

## THIRD DIVISION

**[ G.R. No. 195043, November 20, 2017 ]**

**ARNEL CALAHI, ENRIQUE CALAHI, AND NICASIO RIVERA,  
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

#### MARTIRES, J.:

This Petition for Review on Certiorari under Rule 45 seeks to reverse and set aside the 22 July 2010 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 28889 which affirmed the 17 May 2004 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 86, Cabanatuan City (RTC), in Criminal Case No. 7907 finding petitioners guilty beyond reasonable doubt of illegal possession and use of dangerous drugs under Section 16, Article III of Republic Act No. 6425 (R.A. No. 6425), or the Dangerous Drugs Act of 1972.

### THE FACTS

An Information filed 21 November 1997 charged petitioners Enrique Calahi (*Enrique*), Arnel Calahi (*Arnel*), and Nicasio Rivera (*Nicasio*), including accused Nicolas Macapagal (*Nicolas*), with the following:

That on or about the 20th day of November 1997, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused were all caught in the act of sniffing shabu inside the XLT passenger type jeepney and accused Nicasio Rivera was further caught in possession of the remaining Methamphetamine Hydrochloride or shabu, a regulated drug, approximately weighing zero point thirty six (0.36) gram, without any authority of law.<sup>[3]</sup>

When arraigned on 24 September 1998, the petitioners pleaded not guilty.

On the other hand, accused Nicolas pleaded guilty to the crime charged when arraigned on 13 May 1999. Satisfied that Nicolas entered a plea of guilty voluntarily and understood the consequences of his act, the court applied the provisions of the Indeterminate Sentence Law and the mitigating circumstance of the voluntary plea of guilty and sentenced him to suffer the penalty of *prision correccional* in its minimum period.

Trial ensued for Enrique, Arnel, and Nicasio.

#### **Version of the Prosecution**

On the evening of 20 November 1997, members of the PNP Criminal Investigation

and Detection Group (CIDG), Cabanatuan City, consisting of SPO3 Danilo Padilla (*SPO3 Padilla*) and confidential agents Santiago Maligson (*Agent Maligson*) and Fernando Lopez (*Agent Lopez*), served a search warrant on Elsie Valenzuela (*Elsie*) at San Josef Norte, Cabanatuan City. While serving the search warrant, the CIDG members noticed an XLT jeep parked near Elsie's house. Suspicious, they approached said jeep and saw four (4) persons holding a pot session inside. They noticed the following items inside the vehicle: an aluminum foil, an improvised tooter, a lighter, and remnants of *shabu*. SPO3 Padilla and his team immediately arrested the four who were later identified as Enrique, Arnel, Nicasio, and Nicolas and confiscated the white substance found with them. Then they were brought to the police station in Cabanatuan City.<sup>[4]</sup>

Thereafter, SPO3 Padilla requested a laboratory examination on the confiscated substance by the PNP Crime Laboratory, Cabanatuan City.

Kathlyn L. Vigilia (*Vigilia*), a forensic analyst at the Nueva Ecija Provincial Crime Laboratory Field Office, conducted an initial examination on the confiscated substance. In her Initial Laboratory Examination Report,<sup>[5]</sup> dated 21 November 1997, Vigilia indicated that two specimens were submitted for examination: a white crystalline substance weighing 0.36 gram, denominated as Specimen "A," and one (1) small piece of aluminum foil, designated as Specimen "B." She found that Specimen "A" was positive for methamphetamine hydrochloride (i.e., *shabu*) while Specimen "B" was negative for said substance.

### ***Version of the Defense***

At around 9:30 p.m. on 20 November 1997, Enrique, Arnel, Nicasio, and Nicolas drove to San Josef Norte, Cabanatuan City, to inquire from Elsie if the baptism of a certain child would proceed the following day. They parked their jeep near Elsie's house. Suddenly, policemen arrived and searched the XLT for *shabu* but did not find any. The police officers then told them to alight from the jeep and brought them to Elsie's house. The policemen then conducted a search inside Elsie's house, pursuant to a search warrant issued against her, but were not able to find any *shabu*.

After the search, one of the CIDG members reported the incident to their team leader, Captain Noel Caligagan (*Captain Caligagan*), through radio, who told them to bring the suspects, including Elsie, to the CIDG office. They were detained therein, but were subsequently released from police custody after posting their bail bond.<sup>[6]</sup>

### ***The RTC Ruling***

The RTC convicted Enrique, Arnel, and Nicasio for violation of Section 16, Article III of R.A. No. 6425.

The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered convicting the accused Enrique Calahi, Arnel Calahi, and Nicasio Rivera of the crime of violation of Section 16, Article III of Republic Act No. 6425, as amended, and hereby sentences them to suffer the penalty of prision mayor which has a range of 6 years and 1 day to 12 years imprisonment.

As the quantity of "shabu" charged in the Information is only 0.36 gram and applying the Indeterminate Sentence Law in favor of the accused, the penalty imposable upon each accused is prision correccional in its minimum period which has a range of 6 months and 1 day to 2 years and 4 months imprisonment. Said accused are likewise ordered to pay a fine of P3,000.00 each.

The "shabu" weighing 0.36 gram which is the subject matter of this case is hereby ordered forfeited in favor of the government, the same to be immediately turned over to the Dangerous Drugs Board of the National Bureau of Investigation pursuant to the provision of Section 16, Republic Act No. 6425, as amended, for the reason that it is no longer needed as evidence in judicial proceeding.<sup>[7]</sup>

In rendering the judgment of conviction, the trial court gave more credence to the evidence of the prosecution. It held that the prosecution was able to establish beyond reasonable doubt all the elements of the crime charged, noting that the testimonies of the prosecution witnesses were natural, straightforward, probable, and credible. On the other hand, petitioners only offered mere denials.<sup>[8]</sup>

The petitioners filed a motion for reconsideration of the said decision, but it was denied by the RTC in an Order<sup>[9]</sup> dated 6 July 2004. Aggrieved, they appealed before the CA.

### ***The CA Ruling***

The CA denied the appeal and affirmed the decision of the RTC *in toto*. It explained that the court a quo's evaluation on the witnesses' credibility is generally accorded great weight and respect unless it is shown that it overlooked or misapplied certain facts relative to the weight and substance bearing on the elements of the offense. It held that the RTC correctly found that the prosecution was able to prove beyond reasonable doubt that the petitioners violated Section 16, Article III of R.A. No. 6425.<sup>[10]</sup>

Hence, this petition.

### **ISSUE**

The following are raised:

1. WHETHER OR NOT THE ABSENCE OF AN INVENTORY AND PHOTOGRAPH OF THE SPECIMEN PURPORTEDLY SEIZED AFFECTED THE CONTINUITY OF THE CUSTODY OF THE SAME THAT WILL TARNISH THE INTEGRITY OF THE EVIDENCE;
2. IN ANY EVENT, WHETHER OR NOT THE PENALTY IMPOSED THEREON IS PROPER.

Essentially, the question posed for this Court's determination is whether or not the petitioners' guilt has been proven beyond reasonable doubt.

Petitioner posits that the integrity and identity of the seized items were tarnished

because the arresting officers failed to inventory and photograph the seized items in petitioners' presence, contrary to the mandate of Dangerous Drugs Board Regulation No. 3, series of 1979, as amended by Board Regulation No. 2, series of 1990; that the prosecution also failed to show that the arresting officers marked the items immediately after the alleged seizure; and that the identity of the drug is consequently suspect.

On the other hand, the Office of the Solicitor General (OSG) argues that a violation of the regulation relied upon by petitioners is a matter strictly between the Dangerous Drugs Board and the arresting officers, having no bearing on the prosecution of the criminal case; that noncompliance thereof will not necessarily render the seized items inadmissible; and that absent proof to the contrary, the arresting officers are presumed to have regularly performed their duty.

### **THE COURT'S RULING**

The Court finds merit in the petition.

*As object evidence, the nature of narcotic substances requires the establishment of a chain of custody.*

At the outset, the use of dangerous drugs necessarily entails possession thereof. A conviction for illegal possession of dangerous drugs requires an indubitable showing of the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>[11]</sup>

The dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. It is thus paramount for the prosecution to establish that the identity and integrity of the seized drug were duly preserved in order to sustain a conviction.<sup>[12]</sup> Otherwise, there would be no basis to convict for illegal possession of dangerous drugs because "the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt."<sup>[13]</sup>

In *People v. Obmiranis*,<sup>[14]</sup> this Court held that "a unique characteristic of narcotic substances such as *shabu* is that they are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination, substitution and exchange whether the alteration, tampering, contamination, substitution, and exchange be inadvertent or otherwise not."

Considering the above circumstances, that (1) the existence of *shabu* seized from the accused is essential to a judgment of conviction, and (2) by its nature, it is an object evidence that is not readily identifiable, it is therefore imperative to apply a stricter standard in authenticating a narcotic substance by establishing a chain of

custody with sufficient completeness in order to ensure that the original item has not been exchanged, altered, or tampered with.<sup>[15]</sup>

The chain of custody rule requires proof of every link in the chain, from the moment the item was seized to the time it is presented in court and offered into evidence, such that witnesses constituting the chain are able to testify on how it was given and received, including the precautions taken to ensure that the seized item was not altered or tampered with.<sup>[16]</sup>

*The prosecution failed to establish that the shabu was marked upon seizure, creating a gap in the initial stage of the chain of custody.*

After a careful examination of all the evidence on record, this Court finds that the prosecution failed to establish the identity of the shabu by the requisite proof.

Notably, the records are bereft of any showing that the seized items were marked upon seizure.

SPO3 Padilla, who requested the examination of the seized items by the crime laboratory, did not indicate that the apprehending team marked the items immediately after confiscating them, viz:

Fiscal

(to SPO3 Padilla)

Q. How did you see that those four persons were actually having pot session inside when it was nighttime?

A. The XLT passenger type jeep was parked not far from the house where we effected the search warrant, sir.

Q. Were there lights or were there no lights?

A. There is, sir.

Q. **What did you do thereafter?**

A. **We arrested them and we brought them to our office, sir.**

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Q. **Now, after you and your companions placed those persons under arrest and eventually took them to your station in the Provincial Compound, what else happened?**

A. **I made a request with the crime laboratory to make an examination of those materials or substances which we were able to take from them, sir.**<sup>[17]</sup>

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