

## SECOND DIVISION

[ G.R. No. 239866, September 11, 2019 ]

**PAULO JACKSON POLANGCOS Y FRANCISCO, PETITIONER, VS.  
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**CAGUIOA, J:**

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by the petitioner Paulo Jackson F. Polangcos (Polangcos) assailing the Decision<sup>[2]</sup> dated March 28, 2018 and Resolution<sup>[3]</sup> dated June 7, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39705, which affirmed the Decision<sup>[4]</sup> dated November 2, 2016 of the Regional Trial Court of Marikina City, Branch 263 (RTC) in Criminal Case No. 2015-4818-D-MK, finding Polangcos guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"<sup>[5]</sup> as amended.

#### The Facts

An Information was filed against Polangcos for violating Section 11 of RA 9165, the accusatory portion of which reads:

That on or about the 16<sup>th</sup> day of AUGUST 2015, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control of one (1) plastic sachet containing 0.05 grams of white crystalline substance suspected as shabu and subsequently marked as "PJP-1 08-16-15" which gave a positive result to the test of methamphetamine hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[6]</sup>

When arraigned, Polangcos pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.<sup>[7]</sup>

The prosecution's version, as summarized by the CA, is as follows:

*SPO2 Juntanilla* testified that on 16 August 2015 at around 6:40 p.m., he was on board a mobile patrol car with his team along J.P. Rizal St., Marikina City, when they spotted a motorcycle without a plate number. They then pursued the motorcycle. The succeeding events were narrated by SPO2 Juntanilla in his *Pinagsamang Sinumpaang Salaysay* which he identified in court, thus:

"xxx Na, ito ay aming naabutan, at ako (SPO2 Juntanilla) ay akin siyang tinikitan sa kadahilanang walang plaka ang isang RACAL motorcycle na kulay green at expired na ang driver's license ng nagmamanihong aming nakilala bilang si Paulo Jackson Polang[c]os y Francisco (appellant) xxx. Na, sa aking pagsisiyasat (Body Frisk) ay nalaglag mula sa suot na sombrero ng suspetsado ang isang pirasong plastic sachet na naglalaman ng pinaghihinalaang shabu.

Na, sa puntong yaon ay agad namin siyang inaresto at aming ipinaalam sa kanya ang kanyang nailabag na batas at ang kanyang mga karapatan bilang akusado sa ilalim ng ating binagong saligang batas xxx

Na, ako (SPO2 Juntanilla) ay aking minarkahan ang aking nakumpiska na isang pirasong heat sealed transparent plastic sachet na naglalaman ng pinaghihinalaang shabu at ito ay minarkahan ko ng "PJP-1 8/16/15". Na, ang pag-iimbertyo ng mga ebidensya ay sinaksihan ni Brgy. Kagawad Rogel Santiago ng Brgy. Malanday, Marikina City, xxx"

On cross-examination, SPO2 Juntanilla clarified that he apprehended appellant at about 11:40 p.m. He stated that appellant was arrested for violation of a city ordinance. SPO2 Juntanilla narrated that he frisked appellant first before issuing the Ordinance Violation Receipt. He also recalled that he marked the plastic sachet seized from appellant along J.P. Rizal. Afterwards, SPO2 Juntanilla turned over the seized item to PO2 Diola who was not named in the Chain of Custody Form.

On re-direct examination, SPO2 Juntanilla mentioned that PO2 Diola handed the seized item to Forensic Chemist Police Chief Inspector Margarita Libres (PCI Libres). SPO2 Juntanilla stated that the item he marked was the very same item he submitted to the crime laboratory and which he identified in open court.

Based on Physical Science Report No. MCSO-D-148-15 by PCI Libres, qualitative examination conducted on the heat-sealed transparent plastic sachet with marking "PJP-1 08-16-15" containing 0.05 gram of white crystalline substance gave positive result for the presence of methamphetamine hydrochloride.<sup>[8]</sup>

On the other hand, the defense was unable to present any evidence. Polangcos was not able to take the witness stand as he was absent during the scheduled presentation of defense evidence.<sup>[9]</sup> The case was thus submitted for decision.

### **Ruling of the RTC**

In its Decision<sup>[10]</sup> dated November 2, 2016, the RTC convicted Polangcos of the

crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, above premises considered, the court finds accused PAULO JACKSON POLANGCOS y FRANCISCO **GUILTY** beyond reasonable doubt of violation of Section 11 of Article II of [RA 9165] or the Comprehensive Dangerous Drugs Act of 2002.

The accused is hereby sentenced to suffer the penalty of imprisonment of **TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS.**

He is also ordered to pay the fine in the amount of Three Hundred Thousand Pesos (P300,000.00).

SO ORDERED.<sup>[11]</sup>

In finding Polangcos guilty, the RTC relied on the presumption of regularity in the performance of official duty to hold that the prosecution was able to demonstrate that the integrity and evidentiary value of the seized item were preserved.<sup>[12]</sup> It further held that the non-compliance with the procedure outlined in Section 21, RA 9165 did not render Polangcos' arrest illegal.

Finally, the RTC ruled that while perfect compliance with the chain of custody rule is the ideal, it was its view that it was impossible to always obtain an unbroken chain of custody. It thus considered as not fatal the perceived break in the chain of custody pointed out by the defense, *i.e.* the absence of the name of the officer to whom the seized item was turned over in the Chain of Custody Form.<sup>[13]</sup> It ultimately declared Polangcos guilty of the crime charged.

Aggrieved, Polangcos appealed to the CA.

### **Ruling of the CA**

In the CA, Polangcos questioned the admissibility of the evidence against him. He contended that (1) the seized item was obtained by virtue of an invalid warrantless arrest, and (2) that the integrity and evidentiary value of the seized drug were not preserved.<sup>[14]</sup>

In the questioned Decision<sup>[15]</sup> dated March 28, 2018, the CA affirmed the RTC's conviction of Polangcos. It ruled that the prosecution was able to establish all the elements of the crime,<sup>[16]</sup> namely: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.<sup>[17]</sup>

Moreover, the CA held that despite the fact that the police officers failed to strictly comply with the chain-of-custody requirement, it was not fatal for the prosecution's cause as "[w]hat is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."<sup>[18]</sup>

The CA further declared that Polangcos could no longer assail the validity of his

arrest because "any objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment."<sup>[19]</sup> It thus ruled that any irregularity was already cured upon Polangcos' voluntary submission to the court's jurisdiction. The CA therefore affirmed Polangcos' conviction.

Polangcos filed a motion for reconsideration, but the CA denied the same in a Resolution<sup>[20]</sup> dated June 7, 2018.

Hence, the instant appeal.

### **Issue**

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Polangcos.

### **The Court's Ruling**

The petition is meritorious.

The CA manifestly overlooked the undisputed fact that the seized item was confiscated from Polangcos as he was being issued a traffic violation ticket. His violations consisted of (1) not having a plate number, and (2) expired official receipt (OR) and certificate of registration (CR) of the motorcycle he was riding.<sup>[21]</sup>

Polangcos' main violation or the violation for which he was apprehended, which was the lack of a plate number in his motorcycle, was punishable only by a city ordinance that prescribes as penalty the fine of P500.00. Even SPO2 Rey J. Juntanilla (SPO2 Juntanilla), the apprehending officer, recognized that he arrested Polangcos even though the penalty for his violation was merely a fine. The RTC, in its Decision, noted that:

On cross-examination, **the witness [SPO2 Juntanilla] admitted that he arrested the accused for violation of the city ordinance of driving a motorcycle without a plate number, however, he issued a receipt for such violation and further admitted that the penalty for such offense is the payment of P500.00 fine.** He likewise admitted that after they caught up with the accused when the latter alighted from his motorcycle[,] [h]e immediately frisked the accused before the issuance of the ticket and mentioned that he conducted the frisking due to his initial traffic violation.<sup>[22]</sup>

Meanwhile, Polangcos' second violation - having expired OR and CR for the motorcycle - is likewise punishable only by fine. Land Transportation Office (LTO) Department Order No. 2008-39, or the "Revised Schedule of LTO Fines and Penalties for Traffic and Administrative Violations," provides that the offense of "[o]perating/allowing the operation of MV with a suspended/revoked Certificate/Official Receipt of registration" is punishable only with a fine of P1,000.00.

In view of the foregoing, SPO2 Juntanilla thus conducted an illegal search when he frisked Polangcos for the foregoing violations which were punishable only by fine. He had no reason to "arrest" Polangcos because the latter's violation did not entail a

penalty of imprisonment. It was thus not, as it could not have been, a search incidental to a lawful arrest as there was no, as there could not have been any, lawful arrest to speak of.

In the very recent case of *People v. Cristobal*,<sup>[23]</sup> (*Cristobal*) the driver of the motorcycle was flagged because he was not wearing a helmet, and he did not have in his possession the OR and CR of the motorcycle. The accused therein was then frisked to search for a deadly weapon, but the police officers did not find any. The apprehending officer thereafter noticed that there was a bulge in the pocket of his pants, so the officer asked the accused to remove the thing in his pocket. When the accused obliged, it was then revealed that the thing in his pocket was a small plastic bag containing seven sachets of *shabu*. The accused was then charged with Illegal Possession of Dangerous Drugs, similar to Polangcos in this case.

When the case reached the Court, the accused was acquitted as the Court found that the seized items were borne of an illegal search. The Court similarly held that the search was unlawful because it was not preceded by a valid arrest. As the violations of the accused therein were only punishable by fine, the Court ruled that there was no reason to arrest the accused, and, as a consequence, no valid arrest preceded the search thereafter conducted. Accordingly, the Court held that the accused therein must be acquitted as the evidence against him was rendered inadmissible by the exclusionary rule provided under the Constitution. The Court elucidated:

Thus, any item seized through an illegal search, as in this case, cannot be used in any prosecution against the person as mandated by Section 3(2), Article III of the 1987 Constitution. As there is no longer any evidence against Cristobal in this case, he must perforce be acquitted.

<sup>[24]</sup>

The case of *Cristobal* squarely applies to this case. There was likewise no valid arrest to speak of in this case - as Polangcos' violations were also punishable by fine only — and there could thus be no valid "search incidental to lawful arrest." Ultimately, Polangcos must be similarly acquitted, as the *corpus delicti* of the crime, *i.e.* the seized drug, is excluded evidence, inadmissible in any proceeding, including this one, against him.

Parenthetically, it must be pointed out that the CA erred in equating the validity of the arrest of Polangcos with the admissibility of the evidence used against him. While the CA was correct in ruling that "any objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment,"<sup>[25]</sup> the said principle, however, would not apply to Polangcos' contention that the evidence used to convict him was inadmissible. Polangcos' argument was not only that he was illegally arrested, but that he was also wrongfully convicted because the evidence used against him was inadmissible. The Court thus stresses that any evidence seized as a result of searches and seizures conducted in violation of Section 2, Article III of the 1987 Constitution is inadmissible "for any purpose in any proceeding" in accordance with the exclusionary rule in Section 3(2), Article III of the 1987 Constitution.

***There was also no valid  
consented search***