

## FIRST DIVISION

[ G.R. No. 218891, September 19, 2016 ]

**EDMUND BULAUTAN Y MAUAYAN,\* PETITIONER, VS. PEOPLE OF  
THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated March 26, 2015 and the Resolution<sup>[3]</sup> dated June 17, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 36117, which affirmed the Decision<sup>[4]</sup> dated September 20, 2013 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5 (RTC) in Criminal Case No. 10086, finding petitioner Edmund Bulautan y Mauayan (Bulautan) guilty beyond reasonable doubt, for violating Section 11, Article II of Republic Act No. (RA) 9165,<sup>[5]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

#### The Facts

The instant case stemmed from an Information<sup>[6]</sup> dated November 7, 2003 filed before the RTC, charging Bulautan of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of RA 9165,<sup>[7]</sup> the accusatory portion of which reads:

That on or about October 03, 2003, in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused, [Bulautan], without authority, did then and there willfully[,] unlawfully[,] and feloniously have in his possession and under his control and custody three (03) pieces of heat sealed plastic sachet containing Methamphetamine Hydrochloride, a dangerous drug commonly known as *shabu* which he kept inside his residence/dwelling at Centro Northeast, Solana, Cagayan weighing 0.22 grams which dangerous drug was confiscated by elements of the PNP Solana, Cagayan which conducted a search at the residence/dwelling of the accused by virtue of Search Warrant No. 21 issued by Executive Judge, Honorable VILMA T[.] PAUIG of RTC Branch II, Tuguegarao City, Cagayan which resulted to the confiscation of the above-mentioned dangerous drug as the accused while in possession thereof do not have necessary permit and/or authority [sic].

CONTRARY TO LAW.<sup>[8]</sup>

The prosecution alleged that on October 3, 2003, the Philippine National Police of Solana, Gagayan constituted a team headed by P/Insp. Kevin Bulayungan (P/Insp. Bulayungan) as leader, with SPO2 Lito Baccay (SPO2 Baccay) and PO3 Elizalde Tagal

(PO3 Tagal) as search officer and investigator, respectively, to implement a search warrant issued by Executive Judge Vilma T. Pauig to search Bulautitan's residence. Before going to the target residence, the search team first went to the house of Barangay Chairman Jane Busilan, who in turn, assigned *Kagawad* (Kgd.) Jerry Soliva (Kgd. Soliva) and Kgd. Herald de Polonia (Kgd. Polonia) as search witnesses. Upon arriving at Bulautitan's residence, the search team was met by Bulautitan's two (2) children and housekeeper, who informed them that Bulautitan was not home. This notwithstanding, the search team explained to the children and housekeeper the reason for their presence, prompting the latter to allow them inside the house and conduct the search. SPO2 Baccay then proceeded to Bulautitan's room and there, discovered three (3) heat-sealed plastic sachets containing white crystalline substance. Suspecting that the contents are *shabu*, the search team showed the sachets to the children and housekeeper and photographed the same. SPO2 Baccay then gave the sachets to P/Insp. Bulayungan, who in turn, handed them over to PO3 Tagal who wrapped the confiscated items with a piece of paper for transport to the Solana PNP Station. When Bulautitan arrived at his residence, the search team effected his arrest and took him to the police station with the seized sachets. Upon arrival thereat, PO3 Tagal prepared the police blotter and request for laboratory examination, marked the sachets with his initials, and delivered the same to forensic chemist S/Insp. Myrna Madriaga Tulauan of the PNP Crime Laboratory. A qualitative examination revealed that the three (3) plastic sachets contained an aggregate of 0.22 gram of *shabu*.<sup>[9]</sup>

In his defense, Bulautitan denied owning the sachets allegedly recovered by the search team in his house. He narrated that in the morning of the fateful day, he went with his wife to Tuguegarao City to tend to their meat shop. He eventually received a call from his daughter, Maria Bulautitan (Maria), informing him that policemen are in their house and conducting a search therein, prompting him to immediately go home. Upon reaching his house, the policemen informed him that they recovered *shabu* from his room, and thus, arrested him. Finally, Bulautitan averred that Joseph Juan - the person who executed the affidavit in support of the application for search warrant — wanted to get even with him as his wife testified against Juan in a theft case. Upon arraignment, Bulautitan pleaded not guilty to the charges against him.<sup>[10]</sup>

### **The RTC Ruling**

In a Decision<sup>[11]</sup> dated September 20, 2013, the RTC found Bulautitan guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, two (2) months, and one (1) day, as maximum, and to pay a fine in the amount of P300,000.00.<sup>[12]</sup>

The RTC found that Bulautitan constructively possessed the sachets containing *shabu* as they were found inside his house where he exercised dominion and control. In this relation, the RTC opined that the policemen must be accorded the presumption of regularity in the performance of their official duties, especially in the absence of any evidence from Bulautitan to show otherwise.<sup>[13]</sup>

Aggrieved, Bulautitan elevated his conviction before the CA.

## The CA Ruling

In a Decision<sup>[14]</sup> dated March 26, 2015, the CA affirmed Bulautan's conviction. It held that all the elements of illegal possession of dangerous drugs are present, considering that Bulautan without any authority constructively possessed the seized sachets containing *shabu* as they were found inside his house. The CA further held that the prosecution had established an unbroken chain, of custody of the seized sachets. Finally, the CA ruled that the search which yielded the seized sachets was properly implemented as it was done in the presence of Bulautan's two (2) children and housekeeper.<sup>[15]</sup>

Aggrieved, Bulautan moved for reconsideration which the CA denied in a Resolution<sup>[16]</sup> dated June 17, 2015; hence, this petition.

## The Issue Before the Court

The issue for the Court's resolution is whether or not Bulautan's conviction for illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of RA 9165, should be upheld.

## The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. 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.<sup>[17]</sup>

In this light and as will be explained hereunder, the Court is of the view that Bulautan's conviction must be set aside.

Section 2,<sup>[18]</sup> Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which such search and seizure becomes "unreasonable" within the meaning of the said constitutional provision.** To protect the people from unreasonable searches and seizures, Section 3 (2),<sup>[19]</sup> Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.<sup>[20]</sup>

It must, however, be clarified that a search warrant<sup>[21]</sup> issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same as the same Rules provide

parameters in the proper conduct of a search. Section 8, Rule 126 of the aforesaid Rules, states that:

**SEC. 8.** *Search of house, room, or premises to be made in presence of two witnesses.* — No search of a house, room or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Under this provision, a search under the strength of a warrant is required to be witnessed by the lawful occupant of the premises sought to be searched. It must be stressed **that it is only upon their absence** that their presence may be replaced by two (2) persons of sufficient age and discretion residing in the same locality. In *People v. Go*,<sup>[22]</sup> the Court held that a departure from the said mandatory rule - by preventing the lawful occupant or a member of his family from actually witnessing the search and choosing two (2) other witnesses observe the search - violates the spirit and letter of the law, and thus, taints the search with the vice of unreasonableness, rendering the seized articles inadmissible due to the application of the exclusionary rule, viz.:

As pointed out earlier, the members of the raiding team categorically admitted that the search of the upper floor, which allegedly resulted in the recovery of the plastic bag containing the *shabu*, did not take place in the presence of either the lawful occupant of the premises, *i.e.* appellant (who was out), or his son Jack Go (who was handcuffed to a chair on the ground floor). **Such a procedure, whereby the witnesses prescribed by law are prevented from actually observing and monitoring the search of the premises, violates both the spirit and letter of the law:**

x x x x

That the raiding party summoned two *barangay kagawads* to witness the search at the second floor is of no moment. **The Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted. Thus, Section 8, Rule 126 provides that the search should be witnessed by "two witnesses of sufficient age and discretion residing in the same locality" only in the absence of either the lawful occupant of the premises or any member of his family.** Thus, the search of appellant's residence clearly should have been witnessed by his son Jack Go who was present at the time. The police officers were without discretion to substitute their choice of witnesses for those prescribed by the law.

x x x x

**The raiding team's departure from the procedure mandated by Section 8, Rule 126 of the Rules of Court, taken together with the numerous other irregularities attending the search of appellant's residence, tainted the search with the vice of unreasonableness, thus compelling this Court to apply the**

**exclusionary rule and declare the seized articles inadmissible in evidence.** This must necessarily be so since it is this Court's solemn duty to be ever watchful for the constitutional rights of the people, and against any stealthy encroachments thereon. In the oft-quoted language of Judge Learned Hand:

**As we understand it, the reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege.** In earlier times the action of trespass against the offending official may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will that wrong be repressed.<sup>[23]</sup> (Emphases and underscoring supplied)

In *People v. Del Castillo*,<sup>[24]</sup> the Court similarly held that the search of the premises must be witnessed by the lawful occupant or the family members; otherwise, the search become unreasonable, thus rendering the seized items inadmissible under the exclusionary rule.

In this case, a judicious perusal of the records reveals that the policemen involved in the search of Bulautan's residence — as shown in their own testimonies - **did not** conduct the search in accordance with Section 8, Rule 126 of the Revised Rules of Criminal Procedure.

In his testimony, P/Insp. Bulayungan was adamant that Bulautan was present when the search was commenced, to wit:

[Asst. Pros. Frederick D. Aquino (Pros. Aquino)]: **And was [Bulautan] then present when you implemented the search warrant?**

[P/Insp. Bulayungan]: **Yes, sir.**

x x x x

[Pros. Aquino]: **So after showing to the accused a copy of the search warrant, what did the members of your team do, if any?**

[P/Insp. Bulayungan]: **We conducted an orderly search at the residence of the accused I Bulautan], sir.**

x x x

[Atty. Rolando C. Acacio (Atty. Acacio)] So you mean to say that [Bulautan] was not present when you went to implement the search warrant?

[P/Insp. Bulayungan]: He was present, sir.

[Atty. Acacio]: At what point in time was he present Mr. Witness?