

## FIRST DIVISION

[ G.R. No. 177224, April 11, 2012 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY BIYALA VELASQUEZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

On appeal before Us is the Decision<sup>[1]</sup> dated October 13, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01064 which affirmed the Decision<sup>[2]</sup> dated September 17, 2002 of the Regional Trial Court (RTC), Branch 61, of Baguio City, in Criminal Case Nos. 17945-R and 17946-R, finding accused-appellant Jimmy Biyala Velasquez guilty beyond reasonable doubt of violations of Section 8, Article II and Section 16, Article III of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended.

Accused-appellant was charged before the RTC under the following informations:

Criminal Case No. 17945-R

That on or about the 11<sup>th</sup> day of June 2000 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have in his possession, custody, and control, one (1) brick of dried marijuana leaves having a weight of 826.4 grams wrapped with newspaper pages, knowing fully well that said leaves are marijuana leaves, a prohibited drug, in violation of the abovementioned provision of law.

Criminal Case No. 17946-R

That on or about the 11<sup>th</sup> day of July 2000 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have in his possession and control 4.12 grams of methamphetamine hydrochloride (shabu), contained in a heat sealed plastic bag, a regulated drug(s), without the corresponding license or prescription, in violation of the aforecited provision of law.<sup>[3]</sup>

When arraigned on September 26, 2000, accused-appellant pleaded not guilty to the charges against him.<sup>[4]</sup> After the pre-trial conference conducted on October 23, 2000, trial ensued.<sup>[5]</sup>

The following witnesses testified before the RTC for the prosecution: Forensic Analyst Emilia G. Montes,<sup>[6]</sup> the chemist who examined the dangerous drugs and related paraphernalia confiscated from accused-appellant; Senior Police Officer 1 (SPO1) Modesto Carrera (Carrera),<sup>[7]</sup> Police Officer 1 (PO1) Rolando Amangao (Amangao),<sup>[8]</sup> and SPO1 Warren Lacangan (Lacangan),<sup>[9]</sup> members of the 14<sup>th</sup> Regional Criminal Investigation and Detection Group (RCIDG) of the Philippine National Police (PNP) in Baguio City who searched accused-appellant's house and apprehended him for illegal possession of dangerous drugs and paraphernalia; and Barangay Kagawad Jaime Udani,<sup>[10]</sup> who witnessed the said search and seizure.

The collective testimonies of the prosecution witnesses painted the following version of events:

On July 9, 2000, at about 9:00 in the morning, a certain Manuel De Vera reported to the office of the 14<sup>th</sup> Regional Criminal Investigation and Detection Group that accused-appellant Velasquez is engaged in selling shabu and marijuana dried leaves in his residence at No. 144 Paraan St., Victoria Village, Quezon Hill, Baguio City. De Vera allegedly came to know of the said activities of accused-appellant Velasquez when his co-driver, a certain Arnold, whom he claimed as a shabu user, told him about it.

On the same day, SPO1 Modesto Carrera instructed De Vera to buy *shabu* and gave him P600.00 to verify the truthfulness of the allegations against accused-appellant Velasquez. De Vera and Arnold were able to buy shabu and marijuana which they gave later to SPO1 Carrera.

Thereafter, SPO1 Carrera filed with the RTC of Baguio City, Branch 59, an application for the issuance of a search warrant against accused-appellant Velasquez, which was eventually granted.

On July 13, 2000, a team composed of P/Sr. Insp. Castil, PO1 Sawad, PO2 Cejas, PO1 Labiasto, SPO1 Carrera, SPO1 Lacangan and PO1 Amangao was formed to implement the search warrant. They sought the assistance of Barangay Kagawad Jaime Udani and Barangay Kagawad Lilian Somera of Barangay Victoria Village to witness the search. The police officers together with Udani and Somera proceeded to the residence of accused-appellant Velasquez, introduced themselves and presented the search warrant.

In the course of the search, PO1 Amangao and SPO1 Lacangan found in the bedroom of accused-appellant Velasquez a plastic bag containing a brick of dried leaves suspected to be marijuana, which was wrapped in an old newspaper. After informing accused-appellant Velasquez that they found illegal drugs inside his bedroom, SPO1 Lacangan arrested him and apprised him of his constitutional rights. When accused-appellant Velasquez was frisked, one transparent heat-sealed plastic sachet containing a white crystalline substance suspected to be shabu was found in his pocket. The search on accused-appellant Velasquez's residence

also yielded 36 pieces of rolling papers, aluminum foil and tooter, among others.<sup>[11]</sup>

The prosecution likewise submitted object and documentary evidence to support its charges against accused-appellant, which consisted of: (1) the Search and Seizure Warrant for dangerous drugs and paraphernalia at accused-appellant's house, issued on July 10, 2000, by Judge Abraham B. Borreta of RTC-Branch 59 of Baguio City;<sup>[12]</sup> (2) the Joint Affidavit of Search dated July 14, 2000 executed by SPO1 Carrera, [SPO1] Lacangan, and PO1 Amangao;<sup>[13]</sup> (3) the Receipt of Items Confiscated and a Certification dated July 13, 2000, executed by Baranggay Kagawads Lillian M. Somera and Jaime D. Udani, attesting to the orderly execution of the Search and Seizure Warrant;<sup>[14]</sup> (4) the Request for Laboratory Examination of the items confiscated, made by P/SINSP Rodolfo D. Castil, Jr. and dated July 13, 2000;<sup>[15]</sup> (5) one brick of marijuana fruiting tops with a weight of 826.4 grams and five plastic sachets of methamphetamine hydrochloride or *shabu* with a total weight of 4.12 grams; (6) four pieces of cut aluminum foils, one small vial, and three small used plastic sachets, all with *shabu* residues; (7) Initial Laboratory Examination Report<sup>[16]</sup> dated July 13, 2000 and Chemistry Report No. D-081-2000<sup>[17]</sup> dated July 14, 2000, issued by Forensic Analyst Montes, indicating that the brick and sachet contents tested positive for marijuana and *shabu*, respectively; and (8) Chemistry Report No. BCDT-266-2000 dated July 13, 2000 issued by Forensic Analyst Montes stating that accused-appellant's urine sample tested positive for *shabu*.<sup>[18]</sup>

Accused-appellant,<sup>[19]</sup> for his part, presented his lone testimony and submitted the defenses of denial and frame-up. Accused-appellant narrated that:

In the morning of June 11, 2000, accused-appellant Velasquez was in his house at 143 Quezon Hill when his fellow drivers, Rolando and Nelson, went to see him to redeem a cell phone the latter had pawned to accused-appellant Velasquez. Then, someone repeatedly knocked at his door and when accused-appellant Velasquez asked who it was, no one answered. Suddenly, said persons who refused to identify themselves barged into the house of accused-appellant Velasquez by kicking the door open and once inside, they drew their firearms and pointed the same to the accused. The intruders turned out to be Police Officers Carrera, Lacangan, and Amangao, who were there to serve a search warrant on accused-appellant Velasquez.

Accused-appellant Velasquez was bodily searched but nothing was found on him. Nevertheless, the police operatives continued their operations inside the bedroom of accused-appellant Velasquez. When SPO1 Lacangan was inside the bedroom, he summoned accused-appellant Velasquez and presented to him something wrapped in a bag. They proceeded to the living room and accused-appellant Velasquez was shown what was found inside his room, a kilo of marijuana. SPO1 Lacangan was allegedly holding the marijuana when he entered the room of accused-appellant Velasquez.

Accused-appellant Velasquez claimed that when the conduct of the

search started, barangay officials Udani and Somera were not yet present. They appeared only later, about 5 minutes after the search had started.<sup>[20]</sup>

Accused-appellant offered no other object or documentary evidence except for Forensic Analyst Montes's Chemistry Report No. BCDT-266-2000 dated July 13, 2000, which was previously submitted by the prosecution<sup>[21]</sup> and which accused-appellant requested to be also marked as his evidence.

The RTC rendered a Decision<sup>[22]</sup> on September 17, 2002. The RTC noted at the outset the variance in the dates stated in the informations in Criminal Case Nos. 17945-R and 17946-R. The information in Criminal Case No. 17945-R alleged that the incident happened "on or about the 11<sup>th</sup> day of **June** 2000," while the information in Criminal Case No. 17946-R alleged that the incident occurred "on or about the 11<sup>th</sup> day of **July** 2000." The RTC declared that the discrepancy was merely typographical as the records and the testimonies of the witnesses established that the incident occurred on or about July 11, 2000, or more precisely, on July 13, 2000 when the Search and Seizure Warrant was actually served and implemented.

The RTC further ruled that after weighing the evidence presented by the parties, accused-appellant was guilty beyond reasonable doubt of the crimes charged, thus:

WHEREFORE, judgment is rendered finding the accused Jimmy Velasquez y Biyala GUILTY beyond reasonable doubt in both cases. In Criminal Case No. 17945-R, the accused is sentenced to Reclusion Perpetua and to pay a fine of P500,000.00; in Criminal Case No. 17946-R, the accused is sentenced to a prison term of six (6) months of *arresto mayor* to two (2) years, four (4) months of *prision correccional*, and to pay the costs.<sup>[23]</sup>

Accused-appellant assailed the foregoing RTC judgment directly before us. However, pursuant to our pronouncement in *People v. Mateo*,<sup>[24]</sup> we referred accused-appellant's appeal to the Court of Appeals for appropriate action and disposition.<sup>[25]</sup>

In its Decision dated October 13, 2006, the Court of Appeals sustained the accused-appellant's convictions. The appellate court decreed thus:

WHEREFORE, premises considered, the September 17, 2002 Decision of the Regional Trial Court of Baguio City, Branch 61, in Criminal Case Nos. 17945-R and 17946-R, is hereby AFFIRMED.

Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal, filed with the Clerk of Court of the Court of Appeals.<sup>[26]</sup>

Hence, the instant appeal.

Accused-appellant asserts in his appeal that:

- 1) There are irregularities in the performance of the duties of the officers;<sup>[27]</sup>
- 2) There are numerous discrepancies in testimonies of the [prosecution] witnesses;<sup>[28]</sup> and
- 3) The court a quo erred in finding accused guilty beyond reasonable doubt.<sup>[29]</sup>

Plaintiff-appellee counters that:

#### I

The search was conducted by the police officers in the presence of appellant and his wife as well as the two barangay kagawad.

#### II

Appellant waived whatever objection he had to the implementation of the search warrant.

#### III

The court a quo correctly convicted appellant for violation of the dangerous drugs act, as amended.<sup>[30]</sup>

The appeal is devoid of merit.

Illegal possession of prohibited or regulated drugs is committed when the following elements concur: “(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.”<sup>[31]</sup>

All these elements were established beyond reasonable doubt in the cases against accused-appellant. The prosecution witnesses consistently and categorically testified that pursuant to a search warrant duly issued by a judge, they found and seized from accused-appellant’s house and actual possession a brick of marijuana leaves and heat-sealed sachets of methamphetamine hydrochloride or *shabu*.

SPO1 Carrera related before the RTC how they secured a Search and Seizure Warrant for accused-appellant’s house, how the Search and Seizure Warrant was implemented, who inventoried the dangerous drugs and paraphernalia confiscated from accused-appellant, and to whom said confiscated items were submitted for