



Republic of the Philippines
Supreme Court
Manila

Wynne E. Linares
Associate Justice
AUG 27 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 213598

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
PERALTA,
DEL CASTILLO,*
PEREZ, and
REYES, JJ.

MERCELITA¹ ARENAS y BONZO
@ MERLY,
Accused-Appellant.

Promulgated:

July 27, 2016

X-----
Wynne E. Linares X

DECISION

PERALTA, J.:

This is an appeal from the Decision² dated January 22, 2014 of the Court of Appeals (CA) in CA-GR. CR-H.C. No. 05533, which affirmed *in toto* the Decision dated April 16, 2012 of the Regional Trial Court (RTC) of Lingayen Pangasinan, Branch 38, in Criminal Case No. L-8966. The RTC found appellant guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information³ dated August 9, 2010, the appellant was charged as follows:

¹ Spelled as "Mercilita" in the records of the trial court.
* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 8, 2014.
² Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy C. Lazaro-Javier and Pedro B. Corales, concurring; *rollo*, pp. 3-16.
³ Records, p. 1.

Wynne E. Linares

That on or about August 6, 2010 in the evening, in Brgy. Poblacion, Sual, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully and unlawfully sell two (2) heat-sealed plastic sachets of Metamphetamine (sic) Hydrochloride (Shabu), a prohibited drug, in exchange for ₱2,000.00 marked money to PO3 Benedict Julius B. Rimando, acting as poseur-buyer, and was likewise in possession, with intent to sell, one (1) heat-sealed plastic sachet of methamphetamine Hydrochloride (*Shabu*) without lawful authority to possess and sell the same.

Contrary to Art. II, Section 5 of RA 9165.⁴

Upon her arraignment⁵ on August 25, 2010, she pleaded not guilty to the crimes charged. Pre-trial and trial thereafter ensued.

The prosecution presented the testimonies of PO3 Benedict Julius B. Rimando (*PO3 Rimando*), PO2 Alex Aficial, Jr. (*PO2 Aficial*), Police Senior Inspector Myrna Malojo (*PSI Malojo*), PO2 Catherine Viray (*PO2 Viray*), Barangay Kagawad Dioniso S. Gulen, Police Inspector Ma. Theresa Amor Manuel, and Police Senior Inspector Leo S. Llamas (*PSI Llamas*).

The prosecution evidence established that sometime in July 2010, the Chief of Police (*COP*) of the Sual Police Station, Sual, Pangasinan, PSI Llamas, started conducting a surveillance on the alleged illegal drug-selling activities of appellant. At 6:00 p.m. of August 6, 2010, he called on PO3 Rimando, PO2 Aficial, SPO2 Gulen, PO1 Viray and SPO1 Editha Castro to an emergency conference and instructed them to conduct a buy-bust operation on appellant who agreed to deliver the items in front of Las Brisas Subdivision, along the National Highway in Poblacion Sual, Pangasinan. During the briefing, the appellant was described as a woman of about 4 to 5 feet tall and between 45 to 50 years old. PO3 Rimando was designated as the poseur-buyer and was given two (2) ₱1000 bills to be used for the operation, which were photocopied and entered into the police blotter. PO2 Aficial had earlier coordinated with the PDEA of the intended buy bust.⁶

At 6:30 p.m., the team walked to the area which was about 150 meters away from their station. PO3 Rimando and PO2 Aficial stood at the side of the highway beside the subdivision as earlier instructed by PSI Llamas while the other team members were positioned strategically. After 5 minutes of waiting, appellant came near PO3 Rimando who told the former in Ilocano dialect that he was instructed to pick up the items and asked the appellant whether she had the items to which the latter answered in the affirmative. PO3 Rimando then handed appellant the two marked ₱1000.00 bills and the latter gave him the two (2) small plastic sachets containing white crystalline substance. PO3 Rimando signaled PO2 Aficial, who was two meters away

⁴ *Id.*

⁵ *Id.* at 27.

⁶ TSN, October 26, 2010, pp. 3-5.

from him, to come over and they introduced themselves as police officers. PO3 Rimando conducted a routine body search on appellant and he was able to recover from her the marked money and another small plastic sachet she was holding in her left hand.⁷

Appellant was brought to the Sual Police Station where PO3 Rimando marked the two plastic sachets subject of the buy-bust with “BJB-1” and “BJB-2,” and the one plastic sachet recovered from appellant with “BJB-3.” He prepared and signed the confiscation receipt of the seized items in the presence of a barangay kagawad, a Department of Justice (*DOJ*) Prosecutor, and an ABS-CBN reporter, who all affixed their signatures in the Confiscation Receipt, as well as the appellant.⁸ PO2 Viray took pictures of the seized items, marked money as well as the signing of the receipt inside the police station.⁹ PO3 Rimando brought the seized items as well as the Request for Laboratory Examination¹⁰ prepared by PSI Llamas to the PNP Crime Laboratory in Lingayen, Pangasinan.

PSI Myrna Malojo, a forensic chemist, personally received from PO3 Rimando the letter request and the seized items.¹¹ The laboratory results showed a positive result for methamphetamine hydrochloride or *shabu*, and having a weight of 0.08 grams, 0.07 grams and 0.05 grams, respectively, which findings were contained in PSI Malojo's initial¹² and confirmatory¹³ reports. PSI Malojo sealed the seized items and placed her own markings thereon and turned them to the evidence custodian.¹⁴ She identified in court the items she examined as the same items she received from PO3 Rimando¹⁵ and the latter also identified the subject items as the same items he recovered from the appellant during the buy-bust operation.¹⁶

Appellant denied the charges alleging that at 7:00 to 8:00 a.m. of August 6, 2010, she was with a certain Mina grilling barbecue at a video bar in front of Jamaica Sual Subdivision; that after a while, Mina's boyfriend, PSI Llamas, arrived and talked with Mina. When PSI Llamas left, Mina asked her to deliver a letter to a certain Renee who owed her money. Mina called on a tricycle driver who would bring her to Renee. When she met Renee, she handed her the letter from Mina and Renee gave her a sealed envelope. Upon her return to the bar, she gave the envelope to Mina who was drinking beer with PSI Llamas. She then asked permission to go home as she would still cook dinner but Mina told her to grill more barbecues. As she insisted in going home, PSI Llamas placed his right arm around her neck

⁷ *Id.* at 6-8.

⁸ *Id.* at 9-13.

⁹ TSN, August 23, 2011 pp. 2-3.

¹⁰ Exhibit “E,” records, p. 10.

¹¹ TSN, February 7, 2011, pp. 3-9.

¹² Exhibit “F,” records, p. 11.

¹³ Exhibit “H,” *id.* at 54.

¹⁴ TSN, February 7, 2011, p. 8.

¹⁵ *Id.*

¹⁶ TSN, July 18, 2011, p. 6.

and called someone on his cellphone. She tried to remove PSI Llamas' arm around her neck when a police car arrived and brought her to the police station where she was forced to say something about the *shabu* which she had no knowledge of and she was later detained.¹⁷

In rebuttal, PSI Llamas denied knowing Mina and going to the videoke bar on August 6, 2010; that he only met the appellant at the police station and was not the one who arrested her.¹⁸ In her sur-rebuttal, appellant claimed that she had known PSI Llamas for about 3 weeks prior to her arrest and insisted that he was the one who arrested her.

On April 16, 2012, the RTC rendered a Decision¹⁹ finding appellant guilty of the charged offenses, the dispositive portion of which reads:

WHEREFORE, premises considered, and the prosecution having established to a moral certainty the guilt of accused MERCILITA ARENAS y BONZO @ "Merly," this Court hereby renders judgment as follows:

1. For violation of Section 5, Art. II of RA 9165, this Court hereby sentences said accused to LIFE IMPRISONMENT, and to pay [a] fine of Five Hundred Thousand Pesos (₱500,000.00);
2. For violation of Section 11, Art. II of the same Act, this Court hereby sentences said Accused to a prison term of Twelve (12) Years and One (1) Day to Twenty (20) Years, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

SO ORDERED.²⁰

The RTC found that PO3 Rimando, who acted as the poseur-buyer during the buy-bust operation, positively identified appellant as the one who sold and handed him the two plastic sachets of *shabu* in the amount of ₱2,000.00 and the same person who received the marked money from him. It was also proven that during appellant's arrest, PO3 Rimando recovered one more plastic sachet of *shabu* in her possession, and he marked the three plastic sachets with his initials; and that every link in the chain of custody of the confiscated plastic sachets was also established. The RTC found that PO3 Rimando testified in a frank, spontaneous and straightforward manner and his credibility was not crumpled on cross examination, and it rejected appellant's defenses of denial and frame up.

The CA affirmed the RTC decision. The *fallo* of its Decision reads:

¹⁷ TSN, January 31, 2012, pp. 3-9.
¹⁸ TSN, February 20, 2012, pp. 5-9.
¹⁹ Per Judge Teodoro C. Fernandez, *CA rollo*, pp. 44-53.
²⁰ *Id.* at 52-53.



WHEREFORE, premises considered, the instant appeal is DISMISSED. The decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 38 dated 16 April 2012 is AFFIRMED.²¹

Hence, this appeal filed by appellant. Both appellant and the Solicitor General manifested that they are adopting their Briefs filed with the CA.

Appellant is now before us with the same issues raised before the CA, *i.e.*, that the RTC gravely erred: (1) in giving weight and credence to the conflicting testimonies of the prosecution witnesses; (2) in holding that there was a legitimate buy-bust operation; (3) in convicting appellant of the crimes charged despite the failure to prove the elements of the alleged sale of *shabu* and the chain of custody and the integrity of the allegedly seized items; and (4) in convicting appellant under an Information which charges two offenses in violation of Section 13, Rule 110 of the Rules of Court.

We find no merit in the appeal.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identities of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for the thing. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.²² We find all the elements necessary for appellant's conviction for illegal sale of *shabu* clearly established in this case.

PO3 Rimando, the poseur-buyer, positively identified appellant as the person whom he caught *in flagrante delicto* selling white crystalline substance presumed to be *shabu* in the buy-bust operation conducted by their police team; that upon appellant's receipt of the ₱2,000.00 buy-bust money from PO3 Rimando, she handed to him the two sachets of white crystalline substance which when tested yielded positive results for *shabu*. Appellant's delivery of the *shabu* to PO3 Rimando and her receipt of the marked money successfully consummated the buy-bust transaction. The seized *shabu* and the marked money were presented as evidence before the trial court.

Appellant's reliance on the case of *People v. Ong*²³ wherein the Court acquitted the appellants of the charge of illegal sale of *shabu* for failure of the prosecution to prove all the elements of the crime charged is misplaced. The Court found therein that the testimony of SPO1 Gonzales, who acted as the poseur-buyer, showed that he was not privy to the sale

²¹ Rollo, p. 16.

²² *People v. Bautista*, 682 Phil. 487, 498 (2012), citing *People v. Naquita*, 582 Phil. 422, 442-443 (2008); *People v. Del Monte*, 575 Phil. 579, 587 (2008); *People v. Santiago*, 564 Phil. 181, 193 (2007).

²³ 476 Phil. 513 (2004).



transaction which transpired between the confidential informant, who did not testify, and the appellant.

Here, while it appeared that it was PSI Llamas who initially dealt with appellant regarding the sale of *shabu*, it also appeared that PSI Llamas had designated PO3 Rimando as his representative in the sale transaction with appellant. Notably, PO3 Rimando was instructed by PSI Llamas to wait at the specified area where appellant would be the first to approach him for the sale of *shabu*,²⁴ which established the fact that appellant was already informed beforehand as to the person she was to deal with regarding the sale of *shabu*. Indeed, appellant approached PO3 Rimando who was waiting at the designated area and upon receipt from him of the payment of ₱2000.00, the former handed to the latter the two sachets of *shabu*. The identity of appellant as the seller, as well as the object and consideration for the sale transaction, had been proved by the testimony of PO3 Rimando, the buyer.

We also find appellant guilty of illegal possession of *shabu*. The essential requisites to establish illegal possession of dangerous drugs are: (1) the accused was in possession of the dangerous drug, (2) such possession is not authorized by law, and (3) the accused freely and consciously possessed the dangerous drug.²⁵ What must be proved beyond reasonable doubt is the fact of possession of the prohibited drug itself. This may be done by presenting the police officer who actually recovered the prohibited drugs as a witness, being the person who has the direct knowledge of the possession.²⁶

In the instant case, PO3 Rimando, the person who had direct knowledge of the seizure and confiscation of the *shabu* from the appellant, testified that he was also able to recover another plastic sachet of *shabu* which appellant was holding with her left hand, which testimony was corroborated by PO2 Aficial.²⁷ As it was proved that appellant had freely and consciously possessed one (1) plastic sachet of *shabu* without authority to do so, she can be found guilty of illegal possession of *shabu*.

The RTC and the CA correctly found that the prosecution was able to establish the chain of custody of the seized *shabu* from the time they were recovered from appellant up to the time they were presented in court. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,²⁸ which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

²⁴ TSN, October 26, 2010, pp. 3-8.

²⁵ *Miclat, Jr. v. People*, 672 Phil. 191, 209 (2011).

²⁶ *People v. Belocura*, 693 Phil. 476, 490 (2012).

²⁷ TSN, October 26, 2010, p. 8.

²⁸ Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

It was established that after PO3 Rimando seized the three plastic sachets containing white crystalline substance from appellant, he was in possession of the same from confiscation up to the police station.²⁹ He marked the three plastic sachets at the police station, which was only 150 meters away from the scene,³⁰ with “BJB-1”, “BJB-2” and “BJB-3.”³¹ He prepared the confiscation receipt in the presence of a barangay kagawad, a DOJ Prosecutor and an ABS-CBN Reporter, who all affixed their signatures therein, the appellant, PO1 Viray and PO2 Aficial.³² PO1 Viray then took photographs of the seized items, the preparation and signing of the confiscation receipt. PO3 Rimando then brought the request for laboratory examination prepared by PSI Llamas of the seized items and personally brought the same to the PNP Crime Laboratory for examination.³³

PSI Malojo, the forensic chemist, personally received the said request and the three small heat-sealed plastic sachets containing white crystalline substance with markings from PO3 Rimando.³⁴ After examining the items, PSI Malojo found them to be positive for the presence of methamphetamine hydrochloride, also known as *shabu*, which findings were embodied in her Initial Laboratory Report and eventually, in her Final Chemistry Report. After her examination, PSI Malojo sealed the seized items and placed her own markings thereon, and turned them over to the evidence custodian for safekeeping.³⁵ During her testimony in court, PSI Malojo identified the items she examined as the same items she received from PO3 Rimando. PO3 Rimando also identified in court the subject items as the same items he recovered from the possession of appellant during the buy-bust operation.³⁶

We likewise agree with the CA that the alleged inconsistencies in the testimonies of the prosecution witnesses refer to minor details which did not relate to the crimes charged. The inconsistencies have been sufficiently explained during trial by the witnesses themselves. We quote with approval what the CA said:

²⁹ TSN, October 26, 2010, p. 9; TSN, June 13, 2011, p. 4; TSN, September 19, 2011, p. 9.

³⁰ TSN, October 26, 2010, p. 6.

³¹ *Id.* at 9.

³² *Id.* at 10-13.

³³ TSN, June 13, 2011, p. 9.

³⁴ TSN, February 7, 2011, pp. 4-5.

³⁵ *Id.* at 8.

³⁶ TSN, June 13, 2011, pp. 2-3.



The alleged inconsistencies in the composition of the buy-bust team, in the identity and/or description of accused-appellant, and in the markings on the seized items are collateral matters and not essential elements of the crimes charged. Moreover, a scrutiny of these purported inconsistencies would show that the same are not conflicting at all.

Although PO2 Viray testified that she was at the office at the time PO3 Rimando and PO2 Aficial were conducting the buy-bust operation, it does not necessarily mean that she was not part of the buy-bust team. PO2 Viray testified that before the conduct of the buy-bust operation, she was designated by PO3 Rimando to be the official photographer. She was told to take photographs after the subject operation, a task that she performed when accused-appellant was brought to the police station. This explains why PO3 Rimando included her in his testimony as one of the members of the buy-bust team.

Similarly the testimony of PO2 Aficial that he was with PO3 Rimando during the buy-bust operation is not conflicting with PO3 Rimando's enumeration of the member of the buy-bust team. PO2 Aficial was asked who was with [him] during the buy-bust operation and he merely answered the question of the counsel for the defense. PO2 Aficial was not asked who were the other members of the buy-bust team. His answer was consistent with PO3 Rimando's statement that when the latter gave the pre-arranged signal, he approached PO3 Rimando and they introduced themselves to accused-appellant as police officers.

x x x x

As regards the source of the information on the description of accused-appellant which enabled the poseur-buyer to identify her, the same is a trivial matter. Whether the information came from PSI Llamas or a confidential informant, the fact remains that a crime was committed by accused-appellant in the presence of the police officers who were members of the buy-bust team and who had the duty to immediately arrest her after the consummation of the transaction. The fact also remains that the description about the seller matched accused-appellant. x x x

As to the alleged discrepancies in the markings of the seized items, the same are clearly typographical errors. The transcript of PSI Malojo's testimony showed that she identified the markings on the seized plastic sachets as "BJB-1", "NJN-2" and "BJB-3." However, the follow-up question of the prosecutor clarified that she was actually referring to "BJB-1", "BJB-2" and "BJB-3", to wit:

Q. I am showing you then Madam Witness three (3) plastic sachet (*sic*) will you go over the contain (*sic*) to the one you are testifying "BJB-1" to "BJB-3" (*sic*)?

A. Yes, sir.

The universal practice is that exhibits or evidence are marked chronologically. It is highly unlikely that the second sachet would be marked "NJN-2" when the first one was marked "BJB-1" and the third one was marked "BJB-3". Notably, both Confiscation Receipt and Request for Laboratory Examination showed that the seized items were marked "BJB-1", "BJB-2" and "BJB-3" consistent with the testimony of PO3 Rimando. It should also be noted that in the computer keyboard, the letters "B" and "N" are beside each other. Hence, the only logical conclusion for the purported



discrepancy is that the stenographer inadvertently pressed the letter "N" instead of the letter "B."³⁷

Anent the matter of the confiscation receipt bearing the date August 5, 2010 when the buy-bust happened on August 6, 2010, PO3 Rimando explained that he committed an error in placing the date August 5 which should be August 6.³⁸ Moreover, it was established by the testimony of Kagawad Gulen that on August 6, 2010, he was called to witness the items confiscated from appellant and was asked to sit beside PO3 Rimando while the latter was preparing the confiscation receipt.³⁹ Gulen even identified in court the confiscation receipt where his signature appeared.⁴⁰

Appellant's contention that the RTC erred in convicting him under an Information that charged two offenses is not persuasive. Although the Information in this case charged two offenses which is a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which provides that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses," nonetheless, Section 3, Rule 120 of the Revised Rules of Criminal Procedure also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense."⁴¹

Appellant's failure to raise that more than one offense was charged in the Information in a motion to quash⁴² before she pleaded to the same is deemed a waiver.⁴³ As appellant failed to file a motion to quash the

³⁷ *Rollo*, pp. 8-10.

³⁸ TSN, June 13, 2011, p. 8.

³⁹ TSN, September 19, 2011, pp. 19-20.

⁴⁰ *Id.* at 21.

⁴¹ *People v. Chingh*, 611 Phil. 208, 220 (2011).

⁴² Section 3, Rule 117, Revised Rules on Criminal Procedure provides:

Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

⁴³ Section 9, Rule 117, Revised Rules on Criminal Procedure provides:

Section 9. Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

Information, she can be convicted of the crimes charged in the Information if proven.

We also find no merit in appellant's claim that she cannot be convicted of illegal possession of illegal drugs as its possession is absorbed in the charge of illegal sale.

In *People v. Lacerna*,⁴⁴ We held:

The prevailing doctrine is that possession of marijuana is absorbed in the sale thereof, except where the seller is further apprehended in possession of another quantity of the prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller.

Here, it was established that PO3 Rimando was able to recover from appellant's possession another plastic sachet of *shabu* which was not the subject of the illegal sale; thus, she could be separately charged with illegal possession for the same.

We find that the RTC correctly imposed on appellant the penalty of life imprisonment and a fine of ₱500,000.00⁴⁵ for the crime of illegal sale of dangerous drugs.

As to the crime of illegal possession, Section 11, Article II of Republic Act No. 9165 provides:

Section 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) ...

⁴⁴ 344 Phil. 100, 120 (1997)

⁴⁵ Section 5, Article II of Republic Act. No. 9165 provides:

Article II, 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.

(2) ... and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly-introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Clear from the foregoing, the quantity of the dangerous drugs is determinative of the penalty to be imposed for the crime of illegal possession of dangerous drugs. We note, however, that the quantity of *shabu* found to be in appellant's possession was not indicated in the Information which is important as the law provides for the graduation of penalties. We cannot just rely on the quantity established by the prosecution, which the RTC did in imposing the penalty, without violating appellant's right to be informed of the accusation against her. The RTC imposed the minimum penalty provided by law since the quantity recovered from appellant's possession was less than 5 grams of *shabu*; however, it could have been different if the quantity recovered from appellant was more than 5 grams where the penalty imposable is imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), or even the maximum 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), because in this case, the Court could not impose the penalty provided by law in view of the non-allegation of the true quantity in the information.

By analogy, in theft cases,⁴⁶ where the penalty is graduated according to the value of the thing stolen, we ruled that when the prosecution failed to establish the amount of property taken by an independent and reliable estimate, we may fix the value of the property taken based on attendant circumstances or impose the minimum penalty. Since it was proved that appellant was in possession of *shabu* but the quantity was not specified in the Information, the corresponding penalty to be imposed on her should be the minimum penalty corresponding to illegal possession of less than five grams of methamphetamine hydrochloride or *shabu* which is penalized with imprisonment of *twelve (12) years and one (1) day to twenty (20) years*

⁴⁶ *People v. Anabe*, 644 Phil. 261, 286 (2010); *Viray v. People*, 720 Phil. 841, 854 (2013).

and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).⁴⁷

Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law; hence, the imposable penalty should be within the range of *twelve (12) years and one (1) day to fourteen (14) years and eight (8) months*.

One final note. Public prosecutors are reminded to carefully prepare the criminal complaint and Information in accordance with the law so as not to adversely affect the dispensation of justice.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision dated January 22, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05533 is **AFFIRMED with MODIFICATION** only insofar as to the penalty imposable for the crime of illegal possession so that appellant is sentenced to suffer the indeterminate sentence of *twelve (12) years and one (1) day to fourteen (14) years and eight (8) months*.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

⁴⁷ Section 11, Article II, RA No. 9165 provides:

Section 11. *Possession of Dangerous Drugs*. The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x.

(3) *Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00)*, if the quantities of dangerous drugs are *less than five (5) grams* of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, *methamphetamine hydrochloride* or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "*ecstasy*," PMA, TMA, LSD, GHB, and those similarly designed or newly-introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

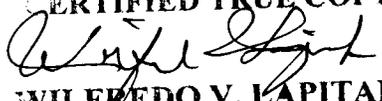
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division



MARIA LOURDES P. A. SERENO
Chief Justice

AUG 25 2016