

THIRD DIVISION

[G.R. No. 228107, October 09, 2019]

GREGORIO TELEN Y ICHON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

LEONEN, J.:

For a "stop and frisk" search to be valid, it must be supported by evidence such that the totality of the suspicious circumstances observed by the arresting officer led him or her to believe that an accused was committing an illicit act. A warrantless arrest not based on this is a violation of the accused's basic right to privacy.

This Court resolves a Petition for Review on Certiorari^[1] assailing the Decision^[2] and Resolution^[3] of the Court of Appeals. The Court of Appeals upheld the Regional Trial Court Judgment^[4] finding Gregorio Telen y Ichon (Telen) guilty beyond reasonable doubt of violating Article II, Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

In an Information^[5] filed before the Regional Trial Court, Telen was charged with the crime of illegal possession of dangerous drugs. The accusatory portion of the Information read:

On or about October 7, 2012, in Pasig City and within the jurisdiction of this [Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully and unlawfully have in his possession and under his custody and control three (3) heat-sealed transparent plastic sachets each containing white crystalline substance, with the following weight, to wit:

- a. two grams and twenty-nine decigrams (2.29 grams).
- b. eight centigrams (0.08 gram)
- c. ten decigrams (*sic*) (0.10 gram)

with a total weight of two grams and forty-seven decigrams (*sic*) (2.47 grams), which were found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.^[6]

On arraignment, Telen pleaded not guilty to the charge against him.^[7]

During trial, the prosecution presented four (4) witnesses: (1) Police Senior Inspector Anamelisa S. Bacani (Senior Inspector Bacani); (2) PO3 Marck Andrew M. Mazo (PO3 Mazo);^[8] (3) Police Senior Inspector Karl T. Payumo (Senior Inspector Payumo); and (4) PO2 Angel Dela Cruz (PO2 Dela Cruz).^[9]

The prosecution's evidence showed that at about 2:30 p.m. on October 7, 2012, PO3 Mazo was at Petron Gasoline Station, Guadalupe, Makati City, waiting for his turn to gas up his motorcycle. He was in line behind another rider—later identified to be, Telen—who was then putting gasoline in his own motorcycle.^[10]

After filling up his motorcycle's gas tank, Telen drew out his wallet from his right back pocket. This caused his shirt to be pulled up, revealing a part of his waist. PO3 Mazo saw a metal part of what appeared to be a hand grenade tucked in Telen's right waistband. This prompted the officer to call his superior to report what he observed and ask for back-up.^[11]

As instructed by his superior, PO3 Mazo tailed Telen on the road up to Robinsons Galleria, where Telen left his motorcycle at the parking area along Ortigas Avenue. The officer continued tailing Telen while he walked around the area, by the mall's entrance.^[12]

At around 5:00 p.m., PO3 Mazo received a call informing him that his back-up was already positioned in the area. PO3 Mazo then saw Senior Inspector Payumo at a distance.^[13]

When Telen returned to his motorcycle about 30 minutes later, PO3 Mazo approached him. The officer placed his arm around Telen's shoulder and patted his right waist. He introduced himself as a police officer and warned Telen not to make any untoward movement. He then pulled out the metal object from Telen's waist and confirmed that it was indeed a hand grenade.^[14]

PO3 Mazo arrested Telen and apprised him of his constitutional rights. He then frisked Telen and recovered three (3) small plastic sachets of white crystalline substance from him. He placed the seized items in the compartment of his motorcycle.^[15]

Subsequently, the police officers brought Telen to the District Special Operation Unit-Southern Police District, Fort Andres Bonifacio, Taguig City. There, PO3 Mazo marked the confiscated sachets with his signature. He also prepared Telen's Booking Sheet and Arrest Report.^[16]

The seized sachets were marked, inventoried, and photographed in the presence of Telen and one Cesar Morales (Morales), a reporter from Police Files. Afterwards, PO3 Mazo turned the seized items over to PO2 Dela Cruz, who then prepared the Chain of Custody Form, the Request for Laboratory Examination, and his Affidavit of Attestation.^[17]

PO2 Dela Cruz brought the seized items to the Southern Police District Crime Laboratory in Makati City. There, he endorsed the items, together with the Request

for Laboratory Examination, to the desk officer on duty, PO3 Gerald Villar (PO3 Villar). In turn, PO3 Villar turned the request and the seized items over to Senior Inspector Bacani, the forensic chemist on duty, who then conducted a qualitative examination on the seized specimens. They turned out to be positive for shabu.^[18]

That same day, Telen was subjected to a medical examination and was found to have no external signs of physical injury.^[19]

As the defense's only witness, Telen denied the charge of illegal possession of shabu against him. He claimed that on the day of the incident, at around 2:00 p.m., he was in front of a fast food restaurant in Robinsons Galleria when two (2) men in civilian clothes approached him, introduced themselves as police officers, and arrested him. Two (2) other men, also in civilian clothes, arrived and forced him to board to a black car. Telen claimed that PO3 Mazo was not among the four (4) men who arrested him.^[20]

Telen was brought to the Southern Police District at Fort Bonifacio, Taguig City. There, a police officer demanded that he produce P7 million. When he stated that he could not produce the money, the police officers mauled him before detaining him there for three (3) days. Afterwards, he was subjected to a medical examination and was informed that he was being charged with possession of illegal drugs.^[21]

In a March 23, 2015 Judgment,^[22] the Regional Trial Court found Telen guilty beyond reasonable doubt of violating Section 11 of Republic Act No. 9165.

The Regional Trial Court ruled that the warrantless arrest against Telen was lawful since he was caught *in flagrante delicto* with a hand grenade. Since a lawful warrantless arrest took place, it maintained, the warrantless search incidental to the arrest was also lawful.^[23]

Further, the Regional Trial Court found that the integrity of the seized drugs from Telen was duly preserved, as the prosecution was able to show a complete chain of custody.^[24]

The dispositive portion of the Regional Trial Court Judgment read:

WHEREFORE, the Court finds accused Gregorio I. Telen **GUILTY** beyond reasonable doubt, and imposes upon him the indeterminate penalty of **twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of three hundred thousand pesos (P300,000.00).** Accordingly, let a mitimus order issue for the commitment of accused Gregorio I. Telen to the National Bilibid Prison, Muntinlupa City.

The three sachets of *shabu* (Exhibits "U", "V" & "W") are forfeited in favor of the government. Atty. Rachel G. Matalang is directed to transmit the said physical evidence to the PDEA for destruction.

SO ORDERED.^[25] (Emphasis in the original)

Telen appealed^[26] before the Court of Appeals.

On June 16, 2016, the Court of Appeals issued the assailed Decision^[27] denying his appeal and affirming the Regional Trial Court Judgment.

The Court of Appeals found no merit in Telen's contention that he was unlawfully arrested. It ruled that since Telen was caught *in flagrante delicto* for illegal possession of a hand grenade, an act punishable under Presidential Decree No. 1866, the police officers were justified in immediately arresting him despite the lack of arrest warrant. Consequently, the search was carried out incidental to a lawful warrantless arrest, and the items seized remained admissible as evidence.^[28]

Telen filed a Motion for Reconsideration,^[29] but the Court of Appeals denied his Motion in a November 4, 2016 Resolution.^[30]

In his Petition for Review on Certiorari,^[31] petitioner Telen asserts that the Court of Appeals erred in affirming his conviction despite the illegality of his arrest and the inadmissibility of the sachets of shabu allegedly confiscated from him. He claims that he was not arrested *in flagrante delicto* because there was no sufficient basis to incite suspicion that he was committing a criminal activity.^[32]

Moreover, petitioner argues that the prosecution failed to comply with Section 21 of Republic Act No. 9165 and, therefore, failed to establish the identity of the prohibited drugs. His conviction is, thus, unwarranted.^[33]

In its Comment,^[34] respondent People of the Philippines, through the Office of the Solicitor General, insists that the Court of Appeals did not err in affirming petitioner's conviction. It contends that, by questioning his conviction, petitioner effectively raises questions of fact since their resolution requires an examination of evidence, which is beyond the purview of a Rule 45 petition.^[35]

Further, respondent insists that the Court of Appeals did not err in affirming the legality of petitioner's arrest as he was caught *in flagrante delicto*, which is allowed under Rule 113, Section 5 of the Rules of Court. It then points out that since the warrantless search was done incidental to the lawful arrest, it was lawful.^[36]

Respondent maintains that the prosecution successfully established all the elements required to convict petitioner of violation of Section 11 of Republic Act No. 9165. According to respondent, the police officers preserved the identity and the evidentiary value of the seized items. Finally, it asserts that the noncompliance with the provisions of Section 21 of Republic Act No. 9165 was not fatal to the prosecution's case.^[37]

The sole issue for this Court's resolution is whether or not the warrantless search made upon petitioner Gregorio Telen y Ichon was unlawful and, consequently, the illegal drugs confiscated from him inadmissible in evidence.

This Court is not a trier of facts. Generally, it may only entertain questions of law in a petition for review on certiorari.^[38] However, this Court is not precluded from reviewing the factual findings of lower courts in criminal cases. Anchored on an accused's constitutional right to be presumed innocent until proven guilty, this Court is mindful of its duty to closely examine the records, including the pieces of evidence presented to determine the accused's guilt with moral certainty.

For this reason, the entire records of a criminal case are thrown wide open for this Court's review.^[39] This case is no exception.

The fundamental right against unlawful searches and seizures is guaranteed by no less than the Constitution. Article III, Section 2 of the Constitution provides:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

However, the constitutional guarantee applies only to searches and seizures tainted with unreasonableness. As a safeguard, a search and seizure can be carried out on the strength of a warrant issued upon a judge's personal determination of probable cause. In the absence of a warrant, the Constitution renders the evidence obtained inadmissible for any purpose, in any proceeding.^[40]

Nevertheless, the requirement of a judicial warrant is not absolute. Over time, this Court has recognized jurisprudential exceptions where, despite the lack of a judicial warrant, the search and seizure were held reasonable due to the circumstances surrounding the cases. These exceptions are:

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view," the elements of which are:
 - (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
 - (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
 - (c) the evidence must be immediately apparent, and
 - (d) "plain view" justified mere seizure of evidence without further search;
3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in