondly, she presented no evidence about her being authorized to possess the *shabu*. Worthy to reiterate is that her mere possession of the *shabu* constituted the crime itself. Her *animus possidendi* – the intent to possess essential in crimes of mere possession like this – was established beyond reasonable doubt in view of the absence of a credible explanation for the possession.[18]

Thirdly, the petitioner insists that the State did not prove the chain of custody of the *shabu*. In our view, however, her immediate admission of the possession of the *shabu* following her arrest *in flagranti delicto* bound her for, under the rules on evidence, the act, declaration or omission of a party as to a relevant fact was admissible against her.[19] Her admission renders her insistence irrelevant and inconsequential.

Finally, the CA affirmed the penalty fixed by the RTC of 12 years and one day of imprisonment and fine of ₱300,000.00 with subsidiary imprisonment in case of inability to pay the fine. The affirmance was erroneous for two reasons, namely: *one*, the penalty of imprisonment thus imposed was a straight penalty, which was contrary to Section 1 of the *Indeterminate Sentence Law*; and, *two*, mandating the subsidiary imprisonment was legally invalid and unenforceable.

The penalty for the crime committed by the petitioner is provided for in Section 11(3) of R.A. No. 9165, as follows:

> Section 11. *Possession of Dangerous Drugs*. – 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
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> x x x x
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> (3) **Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to four hundred thousand pesos (₱400,000.00)**, if the

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[17] *People v. Garcia*, G.R. No. 200529, September 19, 2012, 681 SCRA 465, 477.

[18] *People v. Bontuyan*, G.R. No. 206912, September 10, 2014, 735 SCRA 49, 61.

[19] Rule 130 of the *Rules of Court* provides:

Section 26. *Admissions of a party*. - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (22)

> quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **methamphetamine hydrochloride or "shabu"**, or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Based on the provision, the correct penalty was an indeterminate sentence whose minimum should not be less than the minimum of 12 years and one day prescribed by Section 11(3), R.A. No. 9165, supra, and whose maximum should not exceed the maximum of 20 years as also prescribed by Section 11(3), R.A. No. 9165, supra. The imposition of the indeterminate sentence was required by Section 1 of the *Indeterminate Sentence Law*, *viz.*:

> Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and **if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same**. *(As amended by Act No. 4225)*

Considering that neither the offense committed nor the imposable penalty was expressly exempt from the coverage of the *Indeterminate Sentence Law* pursuant to Section 2[20] thereof, the imposition of the indeterminate sentence was mandatory.[21] The minimum and the maximum periods had a worthy objective, for, as the Court expounded in *Bacar v. Judge de Guzman, Jr.*:[22]

> The need for specifying the minimum and maximum periods of the indeterminate sentence is to prevent the unnecessary and excessive deprivation of liberty and to enhance the economic usefulness of the accused, since he may be exempted from serving the entire sentence, depending upon his behavior and his physical, mental, and moral record.

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[20] Section 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year; nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof. (As amended by Act No. 4225, Aug. 8, 1935)

[21] *Argoncillo v. Court of Appeals*, G.R. No. 118806, July 10, 1998; 292 SCRA 313, 331; *Bacar v. De Guzman, Jr.*, A.M. No. RTJ-96-1349, April 18, 1997, 271 SCRA 328, 339; *People v. Lee, Jr.*, No. L-66859, September 12, 1984, 132 SCRA 66, 67.

[22] Supra, at 340.

> *The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the RPC or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory.*

To conform with the *Indeterminate Sentence Law*, therefore, the indeterminate sentence should be 12 years and one day, as minimum, to 14 years, as maximum.

The other error of the lower courts was in imposing subsidiary imprisonment should the petitioner be unable to pay the fine. The imposition of subsidiary imprisonment, which is a subsidiary personal liability of a person found guilty by final judgment who has no property with which to meet the fine, is based on and in accord with Article 39 of the *Revised Penal Code*, a provision that is supplementary to special laws (like R.A. No. 9165) unless the latter should specially provide the contrary.[23] But subsidiary imprisonment cannot be imposed on the petitioner because her principal penalty, supra, was higher than *prision correccional* or imprisonment for six years. In this regard, Article 39 of the *Revised Penal Code* relevantly states:

> Article 39. *Subsidiary penalty.* — If the convict has no property with which to meet the fine mentioned in the paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules:
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> x x x x
>
> 3. **When the principal imposed is higher than *prision correccional*, no subsidiary imprisonment shall be imposed upon the culprit.**
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> x x x x

To repeat, the RTC's imposition of subsidiary imprisonment "in case of inability to pay the fine" of ₱300,000.00 was invalid and legally unenforceable.

In view of the foregoing, the petitioner is ordered to suffer the modified penalty of an indeterminate sentence of 12 years and one day, as minimum, to 14 years, as maximum, and to pay a fine of ₱300,000.00, without subsidiary imprisonment in case of her insolvency.

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[23] Article 10 of the *Revised Penal Code* states:

Article 10. *Offenses not subject to the provisions of this Code.* — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 31, 2011 in CA-G.R. CR No. 33057 subject to the **MODIFICATION** that the penalty of the petitioner is the indeterminate sentence of 12 years and one day, as minimum, to 14 years, as maximum, and to pay a fine of ₱300,000.00, without subsidiary imprisonment in case of her insolvency; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

(On Leave)
MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice