

## FIRST DIVISION

[ G.R. No. 132371, April 09, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO  
SIMBAHON Y QUIATZON, APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

On April 22, 1995, the Regional Trial Court of Manila, Branch 23, issued Search Warrant No. 95-100,<sup>[1]</sup> commanding the search in the premises of 771 Roxas Street, Sampaloc, Manila, owned by appellant Danilo Simbahon y Quiatzon, for alleged violation of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and Presidential Decree No. 1866, penalizing the illegal possession of firearms.

The search led to the prosecution and conviction of appellant for violation of Section 8, Article III of RA 6425 by the Regional Trial Court of Manila, Branch 9, in Criminal Case No. 95-142514.

The facts as narrated by the trial court are as follows:

Stripped of their immaterialities, the prosecution's evidence tends to establish that about 3:00 o'clock in the early morning of April 23, 1995, police operatives, together with the chairman of the barangay which had jurisdiction over the place, and a member of media, served Search Warrant No. 95-100, Exhibit "F", issued by Hon. Judge William Bayhon on April 22, 1995, upon Danilo Simbahon, Maricar Morgia, and Charito Mangulabnan at their residence at No. 771 Roxas Street, Sampaloc, Manila, that although at first they were met with slight resistance, the team nevertheless gained entry into the house and, rounding up all the occupants found therein, herded them to the sala. Thereafter, they began conducting a search of all the rooms in accordance with the search warrant; that in the room occupied by live-in partners Danilo Simbahon and Charito Mangulabnan, the police officers found under the bed a brick of dried flowering tops suspected to be marijuana, weighing 856.8 grams, wrapped in a newspaper and placed inside a plastic (Exhibit "C") and a black bullet pouch containing six (6) live ammunitions, while in the room occupied by Maricar Morgia, the operative recovered a green plastic pencil case containing nine (9) pieces of small transparent sachets with white crystalline substance suspected to be *shabu* (Exhibit "B-1") and five (5) pieces of .38 caliber live ammunitions. When lastly the living room was searched, the policemen found therein a red and black synthetic case. Inside the case were three (3) pieces of small transparent plastic sachets containing suspected *shabu* (Exhibit "B-2"), some sniffing paraphernalias such as improvised burner, tooter (Exhibit "B-6"), scissors

(Exhibit "B-8"), eight (8) strips of aluminum foil (Exhibit "B-5), plastic sachets with residue (Exhibit "B-3"), and empty plastic sachets (Exhibit "B-4"). After the search, an inventory receipt (Exhibit "G") of the items seized from the house of the suspects was prepared and, together with an affidavit of orderly search (Exhibit "H"), was signed by Danilo Simbahon; that the three accused were then arrested and brought to the precinct for investigation. The ammunitions recovered were sent to the Firearms and Explosive Unit, Camp Crame, Quezon City, to determine their identities and on September 22, 1995 and August 6, 1996, certifications were issued by said office to the effect that accused Maricar Morgia and Danilo Simbahon were not licensed/registered firearm/ammunitions holders of any kind and caliber. The other evidence recovered were brought to the National Bureau of Investigation for laboratory examination and were found to be positive for *shabu* and marijuana as evidenced by Exhibit "E".

For his part, Danilo Simbahon denied the allegations against him and gave his version of the incident as follows:

That in the early morning of April 23, 1995, he was sleeping, together with his wife and children, in one of the rooms in their house located at No. 771 Roxas Street, Sampaloc, Manila, when some male persons who introduced themselves as police officers but were not in uniform forcibly pushed open the door of their house and just barged in; that all of them were herded by the police officers to the sala from their room but he and his wife, Charito, were not aware if something was indeed taken from the other rooms; that thereafter they were all brought, together with another female companion, to the headquarters and he (Simbahon) was investigated but despite his request, the investigation was not reduced into writing. Simbahon denied that a leather bag containing the evidence marked as Exhibits "B-1" to "B-11" and a belt bag with six (6) live ammunitions were found under their bed claiming that they have no bed in their room as they were sleeping only on the floor. He admitted, however, that they were shown a document or paper by the police officers but the same was never handed to him inspite of his request and that one of the policemen also showed them a taped package saying that it was recovered from the room of Maricar Morgia but the contents of the taped package were never shown to them despite demands. He likewise stated that the only reason he was charged by the police was he refused to accede to their demand of P20,000.00 in exchange for his release.<sup>[2]</sup>

Separate informations were filed against Danilo Simbahon, Charito Mangulabnan, and Maricar Morgia for violation of RA 6425, as amended, and PD 1866, as amended, before the Regional Trial Court of Manila, Branch 9, docketed as Criminal Cases Nos. 95-142512 to 95-142515.

The three accused were arraigned on June 2, 1995 and respectively pleaded not guilty. Thereafter, upon motion of the prosecution, the charges against Charito Mangulabnan were dismissed on the ground that she had no participation in the crimes charged against her.<sup>[3]</sup> The cases were then consolidated and jointly tried against Danilo Simbahon and Maricar Morgia. After trial, the court *a quo* rendered a decision, the dispositive portion of which states:

WHEREFORE, for the failure of the prosecution to prove the guilt of the accused Maricar Morgia y Mangulabnan on evidence beyond reasonable doubt, both in Criminal Case No. 95-142512 and in Criminal Case No. 95-142513, she is hereby ACQUITTED of the charges against her in the above mentioned criminal cases. The warrant of arrest issued against her dated November 15, 1995 is hereby ordered recalled.

Likewise, for failure also of the prosecution to prove the guilt of accused Danilo Simbahon y Quiatzon beyond reasonable doubt, said accused is hereby ACQUITTED of the charge against him in Criminal Case No. 95-142515.

However, the Court is convinced that there is proof beyond reasonable doubt that accused Danilo Simbahon y Quiatzon committed the crime charged against him in Criminal Case No. 95-142514 thereby finding him guilty thereof and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) and to pay the cost.

x x x                      x x x                      x x x

SO ORDERED.<sup>[4]</sup>

In view of the imposition of the penalty of *reclusion perpetua*, appellant interposed this direct appeal raising the following issues:

I

WHETHER OR NOT THE LOWER COURT ERRED IN RULING THAT THE PROSECUTION PROVED BEYOND REASONABLE DOUBT THAT APPELLANT COMMITTED A VIOLATION OF SECTION 8 OF REPUBLIC ACT NO. 6425 (1972).

II

WHETHER OR NOT THE LOWER COURT ERRED IN RULING THAT SEARCH WARRANT NO. 95-100 WAS VALID.

III

WHETHER OR NOT THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION IN FAILING TO SUSPEND THE APPELLANT'S ARRAIGNMENT AFTER GRANTING A REINVESTIGATION.

IV

WHETHER OR NOT THE PUBLIC ATTORNEY WAS GROSSLY NEGLIGENT IN FAILING TO CHALLENGE THE VALIDITY OF THE SEARCH CONDUCTED PRIOR TO THE ARRAIGNMENT OF THE APPELLANT.

Appellant contends that the prosecution failed to prove that he was caught *in flagrante delicto* in possession of the brick of marijuana flowering tops. He cites the

testimony of SPO2 Nelson Estuaria that he never admitted ownership or possession of the seized items, particularly the marijuana, and that the same could belong to any one of the occupants of the house that was searched.<sup>[5]</sup>

On the other hand, the Solicitor General argues that the positive testimony of SPO2 Nelson Estuaria that marijuana was found inside the room of accused-appellant prevails over his mere denial.<sup>[6]</sup>

In all prosecutions for violation of The Dangerous Drugs Act, the existence of the dangerous drug is condition *sine qua non* for conviction. The dangerous drug is the very *corpus delicti* of the crime.<sup>[7]</sup>

We find that the prosecution's evidence on the identification of the marijuana allegedly seized from appellant is demonstrably weak, unreliable and unconvincing. The prosecution failed to identify that the marijuana presented in court was the very same marijuana allegedly seized from appellant.<sup>[8]</sup> Such failure to identify the *corpus delicti* of the crime charged against the appellant or to establish the chain of custody cannot but inure to the detriment of the prosecution's case.<sup>[9]</sup> SPO2 Nelson Estuaria testified in this wise:

FISCAL SULIDUM:

Q       What happened after you have searched the room of Danilo Simbahon?

Witness

A       I found several specimens, ma'am.

FISCAL SULIDUM:

Q       I am showing to you a brick of flowering tops dried leaves of marijuana, will you please tell this Honorable Court what is the relation of this brick of marijuana to the marijuana which you recovered from the room of Danilo Simbahon?

Witness

A       This is the same brick of marijuana, ma'am.

FISCAL SULIDUM:

Q       How do you know that this marijuana was recovered from the room of Danilo Simbahon?

Witness

A       It was marked by the investigator, ma'am.

COURT:

Q       How about you, did you put your own marking in order to identify that this was recovered from the room of Danilo Simbahon?

Witness

A       None, Your Honor. I did not put my marking.