



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

XIUQUIN SHI,

Petitioner,

G.R. No. 228519

-versus-

PEOPLE OF THE PHILIPPINES,

Respondent.

x-----x

PEOPLE OF THE PHILIPPINES,

Appellee,

G.R. No. 231363

Members:

-versus-

LEONEN, M., *SAJ, Chairperson,*

LAZARO-JAVIER, A.,

LOPEZ, M.,

DIMAAMPAO,* and

KHO, JR., *JJ.*

SUNXIAO XU *alias* WILLIAM

CHUA, WENXIAN HONG *alias*

ANDY HONG, and XIUQUIN SHI

***alias* KIM SY,**

SUNXIAO XU *alias* WILLIAM

CHUA,

Promulgated:

Accused.

March 16, 2022

x-----Mis-DCBait-----x

* Designated additional Member in lieu of Justice Jhosep Y. Lopez, per Raffle dated October 31, 2021.

DECISION

LAZARO-JAVIER, J.:

The Case

Petitioner Xiuquin¹ Shi *alias* Kim Sy (Sy) and appellant Sunxiao Xu *alias* William Chua (*Chua*) assail the following dispositions of the Court of Appeals in CA-G.R. CR-H.C. No. 05511 entitled “*People of the Philippines v. Sunxiao Xu alias William Chua, Wenxian Hong alias Andy Hong, Xiuquin Shi alias Kim Sy*”:

- 1) **Decision**² dated June 6, 2016 which affirmed the conviction of Chua and Andy Hong (*Hong*) for violation of Sections 5 and 11 of Republic Act No. (RA) 9165,³ and the conviction of Sy for violation of Section 11 of the same law; and
- 2) **Resolutions** dated September 21, 2016⁴ and November 28, 2016⁵ which denied their respective motions for reconsideration.

Antecedents

The Charges

By separate Informations dated April 20, 2010, Chua and Sy, together with Hong, were charged with violations of Sections 5 and 11 of RA 9165, the *Comprehensive Dangerous Drugs Act of 2002*, viz.:

Criminal Case No. 10-0400

That on or about the 18th day of April 2010, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, not being authorized by law to possess, did then and there willfully, unlawfully and feloniously have in his (*sic*) possession and under his (*sic*) control and custody one (1) black bag containing the following, to wit:

¹ Sometimes referred as Xiuqin Shi in the records. *rollo*, p. 55

² Penned by Associate Justice Leoncio Real-Dimagiba, concurred in by Associate Justices Ramon R. Garcia and Jhosep Y. Lopez, G.R. No. 231363, *rollo*, pp. 2–16.

³ Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002.

⁴ G.R. No. 231363, *CA rollo*, pp. 229–221.

⁵ *Id.* at 228–229.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 497.43 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 495.56 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 538.13 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 486.81 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 538.06 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 503.00 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 519.77 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 430.94 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 475.47 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 514.83 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 490.63 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 496.04 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 491.96 grams.

One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 528.05 grams.

All in the total weight of more or less 7006.68 grams, which when tested were positive for Methamphetamine Hydrochloride (*shabu*), a dangerous drug.

CONTRARY TO LAW.⁶

Criminal Case No. 10-0401

That on or about the 18th day of April 2010, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, not being authorized by law, did then and there willfully, unlawfully[,] and feloniously sell, trade, administer, dispense, deliver give away to another, distribute, dispatch in transit[,] or transport one (1) self-sealing transparent plastic bag containing white crystalline substance weighing 496.73 grams to Poseur[-]Buyer SPO3 Elmer Corbe, which contents of said plastic bag when tested were found positive for Methamphetamine Hydrochloride (*shabu*), a dangerous drug.

Contrary to Law.⁷

⁶ G.R. No. 228519, *rollo*, pp. 37–38.

⁷ *Id.* at 38.

Atty. Roselyn Tinio and Filipino-Chinese interpreter Charlie Lim assisted all three accused during the arraignment where they all pleaded *not guilty* to the respective charges against them.⁸

During the trial, the prosecution presented the respective testimonies of SPO3 Elmer Corbe (*SPO3 Corbe*), SPO2 Marcelo Alcancia (*SPO2 Alcancia*), and SPO1 Randy Fuentes (*SPO1 Fuentes*); and stipulated with the defense on the proposed testimonies of Chemist Severino Uy (*Chemist Uy*), Chemist Elaine Erno (*Chemist Erno*), and *Barangay Kagawads* Maximo Sta. Ana Padilla (*Padilla*) and Oscar Noble (*Noble*).

The defense, on the other hand, presented all three accused with the assistance of Chinese Interpreter Linda Ong Lim.

The Prosecution's Version

SPO3 Corbe⁹ testified that on April 18, 2010, around 2 o'clock in the afternoon, Inspector Virgilio Santiago (*Inspector Santiago*) received a report from a confidential informant regarding the alleged illegal drug activity of a certain Chua. Inspector Santiago instructed the informant to arrange a deal for half kilo of *shabu* worth ₱2,000,000.00 at 7-Eleven convenience store along Doña Soledad Avenue, Better Living, Parañaque City. He was designated as poseur-buyer while SPO2 Alcancia, SPO1 Fuentes, and PO3 Rolando Yulo were designated as back-up operatives. They coordinated with the Philippine Drug Enforcement Agency (*PDEA*) and Southern Police District per Pre-Operation Report and Coordination Form No. 04-10-0015 dated April 18, 2010.

During the briefing, he was handed twenty (20) pieces of ₱1,000.00 bills and boodle money for the buy-bust operation. Thereafter, he and the confidential informant proceeded to the area of operation and arrived there around 6 o'clock in the evening. They stood beside their car parked at 7-Eleven while the back-up operatives discreetly positioned themselves nearby.

When Chua arrived, a brief introduction took place, after which, Chua immediately asked for the money. He signaled that the money was inside his black bag. Chua then ordered him and the confidential informant to get into his (Chua's) car. Inside, he saw two other persons who were later identified as Hong, seated at the front passenger's seat, and Hong's wife Sy, seated behind her husband.

⁸ Id. at 38–39.

⁹ Id. at 57–59.

Chua directed Hong to hand over the “stuff” to him (Corbe). Heeding the directive, Hong took out a transparent plastic bag with white crystalline substance, slid it inside an envelope, and handed it to him. As he in turn handed the payment to Chua, he surreptitiously rang the number of SPO2 Alcancia to signal the completion of the sale. The other members of the team thus closed in to arrest the accused. SPO1 Fuentes opened the driver’s door and retrieved the boodle money from Chua while SPO2 Alcancia confiscated fourteen (14) packs of transparent plastic sachets containing white crystalline substance inside the black bag from Hong. Meantime, he seized a cellular phone from Sy who tried to make a call.

They proceeded to Camp Bagong Diwa, Bicutan, Taguig City which was only about two (2) kilometers away from the place of arrest so as not to jeopardize the follow-up operation. There, he marked and inventoried the seized items in the presence of the accused and *Barangay Kagawads* Padilla and Noble. He wrote “BB”¹⁰ on the item subject of the sale while the fourteen (14) packs recovered from Hong were marked “AIDB-1” to “AIDB-14.”¹¹ PO2 James Barbajera (*PO2 Barbajera*) took pictures of the procedure and prepared the request for laboratory examination which he (Corbe) personally brought to the PDEA Crime Laboratory together with the seized items.

SPO2 Alcancia¹² corroborated SPO3 Corbe’s testimony. He affirmed that when the team closed in and opened the front door (passenger side) of Chua’s vehicle, he saw a large black travelling bag resting on Hong’s lap. The bag was wide open revealing fourteen (14) self-sealing transparent plastic bags of suspected *shabu*. He took custody of these items while SPO3 Corbe handled the plastic bag of suspected drugs sold to SPO3 Corbe.

He explained that no representative from the media was present to avoid early publicity as they were to conduct a follow-up operation following a tip from Chua himself that they did not own the seized items and he was going to identify the real owner. His team called the Department of Justice (*DOJ*) but no representative arrived. PO2 Barbajera took photographs of the inventory.

Thereafter, the same team did a follow-up operation along Doña Soledad Avenue. They stayed there for 30 minutes, but no one showed up.

That evening, SPO3 Corbe brought the seized items to the PDEA Crime Laboratory. Per Chemistry Report No. PDEA-DD-010-146, these items tested positive for *methamphetamine hydrochloride*.

¹⁰ Stood for “buy–bust”. TSN dated October 28, 2010, p. 328.

¹¹ Stood for “Anti–Illegal Drug Branch”. TSN dated October 28, 2010, p. 328.

¹² G.R. No. 228519, *rollo*, pp. 59–60.

Meanwhile, SPO1 Fuentes¹³ testified that during the arrest, it was he who opened the door of the driver's seat of Chua's car. He handcuffed and frisked Chua and recovered from him one (1) black pouch containing the buy-bust money and a cellular phone. Meanwhile, SPO2 Alcancia opened the front door (passenger) seat and confiscated a bag containing several plastic bags of white crystalline substance resting on Hong's lap. After the arrest, they proceeded to Camp Bagong Diwa, Taguig City to mark and inventory the seized items. He clarified that it was PO2 Barbajera who took pictures in their office though said officer was not present during the arrest.

As stated, both the prosecution and the defense stipulated on the proposed testimonies of the remaining prosecution witnesses, *viz.* :

PO2 Barbajera¹⁴ took pictures during the inventory at Camp Bagong Diwa, Bicutan, Taguig City, though he was not present during the buy-bust operation.

PDEA Forensic Chemist Uy¹⁵ received the request for laboratory examination from SPO3 Corbe at 11:40 in the evening of April 18, 2010 together with the following items:

- one (1) Y3 bag marked AIDB containing 18 large brown envelopes;
- 14 self-sealing plastic bags each containing approximately 500 grams of white crystalline granules suspected to be *shabu* marked as "AIDB-1" to "AIDB-14"; and
- one (1) large brown envelope marked "BB-ENVELOPE" containing one (1) self-sealing transparent plastic bag containing approximately 500 grams of white crystalline substance suspected to be *shabu* marked "BB."

He examined the specimens which yielded positive results for *methamphetamine hydrochloride* per his Chemistry Report No. PDEA-DD010-146. He could identify the specimens submitted to him for laboratory examination though he had no personal knowledge of the identity of the person who was in prior possession of the same. He affixed his initials and date of examination to the masking tape pasted on the top portion of the plastic bags. Chemist Erno, on the other hand, took representative samples during the ocular inspection of the seized items at the courtroom of Regional Trial Court Branch 259, Parañaque City. Photographs were taken during the ocular inspection and taking of representative samples from the seized items. Both Chemists had no personal knowledge of the source of the specimens.

¹³ Id. at 60–61.

¹⁴ Id. at 62.

¹⁵ Id. at 57 and 60.



Prosecutor Oliver C. Hernandez (*Prosecutor Hernandez*), PDEA Forensic Chemist Erno, Evidence Custodian Majela S. Munasque (*Evidence Custodian Munasque*), SO II Beltran T. Lacap, Jr. (*SO II Lacap, Jr.*), BJMP¹⁶ Jail Guards Eladio Gamponia (*Gamponia*), Tyrone Gallo (*Gallo*), Maria Caria M. Marco (*Marco*), and Franklin Aldania (*Aldania*), OIC/BCC Florentino V. Alumbres, Jr. (*OIC/BCC Alumbres, Jr.*), Clerk III Vladimir Cos (*Clerk III Cos*), and Bailiff SPO4 Carlos Torres (*Bailiff SPO4 Torres*) were present during the ocular inspection of the seized items.¹⁷

Lastly, *Barangay Kagawads* Padilla and Noble¹⁸ were present during the inventory of the fifteen (15) plastic bags containing white crystalline substance at Camp Bagong Diwa, Taguig City. They were in the pictures taken during the inventory and they signed the Certificate of Inventory.

The prosecution offered in evidence the Request for Laboratory Examination (Exhibit A to A-3), Chemistry Report No. PDEA-DD010-146 (Exhibits B to B-8), Joint Affidavit of Apprehension (Exhibits D to D-7), Coordination Form (Exhibits E to E-2), Pre-Operation Report (Exhibits F to F-1) Certificate of Coordination (Exhibit G), Certificate of Inventory (Exhibits H to H-10), Sunxiao Xu's Personal Data (Exhibit I), Wenxian Hong's Personal Data (Exhibit J), Xiuquin Shi's Personal Data (Exhibit K), Pictures of Inventory and Confiscated Evidence (Exhibits L to Q), Photocopy of Buy-Bust Money (Exhibits R to KK-1), Pictures during the Ocular Inspection (Exhibits MM to MM-27), Representative Samples (Exhibits NN to NN-15), Black Bag (Exhibit OO), and Black Pouch (Exhibit PP).¹⁹

The Defense's Version

Sunxiao Xu *alias* **William Chua**²⁰ testified that he was engaged in the business of selling imported bags from China in Baclaran and Quiapo. On April 16, 2010, he, together with Hong, Sy, and one Willy Ong (*Ong*) signed a lease contract over an apartment located at 148 Peru St., Better Living Subdivision, Parañaque City.

Early morning the next day, April 17, 2010, Ong borrowed Hong's car while he (Chua), Hong, and Sy stayed in the apartment. He was supposed to head to Makati City in the afternoon while Hong and Sy had an appointment in Pasay City. Thus, they tried to contact Ong for the latter to immediately return the car, but to no avail. So they decided to just take a cab.

¹⁶ Bureau of Jail Management and Penology.

¹⁷ Records, RTC Crim. Case No. 10-0400/01, pp. 40-41.

¹⁸ G.R. No. 228519, *rollo*, pp. 61-62.

¹⁹ G.R. No. 231363, *CA rollo*, p. 9.

²⁰ G.R. No. 228519, *rollo*, pp. 62-63.

They were waiting at 7-Eleven along Doña Soledad Avenue when several persons in civilian clothes suddenly arrested them. He was forced to board a car with his hands tied with a belt and a plastic bag placed over his head. Meanwhile, Hong and Sy were forced to board another vehicle. The men demanded ₱10,000,000.00 from him but he replied he did not have that amount of money. He was eventually brought to a small room with Hong and Sy where the men increased their demand to ₱30,000,000.00. As they continued to assert they did not have such huge amount, they were locked inside a dark room.

On April 18, 2010, they were instructed to contact their relatives and prepare the amount demanded of them. They reiterated though they did not have that amount of money. That evening, they were brought inside a room with cameras. There, they saw a table with money and alleged illegal drugs. They were made to point to the table while someone took their photos. Outside, they saw Hong's car. They were made to stand beside it and someone again took their photos. They did not seek assistance from the Chinese Embassy, hoping they would just be set free.

Wenxian Hong *alias* **Hong** and **Xiuquin Shi** *alias* **Sy** are husband and wife. They denied any participation in the sale or even in the possession of illegal drugs. They essentially corroborated Chua's testimony.

The defense formally offered the respective judicial affidavits of Chua, Hong, and Sy.²¹

Ruling of the Regional Trial Court

By Decision²² dated March 9, 2012, the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, premises considered the court renders judgement as follows:

1. In *Criminal Case No. 10-0401 for Violation of Sec. 5 Art. II, RA 9165*, the court finds accused **SUNXIAO XU** *alias* **WILLIAM CHUA y BAUTISTA**, and **WENXIAN HONG** *alias* **ANDY HONG**, **GUILTY** beyond reasonable doubt for selling 496.73 grams of methamphetamine hydrochloride (shabu) and are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of THREE MILLION PESOS (Php3,000,000.00) each. Accused **XIUQUIN SHI** *alias* **KIM SY**, is hereby found **NOT GUILTY**, the prosecution having failed to establish her guilt beyond reasonable doubt;

²¹ G.R. 231363, CA *rollo*, p. 10.

²² *Id.* at 73-90.

2. In *Criminal Case No. 10-0400 for Violation of Sec. 11, Art. II, RA 9165*, the court finds accused **SUNXIAO XU alias WILLIAM CHUA y BAUTISTA, WENXIAN HONG alias ANDY HONG and XIUQUIN SY alias KIM SY GUILTY** beyond reasonable doubt for possession of methamphetamine hydrochloride (*shabu*) in the total of more or less 7006.68 grams and are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of THREE MILLION PESOS (Php3,000,000.00) each.

Further it appearing that the accused **SUNXIAO XU alias WILLIAM CHUA y BAUTISTA, WENXIAN HONG alias ANDY HONG** are detained at the Special Intensive Care Area (SICA), Metro Manila District Jail (MMDJ), Camp Bagong Diwa, Bicutan, Taguig City and considering the penalty imposed, the OIC Branch Clerk of Court is hereby directed to prepare the *Mittimus* for their immediate transfer to the New Bilibid Prisons, Muntinlupa City.

Also considering that accused **XIUQUIN SHI alias KIM SY** is detained at the Taguig City Jail – Female Dorm, Bicutan, Taguig City and the penalty imposed, the OIC-Branch Clerk of Court is hereby directed to prepare the *Mittimus* for her immediate transfer to the Correctional Institute for Women, Mandaluyong City.

The specimens are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over to the Philippine Drug Enforcement Agency (PDEA) the remaining representative samples of the evidences in these cases for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.

SO ORDERED.²³

The trial court held that the prosecution sufficiently established the culpability of Chua and Hong for illegal sale of dangerous drugs, albeit Sy was found not to have participated therein. Chua asked for the money from SPO3 Corbe and the informant. Upon being shown the boodle money, Chua instructed Hong to hand over the *shabu*. Hong took out a plastic bag containing white crystalline substance from a traveling bag resting on his lap and handed it to SPO3 Corbe. The contents of the plastic bag tested positive for *methamphetamine hydrochloride*.

As for illegal possession of dangerous drugs, the trial court convicted all three accused, including Sy. It noted that the fourteen (14) plastic bags of *shabu* weighing more or less seven (7) kilos were contained inside a black traveling bag which was found resting on the lap of Hong inside the Toyota Sedan Hong himself owned. Although the fourteen (14) bags of *shabu* were physically recovered from Hong alone, the two other accused Chua and Sy were also deemed to have had possession thereof as may be clearly inferred from the circumstances of the case. Besides, when an accused is charged with illegal possession or transport of illegal drugs, ownership thereof is immaterial.

²³ Id. at 90.

The trial court rejected the accused's defense of denial and frame-up. It found the apprehending officers to have substantially complied with Section 21 of RA 9165. Efforts were made to secure the presence of a representative from the DOJ but no one was available. Meanwhile, they did not secure the presence of the media to avoid publicity which could have prejudiced the follow-up operation. Since the accused failed to establish ill motive on the part of the apprehending officers, the presumption of regularity in the performance of their official functions remained in place.

Proceedings before the Court of Appeals

On appeal,²⁴ the accused faulted the trial court for rendering a verdict of conviction despite the alleged apparent absence of an actual buy-bust operation and the prosecution's failure to prove that the items presented in court were the same items confiscated during the arrest. They asserted:

First. The photos of the seized items were only taken a day after they supposedly got abducted. Worse, they were taken by PO2 Barbajera who was not even present during the arrest.

Second. The marking, photographing, and inventory of the seized items were not conducted at the place of arrest.

Third. SPO3 Corbe did not mark the seized items with his initials, contrary to the rules on handling seized items.

Fourth. No representative from the DOJ and the media were present during the marking, photographing, and inventory of the seized items.

Fifth. The *barangay* officials were not present during the marking of the seized items.

As regards Sy's conviction for illegal possession of dangerous drugs, her mere presence at the back of the car was not sufficient to establish dominion and control over the supposed seized items.

The Office of the Solicitor General (OSG)²⁵ defended the trial court's verdict of conviction. It argued that the prosecution sufficiently established all the elements of the offenses charged - - Chua and Hong sold *shabu* to SPO3 Corbe and together with Sy, they were also found to have been in possession of fourteen (14) other plastic bags of *shabu*.

²⁴ Id. at 13-64.

²⁵ Id. at 96-120.

Too, the prosecution sufficiently established the chain of custody over the seized items *i.e.*, the alleged lapses incurred by the apprehending officers were only raised for the first time on appeal; no objection was raised by appellants during the trial on the admissibility of the fifteen (15) plastic bags of *shabu*; the fact that the marking and inventory were conducted at Camp Bagong Diwa did not compromise the integrity of the seized items; the apprehending team exerted diligent efforts to secure the presence of a representative from the DOJ but to no avail; and they did not reach out to the media to avoid jeopardizing the follow-up operation.

The Rulings of the Court of Appeals

Under its assailed Decision²⁶ dated June 6, 2016, the Court of Appeals affirmed the trial court's ruling. It rejected the claim of frame-up and extortion for lack of clear and convincing evidence. In the case of illegal sale of dangerous drugs, SPO3 Corbe positively identified Chua and Hong as the persons who sold him *shabu* weighing 496.73 grams for ₱2,000,000.00. As for illegal possession of dangerous drugs, the accused's dominion and control thereof was established when they got caught in *flagrante delicto* in possession of the huge volume of *shabu* inside Hong's car. The apprehending officers sufficiently justified their deviation from the chain of custody rule.

Chua²⁷ and Sy²⁸ filed separate motions for reconsideration but the same got denied under Resolutions dated September 21, 2016²⁹ and November 28, 2016,³⁰ respectively. Hong no longer moved for reconsideration nor appealed from the ruling of the Court of Appeals.

The Present Petitions

In her petition for review on certiorari³¹ *via* G.R. No. 228519, Sy claims anew that she did not freely and consciously possess the plastic bags containing the subject drugs. She was not in actual, physical, or constructive possession of the seized items during the arrest as the traveling bag containing the plastic bags of *shabu* were recovered from Hong who was then seated at the front passenger seat. The following circumstances allegedly further negate her intent to possess the drugs in question:

²⁶ Id. at 135–149.

²⁷ Id. at 189–213.

²⁸ Id. at 184–187.

²⁹ Id. at 220–221.

³⁰ Id. at 228–229.

³¹ G.R. No. 228519, *rollo*, pp. 12–35.

First. The drug operation was against Chua, not her.

Second. It was her husband Hong who owned the car. Being Hong's wife does not necessarily mean that she exercised control and dominion over her husband's vehicle. She was quietly sitting at the back of the car as a mere observer.

Third. She did not know that what her husband Hong had on his lap which he handed to SPO3 Corbe was *shabu*. When the alleged transaction was ongoing, there was never a mention of "*shabu*" but only "stuff." Upon Chua's instructions, her husband slid the "stuff" inside a large brown envelope which obstructed her view.

Finally. Her act of making a call should not be taken against her without any showing that the call was in relation to the alleged drugs inside the car.

At any rate, the apprehending officers did not intend to comply with Section 21 of RA 9165. The marking, inventory, and photographing were not conducted at the place of arrest, in violation of the rules. That the apprehending officers did not want to jeopardize the follow-up operation did not justify the deviation from the rule of immediacy. Lastly, the prosecution witnesses did not testify on how the integrity of the seized items was preserved while in transit from the place of arrest to Camp Bagong Diwa, to the crime laboratory, and after examination.

The OSG³² defends the conviction of Sy for illegal possession of dangerous drugs. The fact that the fourteen (14) plastic bags of *shabu* were not found in her actual possession does not exonerate her. For her complicity in the crime can be readily inferred from her actions during the buy-bust operation. At any rate, lack of intent and good faith are not exempting circumstances in *mala prohibita* crimes.

Contrary to the claim of Sy, the prosecution sufficiently established an unbroken chain of custody over the seized items. The OSG further reiterates that the alleged irregularities were only raised for the first time on appeal.

As for Chua, he filed a notice of appeal³³ via G.R. No. 231363.

³² Id. at 143.

³³ G.R. No. 231363, CA *rollo*. pp. 222-224.



In compliance with Resolution³⁴ dated July 12, 2017, the OSG³⁵ manifested that insofar as Chua's appeal is concerned, it is adopting its appellee's brief before the Court of Appeals. On the part of Chua though, he failed to file his supplemental brief despite his repeated requests for extension.³⁶ Thus, he is deemed to have waived his right to file the same.

Our Ruling

The prosecution sufficiently established all the elements of illegal sale and illegal possession of dangerous drugs.

Chua and Sy were charged with violations of RA 9165³⁷ allegedly committed on April 18, 2010. The governing law, therefore, is RA 9165 prior to its amendment by RA 10640³⁸ on August 7, 2014.

To secure a verdict of conviction for ***illegal sale of dangerous drugs***, the prosecution must prove: (a) the identity of the buyer and the seller, object, and consideration; and (b) the delivery of the thing sold and payment.³⁹

As uniformly found by the trial court and the Court of Appeals, SPO3 Corbe positively identified Chua and Hong as the sellers of **496.73 grams** of *shabu* for ₱2,000,000.00 on April 18, 2010. After a brief introduction outside 7-Eleven, Doña Soledad, Better Living, Parañaque City, Chua instructed SPO3 Corbe and the informant to board Hong's car. Chua took the driver's seat. Inside, they saw Hong on the front passenger seat. Behind him was his wife Sy. Chua then asked for the payment but SPO3 Corbe just showed Chua the money, insisting that he be handed the "stuff" first. Chua thus ordered Hong to hand the *shabu* to SPO3 Corbe. Hong obliged and took out a plastic bag of *shabu* from a travelling bag resting on his lap. Hong secured the plastic bag inside a large brown envelope and handed it to SPO3 Corbe. As payment, SPO3 Corbe gave the boodle money to Chua.

On the other hand, to sustain a verdict of conviction for ***illegal possession of dangerous drugs***, the prosecution must establish the following elements: (a) the accused was in possession of an item or object identified as

³⁴ G.R. No. 231363, *rollo*, pp. 23-24.

³⁵ *Id.* at 51-53.

³⁶ Very Respectful Motion for Extension of Time to File Supplemental Brief dated October 26, 2017, *id.* at. 33-35; Very Respectful Motion for Final Extension of Time to File Supplemental Brief, *id.* at 39-41, Very Respectful Motion for a Very Last Extension of Time to File Supplemental Brief dated November 21, 2017, *id.* at 44-46.

³⁷ Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002.

³⁸ Amendment to Republic Act No. 9165 (Anti-Drug Campaign of the Government), Republic Act No. 10640, July 15, 2014.

³⁹ See *People v. Sanchez y Licudine*, 827 Phil. 457, 465 (2018).

prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed said drug.⁴⁰

Here, after SPO3 Corbe announced his authority and the back-up team had closed in, SPO2 Alcancia forced open the front passenger's seat and recovered fourteen (14) more packs of *shabu* **weighing more or less 7006.68 grams** widely exposed inside the open travelling bag resting on Hong's lap. There was no showing that Chua, Sy, or Hong were duly authorized to possess these drugs.

When SPO2 Alcancia opened the front passenger's seat and consequently recovered therefrom fourteen (14) more packs of *shabu* inside the open travelling bag resting on Hong's lap, SPO2 Alcancia did a search incidental to a lawful arrest in accordance with Section 5, Rule 113 of the Rules of Criminal Procedure, *viz.*:

Sec. 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;

So must it be.

Petitioner Sy failed to refute the presumption of animus possidendi over the seized items.

Possession, under the law, includes not only actual possession, but also constructive possession. **Actual possession** exists when the drug is in the immediate physical possession or control of the accused. **Constructive possession**, on the other hand, exists when the drug is under the dominion and control of the accused or when he or she has the right to exercise dominion and control over the place where it is found, as in this case.⁴¹

Here, Sy was found in constructive possession of the fourteen (14) packs of *shabu* inside her husband's car. Her mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict her absent a satisfactory explanation for such possession.⁴²

⁴⁰ *Id.*

⁴¹ See *Quelnan v. People*, 553 Phil. 618, 630 (2007).

⁴² See *People v. Eda y Casani*, 793 Phil. 885, 898 (2016).

Sy nevertheless denies knowledge that her husband's car which she was riding carried a **total volume of 7,503.41 grams**⁴³ of *shabu*. She allegedly did not exercise dominion and control over her husband's car; during the buy-bust, she was just a mere passenger-observer seated at the back of the vehicle. When the transaction was on-going, she never heard *shabu* but only the word "stuff." The fact that her husband, then on the front passenger's seat, inserted the "stuff" inside a brown envelope, thus obstructing her view of what was being handed to SPO3 Corbe. At any rate, the drug operation was against Chua, not her.

But the actuations of Sy during the buy-bust negate her asserted innocence.

First. The Toyota Sedan carrying the packs of *shabu* was owned by her husband, Hong. As husband and wife, it is presumed that they jointly exercise ownership and dominion over the car.

In the following cases, the accused were held to be in constructive possession of illegal drugs since they were shown to enjoy dominion and control over the premises where these drugs were found.⁴⁴

In *People v. Tira*,⁴⁵ the Court held that appellants husband and wife had actual and exclusive possession, control, and dominion over the house, including the room where the drugs were found by the police officers. The drugs were found under the bed in the inner room of the house of the appellants. The wife, appellant Connie Tira, could not escape criminal liability for the crime charged based alone on her bare testimony that she was just a plain housewife, had no involvement in the criminal actuations of her husband, and had no knowledge of the existence of the drugs in the inner room of the house. The Court noted that she had full access to the room, including the space under the bed. She failed to adduce credible evidence that she was prohibited by her husband, appellant Amadeo Tira, from entering the room, cleaning it, or even sleeping on the bed inside the room.

In *People v. Estabillo*,⁴⁶ the Court held that Alexander Estabillo had constructive possession of the two bricks of cocaine recovered from behind the driver's seat of his vehicle upon his arrest. According to the Court, only he had dominion of these items. The two bricks of cocaine were under his control and disposal.

⁴³ 7006.68 grams subject of the illegal possession case and 496.73 grams subject of the sale.

⁴⁴ See *People v. Dela Cruz*, 592 Phil. 207, 216 (2008).

⁴⁵ 474 Phil. 152, 174 (2004).

⁴⁶ G.R. No. 252902, June 16, 2021.

Another. In *People v. Torres*,⁴⁷ the Court held that Torres was in constructive possession of the illicit drugs and paraphernalia found in his residence even if he was not home when the drugs were found. Dexter Torres failed to present any evidence to rebut the existence of *animus possidendi*. The Court added:

The fact that appellant was not in his residence when it was searched nor caught in *flagrante delicto* possessing the illicit drugs and paraphernalia does not dent the case of the prosecution. As a matter of law, when prohibited and regulated drugs are found in a house or other building belonging to and occupied by a particular person, the presumption arises that such person is in possession of such drugs in violation of law, and the fact of finding the same is sufficient to convict. Otherwise stated, the finding of the illicit drugs and paraphernalia in the house owned by the appellant raised the presumption of knowledge and, standing alone, was sufficient to convict.⁴⁸

Thus, Sy cannot evade liability by simply asserting that she did not have any idea that her husband's car carried a total volume of **7503.41⁴⁹ grams of shabu**. Sans any showing that she was prohibited by her husband Hong from using or otherwise exercising dominion over the car, the Court cannot accept Sy's bare assertion of innocence or ignorance to support her plea for acquittal.

Second. Sy was present during the sale of the illegal drugs. Her husband Hong was then seated inside the car (on the front passenger's seat). Meanwhile, she was seated behind Hong, while seated beside her was SPO3 Corbe. During the exchange, SPO3 Corbe even showed off the ₱2,000,000.00 cash inside his bag in her presence. She also saw up close that in exchange for the cash, her husband took out a big plastic bag containing white powdery substance from the travelling bag resting on his lap, slid the same inside an envelope, and handed it to SPO3 Corbe. In exchange, the latter handed the bag full of cash.

This very shady transaction involving a bag full of cash should have already prompted her to at least ask questions as to what was happening inside the car. But Sy simply fell into total silence which We cannot interpret any other way but an acquiescence to the shady transaction happening inside the car. She kept silent when she ought to have asked questions; she looked the other way when she should have probed deep into the transaction.⁵⁰ Indeed, her silence could only be viewed as a form of moral support which she zealously lent to her co-conspirators.⁵¹

⁴⁷ 533 Phil. 227, 247 (2006).

⁴⁸ Id. at 246.

⁴⁹ 7006.68 grams subject of the illegal possession case and 496.73 grams subject of the sale.

⁵⁰ See *Arias v. Sandiganbayan*, 259 Phil. 794, 817 (1989).

⁵¹ See *Fortuna v. People*, 401 Phil. 545, 551 (2000).

Third. It was highly improbable that her view was obstructed given the very limited space inside the car full of five passengers and the shady actions of the persons inside it. Ordinary human experience dictates that a passenger seated at the back, like herein Sy, could normally observe the actions of his or her companions inside the car.

To repeat, Sy chose to turn a blind eye to all the peculiar, nay, suspicious things happening inside the car which led to her arrest and the arrest of her husband and their co-accused. Any normal person in her place should have asked questions, but she never did. To our mind, the only reason why she never asked for what stuff SPO3 Corbe was paying ₱2,000,000.00 was because she knew precisely what the “stuff” or merchandise was, and what exactly was resting on the lap of her husband Hong.

Lastly, her actuations during and after the buy-bust indicate a guilty mind.⁵² Apart from her established acquiescence to the illicit transaction inside the car, she attempted to make a phone call as soon as SPO3 Corbe announced his authority. If she were truly innocent, her first reaction would have been to ask “What’s wrong? Why? What did we do?” But she never did because she knew she and her co-accused were in possession of a large volume of drugs inside the car.

The apprehending officers substantially complied with the chain of custody rule.

Apart from the elements of possession or sale, the identity between the substance illegally possessed and sold, on one hand, and the substance offered in court as exhibit, on the other, must likewise be established with the same degree of certitude.⁵³ Hence, the chain of custody rule comes to fore to ensure that unnecessary doubts concerning the identity of the evidence are removed.⁵⁴

*Mallillin v. People*⁵⁵ expounded on the rationale for the chain of custody rule:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while

⁵² See *People v. Quijano y Sanding*, G.R. No. 247558, February 19, 2020.

⁵³ See *People v. Lorenzo y Casas*, 633 Phil. 393, 403 (2010).

⁵⁴ See *Catuiran y Necudemus v. People*, 605 Phil. 646, 655 (2009).

⁵⁵ 576 Phil. 576–594 (2008).

in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination[,] and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration[,] or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.⁵⁶

The chain of custody rule reckons with the four links beginning from the moment the item was confiscated up to the time it is offered in evidence, thus:

First. The seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second. The turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third. The turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth. The turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁵⁷

Here, the Court finds that the prosecution substantially complied with the chain of custody.

FIRST LINK

The **first link** includes the marking, inventory, and photographing of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing.⁵⁸ The requirement is embodied in Section 21 of RA 9165, *viz.*:

⁵⁶ *Id.* at 587–588.

⁵⁷ See *People v. Kamady Ambing*, 624 Phil. 289, 304 (2010).

⁵⁸ *People v. Bolivar y Molina*, G.R. No. 225626, December 5, 2019.

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

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

The Implementing Rules and Regulations (*IRR*) of RA 9165 further commands:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

The volume of the seized items and place of arrest necessitated the marking, inventory, and photographing at the police station.

Marking means affixing the initials or signature or other identifying signs by the apprehending officer to the dangerous drugs or related items **in the presence of the apprehended violator immediately upon arrest**. The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking sets apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until

their disposal of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence.⁵⁹

Here, Sy and Chua argue that the arresting officers failed to comply with Section 21 of RA 9165 since the seized items should have been marked with SPO3 Corbe's initials, inventoried, and photographed at the place of apprehension, immediately after the arrest.

It is undisputed that appellants were apprehended at a parking lot of a convenience store along Doña Soledad Avenue, Better Living, Parañaque City. SPO3 Corbe justified why they had to immediately leave the place and proceed instead to Camp Bagong Diwa, Bicutan, Taguig City - just about two (2) kilometers away, thus:

Q: What happened next after the arrest of these three (3) accused?

A: We brought them to our office and made an inventory and photographs and we put markings on the recovered evidence.

Q: Where was your office located?

A: Very near at Camp Bagong Diwa.

COURT: In what place did you place the marking?

A: I put the markings inside our office.

FISCAL TO WITNESS: So, from 7 Eleven [did] you immediately proceed[sic] to your office after the buy-bust operation?

A: Yes, Ma'am.

Q: You did not go anywhere else?

A: No, [M]a'am.⁶⁰

x x x

Q: Now, Mr. Witness, you also mentioned that you conducted an inventory at your office wherein there were *barangay* officers who witnessed the inventory?

A: Yes, [M]a'am.

Q: What evidence do you have to prove that the inventory was actually conducted in your office after the recovery of the evidence?

A: We have photographs taken during the inventory, [M]a'am.

COURT: Why is [it] that the inventory was conducted in your office and not at the place of the incident where the accused was arrested?

⁵⁹ See *People v. Gonzales y Santos*, 708 Phil. 121, 131 (2013).

⁶⁰ TSN dated October 28, 2010, pp. 327--331.

A: Because we have information that these accused are very near in [sic] the scene at the time of the apprehension, so we decided to bring the accused in our office in order that the possible follow-up operation will not [be] jeopardize[d], your Honor.

x x x

COURT: Why did you not conduct your inventory right at the scene of the crime?

A: That was the call to us at the time, your Honor, and the scene is very near to our office x x x.

x x x

Q: How far is your office from the place where the accused [were] arrested?

A: More or less, at [sic] about one (1) or two (2) kilometers away from [C]amp Bagong Diwa, your Honor.

Q: Only two (2) kilometers away?

A: That's my estimation only, your Honor.

Q: How would you describe the place where the accused [were] arrested?

A: It is an open area, your Honor, the parking area of a 7-Eleven store, your Honor.

Q: What time was that when the arrest of the accused was made?

A: At around 7:00 o'clock in the evening, your Honor.⁶¹

The Court takes judicial notice that the place of arrest, 7-Eleven Convenience Store, located along the busy, nay, narrow Sucat Road, Parañaque, is an open area and appellants' apprehension happened during rush hour, when traffic was heavy and multitudes of people were moving to and fro – which could have caused a disruption of the procedure involving as it was a huge volume of seized drugs - **a total volume of 7503.41⁶² grams of shabu.**

Further, the Court finds it reasonable and natural for the police officers to be seriously concerned about their own safety considering the confidential information that the real owner of the drugs was some other person who possibly could just be observing them from a distance and would be ready to pounce on them any minute at the place of arrest. Too, because time was of the essence, they had to go back to their office soon to gear up for an immediate follow-up operation in the same area of operation per confidential information from Chua that the seized items did not belong to him and that he would point to the real owner thereof. SPO2 Alcancia testified:

⁶¹ TSN dated November 4, 2010, pp. 21--24.

⁶² 7006.68 grams subject of the illegal possession case and 496.73 grams subject of the sale.

A

- COURT:** Why is it that the inventory was conducted in your office, why not at the place of the arrest?
- A:** Because our team leader told us to have the inventory conducted in our office so that we could immediately conduct a follow-up operation.
- COURT:** Involving the same target persons?
- A:** Yes, sir.
- COURT:** Why is there a need to conduct follow-up operation when you have already arrested the accused?
- A:** Because during the time of the arrest, William Chua told us that what we recovered did not belong to him and that he is going to point to the source.⁶³

Another. Camp Bagong Diwa, where the marking, inventory, and photographing were made is just two (2) kilometers away from the place of arrest. In view of the short distance, the possibility of tampering the **7503.41**⁶⁴ **grams of shabu en route** to Camp Bagong Diwa would be *nil*.

Even then, the police officers testified that *en route* to Camp Bagong Diwa, SPO2 Alcancia was in custody of the items seized (7006.68 grams) from Hong while SPO3 Corbe was in custody of the item (496.73 grams) subject of the sale. At the police station, SPO3 Corbe immediately marked the fourteen (14) plastic bags containing white crystalline substance as “AIDB-1” to “AIDB-14,” respectively, while the item purchased by SPO3 Corbe was marked as “BB.”

It is not true that the photographs of the seized items were only taken a day after the appellants supposedly got abducted. To be clear, there was no abduction to speak of. What took place was an arrest *in flagrante delicto*. As will be discussed later, Sy’s allegation of frame-up and extortion remained unsubstantiated. At any rate, SPO3 Corbe testified that photographs of the seized items and the procedure were taken on the same day of the arrest, *viz.*:

- Q: What time did you place the markings at your office?
- A: More or less, 7:30 to 8:00 [sic] in the evening.
- Q: What time was the arrest made?
- A: Around 7:00 [sic] in the evening.
- Q: The same day?
- A: Of the same day, your Honor.
- Q: What date was that?
- A: April 18, 2010, your Honor.⁶⁵

⁶³ TSN dated December 2, 2010, pp. 893–894.

⁶⁴ 7006.68 grams subject of the illegal possession case and 496.73 grams subject of the sale.

⁶⁵ TSN dated October 28, 2010, pp. 50–51.

The absence of representatives from the DOJ and media during the inventory and photographing did not render the seized items inadmissible.

Section 21 of RA 9165 commands that the seized drugs be inventoried and photographed in the presence of the accused or his representative or counsel, and the three insulating witnesses, namely: (a) a representative from the media; (b) a representative of the DOJ; and (c) an elected public official.⁶⁶

In this case, only *Barangay Kagawads* Padilla and Noble were present during the inventory and photographing of the seized items at Camp Bagong Diwa, Bicutan, Taguig City.

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law. This is because the law has been crafted by Congress as a safety precaution to address potential police abuses, especially considering that the penalty imposed may be life imprisonment. The Court, nonetheless, has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the seized items invalid, provided that the prosecution satisfactorily proves:

- (a) there is a justifiable ground for non-compliance; and
- (b) the integrity and evidentiary value of the seized items are properly preserved.⁶⁷

Here, SPO2 Alcancia explained why two of the three witnesses were not present:

PROS. ROMA: Aside from you, were there other persons present during the inventory?

A: Yes, Ma'am.

Q: Who were those other persons present?

A: Some of our colleagues and two (2) *barangay* leaders of Lower Bicutan.

Q: Do you know the names of these two (2) *barangays* leaders?

A: Maximo Sta. Ana Padilla and Oscar Norbe.

⁶⁶ See *People v. Manansala y Pabalan*, G.R. No. 228825, July 28, 2020.

⁶⁷ See *People v. Bangalan y Mamba*, G.R. No. 232249, September 3, 2018.

X

- COURT: Are they *barangay kagawad*?
A: Yes, [S]ir.
- COURT: What about representatives from the media and DOJ?
A: Aside from the two (2) *kagawads*, no representative from the media and DOJ.
- COURT: Why? Did you not coordinate with the media and the DOJ?
A: As far as I know, **my colleagues tried to seek representative from the DOJ but it was futile. As regards the media members, we did not contact them to avoid early publicity.**
- COURT: **Why did your group did not want early publicity of the result of the operation?**
A: **Because we are expecting a follow[-]up operation regarding this case.**⁶⁸ (Emphases added)

That only two *barangay kagawads* witnessed the procedure is not a ground for appellants' exoneration. The apprehending officers seriously exerted efforts to secure the presence of a representative from the DOJ but to no avail. They tried to call the DOJ but no one was available to witness the procedure because obviously, the time of the operation was already after office hours – 7 o'clock in the evening.

But the marking and inventory of seized items ought not be delayed.⁶⁹ Thus, they decided to push through with the procedure and compensated the absence of the other insulating witnesses with the presence of two *barangay kagawads*. While this is not what the law intended it to be, We consider it substantial compliance with the chain of custody rule as the situation in this case calls for an immediate procedure.

In *People v. Estabillo*,⁷⁰ the seized items were marked, inventoried, and photographed in front of an elected official and two media representatives. There was simply no prosecutor from the DOJ who was available to witness the inventory at that very late hour – 12 o'clock midnight. The Court, however, clarified that an extra media representative was no substitute for a DOJ representative under RA 9165 prior to its amendment. The Court nonetheless considered the arresting officers' decision to invite additional witnesses than required as cogent proof of their good faith, if not, earnest effort to comply with the witness requirement under Section 21, RA 9165, and more important, to ensure transparency and dispel any kind of suspicion on the legitimacy of the operation.

⁶⁸ TSN dated December 2, 2010, *rollo*, pp. 821–823.

⁶⁹ *Supra* note 46.

⁷⁰ *Id.*

Meanwhile, the apprehending officers deliberately excluded the media so as not to jeopardize the conduct of a follow-up operation following Chua's tip that the seized items were not theirs and that he was going to cooperate to point the real owner thereof. The follow-up operation, however, yielded negative result.

Even with the above deviations, the prosecution witnesses sufficiently established who were in possession of the seized items from confiscation at the place of arrest until the turn-over thereof at the PDEA Crime Laboratory. During the trial, SPO3 Corbe identified in open court the pictures of the transparent plastic bags of *shabu* subject of the illegal sale and illegal possession. In fact, the parties even stipulated on the authenticity of these pictures. The integrity and evidentiary value, therefore, remained intact.

The Court, in *Ramos v. People*,⁷¹ upheld the conviction of petitioner Roselyn Ramos for violation of Section 11, RA 9165 despite the fact that only *Barangay* Captain Cajés witnessed the inventory of the seized item. According to the Court, the chain of custody remained unbroken as the police officers substantially complied with the requirements under Section 21, RA 9165. The trial court correctly gave more credence and weight to the testimony of SPO2 Monette Q. Whiteside as against petitioner's unsubstantiated allegations.

Having sufficiently explained the deviations from the chain of custody rule, said deviations cannot be said to have diminished the integrity and evidentiary value of the seized items.

SECOND LINK

PO2 Barbajera documented the marking and inventory before preparing the request for laboratory examination.

The turnover of the seized *shabu* from the arresting officers to the investigating officer at the police station constitutes the **second link** in the chain of custody.⁷² The parties here stipulated on the proposed testimony of PO2 Barbajera. It was PO2 Barbajera who photographed the marking and inventory of the seized items by SPO3 Corbe. It was also PO2 Barbajera who prepared the request for laboratory examination of the seized items. To be sure, the fact that PO2 Barbajera was not part of the apprehending team did not preclude him from efficiently and effectively assuming the task of taking photos of the marking and inventory.

⁷¹ See *Ramos y Ortega v. People*, G.R. No. 244576, June 10, 2019.

⁷² See *People v. Gayoso y Arguelles*, 808 Phil. 19, 32 (2017).

THIRD LINK

The seized items tested positive for methamphetamine hydrochloride.

The **third link** in the chain of custody refers to the delivery by the investigating officer of the illegal drug to the forensic chemist.

Here, after the marking, inventory, and photographing of the seized items at the police station, SPO3 Corbe personally brought them together with the request for laboratory examination to the PDEA Crime Laboratory around 11:40 in the evening on April 18, 2010. The seized items and letter request were personally received by PDEA Chemist Uy.

FOURTH LINK

The seized items were properly turned over to the forensic chemist for laboratory examination.

The fourth link in the chain of custody refers to the turnover and submission of the marked illegal drug from the forensic chemist to the court.⁷³

The prosecution and the defense, however, dispensed with the testimony of Forensic Chemist Uy and stipulated that he personally received the request from SPO3 Corbe at 11:40 in the evening of April 18, 2010 together with the fourteen (14) self-sealing transparent plastic bags containing white crystalline granules marked “AIDB-1” to “AIDB-14” and one (1) large brown envelope containing self-sealing transparent plastic bag with white crystalline substance marked “BB.” The seized items were described in the request for laboratory examination⁷⁴ thus:

A. One (1) “Y-3” black bag marked as “AIDB” containing Eighteen (18) pieces of large brown envelope and:

A.1) Fourteen (14) self-sealing transparent plastic bag. Each plastic bag contains approximately Five Hundred (500) grams of white crystalline granules suspected to be shabu respectively marked as “AIDB-1” to “AIDB-14”;

B. One (1) Large brown envelope marked as BB Envelope containing;

⁷³ Supra note 52.

⁷⁴ RTC Records, pp. 11–12

B.1) One (1) self-sealing transparent plastic bag, containing approximately Five Hundred (500) grams of white crystalline granules suspected to be shabu marked as "BB."

Forensic Chemist Uy did a laboratory examination on the items (a total of 7503.41 grams of white powdery substance), the results of which yielded positive results for *methamphetamine hydrochloride* (*shabu*). His Chemistry Report No. PDEA-DD-010-146 thus contained the following findings:⁷⁵

A – One (1) black bag labeled "Y-3" with markings "AIDB" containing the following:

[sic]

A – 1 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 497.43 grams.

A – 2 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 495.56 grams.

A – 3 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 538.13 grams.

A – 4 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 486.81 grams.

A – 5 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 538.06 grams.

A – 6 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 503.00 grams.

A – 7 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 519.77 grams.

A – 8 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 430.94 grams.

A – 9 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 475.47 grams.

A – 10- One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 514.83 grams.

A – 11 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 490.63 grams.

A – 12 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 496.04 grams.

A – 13 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 491.96 grams.

A – 14 One (1) self-sealing transparent plastic bag containing white crystalline substance weighing 528.05 grams.

x x x

B -- One (1) unsealed large brown envelope with markings "BB-ENVELOPE" containing:

B – 1 One (1) self-sealing transparent plastic bag with markings "BB" containing white crystalline substance with a net weight of 496.73 grams.

Prosecutor Hernandez, Evidence Custodian Munasque, SO II Lacap, Jr., BJMP Jail Guards Gamponia, Gallo, Marco, and Aldania, OIC/BCC Alumbres, Jr., Clerk III Cos, and Bailiff SPO4 Torres witnessed the ocular

⁷⁵ Order dated January 27, 2011. RTC Records, pp. 76-77.



inspection of the seized items at the courtroom of RTC Branch 259 – Parañaque City.⁷⁶

The substantial volume of seized items negates the possibility of planting, tampering, or alteration.

An unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive, not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange. In other words, the level of susceptibility to fungibility, alteration, or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.⁷⁷

Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.⁷⁸ *Mallillin v. People*⁷⁹ is in point:

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin — was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession — was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.⁸⁰ (Emphases added)

People v. Holgado,⁸¹ however, clarified that the miniscule amount of the seized items involved is not *per se* a ground for acquittal but only operates to remind the courts of stricter adherence to the chain of custody, thus:

⁷⁶ Records, RTC Crim. Case No. 10-0400, pp. 40–41.

⁷⁷ *Supra* note 55 at 588.

⁷⁸ *Supra* note 46.

⁷⁹ *Supra* note 55.

⁸⁰ *Id.* at 588.

⁸¹ 741 Phil 78–101 (2014).

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Mallillin v. People*, this court said that “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.”

x x x

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. **Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered.** Also, doubt normally follows in cases where an accused has been discharged from other simultaneous offenses due to mishandling of evidence. Had the Regional Trial Court and the Court of Appeals been so judicious in this case, a speedier resolution would have been handed to Holgado and Misarez whose guilt beyond reasonable doubt was not established.

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.⁸²

Appellants here were caught selling 496.73 grams of *shabu* and in possession of another 7006.68 grams of *shabu*. This substantial volume of seized items far outweighed, if not totally negated the possibility of planting, tampering, or alteration.

At any rate, despite the supposed deviations from the procedure by the apprehending officers, the integrity and evidentiary value of the seized items were duly preserved. The description, weight, and quality of the drugs remained substantially the same from their inventory to the request for examination, their turnover to the laboratory for examination, the results of the laboratory examination, up to their presentation in court.

⁸² Id. at 99–100.

Appellants' claim of frame-up and extortion remained unsubstantiated.

Sy and Chua, nevertheless, claim they were victims of frame-up and extortion by the apprehending officers. When they confessed, they could not produce the ₱30,000,000.00 demanded of them, they were allegedly brought inside a room filled with cameras, made to point to a table with packs of white crystalline substance and money on top, and made to stand beside Hong's car.

The Court is not persuaded.

An allegation of frame-up and extortion by police officers is a common and standard defense in dangerous drugs cases viewed by this Court with disfavor for it can easily be concocted. To substantiate such defense, the evidence must be clear and convincing⁸³ and should show that the buy-bust team was motivated by indecent objective or was not properly performing their duty.⁸⁴

Aside from Sy and Chua's self-serving account of the alleged extortion, no substantiating evidence was adduced by the defense. But there were neither criminal nor administrative charges leveled against the supposed extortionists.⁸⁵ Nor was it shown that the apprehending officers were impelled by improper motive in effecting the buy-bust operation. **The volume of the seized items alone stands against the veracity of the alleged extortion. Where would the apprehending officers get a total of 7503.41⁸⁶ grams of *shabu* just so they could plant it on the accused?**

In any event, against the denial and allegations of frame-up and extortion by Sy and Chua, the positive and consistent testimonies of **SPO3 Corbe, SPO2 Alcancia, SPO1 Fuentes**, together with the *corpus delicti* deserve greater weight and merit.

We commend our law enforcement arm for going after the so-called proverbial *big fish* in *People v. Holgado*.⁸⁷ There, We directed that law enforcement officers should turn their attention to the more challenging task of uprooting the causes of this drug menace – the exceedingly vast network of drug cartels. This surely is a win not only for the government in its effort to rid the country of this crippling, if not, rampant drug dealing, but also for the citizens in ensuring a safe space for our children to grow upright.

⁸³ See *People v. Boco y Alejo*, 368 Phil. 341, 366–367 (1999).

⁸⁴ See *People v. Fernandez y Baguisan*, G.R. No. 198875, June 4, 2014.

⁸⁵ See *People v. Cunanan y David*, 756 Phil. 40, 52 (2015).

⁸⁶ 7006.68 grams subject of the illegal possession case and 496.73 grams subject of the sale.

⁸⁷ *Supra* note 81 at 100.

All told, the Court of Appeals did not err in affirming the conviction of Chua for violations of Sections 5 and 11 of RA 9165 and the conviction of Sy for violation of Section 11 of the same law.

Penalty

In accordance with Sections 5⁸⁸ and 11,⁸⁹ RA 9165, respectively, the courts below correctly sentenced Chua to life imprisonment and fine of ₱3,000,000.00 in each of Criminal Case Nos. 10-0400 and 10-0401; and Sy, also to life imprisonment and fine of ₱3,000,000.00 in Criminal Case No. 10-0400.

ACCORDINGLY, the appeal and petition for review on certiorari in G.R. Nos. 228519 and 231363 are **DENIED** for lack of merit. The Decision dated June 6, 2016 and Resolutions dated September 21, 2016 and November 28, 2016, respectively, in CA-G.R. CR-H.C. No. 05511 are **AFFIRMED**.

In Criminal Case No. 10-0401, **SUNXIAO XU alias William Chua** is found **GUILTY** of **illegal sale of dangerous drugs** in violation of Section 5 of Republic Act No. 9165 and sentenced to **LIFE IMPRISONMENT** and a fine of **₱3,000,000.00**.

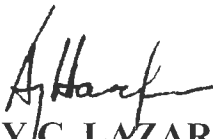
In Criminal Case No. 10-0400, **SUNXIAO XU alias William Chua** is found **GUILTY** of **illegal possession of dangerous drugs** in violation of Section 11 of Republic Act No. 9165 and sentenced to **LIFE IMPRISONMENT** and a fine of **₱3,000,000.00**.

In the same Criminal Case No. 10-0400, **XIUQUIN SHI alias Kim Sy** is found **GUILTY** of **illegal possession of dangerous drugs** in violation of Section 11, Republic Act No. 9165 and sentenced to **LIFE IMPRISONMENT** and a fine of **₱3,000,000.00**.


SO ORDERED.

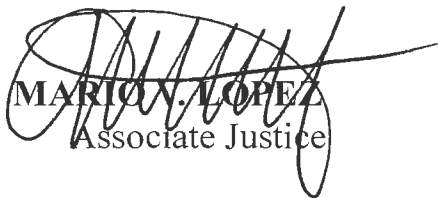
⁸⁸ Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002).

⁸⁹ 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 (Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002).


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson


MARION N. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

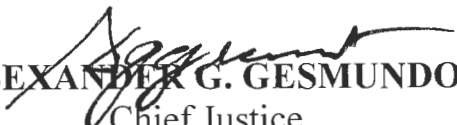
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Chairperson

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice

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