

THIRD DIVISION

[G.R. No. 182010, August 25, 2010]

SUSAN ESQUILLO Y ROMINES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Via petition erroneously captioned as one for Certiorari, Susan Esquillo y Romines (petitioner) challenges the November 27, 2007 Decision^[1] of the Court of Appeals in CA-G.R. CR No. 27894 which *affirmed* the July 28, 2003 Decision of Branch 116 of the Regional Trial Court (RTC) of Pasay City in Criminal Case No. 02-2297 convicting Susan Esquillo y Romines (petitioner) for violating Section 11, Article II of Republic Act (R.A.) No. 9165 (the *Comprehensive Dangerous Drugs Act of 2002*) - possession of methamphetamine hydrochloride or *shabu*.

The accusatory portion of the Information dated December 12, 2002 indicting petitioner reads:

That on or about the 10th day of December, 2002 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control 0.1224 gram of Methylamphetamine Hydrochloride (shabu).^[2] (underscoring supplied)

At the trial, petitioner admitted the genuineness and due execution of the documentary evidence of the prosecution, particularly the Dangerous Drugs and Toxicology Reports issued by National Bureau of Investigation (NBI) Forensic Chemist Antonino de Belen (de Belen),^[3] subject to her defenses, to thus dispense with the testimony of de Belen.

De Belen recorded the results of the laboratory examination of the contents of the sachet in Dangerous Drugs Report No. DD-02-613,^[4] viz:

x x x x

SPECIMEN:

White crystalline substance contained in a heat-sealed transparent plastic sachet marked "SRE" and further placed in bigger marked transparent plastic sachet.

x x x x

F I N D I N G S:

Net Weight of specimen = 0.1224 gram

Examinations conducted on the above-mentioned specimen gave **POSITIVE RESULTS** for METHAMPHETAMINE HYDROCHLORIDE, a dangerous drug. x x x

x x x x (emphasis and underscoring supplied)

With respect to the examination of the urine of petitioner, de Belen recorded the results thereof in Toxicology Report No. TDD-02-4128^[5] reading:

x x x x

SPECIMEN:

Urine of one SUSAN ESQUILLO Y ROMINES. 37 y/o, married, jobless, of no. 1159 Bo. Bayanihan, Maricaban, Pasay City.

x x x x

F I N D I N G S:

Volume of urine = 60 mL.
pH of urine = 5.0
Appearance = yellow orange, turbid

Examinations conducted on the above-mentioned specimen gave **POSITIVE RESULTS** for the presence of METHAMPHETAMINE HYDROCHLORIDE, and its metabolite AMPHETAMINE. x x x

x x x x (emphasis and underscoring supplied)

Based on its documentary evidence and the testimony of PO1 Alvin Cruzin (PO1 Cruzin),^[6] a member of the Pasay City Police Station Special Operations Group (SOG), the prosecution established its version as follows:

On the basis of an informant's tip, PO1 Cruzin, together with PO2 Angel Aguas (PO2 Aguas), proceeded at around 4:00 p.m. on December 10, 2002 to Bayanihan St., Malibay, Pasay City to conduct surveillance on the activities of an alleged notorious snatcher operating in the area known only as "Ryan."

As PO1 Cruzin alighted from the private vehicle that brought him and PO2 Aguas to the target area, he glanced in the direction of petitioner who was standing three meters away and seen placing inside a yellow cigarette case what appeared to be a

small heat-sealed transparent plastic sachet containing white substance. While PO1 Cruz was not sure what the plastic sachet contained, he became suspicious when petitioner started acting strangely as he began to approach her. He then introduced himself as a police officer to petitioner and inquired about the plastic sachet she was placing inside her cigarette case. Instead of replying, however, petitioner attempted to flee to her house nearby but was timely restrained by PO1 Cruzin who then requested her to take out the transparent plastic sachet from the cigarette case.

After apprising petitioner of her constitutional rights, PO1 Cruzin confiscated the plastic sachet^[7] on which he marked her initials "SRE." With the seized item, petitioner was brought for investigation to a Pasay City Police Station where P/Insp. Aquilino E. Almanza, Chief of the Drug Enforcement Unit, prepared a memorandum^[8] dated December 10, 2002 addressed to the Chief Forensic Chemist of the NBI in Manila requesting for: 1) a laboratory examination of the substance contained in the plastic sachet to determine the presence of *shabu*, and 2) the conduct of a drug test on the person of petitioner. PO1 Cruzin and PO2 Aguas soon executed a Joint Affidavit of Apprehension^[9] recounting the details of their intended surveillance and the circumstances leading to petitioner's arrest.

Repudiating the charges, petitioner^[10] gave the following tale:

At around 1:00 to 2:00 p.m. of the date in question, while she was sick and resting at home, several policemen in civilian garb with guns tucked in their waists barged in and asked her whether she knew one named "Ryan" who they claimed was a notorious snatcher operating in the area, to which she replied in the negative. The police officers then forced her to go with them to the Pasay City Police Station-SOG office where she was detained.

While she was under detention, the police officers were toying with a wallet which they claimed contained *shabu* and recovered from her.

In fine, petitioner claimed that the evidence against her was "planted," stemming from an all too obvious attempt by the police officers to extort money from her and her family.

Two other witnesses for the defense, petitioner's daughter Josan Lee^[11] and family friend Ma. Stella Tolentino,^[12] corroborated petitioner's account. They went on to relate that the police officers never informed them of the reason why they were taking custody of petitioner.

By Decision^[13] of July 28, 2003, the trial court found petitioner guilty of illegal possession of Methylamphetamine Hydrochloride or *shabu*, disposing as follows:

WHEREFORE, in light of the foregoing premises and considerations, this Court hereby renders judgment finding the accused Susan Esquillo y Romines GUILTY beyond reasonable doubt of the crime of Violation of par. 3 of Section 11, Article II of R. A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and absent any modifying circumstance to either aggravate or mitigate the criminal liability of the same accused, and furthermore, applying the provisions of the

Indeterminate Sentence Law, the same accused is hereby sentenced to suffer the penalty of imprisonment ranging from Eight (8) years and One (1) day, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day, as maximum, and to pay a fine of P350,000.00, Philippine Currency, plus costs.

The 0.1224 gram of Methylamphetamine Hydrochloride or "Shabu" involved in this case is declared forfeited in favor of the Government and ordered to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper and appropriate disposition in accordance with the provisions of the law.^[14] (underscoring supplied)

Before the Court of Appeals, appellant questioned as illegal her *arrest* without warrant to thus render any evidence obtained on the occasion thereof inadmissible.

In its challenged Decision affirming petitioner's conviction, the appellate court, citing *People v. Chua*,^[15] held that the police officers had probable cause to search petitioner under the "stop-and-frisk" concept, a recognized exception to the general rule prohibiting warrantless searches.^[16]

Brushing aside petitioner's defense of frame-up, the appellate court noted that petitioner failed to adduce evidence that the arresting officers were impelled by any evil motive to falsely charge her, and that she was even found positive for substance abuse.

In her present petition, petitioner assails the appellate court's application of the "stop-and-frisk" principle in light of PO1 Cruzin's failure to justify his suspicion that a crime was being committed, he having merely noticed her placing something inside a cigarette case which could hardly be deemed suspicious. To petitioner, such legal principle could only be invoked if there were overt acts constituting unusual conduct that would arouse the suspicion.^[17]

Respondent, through the Office of the Solicitor General, prays for the affirmance of the appealed decision but seeks a modification of the penalty to conform to the pertinent provisions of R.A. No. 9165.

Appellant's conviction stands.

Petitioner did not question early on her warrantless arrest - before her arraignment. Neither did she take steps to quash the Information on such ground. Verily, she raised the issue of warrantless arrest - as well as the inadmissibility of evidence acquired on the occasion thereof- for the first time only on appeal before the appellate court.^[18] By such omissions, she is deemed to have waived any objections on the legality of her arrest.^[19]

Be that as it may, the circumstances under which petitioner was arrested indeed engender the belief that a search on her was warranted. Recall that the police officers were on a surveillance operation as part of their law enforcement efforts. When PO1 Cruzin saw petitioner placing a plastic sachet containing white crystalline substance into her cigarette case, it was in his plain view. Given his training as a

law enforcement officer, it was instinctive on his part to be drawn to curiosity and to approach her. That petitioner reacted by attempting to flee after he introduced himself as a police officer and inquired about the contents of the plastic sachet all the more pricked his curiosity.

That a search may be conducted by law enforcers only on the strength of a valid search warrant is settled. The same, however, admits of exceptions, viz:

(1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "**stop and frisk**" operations.^[20] (emphasis underscoring supplied)

In the instances where a warrant is not necessary to effect a valid search or seizure, the determination of what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, taking into account, among other things, the uniqueness of the circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.^[21]

Elucidating on what includes "stop-and-frisk" operation and how it is to be carried out, the Court in *People v. Chua*^[22] held:

. . . the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. The police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons (or contraband) concealed about him. It should therefore be emphasized that a search and seizure should precede the arrest for this principle to apply.

This principle of "stop-and-frisk" search was invoked by the Court in *Manalili v. Court of Appeals*. In said case, the policemen chanced upon the accused who had reddish eyes, walking in a swaying manner, and who appeared to be high on drugs. Thus, we upheld the validity of the search as akin to a "stop-and-frisk." In *People v. Solayao*, we also found justifiable reason to "stop-and-frisk" the accused after considering the following circumstances: the drunken actuations of the accused and his companions, the fact that his companions fled when they saw the policemen, and the fact that the peace officers were precisely on an intelligence mission to verify reports that armed persons w[h]ere