

FIRST DIVISION

[G.R. No. 234155, March 25, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO CARIÑO Y LEYVA, ACCUSED-APPELLANT.**

DECISION

GESMUNDO, J.:

On appeal is the May 12, 2017 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08344, which affirmed the April 21, 2016 Joint Decision^[2] of the Regional Trial Court of Tarlac City, Branch 64 (RTC), finding Eduardo Cariño y Leyva (*appellant*) guilty of one (1) count of violation of Section 6, Article II, or Maintenance of Drug Den, in Criminal Case No. 16340; and one (1) count of violation of Section 11, Article II or illegal possession of dangerous drugs in Criminal Case No. 16341, under Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Appellant was charged in three separate informations with illegal sale of dangerous drugs (0.08 gram of methamphetamine hydrochloride (*shabu*), maintenance of a drug den, and illegal possession of dangerous drugs (0.04 gram of shabu). During arraignment, appellant pleaded "not guilty" to all charges. After consolidation, joint trial ensued.^[3]

Evidence of the Prosecution

The prosecution presented the following witnesses: SPO2 Eduardo Navarro (*SPO2 Navarro*), SPO2 Jorge Andasan, Jr. (*SPO2 Andasan, Jr.*), and Forensic Chemist PSI Jebie Timario (*PSI Timario*).^[4] Their combined testimonies tended to establish the following:

On July 24, 2009, SPO2 Navarro arrested a certain Dexter Valencia (*Valencia*) for possession of illegal drugs. Valencia admitted that appellant's house, located at Mac Arthur Highway, Block 3, San Nicolas, Tarlac City, was purposely used for shabu sessions. On that same day, SPO2 Navarro went to appellant's house to warn him of his illegal activities.^[5]

On July 30, 2009, at around 8:30 a.m., SPO2 Navarro and his team, which included SPO2 Andasan and a certain Jay Mallari (*Mallari*), conducted a surveillance operation around the vicinity of appellant's house. SPO2 Navarro was stationed at the highway, SPO2 Andasan along Block 3, and another team member at Block 4. According to SPO2 Navarro, he saw three persons inside appellant's house, later

identified as Noel Manianglung (*Manianglung*), Alma Bucao (*Bucao*), and Milagros Soliman (*Soliman*), who were also in the "drug list."^[6]

After a couple of minutes, SPO2 Navarro saw appellant come out of his house and head towards the house of a certain Tikong Dulay (*Dulay*). SPO2 Navarro followed him and he saw appellant hand some money to Dulay in exchange for four sachets of shabu.^[7]

Appellant went back to his house, with SPO2 Navarro following and returning to his position at the highway. He signaled Mallari to move closer to appellant's house. A few minutes later, Mallari gave a signal to SPO2 Navarro that a "pot session" was taking place inside appellant's house. Appellant then came out of his house. At that point, SPO2 Navarro approached appellant and told him he was being arrested for delivering shabu and maintaining a drug den. After the arrest, SPO2 Navarro stooped to look inside the house and confirmed that Noel Manianglung was heating foil with a lighter and a woman was holding a rolled aluminum foil and using it as a "tooter."^[8]

SPO2 Navarro and his team then entered appellant's house. He found on top of a table one (1) opened or used small plastic sachet (*marked as ETN-1*); two (2) heat-sealed transparent plastic sachets containing white crystalline substance (*marked as ETN-2 and ETN-3*); seven (7) aluminum foils inside a cigarette pack (*marked as ETN-4*); and three (3) disposable lighters (*marked as ETN-5, ETN-6, and ETN-7*). There were also two other sachets of shabu-like substance confiscated from Manianglung, which were hidden in his cell phone (*marked as ETN and ETN-a*). At the place of arrest, SPO2 Navarro prepared a receipt of property seized, which was signed by Edizon Dizon, barangay chairman of San Nicolas, and Owen Policarpio, representative of the Department of Justice (*DOJ*). Appellant refused to sign the inventory. The seized items were also photographed.^[9]

After the marking and inventory, SPO2 Navarro placed the seized items in a plastic bag and brought them to the police station where he prepared a request for laboratory examination. At around 1:45 p.m. on July 30, 2009, SPO2 Navarro delivered the seized items to the crime laboratory, which were received by PSI Timario. The latter's examination found that the substances marked ETN-2, ETN-3, ETN, and ETN-a tested positive for methamphetamine hydrochloride or shabu, and each sachet weighed 0.02 gram. PSI Timario then turned over the items to the evidence custodian.^[10]

Evidence of the Defense

Only appellant testified for the defense. He stated that on July 30, 2009, at around 9:00 a.m., he was at home nursing a foot injury and went to his backyard to get calamansi thorns to treat it. He had three visitors at that time, Bucao, Soliman, and Manianglung. While at the backyard, he was approached by SPO2 Navarro and his team. They asked if they could enter his premises. Appellant inquired if they had a search warrant, to which SPO2 Navarro answered in the negative. Since they were law enforcers, appellant allowed them inside the house.^[11]

They searched appellant but found nothing on him. However, they found two (2) sachets inside Manianlung's cellphone. When asked where those came from,

Manianglung pointed to appellant. The latter was asked to sign papers, which he refused to do. They were brought to Camp Macabulos to undergo a drug examination, with positive results.^[12] Appellant averred that he did not sell or push drugs; however, he admitted that he was also a victim being a drug user himself.^[13]

The RTC Ruling

In its April 21, 2016 joint decision, the RTC acquitted appellant in Criminal Case No. 16339 for illegal sale of dangerous drugs; convicted him in Criminal Case No. 16340 for maintenance of a drug den, with the penalty of life imprisonment and a fine of P500,000.00; and convicted him in Criminal Case No. 16341 for illegal possession of dangerous drugs, with the penalty of twelve (12) years and one (1) day to twenty (20) years, and a fine of P300,000.00.

The RTC acquitted appellant of the charge of illegal sale of dangerous drugs because the police officers conducted only a surveillance, not a buy-bust operation. Thus, the prosecution was not able to substantiate its allegation that appellant took part in the sale of drugs.

Nevertheless, the RTC gave credence to the testimonies of the prosecution's witnesses, corroborated even by appellant himself, that he consented to the use of his house for "pot sessions" and sexual activities for minimal fees. The trial court gave weight to SPO2 Navarro's testimony stating that Valencia, who was caught for possession of dangerous drugs a few days before appellant's arrest, had admitted that he used drugs inside appellant's house. The RTC underscored that appellant's intent to use his property as a drug den was proven.^[14]

Further, the RTC found present all the elements of the crime of illegal possession of dangerous drugs. The two small transparent plastic sachets containing shabu were found on top of the table inside his house. Though it was not found in his immediate possession, he still had constructive possession of the drugs because these were found in a place where he had dominion or control.

Aggrieved, appellant appealed before the CA.

The CA Ruling

In its decision, the CA affirmed appellant's conviction. It ruled that the drugs seized were admissible since they were the result of a valid warrantless search and seizure under the "plain view doctrine." Also, it affirmed the RTC in ruling that the chain of custody was complied with. Though there was no media representative, this may be overlooked with the substantial observance of the other requirements.

The CA also affirmed the RTC ruling that there was, indeed, maintenance of a drug den, based on SPO2 Navarro's observation and the house's general reputation. While Valencia's statement was hearsay evidence, it was not objected to by the defense; hence, the CA gave weight to the statement that appellant's house was used as a drug den. As to the charge of possession of illegal drugs, the CA affirmed the RTC ruling that appellant had full control and dominion of the drugs found in his

house.^[15]

Hence, this appeal.

ASSIGNMENT OF ERRORS

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 6 AND 11, ARTICLE II OF R.A. NO. 9165 DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM BASED ON THE FRUIT OF THE POISONOUS TREE DOCTRINE.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 6 AND 11, ARTICLE II OF RA. NO. 9165 DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGEDLY SEIZED DRUG ITEM.^[16]

In its November 27, 2017 Resolution,^[17] the Court required the parties to submit their respective supplemental briefs, if they so desired. In his April 13, 2018 manifestation,^[18] in lieu of supplemental brief, appellant stated that he would no longer file a supplemental brief since all relevant issues were exhaustively discussed in the appellant's brief. In its March 19, 2018 Manifestation,^[19] the Office of the Solicitor General (*OSG*) stated that it will dispense with the filing of a supplemental brief to expedite the resolution.

THE COURT'S RULING

The Court finds the appeal partially meritorious.

Maintenance of a drug den

For an accused to be convicted of maintenance of a drug den under Section 6 of R.A. No. 9165, the prosecution must establish with proof beyond reasonable doubt that the accused is "maintaining a den" where any dangerous drug is administered, used, or sold.^[20] Hence, two things must be established: (a) that the place is a den — a place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form; and (b) that the accused maintains the said place. It is not enough that the dangerous drug or drug paraphernalia were found in the place. More than a finding that dangerous drug is being used thereat, it must also be clearly shown that the accused is the maintainer or operator or the owner of the place where the dangerous drug is used or sold.^[21]

In this case, the prosecution alleged that the police officers saw in "plain view" that several persons were using drugs inside the house of appellant. The prosecution also alleged that the house had a general reputation as a drug den based on Valencia's statement that he consumed shabu inside the said house.

The Court is not convinced that appellant's guilt was proven beyond reasonable doubt.

Objects sighted in plain view by an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he inadvertently comes across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.^[22]

Here, it was a certain Mallari who saw that drugs were being used inside appellant's house during the surveillance operation. SPO2 Navarro testified as follows:

PROS. MANGLICMOT

Q: Who among your companions witnessed the incident?

A: Jay Mallari, sir.

Q: It was Jay Mallari who witnessed the trade?

A: No, sir, not the trade, the use.^[23]

However, Mallari was never presented as a witness. His rank as a police officer and his assigned role during the alleged surveillance operation were not provided by the prosecution. Thus, it could not be determined from the records whether the requisites of the plain view search were complied with against appellant's alleged crime of maintenance of a drug den. The validity of the plain view search is crucial since it will determine whether the police officers conducted a valid warrantless search and arrest against appellant and his house. The prosecution did not give any justification for its failure to present Mallari as a witness.

Instead, the prosecution presented SPO2 Navarro who, from his position, could not see what was happening inside appellant's house, *viz.*:

PROS. MANGLICMOT

Q: From the place where you were positioned, can you see what was happening inside the house of Cariño?

A: **No, I cannot, sir.**