794 Phil. 263

THIRD DIVISION

[G.R. No. 218578, August 31, 2016]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENRICO BRIONES BADILLA, ACCUSED-APPELLANT.

DECISION

PERALTA, J.:

This is an appeal from the Decision[1] dated March 27, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06354 affirming the Decision[2] dated September 9, 2013 of the Regional Trial Court (*RTC*) of Caloocan City, Branch 127, in Criminal Case No. C-84868, finding herein appellant Enrico Briones Badilla guilty beyond reasonable doubt of Violation of Section 11, Article II of Republic Act No. (R.A. No.) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.[3]

In an Information[4] dated September 9, 2010, appellant was charged with violation of Section 11, Article II of R.A. No. 9165 which reads as follows:

> That on or about the 6th day of September 2010 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of 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 METHYLAMPHETAMINE HYDROCHLORIDE (*Shabu*) weighing 7.75 grams, which when subjected for laboratory examination gave POSITIVE result to the test of Methyl amphetamine Hydrochloride, a dangerous drug, in gross violation of the above-cited law.

Upon arraignment, accused pleaded not guilty[5] to the offense charged. After pre-trial, trial on the merits ensued.

The prosecution's evidence consists of the testimonies of (1) PO2 Borban Paras, the one who arrested appellant and seized the illegal drug from him; (2) PO2 Rafael Espadero, the one who received the marked specimen from PO2 Paras; (3) PO2 Eduardo Ronquillo, one of PO2 Paras' companions during the arrest of accused; and (4) P/Sr. Insp. Margarita Mamotos-Libres, the forensic chemist who examined the specimen seized from the appellant. The testimonies of PO2 Espadero, PO2 Ronquillo and P/Sr. Insp. Libres were abbreviated due to the stipulations entered into by the prosecution and the defense.[6] The evidence of the prosecution may be summed up as follows: On September 6, 2010, around 10:15 p.m., PO2 Paras received a phone call from a concerned citizen informing him that someone was indiscriminately firing a gun at BMBA Compound, 4th Avenue, Caloocan City. PO2 Paras and his companions, PO2 Ronquillo, PO3 Baldomero and PO2 Woo, responded to the call and reached the target area around 10:25 p.m.[7] There they saw a male

person, later identified as appellant Enrico Briones Badilla, standing along the alley. Appellant was suspiciously in the act of pulling or drawing something from his pocket; thus, as a precautionary measure, and thinking that a concealed weapon was inside his pocket, PO2 Paras immediately introduced himself as a police officer, held appellant's arm, and asked the latter to bring out his hand from his pocket.[8] It turned out that appellant was holding a plastic sachet with white crystalline substance. PO2 Paras confiscated the plastic sachet from appellant, informed him of his constitutional rights, and arrested him. Appellant and the confiscated plastic sachet were brought to the Station Anti-Illegal Drags-Special Operation Task Group (SAID-SOTG) Office where PO2 Paras marked the plastic sachet with "*BP/EBB 07 Sept 2010*."[9]

Thereafter, PO2 Paras turned-over appellant and the seized item to PO2 Espadero who placed the seized item in a much bigger plastic sachet which the latter marked with "*SAID-SOTG EVIDENCE 07-Sept 2010*."[10] PO2 Espadero then prepared a Request for Laboratory Examination[11] of the seized item, dated September 7, 2010, and another request for drug test on the urine sample taken from appellant. These requests were both signed by P/Chief Insp. Bartolome Tarnate. PO2 Espadero transmitted the requests and the specimen to the Northern Police District Crime Laboratory Office, where duty desk officer PO1 Pataweg received and recorded the same in his logbook. PO1 Pataweg, in the presence of PO2 Espadero, turned-over the requests and the specimen to P/Sr. Insp. Libres for laboratory examination.[12]

The white crystalline substance was found positive for methylamphetamine hydrochloride, a dangerous drag, per Physical Science Report No. D-246-10,[13] while the urine sample taken from appellant was found positive for methylamphetamine, per Physical Evidence Report No. DT-250-10. Upon completion of the laboratory examination on the seized item, P/Sr. Insp. Libres marked the plastic sachet with "*A*" *MML*, countersigned it, and placed it in a brown envelope where she also wrote her initials "*MML*" and placed the markings "D-246-10,"[14] then she deposited the envelope containing the seized item to the evidence custodian of their office and later retrieved the same for presentation in court.

The defense, on the other hand, presented appellant as its sole witness and offered a different version of what transpired on the day of the arrest. Appellant narrated that on September 6, 2010, around 10:30 in the evening, he was walking along 4th Avenue, Caloocan City when a male person called him. Recognizing the man as a police officer who frequented their place, he approached the man. When he got near the man, the latter's companion poked a gun at him. By instinct, he shoved the gun away and it fell on the ground.[15]

According to appellant, the police officer then arrested him, shoved him aboard the police vehicle, and brought him to 3rd Avenue, Caloocan City. When the police officers failed to see their target person at the said place, they left and went to the police station where he was told that he would be charged with a non-bailable offense. He only saw the plastic sachet containing *shabu* in court. He denied the accusations against him and stated that he was arrested because the police officers thought he would fight back when he shoved the police officer's gun. The police officers asked P20,000.00 from him allegedly because they knew that his father had a junk shop business, but he refused to give them money. He questioned the

positive result of the drug test because allegedly no examination was conducted on his person.[16]

In its Decision dated September 9, 2013, the RTC held appellant guilty beyond reasonable doubt of the offense charged. The dispositive portion of which reads:

> WHEREFORE, premises considered, the prosecution having proved the guilt of the accused Enrico Briones Padilla beyond reasonable doubt, he is hereby sentenced to suffer the penalty of imprisonment of Twenty (20) years and one (1) day to life imprisonment and a fine of Four Hundred Thousand Pesos (P400,000.00) in accordance with Section 11 sub-section 2 of Art. II, R.A. 9165, otherwise known as the "Dangerous Drugs Act of 2002".
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> The drugs subject of this case is hereby ordered confiscated in favor of the government to be dealt with in accordance with law.[17]

Aggrieved, appellant appealed the aforesaid Decision to the Court of Appeals via a Notice of Appeal.

On March 27, 2015, the CA affirmed the appellant's conviction but with modification as to the penalty imposed. The decretal portion of the Decision reads, thus:

> **ACCORDINGLY**, the appeal is **DENIED** and the Decision dated September 9, 2013 is **AFFIRMED with MODIFICATION** of the prison term which is hereby fixed at 20 years and 1 day.[18]

Still unsatisfied, appellant elevated the aforesaid Decision of the CA to this Court via a Notice of Appeal.

In a Resolution[19] dated July 22, 2015, this Court required the parties to simultaneously submit their respective supplemental briefs if they so desire, but both parties manifested that they are no longer filing a supplemental brief.

In his Brief,[20] appellant raised the following assignment of errors:

> I.
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> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE EXISTING DOUBT AND PATENT ILLEGALITY WHICH ATTENDED HIS ARREST.
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> II.
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> THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE ALLEGED SEIZED SHABU.
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> III
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> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-

APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

On the first error, appellant argues that there was no basis for his apprehension because there was no prior knowledge that he was the suspect in the alleged indiscriminate firing incident and that there was no mention that he executed an overt act reflecting any intention to commit a crime. Also, there was no testimony that he had just committed an offense, such that, it cannot be said that PO2 Paras had any immediate justification for subjecting him to any search. Thus, the *shabu* may not be utilized as evidence to sustain his conviction.

On the second error, appellant submits that the failure to mark the seized item right away is a violation of the chain of custody rule as mandated by Section 21 of the Implementing Rules and Regulations of RA 9165. There was no immediate conduct of a physical inventory and the seized item was not photographed in the presence of appellant or counsel, or of a representative from the media, and the Department of Justice, and any elected public official who shall be required to sign copies of the inventory. Appellant avers that there is no absolute certainty that it was the same drug item that was allegedly recovered from him, and there was also no justifiable ground warranting the exception to the chain of custody rule.

On the third error, appellant contends that failure to comply wit chain of custody rule negates the presumption that official duties had regularly performed by the police officers.

We dismiss the appeal.

First Issue: Legality of Arrest

We stress, at the outset, that appellant failed to question the legality of his arrest before he entered his plea. The established rule is that an accused may be estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made *before he enters his plea*; otherwise, the objection is deemed waived.[21] Thus, appellant is deemed to have waived any objection thereto since he voluntarily submitted himself to the jurisdiction of the court when he entered a plea of not guilty during the arraignment, and thereafter actively participated in the trial. He even entered into a stipulation, during the pre-trial of the case, admitting the jurisdiction of the trial court over his person.[22]

In any event, appellant was arrested during the commission of a crime, which instance does not require a warrant in accordance with Section 5(a) of Rule 113 of the Revised Rules on Criminal Procedure.[23] Such arrest is commonly known as *in flagrante delicto*. 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.[24]

We emphasize that the series of events that led the police officers to the place

where appellant was when he was arrested was triggered by a phone call from a concerned citizen that someone was indiscriminately firing a gun in the said place. Under the circumstances, the police officers did not have enough time to secure a warrant considering the "time element" involved in the process. To obtain a warrant would be impossible to contain the crime. In view of the urgency of the matter, the police officers proceeded to the place. There, PO2 Paras saw appellant, alone in an alley which used to be a busy place,[25] suspiciously in the act of pulling something from his pocket. Appellant's act of pulling something from his pocket constituted an overt manifestation in the mind of PO2 Paras that appellant has just committed or is attempting to commit a crime. There was, therefore, sufficient probable cause for PO2 Paras to believe that appellant was, then and there, about to draw a gun from his pocket considering the report he received about an indiscriminate firing in the said place. Probable cause means an actual belief or reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that a crime has been committed or about to be committed.[26]

Thus, thinking there was a concealed weapon inside appellant's pocket and as precautionary measure, PO2 Paras (who was three or four meters away from appellant)[27] immediately introduced himself as a police officer, held appellant's arm, and asked the latter to pull his hand out. Incidentally, appellant was holding a plastic sachet containing white crystalline substance. PO2 Paras then confiscated the plastic sachet from appellant, informed him of his constitutional rights, and arrested him. When an accused is caught *in flagrante delicto*, the police officers are not only authorized, but are duty- bound, to arrest him even without a warrant.[28] And considering that appellant's arrest was legal, the search and seizure that resulted from it were likewise lawful.[29]

Therefore, We agree with the CA when it adopted the People's disquisition:

> The police officers are completely justified for being at the BMBA compound when appellant was arrested, since they were merely performing their regular duty of responding to a reported crime. When **appellant was found alone, acting suspiciously in the reported area, PO2 Paras instinctively thought that appellant was about to pull out a gun or a weapon from his pocket due to a previous report of indiscriminate firing**, that he approached him as a precautionary measure.
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> In the course of the performance of their official duties, the police officers inadvertently recovered from appellant a plastic sachet of shabu which was **voluntarily given** by appellant himself. Clearly, the item recovered from appellant was not a product of illegal search and seizure, because appellant voluntarily surrendered the drugs in his possession. In short, appellant was not forced or coerced to bring out the contents of his pocket, thus, the recovery of evidence was appellant's own volition.
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> Accordingly, appellant was arrested because **he was caught *in flagrante delicto*** of the crime of illegal possession of dangerous drugs, given that mere possession of a prohibited drug already constitutes a