

## SECOND DIVISION

[ G.R. No. 192050, January 09, 2013 ]

**NELSON VALLENO Y LUCITO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

Subject of this petition for review is the Decision<sup>[1]</sup> of the Court of Appeals in CA-GR. CR-H.C. No. 03433, dated 29 October 2009, affirming the Judgment<sup>[2]</sup> of the Regional Trial Court of Naga City ( RTC), in Criminal Case No. 2004-0308. The trial court found petitioner Nelson Valleno y Lucito<sup>[3]</sup> guilty of violation of Section II of Article II, Republic Act No. 9165 and sentenced him to suffer the penalty of life imprisonment and to pay a fine of Four Hundred Thousand Pesos (P400,000.00)

The Information charged petitioner of illegal possession of *shabu*. It reads:

That on or about the 12<sup>th</sup> day of March, 2004, in Barangay San Antonio, Milaor, Camarines Sur, and within the jurisdiction of this Honorable Court, the said accused, without any authority of law, did then and there, wilfully, unlawfully, and feloniously possess, control and have in custody nine (9) transparent plastic sachets, containing Methamphetamine Hydrochloride, locally known as "SHABU", a prohibited drug, weighing no less than 34.7011 grams, with an estimated cost or market value of P69,402.20, to the great damage and prejudice of the Republic of the Philippines.<sup>[4]</sup>

Upon arraignment, petitioner pleaded not guilty. Trial ensued.

Five police officers, two *barangay* officials and one forensic chemist testified for the prosecution.

P/Insp. Perfecto De Lima (P/Insp. De Lima) was the group director of the 504<sup>th</sup> Provincial Mobile Group located at Camarines Sur Police Provincial Office in Naga City. He ordered PO3 Jaime Villano (PO3 Villano) to conduct a surveillance in connection with the illegal drug trade of petitioner. PO3 Villano was tasked to conduct a test-buy operation. The specimen he obtained from petitioner was submitted to the Philippine National Police (PNP) Crime Laboratory, which, in turn, was tested positive for the presence of *shabu*. Subsequently, P/Insp. De Lima ordered SPO4 Romulo Fabiano (SPO4 Fabiano) to apply for a search warrant. Branch 24 of the RTC of Naga City issued Search Warrant No. 2004-006.<sup>[5]</sup>

In the early morning of 12 March 2004, P/Insp. De Lima organized two (2) teams to enforce the search warrant. SPO4 Feliciano was in charge of the security team, which was tasked to secure the area to be searched, while the search team composed of PO3 Villano, PO3 Emilio Edrano (PO3 Edrano) and PO2 Sergio Valenzuela (PO2 Valenzuela), were designated to search the target house in LRV Village, *Barangay* San Antonio, Milaor, Camarines Sur.<sup>[6]</sup>

At around 4:30 a.m., the group left the police station and proceeded to petitioner's house. They arrived at 5:00 a.m. P/Insp. De Lima instructed PO3 Villano to coordinate with the *barangay* officials.<sup>[7]</sup> At 6:00 a.m. and upon arrival of the two (2) *barangay* officials, SPO4 Fabiano knocked on the door of petitioner's house. Petitioner opened the door located at the back of the house. PO3 Villano, who was armed with the search warrant, informed petitioner that his group would conduct a search inside the house.<sup>[8]</sup>

Before entering petitioner's house, P/Insp. De Lima instructed the search team to raise their hands and shirts to show that they have nothing in their possession. P/Insp. De Lima explained that his purpose was to prevent any speculation that they intend to plant evidence.<sup>[9]</sup>

The search team, together with the *barangay* officials, went inside the house, while P/Insp. De Lima, petitioner and his wife were waiting just outside the house. PO3 Edrano and PO2 Valenzuela started searching a cabinet located in the kitchen. PO3 Edrano stood up on a chair to look at the top portion of the cabinet while PO2 Valenzuela was searching the bottom part. PO3 Edrano saw a black Natel bag with a red stripe on it on top of the cabinet. He passed it to PO2 Valenzuela, who handed the bag over to PO3 Villano. PO3 Villano unzipped the bag and uncovered 3 different sizes of white plastic bags containing white granules. The bag also contained a weighing scale and a bamboo stick. Thereafter, he closed the bag and brought it outside to P/Insp. De Lima.<sup>[10]</sup>

PO3 Villano put his markings "JV" on the plastic sachets, the weighing scale and bamboo stick in the presence of the *barangay* officials. He likewise prepared the Inventory Receipt, which was signed by the *barangay* officials. Petitioner, however, refused to sign the Inventory Receipt.<sup>[11]</sup>

After the search, petitioner was handcuffed and brought to the police station. PO3 Villano turned over the seized items to a certain PO3 Molina.<sup>[12]</sup> While in the police station, PO3 Villano prepared the return of the search warrant. He then brought the Return of the Search Warrant, accompanied by the seized items, to the RTC of Naga City. The court ordered him to bring them to the PNP Crime Laboratory for examination.<sup>[13]</sup>

Reynaldo Brito, a *barangay tanod*, testified that the police officers found one plastic sachet containing shabu underneath the bed of petitioner.<sup>[14]</sup> Wilfredo Brito, another *barangay tanod*, corroborated the statements of the police officers that a black bag was taken from the top of the cabinet and that the black bag contained the seized items.<sup>[15]</sup>

Josephine Macura Clemen (Clemen), a forensic chemist, was presented as an expert

witness. She related that after taking a representative sample from the nine (9) plastic sachets seized from petitioner, they were tested positive for the presence of *Methamphetamine Hydrochloride* or *shabu*.<sup>[16]</sup> Her findings were reflected in Chemistry Report No. D-052-04.<sup>[17]</sup>

Petitioner interposed denial. He countered that around 6:00 a.m. of 12 March 2004, he heard a knock at the bedroom door.<sup>[18]</sup> He opened the door and the policemen introduced themselves, showed him the search warrant and asked him to come out of the house while they searched it. After a while, the police officers emerged from the house and told him that they have found a *tawas*-like substance.<sup>[19]</sup> He refused to sign the inventory receipt because he did not understand the contents of the document. He was then brought to the police station.<sup>[20]</sup>

On 13 June 2008, the trial court rendered judgment finding petitioner guilty beyond reasonable doubt for illegal possession of *shabu*. The dispositive portion reads:

WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt for illegal possession of methamphetamine Hydrochloride or *shabu*, a dangerous drug, defined and penalized under Sec. 11(1)(1), Art. II of R.A. 9165, otherwise known as The Comprehensive Drugs Act of 2002, and hereby sentences him to suffer the penalty of life imprisonment and a fine of Four Hundred Thousand pesos (P400,000.00).

The bail bond posted for the provisional liberty of the accused is hereby CANCELLED.<sup>[21]</sup>

In convicting petitioner, the trial court lent credence to the straightforward testimonies of the police officers over the mere denial of the accused. The trial court ruled that the chain of custody over the illegal drugs seized was properly established.

On appeal, the Court of Appeals affirmed petitioner's conviction on 29 October 2009 and denied petitioner's motion for reconsideration on 13 April 2010. Petitioner now seeks relief before this Court via a petition for review. On 11 August 2010, this Court treated the petition as a notice of appeal and required the parties to file their respective supplemental briefs, if they so desire, within thirty days from notice.<sup>[22]</sup> The Office of the Solicitor General manifested that it would no longer file a supplemental brief.<sup>[23]</sup>

Petitioner filed his supplemental brief and harped on the inconsistencies of the testimonies of prosecution witnesses.

In his petition for review, petitioner ascribes upon the Court of

Appeals the following errors:

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE PROSECUTION WAS NOT ABLE TO DISCHARGE ITS BURDEN OF PROVING BY PROOF BEYOND REASONABLE DOUBT THAT PETITIONER HAS COMMITTED THE CRIME OF VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

(B)

THE COURT OF APPEALS ERRED IN INTERPRETING THAT THE REQUIREMENTS PROVIDED FOR UNDER SECTION 21 OF REPUBLIC ACT NO. 9165 ARE NOT MANDATORY AND THAT NON-COMPLIANCE THEREOF IS NOT FATAL TO THE CAUSE OF THE PROSECUTION.

(C)

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE ALLEGED PROHIBITED DRUGS SUBJECT OF THE CASE WERE A PRODUCT OF AN IRREGULAR SEARCH AND SEIZURE.<sup>[24]</sup>

The primordial issue here, as in any criminal case, is whether the guilt of the accused has been established beyond reasonable doubt.

It is hornbook doctrine that the factual findings of the appellate court affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.<sup>[25]</sup> After an exhaustive review of the records of this case, we see no sufficient reason for resort to the exception to the rule.

In order for prosecution for illegal possession of a dangerous drug to prosper, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.<sup>[26]</sup>

All these elements were duly established by the prosecution. During the search, PO3 Edrano found a bag on top of a cabinet inside the house of petitioner. He handed the same to PO3 Villano, who in turn opened it, and found nine (9) plastic sachets of *shabu*, thus:

Q Where did you start searching the house?

A We started at the cabinet.

Q Where is that cabinet located?

A Inside his house in front of the dining table.

Q While you were starting to search the cabinet, do you know where your companions were at that time?

A Yes sir.

Q Where were they?

A The house of the accused was just a small house, so we were just back to back with each other.

Q While you were searching the cabinet, at what particular part of the cabinet did you start?

A I started at the lower portion of the cabinet.

Q What did you find at the lower portion of the cabinet?

ATTY. GENERAL:  
Leading, it is presumed that something was found.

COURT:  
Reform.

PROS. ABONAL:

Q What happened when you started to look at the lower portion of the cabinet?

A I saw different kitchen utensils.

Q After searching the lower portion of the cabinet, what happened next?

A I took a chair which I could use in order to see the top portion of the cabinet.

Q What happened after you took a chair?

A I stood at the chair and I saw a nattel bag colored black with red stripe on it.

Q After finding that black bag, what happened next? A I gave the bag to PO3 Villano.

Q When you handed over the bag to Villano, where were you at that time?

A I was still standing by the chair and looking for other things.

Q After giving the bag to Villano, what happened?

A I went down from the chair and told our team leader to check the bag.

Q Did your team leader accede to your request?

A Yes sir.

Q What happened after checking the bag?

A In front of the 2 barangay officials, our team leader opened the bag and we saw different sizes of plastic bag containing white granules. Our team leader told us that those things are what we are looking for, then he closed the bag. [27]

PO3 Villano confirmed receiving the bag and finding white plastic sachets inside:

PROS. TADEO:

Q Why, according to you, you proceeded to search the premises of the accused. Now, what happened to your search?

A We were able to recover inside his house the nine (9) pieces transparent plastic sachets containing shabu and several pieces of "PP Bags: which we believed they used in repacking of the shabu, and a weighing scale. And others I [cannot] recall, sir.

Q Now, we will go to the specifics. You said that there was actually nine (9) pieces sachets of shabu recovered from the place, who actually recovered these items?

A PO2 (sic) Edrano and PO1 Valenzuela, sir.

PROS. TADEO:

Q How about you?