

SECOND DIVISION

[G.R. No. 237116, November 12, 2018]

**DAMACEN GABRIEL CUNANAN A.K.A. "RYAN," PETITIONER, VS.
PEOPLE OF PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated June 28, 2017 and the Resolution^[3] dated January 22, 2018 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 07257, which affirmed the Decision^[4] dated December 8, 2014 of the Regional Trial Court of Laoag City, Branch 13 (RTC) in Crim. Case Nos. 15243 and 15244 finding petitioner Damacen Gabriel Cunanan a.k.a. "Ryan" (petitioner) guilty beyond reasonable doubt of violation of Sections 11 and 12, Article II of Republic Act No. (RA) 9165,^[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The prosecution alleged that on May 22, 2012, at around 6:30 in the morning, several members of the Laoag City Police Station led by Senior Police Officer (SPO) 4 Rovimmanuel Balolong (SPO4 Balolong) conducted a search on the residence of petitioner at Barangay 14, Fonacier St., Laoag City. The search was by virtue of Search Warrant No. 05-2012^[6] (search warrant) issued by the RTC for an alleged violation of RA 9165, which directed the police officers to make a search of petitioner's bedroom and vehicle, a Mitsubishi Pajero with plate number RDM 429, and to seize and confiscate an "undetermined volume of shabu."^[7]

Upon arrival at petitioner's residence, SPO4 Balolong introduced himself and his companions to an unidentified female, who was standing by the gate inside the premises, and announced their purpose. When they entered the house, SPO4 Balolong and SPO1 Ferdinand Santos (SPO1 Santos) knocked on petitioner's bedroom at the ground floor. When petitioner himself opened the door, SPO1 Santos read and explained to him the contents of the search warrant. Petitioner asked that he be allowed to put on his pants, after which, he and his common-law wife, Justin Cyril Cunanan (Justin), went out of the bedroom and proceeded to the living room while the door to the bedroom was secured. Together with SPO4 Balolong, they waited for Barangay Chairman Felix Ayson (Chairman Ayson) and several members of the media^[8] to arrive, who were invited to witness the search. Upon arrival and prior to conducting the search, Chairman Ayson frisked the searching team members, Police Officer (PO) 1 Engelbert Ventura (PO1 Ventura) and PO3 Arnel Saclayan (PO3 Saclayan) and declared them "clean" of any contraband.^[9]

During the height of activity in the living room, Gwendolyn Cunanan (Gwendolyn), petitioner's mother, surreptitiously slipped into petitioner's bedroom and came out holding something wrapped in a piece of white cloth, which she claimed SPO4 Balolong threw under the bed of her son. SPO4 Balolong took the bundle from Gwendolyn and extracted therefrom **ten (10) pieces of small plastic sachets containing white crystalline substance**. The items were photographed and thereafter, SPO4 Balolong marked the same with his initials and handed them over to SPO1 Santos.^[10]

Meanwhile, PO1 Ventura and PO3 Saclayan continued to search petitioner's bedroom, accompanied by Justin and Gwendolyn. Inside the dresser, PO1 Ventura found a black box labeled "safety can be fun"^[11] containing **six (6) small pieces of cut aluminum foil** and **two (2) disposable lighters**. The search of the room having yielded nothing else, PO1 Ventura turned over the aforesaid items to the evidence custodian, SPO4 Loreto Ancheta (SPO4 Ancheta), for inventory.^[12]

Thereafter, PO1 Ventura and PO3 Saclayan searched petitioner's Mitsubishi Pajero, which was parked at the garage. Under the floor matting on the passenger side of the vehicle directly below the glove compartment, PO3 Saclayan found a white carton box containing **two (2) pieces of cut aluminum foil, four (4) empty plastic sachets, and one (1) big heat-sealed plastic sachet** containing white crystalline substance suspected to be *shabu*.^[13] PO3 Saclayan marked the seized items with his initials, "AMS," and likewise turned them over to SPO4 Ancheta for inventory.^[14]

All of the seized items were placed on a small table inside the premises where they were collated and inventoried by SPO1 Santos and SPO4 Ancheta.^[15] The latter placed his markings on each item,^[16] i.e., "LCPS" which stands for "Laoag City Police Station," the initials of petitioner, and his own signature.^[17] He had possession of all the confiscated items from petitioner's residence and brought them first to the RTC, which were received by Atty. Bernadette Espejo (Atty. Espejo), the Branch Clerk of Court.^[18] Thereafter, he went back to the police station to prepare the Return of Search Warrant and the Motion to Withdraw Confiscated Items (Motion to Withdraw). The Motion to Withdraw was granted on the same day upon order of the RTC.

After receiving the seized items, SPO4 Ancheta prepared the request for laboratory examination, and then brought the items, as well as the request to the Ilocos Norte Crime Laboratory for examination, where they were received by Police Inspector Amiely Ann Luis Navarro (P/Insp. Navarro), the forensic chemist.^[19] After a qualitative examination, the ten (10) small heat-sealed transparent sachets containing an aggregate amount of 0.6006 gram of white crystalline substance and the one (1) big heat-sealed transparent plastic sachet containing 14.7717 grams of the same substance tested positive for methamphetamine hydrochloride, a dangerous drug. The rest of the seized items, meanwhile, tested negative.^[20] Thereafter, the confiscated items were turned over to PO1 Erlanger Aguinaldo (PO1 Aguinaldo), the Property Custodian of the Ilocos Norte Crime Laboratory.

Consequently, separate Informations^[21] for violation of Sections 11 and 12, Article

II of RA 9165 for Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia, respectively, were filed against petitioner on July 25, 2012. However, the Information for Crim. Case No. 15244 was amended to correct *discrepancies* in the weight and contents of the confiscated items. Thus, the amended Information^[22] reads:

That on or about the [sic] 6:30 in the morning of May 22, 2012 in the City of Laoag and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had in his possession, custody and control, one (1) big heat sealed plastic sachet containing white crystalline substance otherwise known as shabu, with an aggregate weight of more or less 14.7717 grams and ten (10) small heat sealed plastic sachet with an arrogate [sic] weight of more or less .6006 grams containing Methamphetamine Hydrochloride locally known as "shabu", with a grand total weight of 15.3723 grams a [sic] dangerous drug, without any license or authority, in Violation of the aforesaid law.

CONTRARY TO LAW.^[23]

By way of defense, petitioner disavowed the charges and claimed that the confiscated items were planted evidence. He averred that SPO4 Balolong threw something under their bed, which turned out to be a folded newspaper containing **nine (9) small plastic sachets**, further containing suspected *shabu*.^[24] His mother, Gwendolyn, and common-law wife, Justin, corroborated this statement.^[25] Petitioner likewise disclaimed ownership of the Mitsubishi Pajero where the police officers found several drug paraphernalia, claiming that Gwendolyn owned the vehicle. Finally, he challenged the legality of the issuance of the search warrant, averring that Antonio Buted, Jr. (Buted), the purported deponent/asset therein, had ill motives against him because of parking issues.^[26]

The RTC Ruling

In a Decision^[27] dated December 8, 2014, the RTC found petitioner guilty of violation of Sections 11 and 12, Article II of RA 9165, as charged. For Illegal Possession of Dangerous Drugs under Section 11, he was sentenced to life imprisonment and ordered to pay a fine of P300,000.00. On the other hand, for Illegal Possession of Drug Paraphernalia under Section 12, he was sentenced to the indeterminate penalty of six (6) months and one (1) day to two (2) years and ordered to pay a fine of P10,000.00.^[28]

The RTC held that by agreeing to be arraigned and tried, petitioner was deemed to have waived his right to question the legality of the issuance of the search warrant. In any case, it found the search warrant to have been duly issued after searching questions had been conducted both on the applicant and the deponent, in accordance with the Constitution and the Rules of Court, and that the police officers properly implemented the same. Likewise, the RTC held that all the elements of the crimes charged were duly established and that the procedural safeguards under

Section 21, Article II of RA 9165 on the preservation of the chain of custody of the seized items had been complied with. On the other hand, it rejected petitioner's defenses of denial and frame-up, finding the same to have no concrete and convincing basis. Dissatisfied, petitioner appealed his conviction.

The CA Ruling

In a Decision^[29] dated June 28, 2017, the CA affirmed with modification petitioner's conviction with respect to the charge of Illegal Possession of Dangerous Drugs by increasing the fine imposed to P500,000.00.^[30] The CA held that the RTC complied with the requirements for the determination of the existence of probable cause in the issuance of the search warrant. Likewise, having found that the police officers' entry into petitioner's house was valid, it upheld the manner of its implementation. It also sustained the RTC's finding that the chain of custody of the seized items had been preserved, positing that the discrepancies in their weight as it appeared first, on the original information for Crim. Case No. 15244 and later, in the amended information, can be explained by the fact that the police officers belatedly obtained a copy of the laboratory report. Finally, it rejected petitioner's defense that the seized items were planted evidence, finding the same self-serving and not worthy of credence.

Petitioner's motion for reconsideration was denied in a Resolution^[31] dated January 22, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding petitioner's conviction for the crimes charged.

The Court's Ruling

The petition is meritorious.

At the outset, it must be emphasized that an appeal in criminal cases throws the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned.^[32] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.^[33]

The rule that a trial court's findings are accorded the highest degree of respect, it being in a position to observe the demeanor and manner of testifying of the witnesses, is not absolute and does not apply when a careful review of the records and a meticulous evaluation of the evidence reveal vital facts and circumstances which the trial court overlooked or misapprehended and which if taken into account would alter the result of the case.^[34]

Probable cause in the issuance of the search warrant

Petitioner first challenges the validity of the search warrant, insisting that it was defective as the testimony of the applicant, SPO4 Balolong, relied on hearsay evidence. As such, there can be no probable cause to issue the search warrant for lack of personal knowledge on his part.

Under Section 2,^[35] Article III of the Constitution, the existence of probable cause for the issuance of a search warrant is crucial to the right against unreasonable searches and seizures, and its existence largely depends on the finding of the judge conducting the examination.^[36] To substantiate a finding of probable cause, Section 5, Rule 126 of the Rules of Court specifically requires:

Section 5. *Examination of complainant; record.* – The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

"The 'probable cause' for a valid search warrant has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched. This probable cause must be shown to be *within the personal knowledge of the complainant or the witnesses* he may produce and not based on mere hearsay."^[37] Relative thereto, the Court held in *People v. Tee*^[38] that "[l]aw enforcers cannot themselves be eyewitnesses to every crime; they are allowed to present witnesses before an examining judge"^[39] for the purpose of determining probable cause in the issuance of a search warrant.

In this case, the judge issued the search warrant not merely on the basis of SPO4 Balolong's testimony but further, based on the first-hand information proffered by the confidential asset who testified that after the surveillance conducted by the police officers, he personally bought *shabu* from petitioner in the course of a "test buy" arranged with SPO4 Balolong, to wit:

COURT – So afterwards, what happened after the surveillance?

ASSET – Sir Balolong told me to try to conduct a test buy against Ryan,^[40] your Honor.

Q – When was that?

A – Only this morning, your Honor.

x x x x