

SECOND DIVISION

[G.R. No. 232891, July 23, 2018]

LAMBERTO MARIÑAS Y FERNANDO, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

REYES, JR., J:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision^[2] and Resolution^[3] of the Court of Appeals (CA) dated December 9, 2016 and July 17, 2017, respectively, in CA-G.R. CR No. 37102, which affirmed the conviction of Lamberto Mariñas y Fernando (petitioner) for violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

The facts, as culled from the records, read as follows:

The petitioner and a certain George Hermino (Hermino) were both charged with violation of Section 11, Article II of R.A. No. 9165 before the Regional Trial Court (RTC) of San Pedro, Laguna. The Information reads:

The undersigned Asst. Provincial Prosecutor of Laguna hereby accuses **LAMBERTO MARIÑAS y FERNANDO** of the crime of **VIOLATION OF SECTION 11, ARTICLE II of R.A. No. 9165 (The Comprehensive Dangerous Drugs Act of 2002)**, committed as follows:

That on or about October 2010, in the Municipality of San Pedro, Laguna, Philippines and within the jurisdiction of this Honorable Court, the said accused without authority or the law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, weighing zero point zero one (0.01) gram.

CONTRARY TO LAW.^[4]

On arraignment, petitioner and Hermino, assisted by counsel, entered a plea of "not guilty" to the offense charged.

The prosecution's version of the facts, as summarized by the Office of the Solicitor General (OSG) read as follows:

On October 5, 2010 at around 2:00 in the morning, PNP San Pedro, Laguna received a report regarding a motorcycle theft in the vicinity of Barangay Cuyab, San Pedro, Laguna. PO2 Santos, SPO4 Dela Peña, SPO2

Abutal and PO2 Avila responded to the report and conducted a monitoring of the area. At 3:00 in the morning, the police officers decided to go to the house of their asset, also in Barangay Cuyab, and on their way to the house, while walking through an alley, they saw two (2) male persons, the one at the doorway was showing to the other person standing outside the door, a plastic sachet which appeared to be shabu.

The police officers immediately approached the two (2) and introduced themselves as police officers when suddenly one person ran away and fled. PO2 Santos immediately held the other person, later identified as [the petitioner]. SPO2 Abutal, on the other hand, saw from the open door [Hermينو], inside the house, holding a plastic sachet of shabu and a pair of scissors. Another empty plastic sachet was confiscated from Hermينو, which was lying on top of the table, in plain view from the open door of his house.

After the two were arrested and after informing them of their Constitutional Rights, appellants were brought to the Police Station. PO2 Santos was in possession of the plastic sachet confiscated from Mariñas, while SPO2 Abutal was in possession of the plastic sachet confiscated from Hermينو, from the place of arrest to the Police Station. The confiscated plastic sachets and pair of scissors were marked at the Police Station by PO2 Santos and SPO2 Abutal, respectively. Afterwards, the confiscated items were inventoried and a certification of inventory was issued. Appellants and the confiscated items were likewise photographed. Mediaman Nick Luares was present in the inventory also took photographs of the confiscated items and of appellants.

PO2 Santos and SPO2 Abutal prepared a Request for Laboratory Examination for seized items from appellants Mariñas and Hermينو. PO2 Santos and mobile driver Eliseo Carmen brought the request for laboratory examination and the confiscated items to the PNP Crime Laboratory at the Camp Vicente Lim, Calamba City for drug analysis. The confiscated specimen, both from appellants Hermينو and Mariñas were in the custody of PO2 Santos after marking, up to the submission to the PNP Crime Laboratory. PO2 Santos likewise personally turned over the specimen to the Receiving Clerk of the PNP Crime Laboratory. However, PO2 Eliseo Carmen was the one who signed the formal turn-over documents as PO2 Santos was not in uniform at the time.

Forensic Chemical Officer Lalaine Ong Rodrigo established that she personally received the confiscated items: two plastic sachets; a pair of scissors; and one empty transparent plastic sachet, including the Request for Laboratory Examination from the Receiving Clerk of the Regional Crime Laboratory, Camp Vicente Lim, Laguna. The two (2) small heat-sealed plastic sachets of shabu marked "LM-P" and "GH-P" were examined by her and found positive for methamphetamine hydrochloride, as contained in Chemistry Report No. D-313-10.

After Rodrigo's examination of the specimen, the same were placed into a container, sealed and marked to prevent tampering. She likewise personally retrieved the object evidence from the evidence custodian and bought (sic) the same before the trial court. She testified before the trial

court that the plastic sachets were in the same condition at the time she examined it and when she retrieved it from the evidence custodian.^[5]

The version of the defense, insofar as the petitioner is concerned and as summarized^[6] by the RTC, reads as follows:

[The petitioner], on the other hand, testified that on October 5, 2010, he was sleeping in his house together with his live-in partner and their two children when police officers knocked so he opened the door. They told him that they were conducting a follow-up operation. Then, they entered and conducted a search in his house. They took and shook the pillows over the heads of his sleeping children. His live-in partner was awakened and surprised of what was happening but she just cried as she cannot do anything. After about thirty minutes, they showed him a small plastic sachet they allegedly found on top of his television set. He was then brought to the police station where he saw accused Hermino.^[7]

After trial, the RTC rendered a Consolidated Judgment^[8] dated September 10, 2014 finding petitioner and his co-accused guilty beyond reasonable doubt of the crime charged. In so ruling, the RTC opined that both have been positively identified by the witnesses for the prosecution to be the same individuals who were caught in *flagrante delicto* for possession of *shabu*. With regard to the identity of the said dangerous drugs, the RTC held that every chain in the custody of the confiscated dangerous drug was accounted for and remained unbroken, in accordance with Section 21 of R.A. No. 9165. The RTC did not give credence to the defense of denial and alibi because the accused failed to present the testimonies of the people living with them to substantiate their arguments. Neither did they file any administrative complaint against the police officers who arrested them.

The dispositive portion of the Consolidated Judgment reads:

WHEREFORE, foregoing considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 10-7556-SPL, [the petitioner] is found GUILTY beyond reasonable doubt of violation of Section 11, Article II of [R.A.] No. 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and to pay a fine of Three Hundred Thousand (P300,000.00) pesos without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. 10-7557-SPL, [Hermino] is found GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and to pay a fine of Three Hundred Thousand (P300,000.00) pesos without subsidiary imprisonment in case of insolvency.

The period of his preventive imprisonment should be given full credit.

Let the two plastic sachets of shabu subject matter of these cases be immediately forwarded to the Philippine Drug Enforcement Agency for its

disposition as provided by law.

SO ORDERED.^[9]

Undeterred, petitioner and Hermino appealed to the CA and assigned the following errors that were allegedly committed by the RTC, to wit:

I. The trial court gravely erred in convicting the accused-appellants of the crime charged despite the illegality of their supposed in *flagrante delicto* arrest.

II. The trial court gravely erred in convicting the accused-appellants of the crime charged despite the prosecution's failure to establish the admissibility of the allegedly seized prohibited drugs for being fruits of the poisonous tree.

III. The trial court gravely erred in giving full credence to the prosecution's version despite the patent inconsistencies in the testimonies of the police officers with regard to the chain of custody of the seized illegal drugs.^[10]

On October 24, 2016, Hermino expired at the National Bilibid Prison Hospital.^[11]

On December 9, 2016, the CA rendered a Decision,^[12] the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Consolidated Judgment dated 10 September 2014 of the [RTC] of San Pedro, Laguna, Branch 31 in Criminal Case Nos. 10-7556-SPL and 10-7557-SPL is **AFFIRMED**.

SO ORDERED.^[13]

Petitioner moved for reconsideration but the same was denied by the CA in a Resolution^[14] dated July 17, 2017.

Hence, this petition.

The Issues

The core issue for the Court's resolution is whether or not the CA erred in affirming petitioner's conviction for violation of Section 11, Article II of R.A. No. 9165.

Ruling of the Court

To convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.^[15]

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the

dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.^[16]

In this case, the petitioner was charged with the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11,^[17] Article II of R.A. No. 9165. The petitioner insists that he should be acquitted on the following grounds: (a) broken chain of custody of the seized drug; and (b) the inconsistent testimonies of the arresting officers with regard to the chain of custody.

The petitioner argues that the arresting officers marked the sachets at the police station, in clear violation of Section 21 of R.A. No. 9165 which requires *marking* of the subject sachet of drugs to be done at the place of apprehension or arrest. The petitioner also claims that the inconsistencies in the testimonies of the arresting officers as regards custody of the seized item supports his contention that there was a break in the chain of custody.

On these points, the Court disagrees with the petitioner.

The petitioner was caught in *flagrante delicto*. Section 5, Rule 113 of the Rules of Court lists the situations when a person may be arrested without a warrant, thus:

Sec. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense[.]

x x x x

Paragraph (a) of Section 5 is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* 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. ^[18]

All the foregoing requirements for a lawful search and seizure are present in this case. The police officers had prior justification to be at the petitioner's place as they were conducting a follow-up operation on carapping incidents in the area when they chanced upon the petitioner standing by, holding a plastic sachet containing suspected illegal drugs; when they approached petitioner and upon introducing themselves as police officers, petitioner ran away. As the crystalline substance was plainly visible, the police officers were justified in seizing them. Simply put, when the arresting officers arrested the petitioner and confiscated the subject sachet of drugs, they did so pursuant to a lawful warrantless arrest and seizure.

The Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of R.A. No. 9165 expressly provide that in *warrantless seizures*, the marking of the seized items shall be done immediately at the place where the drugs were seized OR at the nearest police station OR nearest office of the apprehending officer or team, whichever is practicable, to wit: