

EIGHTEENTH DIVISION

[CA-G.R. CEB-CR. NO. 01991, February 26, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLITO D. OYANGORIN, ACCUSED-APPELLANT.**

D E C I S I O N

LOPEZ, J.:

The Case

Before this Court is an appeal filed under Rule 122 of the Revised Rules of Criminal Procedure which seeks to reverse and set aside the Decision^[1] of the Regional Trial Court (RTC), Branch 13 of Cebu City, dated 25 May 2012, finding Accused-Appellant guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002. The decretal portion of the assailed Decision reads:

"WHEREFORE, judgment is hereby rendered finding accused Carlito D. Oyangorin GUILTY beyond reasonable doubt of violating Sec. 11, Article II of RA 9165 and sentences him to twelve (12) years and one (1) day to thirteen (13) years of imprisonment plus fine in the amount of P300,000.00.

The packet of shabu weighing 0.01 gram mentioned in the information and marked as Exhibit "A" for the prosecution is hereby ordered confiscated and destroyed.

SO ORDERED."

FACTUAL ANTECEDENTS

The Prosecution charged Accused-Appellant before the trial court with violation of Section 11, Article II of Republic Act (R.A.) No. 9165 in an Information^[2] that reads:

"That on or about the 2nd day of June 2009, at about 6:55 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control one (1) heat sealed transparent plastic sachet of white-crystalline substance weighing 0.01 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW."

When arraigned, Accused-Appellant, assisted by his counsel, pleaded not guilty to the crime charged.^[3] To prove its case, the prosecution presented two (2) witnesses, namely: Raul Pelostratos and Benigno Inso, both barangay tanods of Pahina Central, Cebu City. On the other hand, only the Accused-Appellant testified on his behalf.

The Version of the Prosecution

The Prosecution's version of the events, which was primarily lifted from the testimonies of Raul Pelostratos and Benigno Inso, is summarized as follows:

On 2 June 2009, at around 6:55 in the evening, Barangay Tanods (B/T) Raul Pelostratos (Pelostratos) and Benigno Inso (Inso) were conducting a preventive foot patrol along Sanciango Street, Pahina Central, Cebu City.^[4] They were approached by a female concerned citizen and the latter informed them that there was a man in *maong* shorts and white t-shirt carrying a bladed weapon about 20 to 30 meters away from their location.^[5]

They immediately proceeded to the reported area where they instantly spotted a man, later on identified as Accused-Appellant, fitting the description given by the female informant with his right hand holding a bladed weapon. Before they (Pelostratos and Inso) could approach Accused-Appellant, the latter threw the bladed weapon away from him. This prompted the barangay tanods to move towards Accused-Appellant. After introducing themselves as barangay tanods, they arrested him and checked his outer clothing for other possible weapon. He was then brought to the barangay hall for further investigation.^[6]

At the barangay hall, Accused-Appellant was searched anew where a plastic sachet containing white crystalline substance was recovered from the right pocket of his *maong* shorts. This incident prompted B/T Pelostratos and Inso to bring Accused-Appellant to Carbon Police Station 5 together with the subject specimen after wrapping the same with paper. At the police station, the subject specimen, which was wrapped in paper, was turned over to the desk investigator who marked the same with Accused-Appellant's initials, "CDO-1". A Letter Request^[7] for laboratory examination was prepared by Police Inspector Henry P. Eguia. Armed with the letter request, B/T Pelosteros and Inso brought the subject specimen to the crime laboratory for examination.

The result of the laboratory examination conducted by Police Senior Inspector Ryan Ace M. Sala revealed that the white crystalline substance recovered from Accused-Appellant tested positive for methamphetamine hydrochloride, also known as *shabu*, a dangerous drug.^[8]

The Version of the Defense

Accused-Appellant, on the other hand, gave a different version of the events. He narrated that on 2 June 2009, he went to Carbon Public Market, Cebu City, to visit his cousin, nephew and niece.^[9] After his visit, he immediately went home. Upon reaching Leon Kilat Street, he was blocked by three (3) barangay tanods.^[10] He was allegedly confronted about being a robbery suspect.^[11] He told the barangay

tanods that he just came from his cousin's house. He was frisked at the place of his arrest and a knife was recovered in his possession.^[12] He was then brought to the barangay hall where he was again frisked. When asked why he was carrying a knife, he answered that it was for his own protection.^[13] Accused-Appellant denied the allegation that a pack of shabu was found in his possession.^[14]

Ruling of the Trial Court

On 25 May 2012, the trial court rendered the assailed Decision finding Accused-Appellant guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) 9165. The trial court ruled that the seizure of the pack of *shabu* from Accused-Appellant's possession is justified since it was made as an incident to a lawful arrest. It added that Accused-Appellant consented to the conduct of the search on his person as he did not oppose or protest the same. Moreover, all the elements of the crime charged are present in the instant case, according to the trial court.

Aggrieved, Accused-Appellant, through counsel Public Attorney's Office (PAO), filed a Notice of Appeal^[15]. On 10 July 2013, Accused-Appellant filed his Appellant's Brief^[16] raising the following assignments of error, to wit:

I

THE COURT A QUO ERRED IN RULING THAT THE WARRANTLESS SEARCH WAS VALID.

II

THE COURT A QUO FAULTED IN AFFIRMING THE IDENTITY AND CHAIN OF CUSTODY OF THE SEIZED SHABU DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT 9165.

Considering that the above assigned errors are interrelated, these will be discussed jointly.

In his brief, Accused-Appellant argued that there was no valid warrantless search. According to him, in searches incidental to a lawful arrest, the search must be made immediately after the arrest. In his case, however, he argued that after he was arrested for violation of Batas Pambansa Blg. 6, he was never frisked at the place of arrest but he was brought to the barangay hall and a late search was conducted. With respect to the chain of custody of the seized contraband, Accused-Appellant argued that it is not admissible in evidence against him since the strict requirements under Paragraph 1, Section 21, Article II of RA 9165 was not followed by the arresting officers.

The Office of the Solicitor General (OSG) argued in its Brief^[17] that all the elements of illegal possession of dangerous drugs are present and were proven beyond reasonable doubt. Moreover, the OSG added that the search conducted over the person of Accused-Appellant was valid as it was incident to a lawful arrest. With respect to the admissibility of the seized contraband, the OSG argued that although the subject specimen was not marked by the apprehending officers in the presence

of the persons required by law, nonetheless, its integrity and evidentiary value was preserved.

RULING

We resolve to ACQUIT Accused-Appellant for the prosecution's failure to prove his guilt beyond reasonable doubt.

Search and Seizure; Exceptions

Accused-Appellant assails the legality and validity as evidence of the sachet of *shabu* that was recovered in his possession. He contended that the search conducted on his person by the barangay tanods, which yielded the sachet of *shabu*, was unlawful since it was not made immediately after his arrest.

Accused-Appellant's contentions do not hold water.

As a rule, for search to be reasonable under the law there must be a search warrant validly issued by an appropriate judicial officer. However, this rule is not absolute and inflexible for jurisprudence has recognized several exceptions to the search warrant requirement.^[18] Among these exceptions is a search incidental to a lawful arrest.^[19] This is also expressly recognized under Section 13, Rule 126 of the Revised Rules of Court which provides:

Section 13. Search incident to lawful arrest. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

For this rule to apply, it is imperative that there be a prior valid arrest.^[20] Although, generally, a warrant is necessary for a valid arrest, the Rules of Court provides the exceptions therefor, to wit:

Sec. 5. *Arrest without a warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.^[21] xxx xxx
(Emphasis supplied.)

The warrantless arrest of Accused-Appellant falls under paragraph (a) of the above-mentioned provision, also known as "*in flagrante delicto*" arrest, and is therefore,

valid. To constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.^[22]

In the case at bar, Accused-Appellant was lawfully arrested by the barangay tanods after the latter saw him to be in possession of a bladed weapon for which he was subsequently charged for violation of BP Blg. 6. He was actually committing a crime in the presence of the barangay tanods, thus, his warrantless arrest is justified. As a consequence of his arrest, he was immediately searched for other dangerous weapons which he may have been concealing at that time. The purpose of allowing a warrantless search and seizure incident to a lawful arrest is "to protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach".^[23] The search is not only limited to dangerous weapons but covers anything which may have been used or constitute proof in the commission of an offense.

The search conducted on Accused-Appellant at the place of his arrest was limited only to his outer clothing. Thereafter, he was brought to the barangay hall for further investigation where a more thorough search was conducted by the barangay tanods. It bears stressing that at the time the search was conducted, Accused-Appellant never objected nor opposed the same. He voluntarily submitted to the search. In fact, during his direct examination he testified that he agreed to go to the barangay hall together with the barangay tanods and he did not offer any resistance.^[24]

Given that the arrest was valid, the subsequent search on Accused-Appellant's person based on that arrest is also valid.

Notwithstanding the foregoing, Accused-Appellant's acquittal is in order for failure of the prosecution to establish the chain of custody of the seized item.

Constitutional Presumption of Innocence; Weight of Evidence

The Constitution guarantees the accused's presumption of innocence until proven guilty. It provides that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.^[25]

Section 2, Rule 133 of the Rules of Court likewise states that, in a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Chain of Custody over the Seized Contraband; Not Established

Accused-Appellant argued that the procedure set forth under Section 21 of Republic Act No. 9165 was not followed. He specifically harps on the failure of the arresting