



Republic of the Philippines
Supreme Court

Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

G.R. No. 181826

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,
ABAD,
PEREZ,*
MENDOZA, and
LEONEN, *JJ.*

HONG YEN E and
TSIEN TSIEN CHUA,
Appellants.

Promulgated:

January 9, 2013

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DECISION

ABAD, J.:

This is about the duty of the prosecution to prove beyond reasonable doubt that the illegal sale of drugs was consummated. Absence of proof of consummation, the accused may be acquitted for illegal sale of drugs. Nonetheless, accused may be convicted for “illegal possession of prohibited drugs”—penalized in Section 8 of Republic Act (R.A.) 6425, as amended—as possession is necessarily included in the crime charged in the Information.

The Facts and the Case

The City Prosecutor of Manila separately charged the accused Hong Yen E @ “Benjie Ong” (Yen E), Tsien Tsien Chua (Chua), and Gun Jie Ang (Ang) before the Regional Trial Court (RTC) of that city for violation of Section 15, Article III in relation to Section 2(e), (f), (m), and (o), Article I in relation to Article 21 of R.A. 6425, as amended by Presidential Decree 7659.¹

* Designated additional member, in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated December 10, 2012.

¹ Records, Vol. I, pp. 3-4.

The National Bureau of Investigation (NBI) Special Investigator (SI) Roy Rufino C. Suñega (Suñega) testified that Atty. Ruel Lasala, Chief of the Narcotics Division, ordered him to place accused Yen E under surveillance and arrange a possible buy-bust involving him. Subsequently, Suñega went to Jollibee, Masangkay Branch, together with SI Noel C. Bocaling for a pre-arranged meeting with Yen E. At that meeting, Yen E agreed to sell two kilograms of *shabu* to Suñega for ₱600,000.00 per kilogram. He was to deliver the *shabu* in the evening of the following day at the same place.

Suñega caused the preparation of boodle money, consisting of 24 bundles of 100 10-peso bills with four 500-peso bills to cover the top and the bottom of each bundle. He had the 500-peso bills marked with “RS-1,” “RS-2,” “RS-3” and “RS-4” at the right top portion.² As agreed, the NBI agents met with Yen E again on the evening of September 5, 2001. Yen E arrived but requested the police buyers to meet him at Lai-Lai Restaurant. Before he left, Yen E took a peek at the money.

At the Lai-Lai Restaurant, Chua and Ang arrived and approached Yen E. Upon the latter’s instruction, Chua handed over the plastic bags she had to Suñega. Convinced that these contained *shabu*, Suñega lit his cigarette, the signal that the buy-bust had been completed. After the arrest of the three, Suñega placed the *shabu* in plastic bags and marked these with “H. YEN-1” and “H. YEN-2” with the date “9-06-2001.”³ The police then submitted the suspected *shabu* for laboratory examination. Yvette Ylao, an NBI forensic analyst testified that, upon examination, the contents of the plastic bags proved to be methamphetamine hydrochloride.

Accused Chua denied the charges and testified that it was a case of “*hulidap*” and they tortured her. They divested her of her jewelry and demanded ₱2 million for her release. Yen E also denied the charges and complained of being a victim of “*hulidap*.” He testified that the arresting officers demanded ₱2 million for his release. Ang, on the other hand, jumped bail and thus waived his right to adduce evidence.

On April 29, 2004 the RTC found the three accused guilty beyond reasonable doubt of the crime charged and sentenced them to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱500,000.00 each without subsidiary imprisonment in case of insolvency.

On appeal to the Court of Appeals (CA) in CA-G.R. CR-H.C. 02168,⁴

² TSN, August 27, 2002, pp. 11-13.

³ Id. at 29.

⁴ Penned by Justice Conrado M. Vasquez, Jr. and concurred in by Justices Fernanda Lampas-Peralta and Celia C. Librea-Leagogo.

the latter affirmed *in toto* the RTC Decision. It also denied the accused's motion for reconsideration on August 6, 2007, hence, this appeal.

The Issue Presented

The sole issue in this case is whether or not the CA erred in finding that the prosecution succeeded in proving beyond reasonable doubt the consummation of the illegal sale of prohibited drugs.

The Ruling of the Court

One. To prove the crime of illegal sale of dangerous drugs, the prosecution's evidence should establish the following elements: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment. Absent any of these two elements, the prosecution's case must fail.

Here, while SI Suñega claimed that Yen E offered to sell to him two kilograms of *shabu* for ₱1.2 million and that he agreed to buy the same, the sale was not consummated. He thus narrated:

Q: What happened when this Chinese lady handed to you the plastic bag?

A: Well, I immediately inspected the contents of the said bag and I noticed the bag has two transparent plastic bags and crumpled newspapers covered it.

Q: And what was the content of this?

A: Based on my initial examination, I am convinced that it is shabu. Based on its appearance.

Q: What happened, Mr. Witness, when this Chinese lady handed to you the plastic bag?

A: Well, I immediately lighted a cigarette. And the lighting of the cigarette is a pre-arranged signal to our back-up team that the drugs are there already and that is a signal to conduct the arrest. (*sic*)

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Q: What happened, Mr. Witness, when you testified that you gave a pre-arranged signal?

A: After that, I already saw my back-up team approaching our position and **then before I could hand over the money to Mr. Benjie Ong, the arrest was already made.**⁵ (Emphasis supplied)

During the re-cross examination, SI Suñega admitted that the back-up

⁵ TSN, August 27, 2002, pp. 24-29.

team immediately arrested the appellants before he could deliver the buy-bust money to the appellants, thus:

Q: Okay, there was no payment whatsoever?

A: I have the money with me to pay but before I can do so, the back-up team already assisted me in conducting the arrest.

Q: In other words, you did not actually pay for what you claim you have received? *Hindi mo binayaran ang sinasabi mong inabot sa iyo.* Is that correct?

A: That's correct, sir.⁶

It is material in illegal sale of dangerous drugs that the sale actually took place. What consummates the buy-bust transaction is the delivery of the drugs to the poseur-buyer and, in turn, the seller's receipt of the marked money.⁷ While the parties may have agreed on the selling price of the *shabu* and delivery of payment was intended, these do not prove consummated sale. Receipt of the marked money, whether done before delivery of the drugs or after,⁸ is required.

In an attempt to prove a consummated sale, the prosecution heavily relied on the testimony of SI Suñega that Yen E took a peek at the money before they went to the restaurant for the swap with *shabu*. But looking at a thing does not transfer possession of it to the beholder. Such a tenet would make window shoppers liable for theft.

Two. Appellant's exoneration from the sale of prohibited drugs does not spell freedom from all criminal liability as they may be convicted for illegal possession of prohibited drugs under Section 8⁹ of R.A. 6425. This Court has consistently ruled that possession is necessarily included in the sale of illegal drugs.

Given that illegal possession is an element of and is necessarily included in the illegal sale of prohibited drugs, the Court will now determine appellants culpability under Section 8.

The elements of illegal possession of prohibited drugs are as follows: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the

⁶ TSN, September 12, 2002, p. 11.

⁷ *People v. Dela Cruz*, G.R. No. 177324, March 30, 2011, 646 SCRA 707, 718, citing *People v. Mala*, 458 Phil. 180, 190 (2003).

⁸ *People v. Aspiras*, 427 Phil. 27, 37-38 (2002).

⁹ **Section 8. Possession or Use of Prohibited Drugs.** The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug, except Indian hemp as to which the next following paragraph shall apply.

accused freely and consciously possessed the prohibited drug.¹⁰

The evidence on record clearly established that appellant Chua was in possession of the plastic bags containing prohibited drugs without the requisite authority. Applying Section 3(j), Rule 131 of the Rules of Court,¹¹ a disputable presumption arises that she is the owner of the bag and its contents. It may be rebutted by contrary proof that the accused did not in fact exercise power and control over the thing in question, and did not intend to do so. The burden of evidence is thus shifted to the possessor to explain absence of *animus possidendi*.¹² Here, Chua failed to present evidence to rebut the presumption. She claims that she was a victim of frame-up and extortion by the narcotics agents of the NBI. This defense is viewed with disfavor for it can be easily concocted.¹³ The defense of frame-up, often imputed to police officers, requires strong proof when offered as a defense, because of the presumption that public officers acted in the regular performance of their official duties.¹⁴

Although the plastic bags containing *shabu* were found solely in the possession of Chua, it was evident that Yen E had knowledge of its existence. As the records would show, Yen E negotiated for the sale of dangerous drugs. When Chua arrived in the vicinity, she approached Yen E before delivering the *shabu* to Suñega. These acts of the accused indubitably demonstrate a coordinated plan on their part to actively engage in the illegal business of drugs. When conspiracy is shown, the act of one is the act of all conspirators. Direct evidence of conspiracy is not necessary as it can be clearly deduced from the acts of the accused.

Three. As to the accused's argument that the NBI operatives failed to observe the chain of custody rule in dangerous drugs cases, we do not agree. The alleged failure of the apprehending team to inventory and photograph the confiscated items immediately after the operation, is not fatal to the prosecution's cause. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be used in the determination of the guilt or innocence of the accused.¹⁵ Here, the integrity and evidentiary value of the seized drugs had been preserved as there is evidence to account for the crucial links in the chain of custody of the seized *shabu*, starting from its confiscation to its presentation as evidence in the RTC.

¹⁰ *People v. Lacerna*, 344 Phil. 100, 121 (1997).

¹¹ Rule 131, Section 3(j): That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him.

¹² *Cupcupin v. People*, 440 Phil. 712, 731 (2002).


¹³ *People v. Laylo*, G.R. No. 192235, July 6, 2011, 653 SCRA 660, 671.

¹⁴ *People v. Carlos Boco*, 368 Phil. 341, 367 (1999).


¹⁵ *People v. Soriaga*, G.R. No. 191392, March 14, 2011, 645 SCRA 300, 306.

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. 02168 dated March 30, 2007 is hereby **MODIFIED**. The Court **FINDS** Hong Yen E @ “Agi/Benjie Ong” and Tsien Tsien Chua guilty of illegal possession of prohibited drugs under Section 8 of Republic Act 6425; **IMPOSES** on them, in accordance with the Indeterminate Sentence Law, imprisonment for 8 years as minimum to 12 years as maximum; and **ORDERS** them to pay a fine of ₱12,000.00. *Costs de oficio*.

SO ORDERED.


ROBERTO A. ABAD
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
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.



MARIA LOURDES P. A. SERENO

Chief Justice