

# FIRST DIVISION

[ G.R. No. 247558, February 19, 2020 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALLAN QUIJANO Y SANDING, ACCUSED-APPELLANT.**

## D E C I S I O N

**LAZARO-JAVIER, J.:**

### **The Case**

This appeal<sup>[1]</sup> assails the Decision<sup>[2]</sup> dated December 10, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09217 entitled "*People of the Philippines v. Allan Quijano y Sanding*," affirming with modification the Judgment<sup>[3]</sup> dated March 23, 2017 of the Regional Trial Court, Manila, Branch 28, finding appellant Allan Quijano y Sanding guilty of illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165 (RA 9165).<sup>[4]</sup>

### **The Proceedings before the Trial Court**

#### ***The Charge***

By Information<sup>[5]</sup> dated May 11, 2016, appellant was charged with violation of Section 11, Article II of RA 9165, viz.:

That on or about **April 28, 2016**, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control, one (1) self-sealing transparent plastic bag with markings "**ACB-2 TWO/4-28-16 with signature**" containing **SEVEN HUNDRED THIRTY FIVE POINT EIGHT (735.8)** grams of white crystalline substance, which after qualitative examination gave positive results to the tests for methamphetamine hydrochloride commonly known as "Shabu", a dangerous drug.

Contrary to law.

On arraignment, appellant pleaded not guilty.<sup>[6]</sup> At the pre-trial, the prosecution and the defense stipulated on the trial court's jurisdiction, appellant's identity, and the proposed testimony of JO2 Joey J. Magallanes.<sup>[7]</sup>

During the trial proper, JO2 Arthur Briones testified for the prosecution, and appellant, for the defense.

#### ***Version of the Prosecution***

**JO2 Arthur Briones** is a jail officer assigned at the Bureau of Jail Management and Penology, Manila.<sup>[8]</sup> On April 28, 2016, around 1:20 in the afternoon, he was at the window section of the Manila City Jail.<sup>[9]</sup> There, he noticed Marivic Tulipat (a regular visitor at the city jail) receiving a light violet bag from someone inside the city jail bakery. He became suspicious and called her attention. Tulipat appeared hesitant and he had to call her attention several times more before she finally approached him. But before she did, she handed the bag to appellant Allan Quijano y Sanding. This prompted him to also summon appellant who, just like Tulipat, appeared hesitant. Like what he did to Tulipat, he had to also call for appellant several times more before he finally came to him. He then asked appellant about the contents of the bag. Instead of responding, however, appellant turned to Tulipat and tried to give it back to her. But Tulipat refused. His suspicions grew and so he grabbed the bag and opened it. Inside, he saw another blue bag which contained a transparent bag containing white crystalline substance. He immediately arrested appellant and Tulipat and apprised them of their constitutional rights. Tulipat attempted to escape but was eventually caught at the main gate of the city jail.<sup>[10]</sup>

The seized items were marked, inventoried, and photographed inside the Manila City Jail, specifically in its Investigation Unit. Tulipat, appellant, JO3 Jose Rodzon Antonio, Senior Assistant City Prosecutor Maria Josefina Concepcion, Kagawad Rodelito E. Jurilla, and Police Inspector Adelo A. Natividad were all present during the marking, inventory and photographing.<sup>[11]</sup>

JO3 Briones marked the light violet bag "ACD/4/28/16," the blue sando bag "ACB/1/4-28-16" and the self-sealing transparent bag "ACB-2/4-28-16." JO3 Jose Rodzon Antonio took photos of the items. He brought these items and the referral letter signed by City Jail Warden Superintendent Fermin RP Enriquez to the Philippine Drug Enforcement Agency (PDEA) at 2020H (8:20 in the evening) on April 28, 2016.<sup>[12]</sup> The same were received by Forensic Chemist Sweedy Kay L. Perez.

In her Chemistry Repm1 No. PDEA-DD016-092, Forensic Chemist Sweedy Kay Perez certified that the seized item with a net weight of seven hundred thirty-five point eight (735.8) grams yielded positive results for *methamphetamine hydrochloride*, a dangerous drug.<sup>[13]</sup>

#### *Documentary and Object Evidence*

The prosecution offered the following exhibits: letter request for laboratory examination (Exhibit A); stamped receipt (Exhibit A-1); one (1) self-sealing transparent plastic bag containing white crystalline substance marked "ACB-2" (Exhibit B); Chemistry Report No. PDEA-DD016-092 (Exhibit C), findings and conclusions (Exhibit C-1) and signatures (Exhibit C-2); Chain of Custody of Property and Seized Items (Exhibit D) and signatures (Exhibit D-1); letter referral for inquest (Exhibit E); Booking Sheet and Arrest Report of accused Allan Quijano y Sanding (Exhibit F); Affidavit of JO2 Arthur C. Briones (Exhibit G); Inventory of Seized Items (Exhibit H) and signatures (Exhibit H-1); acknowledgement receipt (Exhibit I); Incident Report (Exhibit J); and photographs (Exhibit K).<sup>[14]</sup>

#### ***Version of the Defense***

Appellant testified that he is a detainee at the Manila City Jail.<sup>[15]</sup> On April 28, 2016, around 1:20 in the afternoon, while waiting for his wife to come and visit him, there was suddenly a commotion inside the city jail. Tulipat approached and requested him to hold a light violet bag. He asked for the contents of the bag but Tulipat refused to answer. JO2 Briones inspected the bag and informed appellant that it contained *shabu*. Appellant was not aware of what the bag contained "x x x *dahil pinahawakan lang sa akin yan ni Ate Marivic.*" Tulipat explained that the bag was hers and she only requested appellant to hold it for her when JO2 Briones called her attention. During the inquest proceedings, Tulipat reiterated she owned the bag.<sup>[16]</sup>

The defense did not offer any documentary evidence.

### **The Trial Court's Ruling**

By Decision<sup>[17]</sup> dated March 23, 2017, the trial court rendered a verdict of conviction, viz.:

**WHEREFORE**, with the foregoing, the Court finds the accused **GUILTY** beyond reasonable doubt of the crime charged. He is hereby **SENTENCED** with life imprisonment and a **FINE** of P500,000.00, subject to subsidiary imprisonment in case of insolvency.<sup>[18]</sup>

The trial court gave credence to the testimony of the prosecution's eyewitness who had in his favor the presumption of regularity in the performance of official duty and rejected appellant's denial. According to the trial court, the prosecution sufficiently established the elements of illegal possession of dangerous drugs as there was no showing that appellant had the authority to possess the seized drugs. It held that JO2 Briones' act of intercepting Tulipat and appellant was within the purview of the stop-and-frisk doctrine. The trial court took judicial notice of the fact that items brought inside the jail facility are inspected as part of security measures. Too, the jail facility was surrounded and secured by jail officers who were, by their position, are exposed to all kinds of safety hazards.<sup>[19]</sup>

### **The Proceedings before the Court of Appeals**

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite his alleged lack of *animus possidendi*. He argued that the third element of illegal possession of dangerous drugs - the accused freely and consciously possessed the drugs in question is absent. He merely received the bag from Tulipat without actual knowledge of its contents. In fact, it only took thirty (30) seconds from the time JO2 Briones called out Tulipat to the time she handed the bag to appellant. Thereafter, the bag was immediately confiscated. He was deprived of the chance to inspect the contents of the bag. Too, the prosecution failed to establish an unbroken chain of custody. The prosecution claimed that the seven hundred forty-seven point eight (747.8) grams was the gross weight of the specimen. The Chemistry Report, however, did not specify whether the weight stated therein was the gross or net weight. The unexplained and unaccounted variance in the weight of the seized item cast doubt on its integrity and evidentiary value.<sup>[20]</sup>

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ellaine Rose A. Sanchez-Corro and State Solicitor Lucy L. Butler-

Torres defended the verdict of conviction. Appellant's contention that he had no knowledge of the contents of the bag was belied by his behavior during the incident. Appellant was fully aware that Tulipat was already then being summoned by JO2 Briones and a commotion even ensued since the latter was running after Tulipat. Despite the commotion, appellant readily accepted the bag handed by Tulipat without hesitation. When summoned by JO2 Briones, appellant did not promptly surrender the bag to the former. Thus, the prosecution had sufficiently established that appellant, through his prior and contemporaneous actions, consciously intended to possess the prohibited drug.

The chain of custody and integrity of the seized item were clearly established by the prosecution. Contrary to appellant's claim, the variance in the weight of the seized item was fully explained. As observed by Forensic Chemist Perez, the weighing scale used during the presentation of evidence was not stable enough compared to the unit used at the laboratory.<sup>[21]</sup>

The Court of Appeals affirmed with modification through its assailed Decision<sup>[22]</sup> dated December 10, 2018, viz.:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The 23 March 2017 Decision of Branch 28 of the Regional Trial Court of Manila in Criminal Case No. 16-325138 is **AFFIRMED** with **MODIFICATION** in that the imposition of subsidiary imprisonment is **DELETED**.<sup>[23]</sup>

The Court of Appeals held that appellant failed to establish his so-called lack of knowledge of the contents of the blue bag which turned out to contain the more than seven hundred (700) grams of shabu. It noted that first, appellant knew Tulipat was involved in a commotion inside the Manila City Jail and was being summoned by JO2 Briones, yet, he still readily and without any hesitation accepted the bag containing the subject shabu; second, appellant was reluctant to approach and surrender the bag to JO2 Briones when the latter summoned him; and third, appellant attempted to return the bag to Tulipat when he realized they were about to get caught in possession of the illegal drugs contained inside the bag.<sup>[24]</sup> Further, the unstable weighing scale used during the ocular inspection and the different weighing scales used during the laboratory examination accounted for the variance in the weight of the seized drugs.<sup>[25]</sup>

### **The Present Appeal**

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated July 22, 2019,<sup>[26]</sup> both appellant<sup>[27]</sup> and the OSG<sup>[28]</sup> manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

### **Issue**

Did the Court of Appeals err in affirming appellant's conviction for illegal possession of dangerous drugs?

### **Ruling**

For a successful prosecution of an offense 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 a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>[29]</sup> This crime is *mala prohibita*, as such, criminal intent is not an essential element. The prosecution, however, must prove that the accused had the intent to possess (*animus possidendi*). 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 has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.<sup>[30]</sup>

In possession of illicit drugs cases, ownership is inconsequential. Mere possession of the illicit drugs is *malum prohibitum* and the burden of proof is upon the accused to prove that they have a permit or clearance to possess the prohibited drugs.<sup>[31]</sup>

Here, both the trial court and the Court of Appeals correctly found that the prosecution was able to sufficiently establish all the elements of illegal possession of dangerous drugs. Appellant was caught in possession of illegal drugs of considerable quantity 729.2 grams of *shabu* inside the Manila City Jail, *sans* any authority. He has not disputed this fact, albeit, he asserts that the element of *animus possidendi* was absent.

### ***Appellant failed to prove absence of animus possidendi***

*Animus possidendi* is a state of mind. It is determined on a case-to-case basis taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances. It must be inferred from the attendant events in each particular case. A mere unfounded assertion of the accused that he or she did not know that he or she had possession of the illegal drug is insufficient, *Animus possidendi* is then presumed because he or she was thereby shown to have performed an act that the law prohibited and penalized.<sup>[32]</sup> Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation. Consequently, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi*.<sup>[33]</sup>

Evidence to be given credence must not only proceed from the mouth of a credible witness but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.<sup>[34]</sup> The issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances. There is no test to the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.

<sup>[35]</sup>