

EIGHTH DIVISION

[CA-G.R. CR No. 36266, March 13, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO SUBIDO Y MAMANGON, ACCUSED-APPELLANT.**

D E C I S I O N

LANTION, J.A.C., J.:

This is an appeal from the *Decision*^[1] dated 2 July 2012 of the Regional Trial Court of Manila, Branch 53, finding accused-appellant Francisco Subido y Mamangon **GUILTY** beyond reasonable doubt of violation of **Section 11 (3), Article II of Republic Act No. 9165**^[2] (illegal possession of prohibited drugs) in Criminal Case No. 05-237988. The decretal portion of the said *Decision* reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused FRANCISCO SUBIDO Y MAMANGON **GUILTY beyond reasonable doubt** of the crime of violation of Section 11, Article II, R.A. No. 9165 and is hereby sentenced to suffer imprisonment of TWELVE (12) YEARS, ONE (1) DAY as minimum to FOURTEEN (14) YEARS as maximum, and to pay a fine of P30,000.00

Cost against the accused.

SO ORDERED."^[3]

THE ANTECEDENTS

The indictment of accused-appellant Francisco Subido (hereafter Appellant) stemmed from the *Information*^[4] filed against him which pertinently reads:

xxx

xxx

That on or about July 06, 2005, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drugs, did then and there wilfully, unlawfully, and knowingly have in his possession and under his custody and control one (1) heat sealed transparent plastic sachet containing ONE POINT ZERO ONE SEVEN (0.017) grams of white crystalline substance known as SHABU, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

xxx

xxx

When arraigned, Appellant pleaded **"not guilty"** to the charge against him.^[5] Both the Prosecution and the Defense made the following admissions: 1.) the identity of Appellant; and 2.) the court a quo has jurisdiction over the person of the accused and the subject matter of the case.^[6] Thus, on 11 October 2005, pre-trial was deemed terminated.

Trial ensued thereafter, with the Prosecution presenting 1.) Police Officer (PO) 1 Michael Castillo; 2.) PO2 Neil Valenzuela. Other Prosecution witnesses, such as Police Senior Inspector (PS/Insp.) Jay Bayanbayan (the police Investigator of the Station Anti-Illegal Drug (SAID), PO1 Arnel Olguera and PS/Insp. Miladenia Tapan (Forensic Chemist) were not called to the witness stand since the Prosecution and the Defense stipulated on their respective testimonies.^[7]

On the other hand, the Defense presented Appellant's testimony.

THE FACTS (As culled from the Records)

The Prosecution's version is synthesized by the Office of the Solicitor General as follows:^[8]

On 06 July 2005 at around 10:00 a.m., PO1 Michael Castillo ("PO1 Castillo"), PO2 Neil Valenzuela ("PO2 Valenzuela") and PO1 Arnel Olguera ("PO1 Olguera") of the Alvarez Police Community Precinct ("Alvarez PCP") were dispatched by their desk officer to look into a robbery hold-up incident involving a certain "Chokoy" (later identified as appellant) at the SANTRANS Bus Terminal located at the corner of Lope De Vega St., and Rizal Avenue, Manila.

When they reached the place of the incident, PO2 Valenzuela together with PO1 Castillo and PO1 Olguera, stepped inside one of the buses parked therein. There they saw appellant lying at the back seat of the bus. When he saw the police officers, appellant stood up and threw away a small plastic sachet on the floor. PO2 Valenzuela picked up the plastic sachet and noticed that it contained a white crystalline substance suspected to be shabu. When PO2 Valenzuela told his companions what he saw, PO1 Castillo and PO1 Olguera pounced on appellant and arrested him. After informing him of his constitutional rights, appellant was brought to the Alvarez PCP.

From the place of the incident up to the Alvarez PCP, PO2 Valenzuela was in possession of the plastic sachet recovered from appellant. Upon reaching the police station, PO2 Valenzuela, in the presence of the desk officer as well as PO1 Castillo, PO1 Olguera and appellant, immediately marked the plastic sachet with appellant's initials **"FSM."** From the Alvarez PCP and with the specimen still in PO2 Valenzuela's hand, they brought appellant to the Jose Reyes Memorial Hospital for medical examination. Thereafter, they turned over appellant as well as the specimen to the Station Anti-illegal Drugs (SAID) at the Sta. Cruz Police Station for investigation.

At the SAID Unit, PS/Insp. Jay Baybayan investigated the case and in the course of his investigation he prepared the Request for Laboratory Examination. Thereafter, they brought the specimen to the Western Police District (WPD) Crime Laboratory for examination.

PSI Miladenia Tapan ("PSI Tapan"), forensic chemist at the WPD Crime Laboratory, conducted the laboratory examination on the specimen. After performing physical, chemical and confirmatory tests on the samples of the specimen, she found the specimen to be positive for "methamphetamine (sic) hydrochloride," otherwise known as *shabu*, a dangerous drug."

In his *Brief*,^[9] Appellant's version of the facts was narrated as follows:

"7. Accused Francisco Subido (SUBIDO for brevity), vehemently denied he was caught in possession of dangerous drugs on the date of the incident (July 6, 2005). In truth, he was calling for bus passengers bound for Sapang, Palay, when two (2) police officers approached him. They told him that they are only verifying a hold-up incident that occurred last July 4, 2005. Subido went with them at the police station. However, when they arrived thereat, he was detained and informed that someone pointed to him as the one who took the cell phone of a female victim.

7.1 He was later transferred to police station 3 and was charged with illegal possession of dangerous drugs. The police officers, in exchange, ask that his wife give them Five Thousand Pesos (P5,000.00), which the latter failed to give. Thus, the instant case was instituted against him."

On 2 July 2012, the court *a quo* rendered the assailed Decision.

Aggrieved, Appellant appealed the *Decision* of the court *a quo* raising following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE WITH CERTAINTY THE CORPUS DELICTI OF THE OFFENSE CHARGED.^[10]

THIS COURT'S RULING

Appellant contends that the court *a quo* erred in convicting him despite the Prosecution's alleged failure to prove his guilt beyond reasonable doubt.

The appeal fails.

In a prosecution for illegal possession of dangerous drugs, the following elements must be proven with moral certainty: (1) that the accused is in possession of the

object identified as prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.^[11]

In this case, all the elements are present.

First, the evidence on record established beyond reasonable doubt that Appellant was caught in possession of one (1) transparent plastic sachet containing *shabu*, a prohibited drug. The Prosecution's witnesses PO2 Valenzuela and PO1 Castillo testified that when Appellant saw them board the bus he threw a small transparent plastic sachet containing white substance on the floor.^[12] Suspecting that the white substance inside the plastic sachet contained *shabu*, PO2 Valenzuela picked up the same to be chemically examined, while PO1 Castillo and PO1 Olguera arrested Appellant. Upon examination by Forensic Chemist P/SInsp. Tapan, the white crystalline substance contained in the plastic sachet yielded positive results for the presence of methamphetamine hydrochloride or *shabu*.^[13]

Second, the record is bereft of any evidence to show that Appellant is authorized by law to possess such prohibited drugs.

Third, mere possession of a prohibited drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession.^[14] Hence, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi*.^[15] Unfortunately here, Appellant miserably failed to discharge that burden. Appellant was not able to satisfactorily explain his lack of knowledge or *animus possidendi* of the *shabu* recovered in his possession.

To rebut the overwhelming evidence for the Prosecution, all that Appellant could offer was the defense of bare denial. Time and again, this Court held that the defense of denial, like *alibi*, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act.^[16] To merit consideration, it has to be substantiated by clear and convincing evidence, which, Appellant failed to do.

What further fortifies the credibility of the testimonies of PO2 Valenzuela and PO1 Castillo is the presumption of regularity in the performance of official functions. The presumption remains un rebutted because the Defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive.^[17] Here, there is no showing that the PO2 Valenzuela and PO1 Castillo were moved by ill motives to impute such a serious crime as possession of illegal drugs against the Appellant. Indeed, the court *a quo* correctly applied the presumption of regularity in the performance of official duty and held the same to prevail over Appellant's self-serving and uncorroborated denial.

Moreover, it is well-settled that that the findings of fact of the trial court as well as its calibration of the evidence of the parties, its assessment of the credibility and probative weight of the witnesses, and its conclusion based on its findings are