



SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
JAN 31 2020
BY: JOAN
TIME: 10:45

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 227739

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

JOSEPH SOLAMILLO AMAGO
and **CERILO BOLONGAITA**
VENDIOLA, JR.,
Accused-Appellants.

Promulgated:

JAN 15 2020

X-----

DECISION

PERALTA, C.J.:

On appeal is the May 31, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 01953 which affirmed the September 17, 2014 Judgment² of the Regional Trial Court (RTC), 7th Judicial Region, Branch 30, Dumaguete City, in Criminal Case No. 2013-21877, finding accused-appellants Joseph Solamillo Amago and Cerilo Bolongaita Vendiola, Jr. guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

In an Amended Information³ dated September 25, 2013, accused-appellants were charged with illegal transportation of dangerous drugs, specifically, violation of Section 5, Article II of R.A. No. 9165, committed as follows:

¹ Rollo, pp. 4-34. Penned by Associate Justice Geraldine C. Fiel-Macaraig, with the concurrence of Associate Justices Edgardo L. Delos Santos and Edward B. Contreras.
² Records, pp. 217-223.
³ Id. at 83-84.

That on or about the 5th day of September, 2013 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA VENDIOLA, JR. conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and knowingly deliver or transport six [6] pieces elongated heat-sealed transparent plastic sachet/s containing white crystalline substance weighing 0.05 gram/s, 0.06 gram/s, 0.05 gram/s, 0.06 gram/s, 0.02 gram/s and 0.07 gram/s, respectively, or with a total aggregate weight of 0.31 [gram], more or less, without any lawful authority or permission to deliver or transport the same and which substances after examination conducted on specimen was found positive to the test of Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of Republic Act No. 9165.

That the accused JOSEPH SOLAMILLO AMAGO was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-105-13.

That the accused CERILO BOLONGAITA VENDIOLA, JR., was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-106-13.

Contrary to Section 5, Article II of Republic Act No. 9165.⁴

In their arraignment, accused-appellants pleaded not guilty⁵ and the trial of the case subsequently ensued.

The prosecution presented Police Chief Inspector (*PCI*) Josephine Llena, Police Officer 3 (*PO3*) Edilmar Manaban, Police Officer 2 (*PO2*) Rico Larena, Police Auxiliary Unit (*PAU*) member Emilio Silva Piñero, Police Senior Inspector (*PSI*) Don Richmon Conag, *PO2* Placido Xandro Paclauna, Police Officer 1 (*PO1*) Ranie Cuevas Lee, Department of Justice (*DOJ*) representative Anthony Chilius Benlot, *Barangay* Banilad *Kagawads* Cesar A. Parong and Alfredo M. Omoyon, and media representatives Juancho Gallarde and Anthony Maginsay as its witnesses. Meanwhile, the defense presented accused-appellants as its witnesses.

Version of the Prosecution

On September 5, 2013, at around 8:00 a.m., *PO2* Larena was on duty at the Dumaguete City Police Station, together with Piñero, a civilian contractual employee of the City of Dumaguete detailed with the *PAU*, a program for the city to augment the police force. They were ordered by *PSI* Conag to join in the conduct of a police checkpoint along the South National Highway, at the crossing of Sta. Monica Road, *Barangay* Banilad, Dumaguete City, as a security measure to strengthen precautions against any possible terror plans by any threat group or individual law violator. *PO2* Larena and Piñero went to the said area at around 8:30 a.m. of the same day. They positioned

⁴ *Id.*

⁵ *Id.* at 101.

themselves at about one hundred (100) meters away from the checkpoint sign for northbound vehicles to pass through them before reaching the actual checkpoint stand sign.⁶

At around 9:45 a.m. of the same day, PO2 Larena and Piñero noticed two (2) persons onboard a blue and black Honda Wave 125 motorcycle, bearing LTO plate number 2352 IR, pass by their location. Before reaching the checkpoint sign, the driver of the motorcycle appeared to be rattled and he abruptly executed a U-turn and went back towards the direction of PO2 Larena and Piñero. The action of the two (2) persons led PO2 Larena and Piñero to believe that they have committed traffic violations or were transporting/delivering something illegal. PO2 Larena was prompted to walk in the middle of the road and Piñero to drive his motorcycle to block the two (2) motorists. Before the two (2) motorists could reach PO2 Larena and Piñero, the driver intentionally slumped down his motorcycle and, in doing so, his t-shirt was lifted, enabling PO2 Larena to see in plain view the handle of a handgun that was tucked in his waistband. PO2 Larena and Piñero cautiously went over to the driver and his companion. PO2 Larena asked the driver for the necessary license and permit to carry the said firearm. However, the driver could not produce the necessary papers, leading to his arrest for illegal possession of firearm by PO2 Larena; he was simultaneously apprised of his constitutional rights in the Visayan dialect. Subsequently, the driver was identified as Amago. Meanwhile, at the same instance that the motorcycle was slumped down, Piñero saw a folding knife protrude from the left pocket of the passenger. As he informed PO2 Larena of what he saw, they confiscated the knife from the passenger.⁷

As PO2 Larena confiscated from Amago the loaded handgun which was a caliber .45 pistol colt with serial number 566124, he bodily searched Amago and was able to recover and seize another load of magazine, a black-colored holster, a cellular phone, and money amounting to five hundred sixty pesos (₱560.00). The utility box of the motorcycle was also searched by PO2 Larena to check if there were other illegal firearms concealed inside. Eventually it was found out that the utility box contained one (1) peppermint gum container with six (6) elongated heat-sealed transparent plastic sachets containing white crystalline granules. From his training and experience, PO2 Larena was able to conclude that the sachets contained "*shabu*." This led to the rearrest of Amago for illegal possession of "*shabu*" and was again apprised of his constitutional rights in Visayan dialect.⁸

At the crime scene, PO2 Larena marked the six (6) heat-sealed transparent plastic sachets with "JSA-P1-9-5-13" to "JSA-P6-9-5-13" then signed the same. JSA stood for Joseph Solamillo Amago, P stood for the crime of possession, and numbers 9-5-13 referred to the date of the incident. The

⁶ CA rollo, pp. 99-100.

⁷ *Id.* at 100-101.

⁸ *Id.* at 101-102.

other items that were recovered from Amago were also marked at the crime scene. Subsequent to the marking of the items recovered from Amago, PO2 Larena arrested the passenger for illegal possession of bladed weapon and was apprised of his constitutional rights, also in the Visayan dialect. Incident to his arrest, the passenger was bodily searched, which resulted in the recovery and seizure of one (1) improvised tooter and one (1) folder strip of aluminum foil suspected to be used for illegal drugs. The passenger was later identified as Vendiola. At the crime scene, PO2 Larena marked the three (3) items confiscated from Vendiola, as follows: "CBVJ-P1-9-5-13" for the improvised tooter; "CBVJ-P2-9-5-13" for the folding knife; and "CBVJ-P3-9-5-13" for the aluminum foil.⁹ The same method was used in marking the items seized from Vendiola.

After marking the items confiscated from accused-appellants, PO2 Larena conducted an inventory of the seized items in their presence, together with *Barangay Banilad Kagawad* Felomino Flores, Jr., Omoyon, Parong, Maginsay and Gallarde, who signed the two (2) receipts/inventories prepared by PO2 Paclauna, who was ordered to proceed to the crime scene. PO2 Larena as seizing officer and PO1 Lee, the assigned photographer, signed both receipts/inventories during the conduct of the inventory. PO2 Larena and Piñero then brought the seized and confiscated items, together with accused-appellants, to the Dumaguete City Police Station for the continuation of the inventory, as well as the standard booking procedure. The inventory was continued at the City Anti-Illegal Drugs Operations Task Group office inside the police station as the DOJ representative, Benlot, arrived and signed both receipts/inventories upon verification that the items listed tallied with the items he saw on the table. When the inventory was finished, PO2 Larena placed the six (6) transparent plastic sachets, containing suspected "*shabu*," inside a brown envelope and sealed it with a masking tape and affixed his signature thereon. PO2 Larena then prepared a Memorandum Request for Laboratory Examination and Drug Test for Amago and a Memorandum Request for Drug Test for Vendiola, addressed to the Provincial Chief of the Philippine National Police Crime Laboratory Office in Dumaguete City and signed by PSI Benedick Poblete.¹⁰

It was PO3 Manaban from the crime laboratory who received the tape-sealed envelope containing six (6) heat-sealed transparent plastic sachets with markings "JSA-P1-9-5-13" to JSA-P6-9-5-13," indicated in the Memorandum Request, at 2:15 p.m. Upon checking if the contents tallied with the Memorandum Request, PO3 Manaban resealed the envelope and kept the items inside his locker to which he has the only access to. Afterwards, PO3 Manaban took separate urine samples from accused-appellants and kept the same in the refrigerator in the laboratory. At 6:05 a.m. of September 6, 2013, PO3 Manaban submitted to a forensic chemist of the crime laboratory, PCI Llena, the tape-sealed envelope containing the seized items. Upon receipt, PCI

⁹ *Id.* at 40.

¹⁰ *Id.* at 41.

Llena made her own markings on the specimens, and weighed them that resulted with an aggregate weight of 0.31 gram. The conduct of a qualitative examination on the seized items yielded a positive result for Methamphetamine Hydrochloride. Her findings and conclusions were indicated in her Chemistry Report No. D-156-13. Urine samples were taken from accused-appellants, and the screening and confirmatory tests conducted gave a positive result for the presence of Methamphetamine. The results were indicated in Chemistry Report No. DT-105-13 and Chemistry Report No. DT-106-13. The pieces of evidence were then kept in the evidence vault of the crime laboratory, accessed only by PCI Llena, prior to the submission to the court for trial.¹¹

Version of the Defense

The defense presented accused-appellants as its witnesses, and the following facts were established in their combined testimonies.

Amago is married, worked as a bamboo furniture maker, and a resident of *Barangay* Lutao, Bacong, Negros Oriental. On the other hand, Vendiola is married, worked as an ambulance driver, and is a resident of West Poblacion, Bacong, Negros Oriental. Accused-appellants are longtime friends and neighbors as they are residents of adjacent *barangays*.¹²

At about 7:00 a.m. of September 5, 2013, Amago was at his house tending to his cow and at past 8:00 a.m., he decided to go to Dumaguete City to collect his receivables from his customers on Sta. Rosa Street, Dumaguete City who previously bought bamboo furniture on installment basis. Meanwhile, also at around 8:00 a.m., Vendiola just finished his duty as an ambulance driver of Bacong Municipal Health Office. As he was off duty, Vendiola immediately went to a privately-owned auto repair shop because the ambulance he was using needed an oil change. The shop mechanic then told him that he needed an oil filter to be procured by him at Diesel Auto Parts in Tabuc-tubig, Dumaguete City.¹³

During that time, Amago was traversing the South National Highway onboard a borrowed motorcycle allegedly owned by Roger Pamen. Vendiola saw Amago and asked where Amago was headed. Amago replied that he was on his way to Dumaguete City and Vendiola asked for a ride since he was also headed to Dumaguete City to buy the said oil filter. Upon reaching Dumaguete City, Amago saw a checkpoint sign somewhere near Sta. Monica Road, Banilad, Dumaguete City. He slowed down and eventually stopped before reaching the checkpoint knowing that the registration of the borrowed motorcycle had already expired. While both accused-appellants were parked

¹¹ *Id.* at 41-42.

¹² *Id.* at 42-43.

¹³ *Id.* at 43.

on the shoulder of the road, they were approached by a male person in civilian clothes who introduced himself as a police officer and later identified by Amago as PO2 Paclauna. Right after, Amago was asked to show his driver's license and registration. He told PO2 Paclauna that the motorcycle he was driving had an expired registration and that it was borrowed. Eventually, PO2 Paclauna informed Amago that he would impound the motorcycle.¹⁴

Thereafter, Vendiola disembarked from the motorcycle while Amago remained seated there. PO1 Lee approached Vendiola and the two spoke with each other; Amago did not hear the conversation. PO1 Lee then approached and informed PO2 Paclauna that Amago still had not returned the three thousand pesos (P3,000.00) that PO1 Lee gave him for the bamboo intended for the fence of his house. PO2 Paclauna responded and told PO1 Lee, "*butangan nato ni*" which means that they would plant evidence against Amago. Right after, PO2 Paclauna kicked the motorcycle while Amago was still seated thereon that resulted in Amago falling from the motorcycle. Vendiola tried to approach Amago but he was told by PO1 Lee to go away. PO1 Lee then dragged Vendiola towards a Tamaraw FX which was parked about fifty (50) meters away from where Amago fell. Afterwards, PO1 Lee bodily searched Vendiola and recovered from him a request slip from the shop mechanic, a folding knife, and twenty-five pesos (P25.00); afterwards, Vendiola was made to board the Tamaraw FX.¹⁵

On the other hand, Amago was handcuffed by PO2 Paclauna, together with another police officer in civilian clothes, and was dragged towards the grassy portion near an acacia tree in the same direction where the Tamaraw FX was parked. Later on, a table taken from the Tamaraw FX was set up on a grassy area. The items recovered and seized from Amago were placed on the table. It was then when Amago was told that the six (6) sachets, containing suspected "*shabu*," came from the utility box of the borrowed motorcycle he was driving.¹⁶

When Amago was detained, it was the only time when he found out that he was charged with possession of illegal drugs. Surprisingly, when Amago was preparing his counter-affidavit, he was informed that he was already being charged with violation of Section 5, Article II of R.A. No. 9165. Amago denied the crimes charged against him and claimed that he had no knowledge of the drugs that were allegedly taken from the motorcycle he was driving.¹⁷

Vendiola, on the other hand, did not know that he was already arrested when he was made to board the Tamaraw FX. He also denied ownership of the drug paraphernalia allegedly recovered from him. He was surprised by the fact that he was being charged with violation of Section 5, Article II of R.A.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 43-44.

¹⁷ *Id.* at 44.

No. 9165 as there were no illegal drugs confiscated from him. Lastly, he denied knowing PO2 Larena and Piñero prior to the incident nor does he have any grudge with either of the two.¹⁸

RTC Ruling

After trial, the RTC handed a guilty verdict on accused-appellants for violation of Article II, Section 5 of R.A. No. 9165 for the sale, trade, delivery, administration, dispensation, distribution and transportation of *shabu*. The dispositive portion of the September 17, 2014 Judgment¹⁹ states:

WHEREFORE, in the light of the foregoing, the two (2) accused JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA VENDIOLA, JR. are hereby found GUILTY beyond reasonable doubt of the offense of illegal transport of 0.31 gram of *shabu* in violation of Section 5, Article II of RA 9165 and are hereby sentenced each to suffer a penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The six (6) heat-sealed transparent plastic sachets with markings "JSA-P1-9-5-13" to "JSA-P6-9-5-13" and containing 0.05 gram, 0.06 gram, 0.05 gram, 0.06 gram, 0.02 gram and 0.07 gram, respectively, or with a total aggregate weight of 0.31 gram of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA VENDIOLA, JR. shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.²⁰

CA Ruling

Accused-appellants, on appeal, assigned before the CA the following issues:

[I.]

THE HONORABLE TRIAL COURT ERRED IN ADMITTING AS EVIDENCE THE SEIZED ITEM BEING THE FRUIT OF A POISONOUS TREE.

¹⁸ *Id.*

¹⁹ Records, pp. 217-223.

²⁰ *Id.* at 222-a.



[II.]

THE HONORABLE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE ELEMENTS OF THE CRIME CHARGED.

[III.]

THE HONORABLE TRIAL COURT ERRED IN FINDING THE EXISTENCE OF CONSPIRACY IN THE INSTANT CASE.²¹

On appeal, the CA affirmed the RTC Judgment. It was convinced that the trial court was correct in admitting the seized items as evidence as the warrantless search was incidental to a lawful arrest. The CA was in the position that the fact that there is actual conveyance suffices to support a finding that the act of transporting is committed and it is immaterial whether the place of destination is reached. On the issue of conspiracy, taking into consideration all the circumstances, the CA inevitably led to conclude that there was a concerted action between accused-appellants before and during the time when the offense was carried out, which ably demonstrated their unity of design and objective to transport the dangerous drugs. Lastly, according to the CA, there was no reason to detract from the trial court's pronouncement, the same being supported by the records; thus, accused-appellants' defense of denial deserves scant consideration as it is viewed with disfavor.

Before us, the People manifested that it would no longer file a supplemental brief in view of the adequate discussion of the relevant issues and arguments in its Brief for the Appellee.²² On the other hand, accused-appellants submitted a Supplemental Brief.²³ Essentially, they maintain their main arguments in the CA that the dangerous drugs allegedly seized from them were inadmissible in evidence for being the fruit of a poisonous tree, the elements of the crime charged were not sufficiently established, and the conspiracy in the commission of the crime was not proven.

Our Ruling

We find the appeal bereft of merit.

On the first assignment of error, the record shows that there have been valid *in flagrante delicto* arrests. Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides the occasions on which a person may be arrested without a warrant, to wit:

²¹ CA rollo, pp. 29-33.

²² *Id.* at 66-87.

²³ Rollo, pp. 57-65.

Section 5. Arrest without warrant; when lawful. — A peace officer or 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;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

As per the established facts during the trial, the instant case falls within paragraph (a). For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (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.²⁴

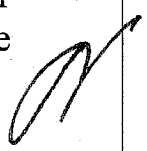
It is apparent that Amago's act of making an abrupt U-turn, instead of stopping at the checkpoint sign, made a reasonable belief for the police officers to suspect that accused-appellants might have committed some traffic violations or delivering something illegal. The police officers stopped them and, in the course, Amago intentionally slumped down the motorcycle he was riding causing his t-shirt to be lifted, thereby exposing the handle of a handgun that was tucked in his waistband. At the same time, Piñero saw a folding knife protruding from the left pocket of Vendiola who had fallen from the motorcycle. Due to the failure of Amago to produce any license to carry the firearm and for the illegal possession of a bladed weapon by Vendiola, they were arrested.

Meanwhile, regarding the admissibility of the confiscated items, they fall within the exception of warrantless search. The search conducted inside the utility box of the motorcycle was legal. A search incident to a lawful arrest under Section 13, Rule 126 of the Rules of Court states:

SEC. 13. Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

In the instant case, the *shabu* was found in a peppermint gum container inside the utility box of accused-appellants' motorcycle that was within their immediate control. Therefore, it is within the permissible area that the

²⁴ *Zalameda v. People*, 614 Phil. 710, 729 (2009).



apprehending officers could validly execute a warrantless search incidental to a lawful arrest.

In *People v. Uyboco*,²⁵ this Court declared that:

In lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area within the latter's reach. Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence.²⁶

It is worth mentioning that in the present case, there was a strict compliance with the chain of custody rule under Section 21 (1) of R.A. No. 9165 which specifies that:

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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

In the instant case, the prosecution presented PO1 Lee, Benlot, Parong, Omoyon, Gallarde and Maginsay as witnesses who were all present during the inventory. All the persons mentioned above were required witnesses mandated by Section 21 of R.A. No. 9165. In fact, the handling of evidence in the crime laboratory was specifically proven by the prosecution to have been preserved with integrity. Hence, there is no room for doubt and there are no other reasons for the seized items not to be admitted as evidence in this case.

On the second issue, under Section 5, Article II of R.A. No. 9165 or illegal delivery or transportation of prohibited drugs, the provision reads:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of

²⁵ 655 Phil. 143 (2011).

²⁶ *Id.* at 172.

the quantity and purity involved, or shall act as a broker in any of such transactions.

Accused-appellants contend that the prosecution failed to prove the fact of delivery or transport of the seized illegal drugs by them to another person or entity. They are in the position that the act of passing on the dangerous drugs from one to the other must be established. The mere presence of dangerous drugs inside the motorcycle should not be construed to mean that such items were intended for delivery.

This Court does not agree.

"Transport" as used under the Comprehensive Dangerous Drugs Act of 2002 means "to carry or convey x x x from one place to another." The essential element of the charge is the movement of the dangerous drug from one place to another.²⁷

There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.²⁸

In the instant case, records established that accused-appellants were found in possession of six (6) sachets containing *shabu*. It cannot be denied that they used a motor vehicle to transport the said illegal drugs from one place to another. As stated earlier, transportation means to carry or convey from one place to another, the fact alone that the accused-appellants were found in possession of the illegal drugs while traversing the South National Highway is sufficient to justify their conviction.

Accused-appellants argued that the prosecution failed to prove the fact of delivery or transport of the seized illegal drugs to another person or entity. They are in the position that the act of passing on the dangerous drugs from one to the other must be established and the mere presence of a dangerous drug inside the vehicle could not be construed to mean that such item is intended for delivery.

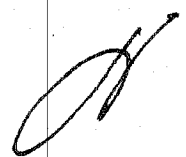
We do not agree.

The case of *People v. Del Mundo*²⁹ provides that:

²⁷ *People v. Dimaano*, 780 Phil. 586, 603 (2016).

²⁸ *People v. Asislo*, 778 Phil. 509, 523 (2016).

²⁹ 418 Phil. 740, 755 (2001).



The very act of transporting a prohibited drug, like in the instant case, is a *malum prohibitum* since it is punished as an offense under a special law. The mere commission of the act constitutes the offense and is sufficient to validly charge and convict an individual committing the act, regardless of criminal intent.

Since the crime is *malum prohibitum*, it is inconsequential to prove that the illegal drugs were delivered or transported to another person. The only thing that had to be proven was the movement of the illegal drugs from one place to another. The records show that the prosecution has successfully proven such fact. The testimony of PO2 Larena sufficiently provided the following details in his direct testimony:

Q: Mister Witness, basing the direction of the Dumaguete City, which side of the road were you located?

A: Right side ma'am.

Q: When you were near the crossing of San Jose, what happened?

A: We noticed two (2) persons riding in tandem going to the North direction.

x x x x

Q: What were used by the two (2) persons?

A: Motorcycle color blue and black ma'am.

Q: When you noticed the two (2) persons, what happened next?

A: They passed to where we stood up going towards the North direction ma'am and before they reached the next stand sign ma'am, they made a U-turn ma'am.

Q: Were you able to see them from the position where you were positioned?

A: Yes ma'am.

Q: When you noticed them making a U-turn, what happened next?

A: So I and my buddy went immediately to the middle of the road to block the said motorist ma'am.³⁰

The evidence on record established beyond reasonable doubt that accused-appellants were in possession of the illegal drugs and drug paraphernalia. The items were found inside the vehicle they were using at the time they were apprehended. In fact, accused-appellants tried to evade arrest by making an abrupt U-turn before reaching the checkpoint. They were also in possession of an illegal firearm and a bladed weapon. It is worthy to note that they both tested positive for the use of illegal drugs. Taking into consideration all the circumstances of the present case, there is no doubt that accused-appellants were transporting illegal drugs. Their bare, unsubstantiated, unpersuasive and uncorroborated denials will not suffice to absolve them from any liability.

³⁰ TSN, PO2 Larena, June 18, 2014, p. 4.



The Court stressed in *People v. Maongco, et al.*³¹ that:

Moreover, accused-appellants' uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the corpus delicti. The testimonies of police officers who caught the accused-appellants in flagrante delicto are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence, which accused-appellants failed to present in this case.³² (Citation omitted)

The last issue presented by the accused-appellants is their position that the conspiracy in the commission of the crime was not proven. They argued that in the instant case, the prosecution failed to establish that both of them assented to the same act of delivering or transporting the six (6) sachets of *shabu*.

We are not persuaded.

In *People v. Lababo*,³³ citing *Bahilidad v. People*,³⁴ the Court summarized the basic principles in determining whether conspiracy exists or not. Thus:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.

It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his [co-conspirators] by being present at the commission of the crime or by exerting moral ascendancy over the other [co-conspirators]. Hence, the mere presence of an accused at the discussion of a conspiracy, even

³¹ 720 Phil. 488 (2013).

³² *Id.* at 509-510.

³³ G.R. No. 234651, June 6, 2018, 865 SCRA 609, 628.

³⁴ 629 Phil. 567, 575 (2010).

approval of it, without any active participation in the same, is not enough for purposes of conviction.³⁵

Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It can be proven by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.³⁶ The CA correctly ruled that conspiracy existed based from the totality of the circumstances of the instant case. The CA held that:

Based on the evidence on record, We do not entertain any doubt that conspiracy had animated the perpetrators in delivering or transporting the seized illegal drugs: Amago conspired with Vendiola in a common desire to transport the dangerous drugs using the motorcycle. Both were positively identified to have been respectively carrying a firearm, a folding knife, an improvised tooter and a folded strip of aluminum foil. As they approached the checkpoint sign, accused-appellants appeared rattled and hastily executed a u-turn, which clearly manifest that they were committing some offense. They were then apprehended for illegal possession of firearm and illegal possession of a bladed weapon. The arrest further resulted to the confiscation of the illegal drugs in the u-box of the motorcycle. It is worth noting as well that both the accused-appellants tested positive for methamphetamine hydrochloride or *shabu*.³⁷

The evidence shows that the chain of circumstances necessarily leads to the conclusion that there was concerted action between accused-appellants, with the objective of transporting illegal drugs.

Based on the foregoing, we sustain accused-appellants' conviction.

WHEREFORE, premises considered, the September 17, 2014 Judgment³⁸ of the Regional Trial Court in Criminal Case No. 2013-21877, finding Joseph Solamillo Amago and Cerilo Bolongaita Vendiola, Jr. guilty of violating Section 5, Article II of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, and the May 31, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC. No. 01953, which affirmed the September 17, 2014 Judgment of the RTC, are **AFFIRMED**.

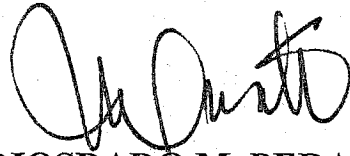
³⁵ *Id.* at 628.

³⁶ *People v. Peralta*, 435 Phil. 743, 764 (2002).

³⁷ *Rollo*, pp. 29-30.

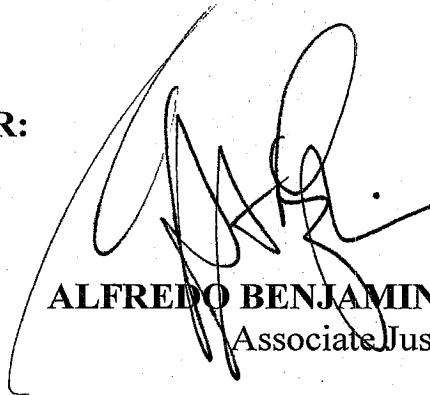
³⁸ Records, pp. 217-223.

SO ORDERED.

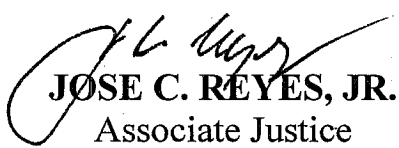


DIOSDADO M. PERALTA
Chief Justice

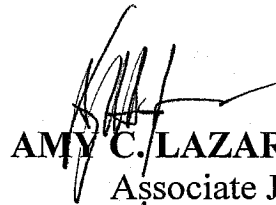
WE CONCUR:



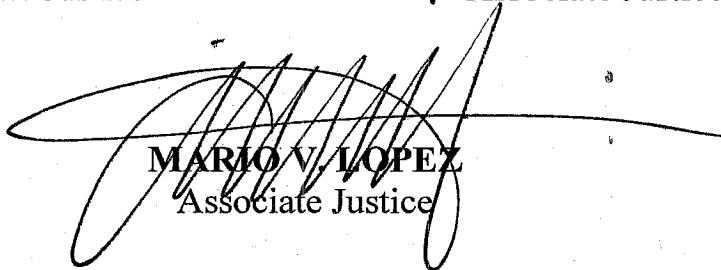
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



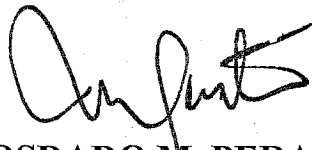
AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
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.



DIOSDADO M. PERALTA
Chief Justice