

THIRD DIVISION

[G.R. No. 181861, October 17, 2011]

**RAUL DAVID, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

PERALTA, J.:

For this Court's consideration is the Petition for Review on *Certiorari*^[1] under Rule 45 of the 1997 Rules of Civil Procedure dated April 11, 2008 of petitioner Raul David, assailing the Decision^[2] dated August 31, 2007 and Resolution^[3] dated February 20, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 29746, affirming the Decision^[4] dated April 27, 2005 of the Regional Trial Court, Branch 66, Capas, Tarlac in Criminal Cases No. 1811-1812, finding petitioner Raul David, guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) 9165.

As shown in the records, the following are the antecedent facts:

After receiving an information from a certain Victor Garcia that a person was selling illegal drugs at L. Cortez St., Brgy. San Jose, Concepcion, Tarlac, the Intelligence Operatives of the Concepcion Police Station, Concepcion, Tarlac, conducted a surveillance on the place from May 25, 2003 until June 23, 2003 when they applied for a search warrant which was granted on the same day. Before implementing the search warrant, the police officers conducted another surveillance from June 23 to June 24, 2003 during which, it was observed that several students were going inside the petitioner's house. It was also during that time that the poseur-buyer was able to buy *shabu* (methamphetamine hydrochloride) from the petitioner.

On June 29, 2003, around 1:00 p.m., the search team composed of PO3 Mario Flores, PO2 Henry Balabat, SPO1 Rustico Basco and PO1 Roger Paras, implemented the search warrant with the presence of *Barangay* Captain Antonio Canono. The search team, before conducting the search, sought permission from the petitioner. The two-storey house had two rooms ? one downstairs and the other one upstairs. According to petitioner, the room downstairs was occupied by his brother, Rael David, who was not present during the search, and the room upstairs was occupied by the former.

PO3 Flores found six (6) sachets of marijuana and three (3) plastic sachets of substance suspected to be *shabu* on top of a padlocked cabinet underneath the stairs. During that time, appellant was around two (2) meters away in the sala.

Thereafter, the police operatives took pictures of the items searched and the *barangay* captain signed a certificate of good search. The confiscated items were then turned over to Investigator Simplicio Cunanan of the Concepcion Police Station for investigation.

It was revealed in Chemistry Report No. D-143-2003^[5] of Police Inspector Jessica R. Quilang that the specimens in the three (3) heat-sealed transparent plastic sachets with "RB-A," "RB-B," and "RB-C" markings were positive for 0.327 gram of *shabu*, a dangerous drug, while the specimen in the six (6) heat-sealed plastic sachets with markings "RB-1" up to "RB-6" were positive for 3.865 grams of marijuana.

Thus, appellant was charged in the following Informations:

Criminal Case No. 1811

That on or about 1:00 o'clock in the afternoon of 29 June 2003, at Brgy. San Jose, [M]unicipality of Concepcion, [P]rovince of Tarlac, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and criminally possessed Six (6) plastic heat-sealed sachets containing dried marijuana leaves weighing more or less 3.865 gram[s] without being authorized by law.

CONTRARY TO LAW.^[6]

Criminal Case No. 1812

That on or about 1:00 o'clock in the afternoon of 29 June 2003, at Brgy. San Jose, [M]unicipality of Concepcion, [P]rovince of Tarlac, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and criminally possessed three (3) plastic heat-sealed sachets containing [METHAMPHETAMINE] HYDROCHLORIDE, better known as Shabu, weighing more or less 0.327 gram without being authorized by law.

CONTRARY TO LAW.^[7]

Upon arraignment on August 4, 2003, petitioner, assisted by his counsel, pleaded "not guilty" on both charges.^[8] The trial on the merits ensued, where the facts earlier stated were testified to by the witnesses for the prosecution, namely: PO3 Mario Flores, SPO1 Rustico Basco and Officer Jessica Quilang. On the other hand, the defense presented the testimonies of the petitioner; his brother, Rael David, and his sister-in-law, Lilibeth David, the summary of which follows:

Police operatives arrived at the house of the petitioner in the afternoon of June 29, 2003. PO3 Flores grabbed the petitioner and pulled him through his clothes and announced their authority to search. This prompted the petitioner's sister-in-law, Lilibeth David, to get out of the room in order to prevent the said policeman from grabbing the petitioner. To avoid any implantation of evidence, petitioner took off his shirt. Lilibeth David summoned the *barangay* captain, after which, policemen Basco, Flores and Paras conducted the search which lasted for about thirty (30) minutes, while the other police officer stayed outside with the *barangay* captain.

Police officers Basco and Paras searched the ground floor first and found nothing. Thereafter, police officer Flores allegedly saw marijuana on top of a cabinet inside the room downstairs. Upon the discovery, the item was photographed. Afterwards, petitioner was asked about the whereabouts of the *shabu*. At the time of the search, petitioner's brother, Rael David, was not present. Consequently, petitioner was taken to the police station for custodial investigation and during the interrogation, he was not informed of his right to counsel.

The trial court found the petitioner guilty in its Decision dated April 27, 2005, the dispositive portion of which follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crimes of Possession of 3.865 grams of Marijuana and 0.327 gram of [methamphetamine] hydrochloride (*shabu*), accused is hereby sentenced to suffer the indeterminate penalties of Twelve (12) years & one day, as minimum, to Fourteen years, as maximum, and to pay a fine of Three Hundred Thousand Pesos.

SO ORDERED.^[9]

On appeal, the CA affirmed the conviction with modifications, the dispositive portion of its Decision dated August 31, 2007 reads as follows:

WHEREFORE, the Decision of the Regional Trial Court of Capas, Tarlac, Branch 66 in Criminal Cases No. 1811-1812, finding accused-appellant Raul David y Erese, GUILTY beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165 is hereby AFFIRMED with the following MODIFICATIONS:

1) In Criminal Case No. 1811 for illegal possession of marijuana, he is sentenced to suffer the penalty of Twelve (12) Years and One (1) day, as minimum, to Fourteen (14) Years, as maximum, and to pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00);

2) In Criminal Case No. 1812 for illegal possession of *shabu*, he is sentenced to suffer the penalty of Twelve (12) Years and One (1) day, as minimum, to Fourteen (14) Years, as maximum, and to pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00).

Costs de oficio.

SO ORDERED.^[10]

The CA, in its Resolution^[11] dated February 20, 2008, denied appellant's Motion for Reconsideration,^[12] hence, the present petition where the appellant presented the following issues:

GROUND FOR THE ALLOWANCE OF THE PETITION

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING WITH MODIFICATION THE PETITIONER'S CONVICTION. THE ASSAILED DECISION IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE, AND IF NOT CORRECTED, IT WILL CAUSE GRAVE INJUSTICE AND [IRREPARABLE] INJURY TO HEREIN PETITIONER.

ISSUES PRESENTED FOR RESOLUTION

I

WHETHER THE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

WHETHER THE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THAT THE DANGEROUS DRUGS SUBMITTED FOR LABORATORY EXAMINATION AND PRESENTED AS EVIDENCE BEFORE THE TRIAL COURT WERE THE SAME ONES ALLEGEDLY SEIZED.

III

WHETHER THE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE TRIAL COURT WHICH FOUND THE PETITIONER GUILTY OF A SINGLE CHARGE OF VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

The petition lacks merit.

The arguments presented in the petition are purely factual. This is contrary to what is allowed by law when filing a petition under Rule 45 of the Rules of Court.^[13] Nevertheless, this Court, upon review of the records of this case, finds that the trial court and the CA's findings of facts should be accorded respect.

For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug.^[14]

Based on the evidence presented by the prosecution, it was proven that all the elements for illegal possession of dangerous drugs are present in this case. PO3 Mario Flores, during the search in the house of petitioner, found six (6) sachets of *marijuana* and three (3) sachets of *shabu*, both classified as dangerous drugs under the pertinent law, on top of a padlocked cabinet underneath the stairs. Thus, PO3

Flores testified:

- Q: According to you, you were able to discover or find six (6) teabags of marijuana, where did you see these teabags?
- A: On top of their *aparador*, sir.
- Q: And where is that *aparador* situated?
- A: Underneath the stairs, sir.
- Q: And according to you also, you found three (3) plastic bags of *shabu*, where did you discover these three (3) plastic sachets?
- A: Also on top of the *aparador*, sir.
- Q: The same *aparador* where you discovered the six (6) teabags of *marijuana*?
- A: Yes, sir.^[15]

The above testimony was corroborated by SPO1 Rustico Basco, who said:

- Q: Upon entering the house, what did you do there?
- A: Because we were already allowed by Lilibeth David to conduct the search, we started doing so, sir.
- Q: By the way, who among your companions, or who among you in the group, actually entered the house?
- A: Myself, PO3 Mario Flores and PO1 Roger Paras, sir.
- COURT:
- Q: At the time, where was the Barangay Captain?
- A: He was then inside the house, your Honor, but he did not conduct the search.
- Q: Who personally, what part of the house did he search?
- A: I went upstairs, sir.
- Q: How about your companions Flores and Paras?
- A: PO3 Flores conducted the search downstairs, while PO1 Paras was with me, sir.
- COURT:
- Q: At the time when you were upstairs, where was Raul David?
- WITNESS:
- A: He was downstairs, your Honor, seated on the sofa beside Lilibeth.
- Q: How about the wife of Raul David?
- A: The wife was near the stairs, your Honor.
- Q: When you entered the elevated room, who were your companions?
- A: PO1 Roger Paras and Lilibeth David were the ones who went with me when I conducted the search upstairs since the room is only small.
- FISCAL Llobrera:
- Q: What happened to your search?
- A: PO3 Mario Flores was able to find six sachet(s) of marijuana, three sachet(s) of shabu.
- Q: Items were discovered by whom?
- A: By Officer Flores and PO1 Paras, sir.^[16]