

SECOND DIVISION

[G.R. No. 121003, April 20, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO CRESPO POBLETE, ALIASES: "BOY CRESPO," "BOY
POBLETE," "BOY CORTISTA" AND "BOY NARCOM," ACCUSED-
APPELLANT.**

D E C I S I O N

PUNO, J.:

Accused ALBERTO CRESPO y POBLETE was charged and convicted with illegal possession of drugs and ammunitions which were found in his house by virtue of a search conducted by the police.

The Information^[1] charging him with violation of Section 8, Article II, R.A. 6425, as amended, for illegal possession of prohibited drugs, reads:

"That on or about September 14, 1993, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did then and there willfully, unlawfully, feloniously and knowingly have in his possession and control (one) stick of flowering tops of Marijuana, wrapped in a(n) aluminum foil.

"Contrary to law."

The Information^[2] charging accused with violation of Section 16, Article III, R.A. 6425, as amended, for illegal possession of regulated drugs, reads:

"That on or about September 14, 1993, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did then and there willfully, unlawfully, feloniously and knowingly have in his possession and control thirteen (13) pieces of aluminum foils containing Methamphetamine Hydrochloride, also known as "SHABU", without the corresponding license or prescription.

"Contrary to law."

The Information^[3] charging accused with violation of P.D. No. 1866 for illegal possession of ammunitions, reads:

"That on or about September 14, 1993, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did then and there willfully, unlawfully, feloniously and knowingly have in his possession and control four (4) live ammunitions for (a) .22 caliber (handgun).

"Contrary to law."

At the arraignment, accused pled not guilty. Trial ensued.

The People's case is founded mainly on the testimonies of the police officers who served the search warrants on accused and barangay captain TIBURCIO LUNA who was one of those who witnessed the search.

The records show that a team from the Intelligence and Operations Division of the PNP Cavite City conducted a surveillance on accused ALBERTO CRESPO. After their surveillance confirmed that accused was selling shabu, the team, headed by Asst. Chief SPO2 Amorico Alvarez, applied for warrants to search accused's house for illegal drugs and ammunitions.^[4] RTC Judge Rolando D. Diaz issued the search warrants on September 14, 1993 after examining the applicant and his witnesses, SPO1 Facundo Baricuatro, Jr. and PO2 Fernando Lopez.^[5]

At about 1:00 p.m. of the same day, police officers from the Intelligence Operations Division of the PNP Cavite City went to accused's house in Caridad, Cavite City, to serve the search warrants. The team was headed by Chief of Police Inspector Victor Manansala, with PO1 SPO1 Facundo Baricuatro, Jr., PO3 Vicente Abad, PO2 Fernando Lopez and PO2 Reginaldo Dela Cruz, among others, as members. Before proceeding to accused's house, the police officers informed barangay captain TIBURCIO LUNA and barangay councilor QUIRINO DEL ROSARIO about the search warrants and requested them to witness the search.^[6]

Accused's house is small and has only one bedroom. A wooden divider, about 3 feet high, separated the bedroom from the sala. standing by the door of the living room, one could see the entire house. When the police officers arrived at accused's house, they identified themselves, stated their purpose and showed the warrants to accused. A heated altercation erupted between accused and SPO1 Facundo Baricuatro, Jr. as the former questioned the search of his house. The police were forced to handcuff accused to his son Regner^[7] who, the police discovered, had an outstanding warrant of arrest against him involving another case.^[8]

As the room was small and there was barely enough space for the police officers and the barangay officials, accused and his family were requested to sit in the sala. they faced the bedroom where they could see the search being conducted. Police officers Abad and dela Cruz began the search in the bedroom. PO1 Facundo Baricuatro, Jr. stayed in the sala and served as recorder of the items which the search may yield. The two barangay officials served as witnesses.^[9]

There were two (2) cabinets in the bedroom. PO3 Abad searched the small cabinet containing clothes to the bed to make it easier for barangay councilor to witness the search. The clothes did not yield anything. PO3 Abad returned to the cabinet and opened its small drawer. He found two .22 caliber bullets, a tooter and an aluminum foil suspected to contain marijuana. He gave the items to PO1 Baricuatro, Jr. for recording, There were some pentel pens left inside the drawer.^[10]

PO2 dela Cruz also conducted a search in the bedroom. He found two pieces of .22 caliber bullets in the pocket of a coat hanging inside the other cabinet. He also found a pentel pen containing 13 pieces of aluminum foil with shabu inside its drawer. He turned over the articles to PO1 Baricuatro, Jr. for recording. Dela Cruz' search was witnessed by barangay captain Luna.^[11]

All the illicit articles recovered from accused's house were confiscated and recorded in the Receipt of Properties Seized which was signed by barangay captain Luna and councilor del Rosario as witnesses.^[12] The police officers arrested accused and his son, Regner, who has an outstanding warrant of arrest for slight physical injuries.^[13] The confiscated aluminum foils were forwarded to the National Bureau of Investigation for examination of their contents. NBI Forensic Chemist EMILIA ROSALDES found that one of the foils contained a stick of flowering tops of marijuana (1.4463 grams), while the 13 aluminum foils contained metamphetamine hydrochloride (1 gram).^[14]

For his part, accused denied owning the illicit items found by the police in his house. He charged that the policemen were lying when they testified that barangay captain Luna was present in the bedroom during the search.^[15] He claimed that the bedroom search of PO3 Abad, as witnessed by councilor del Rosario, was negative. He explained that the pens found in the drawer were all Snowman pentel pens used by his daughter in school. He alleged that the black Pilot pen and thirteen (13) pieces of aluminum foil containing shabu discovered by PO2 dela Cruz did not belong to him.^[16]

On cross-examination, accused admitted that he knows councilor del Rosario as he used to be their barangay captain. He also admitted that he has been previously arrested in another drug case.^[17]

Councilor QUIRINO DEL ROSARIO testified for the accused. He declared that the barangay captain was outside accused's house and did not personally witness the search. On his part, he stood behind PO3 Abad to see how he would conduct the search. PO3 Abad sifted the clothes in the laundry basket but found nothing. He searched one of the two cabinets and examined the clothes therein. He searched the drawer inside the cabinet but found only some papers and pens. He proceeded to check the other cabinet. PO2 dela Cruz entered the bedroom and went to the cabinet they earlier inspected. After a while, dela Cruz announced that he found two bullets and a foil containing marijuana inside the pocket of the coat hanging in the cabinet. Thereafter, dela Cruz again declared that he may have found something inside a pen. Its contents were poured out and the police suspected them to be shabu. However, councilor del Rosario could not tell whether the pen was one of those they earlier found in the drawer.^[18]

The defense then presented barangay captain TIBURCIO LUNA to confirm the testimony of councilor del Rosario. However, Luna firmly asserted that he was standing by the door of the bedroom during the search. He stressed that from that position, he witnessed the entire search conducted by the police.^[19]

MARILYN CRESPO, the 13-year old daughter of accused, testified that in September 1993, she owned three pentel pens: a yellow, green and blue Snowman pen she used in her Science and Home Economics classes. She kept these pens in the cabinet in their bedroom. These pens were not confiscated by the police. She averred that the Black Pilot pen taken by the police from their house does not belong to her.^[20]

On December 20, 1994, Judge Rolando D. Diaz^[21] found accused guilty of the crimes charged.^[22] The dispositive portion of his Decision reads:

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