

FIRST DIVISION

[G.R. NO. 170837, September 12, 2006]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DEXTER
TORRES Y DELA CRUZ, APPELLANT.**

D E C I S I O N

CALLEJO, SR., J.:

Dexter Torres was charged with violation of Section 8, Article II of Republic Act (R.A.) No. 6425, as amended, for unlawful possession of 831.91 grams of marijuana fruiting tops, a prohibited drug; as well as Section 16, Article III of the same law for illegal possession of 0.26 grams of methamphetamine hydrochloride, a regulated drug commonly known as *shabu*.

The indictment in Criminal Case No. 08-1334 for violation of Section 8, Article II of R.A. No. 6425 reads:

That on or about August 13, 2001, in the Municipality of Gonzaga, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) brick of Marijuana fruiting tops weighing 831.91 grams wrapped in a newspaper which gave POSITIVE results for the tests of marijuana, a prohibited drug, the said accused knowing fully well and aware that it is prohibited for any person to, unless authorized by law, to possess or use any prohibited drug.

CONTRARY TO LAW.^[1]

Upon the other hand, the accusatory portion of the Information in Criminal Case No. 08-1344 for violation of Section 16, Article III of the same law reads:

That on or about August 13, 2001, in the Municipality of Gonzaga, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody two (2) small heat-sealed transparent plastic sachets containing white crystalline substances with a total weight of 0.26 gm. which substances gave POSITIVE results to the tests for Methamphetamine Hydrochloride, a regulated drug, commonly known as Shabu, the said accused knowing fully well and aware that it is prohibited for any person to possess or use any regulated drug without the corresponding license or prescription.

CONTRARY TO LAW.^[2]

The two (2) criminal cases were jointly tried at the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 8. Dexter pleaded not guilty to both charges.^[3]

The case for the prosecution is as follows:

In the early afternoon of August 13, 2001, operatives of the Second Regional Narcotics Office led by PSI Teodolfo M. Tannagan, SPO4 Abelardo M. Lasam, SPO1 Jessie O. Liwag and PO2 Tirso T. Pascual, as members, and a back-up team from the Gonzaga Police Station, armed with a search warrant issued by Executive Judge Jimmy Henry F. Lucson, Jr. of the RTC of Tuguegarao City, Cagayan, raided the house of Dexter Torres located at Salvanera St., *Barangay* Paradise, Gonzaga, Cagayan. The team was joined by the two *barangay* councilmen, Edward Sagnep and Ernesto Vivit.

Just before searching Dexter's house, SPO4 Lasam presented the search warrant and introduced the raiding team to Henny Gatchalian, Dexter's sister, and Dexter's children. When asked where the owners of the house were, Henny responded that her brother and his wife had just left. In their presence and that of the two *kagawads*, the team searched the master's bedroom and found the following stashed inside the second deck of a wooden cabinet: 1) a brick of dried suspected marijuana wrapped inside newsprint; 2) two plastic sachets of suspected *shabu*; 3) three pieces of aluminum foil; 4) a colored green plastic lighter; and 5) a small transparent plastic bag. The raiders then prepared an inventory^[4] of the articles seized, a copy of which was handed to Henny. After photos of the confiscated articles were taken, they were placed in a plastic bag and turned over to SPO4 Lasam, who submitted the same to the Regional Crime Laboratory Office 2, Camp Alimanao, Tuguegarao, Cagayan, for forensic examination.^[5]

That same afternoon, *Kagawads* Edward and Ernesto both signed a certification^[6] as to the conduct of the search, certifying, among others, that it was conducted in an orderly and peaceful manner; no unnecessary force was employed; nobody was hurt; and nothing was taken without proper receipt. Henny, however, refused to sign the certification.

PSI Forensic Chemist Maria Leonora C. Camarao examined the substance seized from Dexter's house which tested positive for marijuana and *shabu*. On the witness stand, Maria confirmed her Physical Science Reports, hereunder reproduced as follows:

SPECIMEN SUBMITTED:

Exh "A" - one (1) brick of suspected Marijuana fruiting tops with weight of 831.91 grams wrapped with newspaper print and masking tape with markings and further placed in one (1) brown long envelope with description. xxx

Exh "B-B1" - Two (2) small heat-sealed transparent plastic sachets wrapped with masking tape with markings, containing white crystalline substances with total weight of 0.26 gm and further placed in one (1) cellophane with description. xxx

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of prohibited and/or regulated drugs.
xxx

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave the following results:

Exh "A" - gave POSITIVE result to the test for Marijuana, a prohibited drug. xxx

Exh "B-B1" - gave POSITIVE result to the test for Methamphetamine Hydrochloride, a regulated drug. xxx

CONCLUSION:

Exh "A" - contains Marijuana, a prohibited drug. xxx

Exh "B-B1" - contains Methamphetamine Hydrochloride, a regulated drug. xxx^[7]

On December 5, 2002, the prosecution formally offered its exhibits, which included the brick of marijuana leaves and fruiting tops weighing 831.91 grams (Exhibit "A"); and the *shabu* which weighed 0.26 grams (Exhibits "B" and "B-1"). Thereafter, the prosecution rested its case.^[8]

Dexter, through counsel, objected to the offer of evidence on the ground that the same were "confiscated not from [his] possession as he was then staying in Laoag City."^[9]

The defense consists of the testimonies of Dexter himself, his sister Henny Gatchalian, and his relative, *Kagawad* Ernesto, are predicated on denial and frame-up.

The defense version is as follows:

Thirty-eight-year old Dexter eked out a living as a carpenter. He averred that weeks before his house was searched, he was already in Gabu, Laoag City, working in a house construction project of his sister-in-law Rema Pentigrado. He left for Gabu, Laoag City on July 28, 2001 with his wife. After entrusting his children to the care of his father, and his sister Henny, he padlocked his place and gave the key to his sister. He declared that he only came to know of the incident from Henny when he and his wife arrived home from Gabu, Laoag City.^[10]

Kagawad Ernesto, aged 65 years, Dexter's kin, narrated that on August 13, 2001 he was at his house. A policeman from the Gonzaga Police Station arrived and asked him to be a witness in a raid that lawmen would conduct in Dexter's residence. He acceded. However, upon reaching the premises, he found out that the search had

already been conducted. He was informed that a brick of marijuana had been found inside the house, but he did not see it. Later, upon the prodding of the police, he signed a confiscation receipt without reading its contents.^[11]

Henny, aged 35 years, recounted that at about 1:00 p.m. of August 13, 2001, she was at her father's house when a number of policemen arrived. They asked her to open the door, and as she was forced to do so, she accompanied the police to the neighboring house and unlocked the place. Inside, she was placed in one of the rooms and was ordered not to move a muscle. Thereafter, the policemen ransacked the cabinets, chests and drawers. Meanwhile, she remained confined in the room, without a clue as to what was taking place. After the search, the policemen brought her out of the house and showed to her the *shabu* and marijuana which the police claimed to have found inside the house. She denied signing anything save the search warrant. Henny, however, told the court that it was Dexter's mistress, not his wife, that her brother brought to Gabu, Laoag City.^[12]

On November 14, 2003, the RTC rendered a joint decision convicting Dexter of the offenses charged. The *fallo* reads -

WHEREFORE, the Court finds accused Dexter Torres y De La Cruz "GUILTY" beyond reasonable doubt in both cases and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and a fine of Five Hundred Thousand (P500,000.00) Pesos in Criminal Case No. 08-1334 and, the indeterminate prison term of six (6) years, one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, and a fine of Five Hundred Thousand (P500,000.00) Pesos in Criminal Case No. 08-1344.

With costs.

SO ORDERED.^[13]

The trial court rejected the defense of alibi cum frame-up of the accused and upheld in favor of the prosecution the presumption of regularity in the performance of official duties.

Dexter appealed his conviction to this Court, docketed as G.R. Nos. 162542-43, praying for the reversal of the judgment. He claimed that the search warrant had been unlawfully implemented and that the prosecution failed to prove his guilt beyond reasonable doubt. He assigned the following errors purportedly committed by the trial court:

I

THE COURT A *QUO* GRAVELY ERRED IN FINDING THAT THE SEARCH WARRANT ISSUED AGAINST HEREIN APPELLANT WAS VALIDLY AND LAWFULLY IMPLEMENTED..

II

THE COURT A *QUO* ERRED IN FINDING THAT THE GUILT OF THE

ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN
BEYOND REASONABLE DOUBT.^[14]

The appeal was transferred to the CA for appropriate action and disposition *per* Resolution^[15] of this Court dated April 6, 2005, in accordance with the ruling in *People v. Mateo*.^[16]

On July 28, 2005, the judgment of conviction was affirmed, but was modified as to the penalty imposed in Criminal Case No. 08-1344. In disposing the appeal, the CA gave short shrift to Dexter's claim that the two-witness rule under Sec. 8, Rule 126 of the Revised Rules of Court was violated. Emphatically pointing out that at the time of the search, Henny was living in Dexter's house, and therefore a lawful occupant, it held that the two-witness rule applies only in the absence of a lawful occupant of the searched premises. Citing *People v. Simon*,^[17] and considering that only 0.26 grams of *shabu* was involved, the appellate court reduced Dexter's sentence to an indeterminate penalty of six (6) months of *arresto mayor* to four (4) years and two (2) months of *prison correccional*. The petitory portion of the CA decision reads -

WHEREFORE, in view of the foregoing, the joint decision of the Regional Trial Court, Branch 08 of Aparri, Cagayan in Criminal Cases Nos. 08-1334 and 08-1344 is hereby AFFIRMED WITH MODIFICATIONS. Accused-appellant Dexter Torres y Dela Cruz is hereby found GUILTY of violating Sections 8 and 16 of Republic Act No. 6425, as amended by Republic Act No. 7659, and is hereby sentenced to suffer:

(1) the penalty of *reclusion perpetua* and a fine of Five Hundred Thousand Pesos (P500,000.00) in Criminal Case No. 08-1334; and

(2) an indeterminate sentence of 6 months of *arresto mayor* to 4 years and 2 months of *prison correccional* in Criminal Case 08-1344.

SO ORDERED.^[18]

Dexter sought reconsideration, which the CA denied.^[19]

Unfazed, Dexter, now the appellant, appealed anew to this Court, adopting by way of manifestation the same arguments before the CA.^[20]

Appellant insists that the items seized from his house are inadmissible as evidence, being the fruits of an illegal search. He maintains that the manner of search conducted in his residence had failed to comply with the mandatory provisions of Section 8 (formerly Section 7), Rule 126 of the 2000 Rules of Criminal Procedure, which provides:

SEC. 8. *Search of house, room, or premises, to be made in presence of two witnesses.* ' No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.