

## THIRD DIVISION

[ G.R. No. 182178, August 15, 2011 ]

**STEPHEN SY Y TIBAGONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**PERALTA, J.:**

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision<sup>[1]</sup> dated October 24, 2007 of the Court of Appeals (CA) in CA-G.R. CR No. 00402, which in turn affirmed *in toto* the Decision of the Regional Trial Court (RTC), Branch 30, Dumaguete City, in Criminal Case No. 17614 convicting petitioner of violation of Section 11, Article II of Republic Act (RA) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, as well as the Resolution<sup>[2]</sup> dated March 7, 2008, denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

Under an Information dated June 12, 2005, petitioner Stephen T. Sy was indicted for violation of Section 11, Article II of RA No. 9165, the accusatory portion of which reads:

That on or about the 11<sup>th</sup> day of June 2005, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said [petitioner], not being authorized by law, did, then and there willfully, unlawfully and feloniously possess and keep one (1) heat-sealed transparent plastic sachet containing 0.02 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly known as "shabu," a dangerous drug.

Contrary to Section 11, Article II of R.A. 9165.<sup>[3]</sup>

Upon his arraignment, petitioner, with the assistance of counsel, pleaded not guilty to the crime charged. Consequently, trial on the merits ensued.

To establish its case, on the one hand, the prosecution presented Police Senior Inspector Maria Ana Rivera-Dagasdas, Police Officer (PO) 3 Liberato Faelogo, PO3 Dario Paquera, *Barangay Kagawad* Rogelio Talavera, PO2 Glenn M. Corsame, and Reysan Elloren.

On the other hand, the defense presented the petitioner as its sole witness.

## Evidence for the Prosecution

PO3 Faelogo, a member of the PNP and assigned as Intelligence Operative of the Dumaguete City Police Station, testified that at about 2 o'clock in the afternoon of June 11, 2005, while he was on duty, their office received a telephone call from a concerned citizen that an illegal drug trade was going on at Zone 3, Barangay Looc, Dumaguete City. With him at that time was PO3 Paquera. PO3 Faelogo averred that the two (2) of them immediately responded and went to the place as reported. While walking at the pathway going to the interior portion of Zone 3, Barangay Looc, at a distance of about two (2) meters away, they saw a man, later identified as the [petitioner] in this case, examining a transparent plastic sachet containing shabu powder by flicking the same. They approached the [petitioner], introduced themselves as policemen and announced his arrest for illegal possession of dangerous drug. PO3 Faelogo then apprised the [petitioner] of his constitutional rights but while doing so, the [petitioner] hurriedly boarded on his motorcycle for a possible escape. PO3 Faelogo was not able to finish his recital of the constitutional rights of the [petitioner]. PO3 Faelogo had to wrestle with the [petitioner] who dropped the sachet of shabu on the ground. While PO3 Faelogo and the [petitioner] were wrestling, PO3 Paquera picked up the said sachet of shabu. After a few minutes of struggle, they were able to subdue the [petitioner] and handcuff him. PO3 Faelogo continued to inform the [petitioner] of his constitutional rights in the Cebuano dialect. The [petitioner] was searched and found in his possession was a disposable lighter. PO3 Paquera gave the plastic sachet of shabu to PO3 Faelogo who made markings on it with the initials "SS 06-11-05" with SS to mean the name of the [petitioner] Stephen Sy and the numbers, the date of the incident. They then brought the [petitioner] with the seized items to the police station. They were not able to conduct an inventory in the crime scene, as there was a commotion where some people tried to rescue the [petitioner]. For their safety, they left the area.

At the police station, PO3 Paquera took a photograph of the [petitioner] and the seized items. PO3 Faelogo then conducted an inventory of the recovered sachet of shabu including the disposable lighter in the presence of DOJ Representative Pros. Angelita Alcoran, Brgy. Kagawad Rogelio Talavera of Barangay Looc, the elected official representative, Reysan Elloren, the media representative and PO2 Glenn Corsame of the PDEA, who all signed the receipt of property seized. The [petitioner] was given a copy of the receipt. PO2 Corsame had the incident recorded in the PDEA blotter.

PO3 Faelogo also averred that he was the one who submitted the seized one (1) heat-sealed transparent plastic sachet containing white crystalline powder/granules to the PNP Crime Laboratory, together with a letter request dated June 11, 2005 of the Chief of Police of Dumaguete City Police Station. The [petitioner] was not subjected to drug examination, as no drug testing kit was available at that time.

It was Police Senior Inspector Maria Ana Rivera-Dagasdas, forensic

chemical officer of the Negros Oriental Provincial Crime Laboratory who received the seized one (1) heat-sealed transparent plastic sachet with marking "SS-06-11-05" and conducted a laboratory examination on the contents thereof. She re-marked the sachet as Specimen A which had a weight of 0.02 gram. Her qualitative examination conducted on the specimen gave positive result to the tests for the presence of methamphetamine hydrochloride, a dangerous drug under RA 9165. Her conclusion was that Specimen A contained methamphetamine hydrochloride, a dangerous drug under RA 9165. Her examination results were embodied in a Chemistry Report No. D-103-05 and a certification, which she signed and submitted.

In support of the case filed, PO3 Faelogo and PO3 Paquera executed a joint affidavit of arrest, which they identified in Court.<sup>[4]</sup>

### **Evidence for the Defense**

The [petitioner] claimed that on June 11, 2005 at around 2 o'clock in the afternoon, he was in Barangay Looc to book a masseur to massage him in the evening. As he was not able to find the person to massage him, the [petitioner] started to go home. While he was about to board his motorcycle, one of two (2) men, whom he had seen earlier from a distance, immediately handcuffed him in his left wrist. The [petitioner] was not given a warning and he was surprised why he was handcuffed especially since he had not committed any crime. Fearing for his life, the [petitioner] resisted and told the person who handcuffed him, "What am I charged of?" The [petitioner] was told to just keep quiet. The [petitioner] told the person to search him first before he should handcuff him. The [petitioner] continued to resist the person and they wrestled with each other. Noticing that this person had a gun tucked in his waist, the [petitioner] did not resist anymore. The [petitioner] was frisked in his pockets, in his cap and other parts of his body, including his brief wherein the person inserted his hand inside. The pants of the [petitioner] were also removed. The search was conducted in full view of many onlookers, but still nothing was found on the [petitioner]. One of the persons then picked up something, which the [petitioner] could not see and was told that it was shabu and a lighter. The [petitioner] was then brought to the Dumaguete City Police Station. The [petitioner] later learned at the police station the identity of the persons who arrested him, namely, Liberato Faelogo and Dario Paquera. At the police station, a photograph was taken of the [petitioner]. The [petitioner] then requested that he be subjected to drug examination, but was not tested. The [petitioner] kept on requesting for drug examination for a week but still he was not tested. The [petitioner] also claimed that while he was at the police station and being investigated, he was kicked and punched by no less than the Chief of Police, one named Hidalgo. The [petitioner] tried to protest but was not able to do anything, as nobody was around to help him.<sup>[5]</sup>

On May 12, 2006, the RTC, after finding that the prosecution has established all the elements of the offense charged, rendered a Decision<sup>[6]</sup> convicting petitioner of violation of Section 11, Article II of RA No. 9165, the dispositive portion of which reads:

WHEREFORE, the Court hereby renders judgment finding the accused Stephen Sy y Tibagong GUILTY beyond reasonable doubt of the offense of illegal possession of 0.02 gram of Methamphetamine Hydrochloride or shabu in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and (1) day, as minimum, term to fourteen (14) years, as maximum term, and to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

The seized one (1) heat-sealed transparent plastic sachet containing 0.02 gram of white crystalline substance of Methamphetamine Hydrochloride or shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

SO ORDERED.<sup>[7]</sup>

Aggrieved, petitioner appealed the Decision before the CA, which was later docketed as CA-G.R. CR No. 00402.

On October 24, 2007, the CA rendered a Decision affirming *in toto* the decision of the RTC, the dispositive portion of which reads:

**WHEREFORE**, in view of the foregoing, the appeal is hereby **DISMISSED** and the assailed decision of the lower court finding accused-appellant guilty beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED** *in toto*.

**SO ORDERED.**<sup>[8]</sup>

Petitioner filed a motion for reconsideration, but was denied in the Resolution dated March 7, 2008.

Hence, the petition raising the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE POLICE OFFICERS ENJOYED THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR DUTY.

II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT

PETITIONER'S WARRANTLESS ARREST WAS VALID.

III

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RIGHT OF THE PETITIONER AGAINST UNLAWFUL SEARCHES AND SEIZURES WAS NOT VIOLATED.

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THE CONVICTION OF THE PETITIONER BASED ON THE TRANSPARENT PLASTIC SACHET CONSIDERING THAT THE SAME WAS THE "FRUIT OF A POISONOUS TREE" AND COULD NOT BE USED FOR ANY PURPOSE IN ANY PROCEEDING.

V

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT BECAUSE PETITIONER SUBMITTED TO THE JURISDICTION OF THE LOWER COURT, THAT HE ALSO WAIVED HIS RIGHT TO OBJECT TO THE ADMISSION OF THE PLASTIC SACHET IN EVIDENCE.<sup>[9]</sup>

Simply stated, petitioner contends that since he was not doing anything illegal at the time of his arrest that would arouse the suspicion of the arresting officers, his subsequent arrest and the ensuing search upon his person was illegal and, therefore, any alleged illegal drugs recovered from him cannot be used in trial against him, without the risk of violating his constitutional right against unlawful searches and seizure.

Petitioner posits that the arresting officers lacked probable cause when they arrested him. He argues that the act of flicking a clear plastic sachet in broad daylight cannot be perceived as an illegal act. Thus, he was not caught *in flagrante delicto* and the resulting warrantless arrest made by the police officers was invalid. Moreover, the confiscated sachet is not admissible in evidence against him being the fruit of the poisonous tree.

The petition is without merit.

It has been consistently ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.<sup>[10]</sup>

In the case at bar, petitioner never objected to the irregularity of his arrest before his arraignment. Moreover, he actively participated in the proceedings before the RTC. Thus, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid