

[CR No. 32677, September 17, 2010]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PERO MARAORAO Y CABITAY, ACCUSED-APPELLANT.**

Court of Appeals

Before Us is an appeal from the Decision^[1] dated June 26, 2009 of the Regional Trial Court, Branch 2, Manila City in Criminal Case No. 08-260021 finding accused-appellant Pero Maraorao y Cabitay guilty beyond reasonable doubt of the crime of illegal possession of zero point zero twenty-six (0.026) gram of methylamphetamine hydrochloride in violation of par. 3, Section 11, Article II of Republic Act No. 9165, otherwise known as "The Dangerous Comprehensive Drugs Act of 2002" and sentencing him to suffer imprisonment of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, and to pay a fine of P300,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs of suit.

THE FACTS

In an Information^[2] dated February 29, 2008, appellant was charged with the crime of illegal possession of *shabu* in violation of par. 3, Section 11, Article II of R.A. No. 9165 committed as follows:

That on or about **February 27, 2008**, in the City of Manila, Philippines, the said accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly has (sic) in his possession and under his custody and control one (1) **heat-sealed transparent plastic sachet with marking "SAID-2", containing zero point zero two six (0.026) gram of white crystalline substance known as shabu, containing Methylamphetamine, a dangerous drug.**

Contrary to law.^[3]

On April 4, 2008, appellant was arraigned and pleaded not guilty.^[4]

During the pre-trial,^[5] the parties entered into a stipulation of facts as to the genuineness and due execution of the documents, *viz*: (a) the letter request dated February 27, 2008 for laboratory examination of the plastic sachet of shabu subject of illegal possession of appellant and the rubber stamp "RECEIVED" thereon, marked as Exhibits "A" and "A-1", respectively;^[6] (b) the plastic sachet containing shabu with markings "SAID-2" and its brown envelope, marked as Exhibits "B" and "B-1", respectively; and, (c) the Final Chemistry Report No. D-227-08, its findings and conclusions, and signatures appearing thereon, marked as Exhibits "C" and "C-1" and "C-2", respectively.^[7]

Trial on the merits ensued thereafter.

The prosecution presented two witnesses, namely: PO2 Exequiel Arevalo^[8] and SPO3 Pedro Valdez. However, the testimony of the latter was dispensed with after the parties agreed to stipulate that SPO3 Valdez was just a back-up officer who did not personally see the recovery of the seized illegal drugs and that he was only informed by PO2 Arevalo thereof after the fact of appellant's arrest.^[9]

The facts adduced by the prosecution may be summarized as follows:

The Central Market Sta. Cruz Police Station (PS-3) received reports from their confidential informant that a certain "Haron" was engaged in selling shabu at Arlegui Street. Consequently, a buy-bust operation was conducted thereon at 6:00 o'clock in the evening of February 27, 2008 whereby PO2 Boy Baladjay was tasked as poseur-buyer. While waiting inside the vicinity of the Barter compound which was located at Arlegui Street and a known lair of "Haron", the confidential and poseur-buyer were approached by one Najim Racman, alleged right-hand person of "Haron" who asked them what their business was in said vicinity. The confidential informant then introduced themselves as purported buyers of illegal drugs and asked for "Haron" but they were subsequently told by Najim that "Haron" had already left and that he was now the one left to handle the sale of *shabu* at said place. The poseur-buyer asked if he could buy *shabu* worth P300.00 prompting Najim to excuse himself and proceed to a nearby computer video game shop. Shortly thereafter, Najim returned and asked for the money which the poseur-buyer handed to Najim who then gave a plastic sachet containing white crystalline substance. The poseur-buyer then gave the pre-arranged signal to the back-up officers to effect the arrest of Najim. The poseur-buyer identified himself as a police officer and at the same time grabbed the buy-bust money consisting of three (3) P100-peso bills.

Poseur-buyer PO2 Baladjay then pointed to PO2 Arevalo, one of the back-up officers, the computer shop where Najim allegedly went prior to the consummation of the sale of *shabu* and told him to proceed therein to look for illegal drugs. Consequently, PO2 Arevalo went inside the computer shop where he saw appellant playing video games.^[10] PO2 Arevalo then held appellant and recovered from appellant's right from pocket one plastic sachet suspect to contain *shabu*.^[11] He immediately informed appellant of his rights and brought him along with Najim to the police station. The seized illegal drug from appellant was turned over to the police investigator who marked it as "SAID-2" in the presence of appellant and PO2 Arevalo.^[12]

Upon laboratory examination, the seized illegal drugs subject of the possession weighed 0.026 gram and tested positive for the presence of methylamphetamine hydrochloride, a dangerous drug, as shown by the Chemistry Report No. D-227-08^[13] issued by Forensic Chemist Elisa G. Reyes.

The defense, on the other hand presented appellant Pero Maraorao^[14] as its lone witness.

Appellant testified that he is twenty (20) years old, single, a student and resident of Globo de Oro, Quiapo, Manila. He testified that he was arrested on the eve of February 26, 2008 and not February 27, 2008. On February 26, 2008, at around 6:00 o'clock in the evening, he was inside his home watching television. Thereafter,

he went to sleep and woke up at around 11:00 o'clock in the evening. He then went outside to buy something. While he, long with two other companions Abdul Racman and an unidentified person, were outside eating their meals, they were apprehended by police officers and brought to the police station. The police officers were looking for a certain "Laila" whom they were supposed to arrest. PO2 Arevalo then demanded P10,000.00 for his release. But because he was unable to pinpoint the person named "Laila" as well as to produce the amount of P10,000.00, he was charged with the crime of illegal possession of shabu. Appellant further testified that he is not familiar with a certain "Haron". Neither was he inside the computer shop on the eve of February 27, 2008 as claimed by the prosecution.

In a Decision^[15] dated June 26, 2009, the court *a quo* convicted appellant of the crime charged. It gave credence to the testimony of the prosecution's lone witness that appellant was caught in possession of *shabu* as an incident of a valid buy-bust operation. Appellant's defense of denial and extortion cannot prevail over the positive testimony of the said prosecution's witness.

Hence, the instant appeal in which appellant raised the lone **assignment of error** that:^[16]

THE COURT A QUO GRAVELY ERRED CONVICTING APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTIONS FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.

THE ISSUE

The main issue is whether or not the prosecution was able to establish appellants guilt of the crime of illegal possession of *shabu* with proof beyond reasonable doubt.

THE COURT'S RULING

The appeal is meritorious.

Appellant mainly contends that the prosecution failed to establish the continuous and unbroken chain of custody of the *corpus delicti* of the crime thereby casting doubt as to its integrity and identity. Appellant pointed out that the investigator to whom the seized drug was turned over was not identified. Moreover, the said unidentified investigator who made the markings thereon and the other persons who thereafter came in contact with the seized drugs were not presented in open court. Neither was the testimony of prosecution witness PO2 Arevalo sufficient to establish the chain of custody of the subject drug. The prosecution likewise violated the procedure in the handling, marking and custody of the seized illegal drugs.

Well-settled is the rule that an appeal in criminal case opens the whole case for review including the review of the penalty and indemnity imposed by the trial court.^[17] The Court is clothed with ample authority to review matters, even those not raised on appeal, if there is a finding that a consideration is necessary in arriving at a just disposition of the case.^[18] Every circumstance in favor of the accused shall be considered,^[19] in view of the constitutional mandate that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt.

At the outset, this Court finds that the seized drug subject of illegal possession is inadmissible to evidence for being a fruit of a poisonous tree. The search conducted on appellant was not lawful as it is not an incident of a valid warrantless arrest under Section 5,^[20] Rule 113 of the Revised Rules of Criminal Procedure.

The conduct of a valid warrantless search and seizure is permissible under the following instances:^[21] (1) search incident to a lawful arrest, (2) search of a moving motor vehicle, (3) search in violation of custom laws, (4) seizure of the evidence in plain view, (5) when the accused himself waives his right against unreasonable searches and seizures,^[22] (6) stop and frisk,^[23] (7) exigent and emergency circumstances.^[24]

In *People vs. Doria*,^[25] probable cause means an actual belief or reasonable grounds of suspicion. The ground of suspicion is reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion must thus be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest. Further, in *People vs. Laguio, Jr., et al.*,^[26] for warrantless arrest of an accused caught in *flagrante delicto* under paragraph (a) of Section 5 to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

In the instant case, there was no probable cause to effect a warrantless arrest on the person of appellant. As testified to by prosecution witness PO2 Arevalo himself, he has no personal knowledge of any overt act committed by appellant. PO2 Arevalo was only prompted to proceed to the computer shop due to the tip given by poseur-buyer PO2 Baladjay who pointed to the computer shop where co-accused Najim allegedly went inside before the consummation of the drug sale. PO2 Arevalo was just tasked to look for further illegal items inside the computer shop where appellant was incidentally found playing computer video games. PO2 Arevalo then unlawfully conducted a search on appellant's person without even explaining the reason therefor. The pertinent portions of PO2 Arevalo's testimony are quoted:

On Direct Examination

Fiscal Yap

Q Could you tell us who was the subject of this buy[-]; bust operation?

A A certain name Haron, sir, (*sic*)

Q Where was Haron then at the time of the operation?

A After the buy[-]bust operation, sir [,] we were able to arrest the right hand "kanang kamay" of Haron, sir.

Q Who was the right hand?

A Najim Racman, sir.

Q So where was this you said you arrested a certain Pero

Maraorao, where was he then at the time of your arrest?

A He was at the near the video games, sir.

Q What was he doing then?

A He was playing, sir.

Q Then what prompted you to make an arrest?

A When PO2 Boy Nino Baladjay made a prearranged signal he pointed to me the place where he was able to get the shabu, sir.

Q What place?

A Inside the Barter, sir [,] sa may video games, sir.

Q So when you said your pointed to somebody, who was that somebody pointed as the source of the shabu?

A And then I was informed by PO2 Baladjay that he came from the video games and told me to look for the items there, sir.

Q So when you reached the video games, how many people were around at that time?

A Only one, sir.

Q Who was that person then?

A Pero Maraorao, sir.

Q So [,] what did you do when you were at the video games with this certain Pero Maraorao?

A When I arrived there [,] I got held of Pero Maraorao, sir. (*sic*)

Q Then what happened nest, Mr. Witness?

A Then I told him, check only, sir.

Q So [,] what was the result when you said check?

A Then I able to recover a plastic sachet from his right front pocket, sir. (*sic*)

Q So [,] what happened next, Mr. Witness?

A After the recovery, sir [,] informed his rights and I immediately brought him to the office together with the person arrested by PO2 Baladjay, sir.

[TSN, March 23, 2009, pp. 6-8]

On Cross-examination:

Atty. Kho

Q Mr . Witness, you said earlier that the accused was playing before he was arrested?

A Yes, sir.

Q How far away were you from him?

A Magkabilang kanto lang po, sir.

Q How far exactly?

A Six to seven meters, sir.

Q Aside from playing did you notice something from him?

A We were not focused to that person but to our poseur[-]buyer, sir.