

## SECOND DIVISION

[ G.R. No. 232006, July 10, 2019 ]

**IN RE: THE WRIT OF HABEAS CORPUS FOR MICHAEL LABRADOR ABELLANA (PETITIONER, DETAINED AT THE NEW BILIBID PRISONS, MUNTINLUPA CITY), VS. HON. MEINRADO P. PAREDES, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT OF CEBU CITY BRANCH 13, PEOPLE OF THE PHILIPPINES, S/SUPT BENJAMIN DELOS SANTOS (RET.), IN HIS CAPACITY AS CHIEF OF BUREAU OF CORRECTIONS, RESPONDENTS.**

### DECISION

**CAGUIOA, J:**

Before the Court is a petition for the issuance of the writ of *habeas corpus* under Rule 102 of the Rules of Court. Petitioner Michael Labrador Abellana (petitioner) prays for his release from prison on the ground that he has been deprived of his rights to due process and to competent counsel.

#### The Facts

Petitioner was charged before Branch 13, Regional Trial Court, Cebu City (RTC) with violation of Sections 11 and 12, Article II of Republic Act No. (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002. The factual findings by the RTC in its Decision are as follows:

A search warrant was issued against herein accused by the presiding judge of this court. The accused who is Michael Badajos also known as Michael Badayos is a resident of Bgy. Suba, Cebu City. The search warrant was for violation of Section 11, Article II of RA 9165.

When the team led by P/Supt. Labra arrived, the accused was present. They identified themselves as police officers and informed the accused of the existence of the search warrant. PO2 Maglinte was designated as searcher while PO2 dela Victoria was designated recorder. The search was done in the presence of the accused and barangay tanods of Bgy. Suba.

The sala of the 2-storey house was searched first. Then they found the hanged pants of the accused in the window. There was no other male person in the house. They found in the said front pocket of the accused the following items:

1. Big transparent plastic pack of white crystalline substance believed to be *shahu*. They marked it SW-MAB-01. They also

found *shabu* paraphernalia consisting of the following:

- One scissor;
- Two disposable lighters;
- One improvised clip;
- One rolled aluminum tinfoil;
- One improvised burner;
- Six assorted sizes of empty plastic packs;
- One improvised funnel inside a plastic pack (Exh. D).<sup>[1]</sup>

Subsequently, petitioner was charged on the basis of the following Informations:

**CBU-77150**

That on or about the 26<sup>th</sup> day of May 2008 at about 4:30 p.m. in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and under his control one (1) heat-sealed transparent plastic packs of white crystalline substance weighing 6.89 [grams] locally known as "shabu" containing methylamphetamine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.

**CBU-77151**

That on the 26<sup>th</sup> day of May 2008 at about 4:30 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without any lawful purpose, did then and there have in his possession and control the following:

- a) One (1) scissor
- b) Two (2) disposable lighters
- c) One (1) improvised clip
- d) One (1) rolled aluminum tin foil
- e) One (1) improvised burner
- f) Assorted sizes of empty packs to be used in repacking *shabu*
- g) One (1) improvised funnel

which are instruments or equipments (*sic*) fit or intended for smoking, consuming, administering, ingesting or introducing any dangerous drug into the body.

CONTRARY TO LAW.<sup>[2]</sup>

Petitioner pleaded not guilty to the crimes charged in both Informations.<sup>[3]</sup>

He thereafter filed a Motion to Quash Search Warrant, which was denied by the RTC in an Order dated September 15, 2006.<sup>[4]</sup> After the pre-trial, the trial for the case ensued. Petitioner was represented then by Atty. Dario Rama, Jr. (Atty. Rama).<sup>[5]</sup>

On November 9, 2007, petitioner filed a Motion for Physical Re-examination and Re-weighing of the alleged *shabu* confiscated from him, which was granted by the RTC. The Qualitative Report revealed that the actual weight of the drugs seized was 4.4562 grams and not 6.89 grams. As a result, petitioner was able to file a Petition for Bail, which was granted.<sup>[6]</sup> Thus, on April 4, 2008, petitioner was released from detention after furnishing the bail bond.<sup>[7]</sup>

After the prosecution rested its case, petitioner filed a demurrer to evidence, which was denied.<sup>[8]</sup>

On December 3, 2008, Atty. Raul Albura (Atty. Albura) filed his Entry of Appearance<sup>[9]</sup> as counsel for petitioner.

On April 30, 2009, the RTC issued an Order<sup>[10]</sup> submitting the case for decision for failure of petitioner and his counsel to appear during the scheduled hearing on even date for initial presentation of evidence for the defense.<sup>[11]</sup>

On July 25, 2009, petitioner, through Atty. Albura, filed an Urgent Motion to Defer Promulgation of Judgment.<sup>[12]</sup> Petitioner claimed that he received a copy of the July 17, 2009 Notice setting the promulgation of judgment on July 29, 2009 at 9:30 a.m. only on July 22, 2009. Petitioner also made the following claims:

x x x the Honorable Court, ordered the accused to present his witness starting September 10, 2008. Unfortunately, **he failed to testify or present witnesses because x x x there was no proper guidance of his previous counsel** [which] he observed [as] not [being able to defend] his case diligently as exemplified by: a) failure to quash the search warrant before arraignment[; and] b) failure to file the Demurrer to Evidence on time.

Finally, last September 24, 2008 hearing, accused **manifested [to] the Honorable Court [his desire to replace or change] his counsel**. Due to financial constraints, it took him until December 9, 2008 to engage the services of **Atty. Raul A. Albura, who entered his appearance** on the same date.

x x x Unfortunately, **the present counsel was never furnished copies of any [order, process and notice] from this Honorable Court** since the time he represented the accused despite filing a formal Entry of Appearance received by the court last December 9, 2008 x x x.

In fact, **the undersigned counsel accidentally received the Notice**

**of Promulgation of Judgment** when he visited the court's office to follow-up his Notarial Petition.

x x x In view of the foregoing, **the promulgation of judgment in this case without giving the accused an opportunity to adduce his defense** either testimonial or documentary is **a denial of his constitutional right to due process.**<sup>[13]</sup> (Emphasis and underscoring supplied)

### **Rulings of the RTC**

On July 29, 2009, the RTC promulgated its Decision<sup>[14]</sup> dated May 11, 2009,<sup>[15]</sup> the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused MICHAEL L. ABELLANA[,] also known as MICHAEL BADAYOS[,] GUILTY beyond reasonable doubt of the crime of violation of Section 11, Art. II, RA 9165, and sentences him to TWELVE (12) YEARS AND ONE (1) DAY TO FIFTEEN (15) YEARS of imprisonment, subject to [a] fine in the amount of THREE HUNDRED THOUSAND PESOS (P300,000.00)[;] and for violation of Section 12, Art. 2, RA 9165[,] he is hereby sentenced to suffer SIX (6) MONTHS AND ONE (1) DAY TO FOUR (4) YEARS of imprisonment and a fine in the amount of TEN THOUSAND PESOS (P10,000.00).<sup>[16]</sup>

#### *Motion for New Trial or Reconsideration*

On August 13, 2009, petitioner filed a Motion for New Trial or Reconsideration.<sup>[17]</sup> He alleged that his rights as an accused had been prejudiced by some irregularities committed during trial. Specifically, he claimed that he had been deprived of his right to due process because he had not been properly notified ever since Atty. Albura became his new counsel and that in total, Atty. Albura received only two notices involving the case, which included the Notice of Promulgation of Judgment.<sup>[18]</sup> Petitioner also discussed the merits of his case, claiming that there were errors of fact in the RTC Decision.<sup>[19]</sup>

On August 28, 2009, the RTC issued a Warrant of Arrest<sup>[20]</sup> against petitioner.

On November 25, 2009, the RTC issued a Show Cause Order<sup>[21]</sup> against Atty. Albura to explain why he should not be held in contempt for the following statements in petitioner's Motion for New Trial or Reconsideration:

x x x Although, **counsel acknowledged his part of the blame for his failure to attend the said promulgation** but with a reason **as a sign of a protest** premised on the foregoing circumstances especially that

counsel tried to defer the promulgation of the judgment by filing an "Urgent Motion to Defer the Promulgation of Judgment with a Manifestation to Submit a Memorandum" filed last July 27, 2009.<sup>[22]</sup> (Emphasis supplied)

On December 28, 2009, the RTC issued an Order<sup>[23]</sup> denying petitioner's Motion for New Trial or Reconsideration on the basis of the last paragraph of Section 6, Rule 120 of the Rules of Court, which provides:

SECTION 6. *Promulgation of judgment.* — x x x

x x x x

**If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest.** Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (6a) (Emphasis and underscoring supplied)

The RTC stated that when the case was called for promulgation of judgment, petitioner failed to appear despite notice through the bond company. His counsel's knowledge of the scheduled promulgation was also admitted when he stated in the Motion for New Trial or Reconsideration that "the first notice was received accidentally when counsel visited the courts' office to follow up his notarial petition whereby a court's personnel casually served [it] like an ordinary notice."<sup>[24]</sup> Thus, petitioner's failure to appear for promulgation of judgment was without justifiable cause. Moreover, petitioner did not surrender within 15 days from date of promulgation and there was no manifestation that his absence was for a justifiable cause. Thus, he lost all the remedies available, including a motion for new trial or reconsideration.<sup>[25]</sup>

In any case, the RTC ruled that petitioner was not deprived of his right to due process. The RTC stated that there was no proper substitution of counsel.<sup>[26]</sup> The RTC also rejected petitioner's claim that his previous counsel was negligent for failing to quash the warrant and for failure to file the demurrer to evidence on time. The RTC ruled that there was no ground to quash the warrant and the demurrer was actually filed on time. Moreover, the RTC stated that the previous counsel, Atty. Rama, was not remiss in his duties as he filed several pleadings for petitioner, including the motion for re-examination and re-weighing of the *shabu* and the petition for bail, both of which were granted for petitioner's benefit. In contrast, the RTC stated that it was Atty. Albura who discouraged his client from attending the