

FIRST DIVISION

[G.R. No. 205926, July 22, 2015]

ALVIN COMERCIANTE Y GONZALES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated October 20, 2011 and the Resolution^[3] dated February 19, 2013 of the Court of Appeals (CA) in CA-G.R. CR No. 32813, which affirmed *in toto* the Judgment^[4] dated July 28, 2009 of the Regional Trial Court of Mandaluyong City, Branch 213 (RTC) in Crim. Case No. MC-03-7242-D convicting petitioner Alvin Comerciante y Gonzales (Comerciante) of the crime of illegal Possession of Dangerous Drugs defined and penalized under Section 11, Article II of Republic Act No. (RA) 9165,^[5] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On July 31, 2003, an Information was filed before the RTC charging Comerciante of violation of Section 11, Article II of RA 9165, to wit:

That on or about the 30th day of July 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously and knowingly have in his possession, custody and control Two (2) heat-sealed transparent plastic sachet (*sic*) each containing 0.15 gram (*sic*) and 0.28 gram (*sic*) of white crystalline substance with a total of 0.43 grams which was found positive to the test for Methamphetamine Hydrochloride commonly known as "*shabu*", a dangerous drug.

CONTRARY TO LAW.^[6]

According to the prosecution, at around 10 o'clock in the evening of July 30, 2003, Agent Eduardo Radan (Agent Radan) of the NARCOTICS group and PO3 Bienvy Calag II (PO3 Calag) were aboard a motorcycle, patrolling the area while on their way to visit a friend at Private Road, Barangay Hulo, Mandaluyong City. Cruising at a speed of 30 kilometers per hour along Private Road, they spotted, at a distance of about 10 meters, two (2) men - later identified as Comerciante and a certain Erick Dasilla^[7] (Dasilla) - standing and showing "improper and unpleasant movements," with one of them handing plastic sachets to the other. Thinking that the sachets may contain *shabu*, they immediately stopped and approached Comerciante and Dasilla. At a distance of around five (5) meters, PO3 Calag introduced himself as a police

officer, arrested Comerciante and Dasilla, and confiscated two (2) plastic sachets containing white crystalline substance from them. A laboratory examination later confirmed that said sachets contained methamphetamine hydrochloride or *shabu*.^[8]

After the prosecution rested its case, Dasilla filed a demurrer to evidence, which was granted by the RTC, thus his acquittal. However, due to Comerciante's failure to file his own demurrer to evidence, the RTC considered his right to do so waived and ordered him to present his evidence.^[9]

In his defense, Comerciante averred that PO3 Calag was looking for a certain "Barok", who was a notorious drug pusher in the area, when suddenly, he and Dasilla, who were just standing in front of a jeepney along Private Road, were arrested and taken to a police station. There, the police officers claimed to have confiscated illegal drugs from them and were asked money in exchange for their release. When they failed to accede to the demand, they were brought to another police station to undergo inquest proceedings, and thereafter, were charged with illegal possession of dangerous drugs.^[10]

The RTC Ruling

In a Judgment^[11] dated July 28, 2009, the RTC found Comerciante guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and accordingly, sentenced him to suffer the penalty of imprisonment for twelve (12) years and one (1) day to twenty (20) years, and ordered him to pay a fine in the amount of P300,000.00.^[12]

The RTC found that PO3 Calag conducted a valid warrantless arrest on Comerciante, which yielded two (2) plastic sachets containing *shabu*. In this relation, the RTC opined that there was probable cause to justify the warrantless arrest, considering that PO3 Calag saw, in plain view, that Comerciante was carrying the said sachets when he decided to approach and apprehend the latter. Further, the RTC found that absent any proof of intent that PO3 Calag was impelled by any malicious motive, he must be presumed to have properly performed his duty when he arrested Comerciante.^[13]

Aggrieved, Comerciante appealed to the CA.

The CA Ruling

In a Decision^[14] dated October 20, 2011 the CA affirmed Comerciante's conviction. It held that PO3 Calag had probable cause to effect the warrantless arrest of Comerciante, given that the latter was committing a crime *in flagrante delicto*; and that he personally saw the latter exchanging plastic sachets with Dasilla. According to the CA, this was enough to draw a reasonable suspicion that those sachets might be *shabu*, and thus, PO3 Calag had every reason to inquire on the matter right then and there.^[15]

Dissatisfied, Comerciante moved for reconsideration^[16] which was, however, denied in a Resolution^[17] dated February 19, 2013. Hence, this petition.^[18]

The Issue Before the Court

The core Issue for the Court's resolution is whether or not the CA correctly affirmed Comerciante's conviction for violation of Section 11, Article II of RA 9165.

In his petition, Comerciante essentially contends that PO3 Carag did not effect a valid warrantless arrest on him. Consequently, the evidence gathered as a result of such illegal warrantless arrest, *i.e.*, the plastic sachets containing *shabu* should be rendered inadmissible, necessarily resulting in his acquittal.^[19]

On the other hand, the Office of the Solicitor General, on behalf of respondent People of the Philippines, maintains that Comerciante's warrantless arrest was validly made pursuant to the "stop and frisk" rule, especially considering that he was caught *in flagrante delicto* in possession of illegal drugs.^[20]

The Court's Ruling

The petition is meritorious.

Section 2, Article III^[21] of the 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; in the absence of such warrant, such search and seizure becomes, as a general rule, "unreasonable" within the meaning of said constitutional provision. To protect people from unreasonable searches and seizures, Section 3 (2), Article III^[22] of the Constitution provides an exclusionary rule which instructs that 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. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.^[23]

The exclusionary rule is not, however, an absolute and rigid proscription. One of the recognized exceptions established by jurisprudence is a search incident to a lawful arrest.^[24] In this instance, the law requires that there first be a lawful arrest before a search can be made the process cannot be reversed.^[25] Section 5, Rule 113 of the Revised Rules on Criminal Procedure lays down the rules on lawful warrantless arrests, as follows:

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;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while

being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

The aforementioned provision provides three (3) instances when a warrantless arrest may be lawfully effected: (a) arrest of a suspect *in flagrante delicto*; (b) arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; (c) arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.^[26]

For a warrantless arrest under Section 5 (a) to operate, two (2) elements must concur, namely: (a) 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 (b) such overt act is done in the presence or within the view of the arresting officer.^[27] On the other hand, Section 5 (b) requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.^[28]

In both instances, the officer's personal knowledge of the fact of the commission of an offense is absolutely required. Under Section 5 (a), the officer himself witnesses the crime; while in Section 5 (b), he knows for a fact that a crime has just been committed.^[29]

A judicious review of the factual milieu of the instant case reveals that there could have been no lawful warrantless arrest made on Comerciante. PO3 Calag himself admitted that he was aboard a motorcycle cruising at a speed of around 30 kilometers per hour when he saw Comerciante and Dasilla standing around and showing "improper and unpleasant movements," with one of them handing plastic sachets to the other. On the basis of the foregoing, he decided to effect an arrest. PO3 Calag's testimony on direct examination is revelatory:

Pros. Silao:

Q: Now on July 30, 2003 around 10:00 o'clock in the evening, kindly tell the court where were you?

A: We were then conducting our patrol on a motorbike ma'am.

x x x x

Q: And who were with you while you were patrolling?

A: Eduardo Radan, Ma'am.

Q: And who is this Eduardo Radan?

A: He is an agent of the Narcotics Group, ma'am.

Q: While you were along Private Road, Hulo, Mandaluyong City, what unusual incident that happened if any?

A: We spotted somebody who was then as if handing a plastic sachet to someone.

x x x x

Q: Now how far were you when you saw this incident from

these two male persons you already identified?

A: About ten (10) meters away ma'am.

Q: What were their positions in relation to you when you saw them in that particular act?

A: They were quite facing me then.

Q: What was the speed of your motorcycle when you were traversing this Private Road, Hulo, Mandaluyong City?

A: About thirty (30) kilometers per hour, ma'am.

Q: And who was driving the motorcycle?

A: Eduardo Radan, ma'am.

Q: When you spotted them as if handing something to each other, what did you do?

A: We stopped ma'am.

Q: And how far were you from them when you stopped, more or less?

A: We passed by them for a short distance before we stopped ma'am.

Q: And after you passed by them and you said you stopped, what was the reaction of these two male persons?

A: They were surprised, ma'am.

x x x x

Q: And what was their reaction when you said you introduced yourself as police officer?

A: They were surprised.

Q: When you say "nabigla" what was their reaction that made you say that they were surprised?

A: They were stunned.

Q: After they were stunned, what did you do next, police officer?

A: I arrested them, ma'am. I invited them.

Q: What did you say to them? How did you invite them? In short, *napakasimple lang ng tanong ko sa yo eh*. Did you say anything?

Court:

Mr. Witness, stop making unnecessary movements, just listen.

Pros. Silao:

Are you fit to testify? *May sakit ka ba o wala?*

Witness:

Wala po.

Pros. Silao:

Eh, bakit di ka makapagsalita?

Court:

You keep touching your eyes. Just relax. Answer the question, *ano sinabi mo sa kanila?*

Pros. Silao:

Are you fit to testify? *Wala ka bang sakit?*

Witness:

Wala po.

x x x x

Q: From what portion of his body, I am referring to Alvin Comerciante did you recover the plastic sachet?

A: From his hand ma'am.

Q: Left or right hand?

Pros. Silao:

You cannot recall? Hindi mo matandaan. Sabihin mo