

## SEVENTH DIVISION

[ CA-G.R. CR NO. 33740, May 30, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. TIRSO VILLARIVERA Y SALUMBIDES, ACCUSED-APPELLANT.**

### DECISION

**TIJAM, J.:**

On appeal is the Decision<sup>[1]</sup> promulgated on April 5, 2010 by the Regional Trial Court [RTC], Branch 55, Lucena City, in Criminal Case No. 2003-779 convicting Accused-Appellant for illegal possession of dangerous drugs, thereby sentencing him as follows:

"WHEREFORE, judgment is hereby rendered finding the accused Tirso Villarivera y Salumbides guilty of violation of Section 11, Article II of Republic Act No. 9165 and is sentenced to the indeterminate penalty of twelve (12) years and one (1) day[s], as minimum, to fourteen (14) years, eight (8) months, and one (1) day, as maximum, and to pay a fine of three hundred thousand pesos (Php3000,000.00).

The two plastic sachets of shabu is hereby confiscated in favor of the government and the Branch Clerk of this Court is hereby directed to forward them to the PDEA for its proper disposition.

**SO ORDERED."**

The facts and antecedent proceedings, as borne by the records, are as follows:

On a plea of not guilty,<sup>[2]</sup> Accused-Appellant was tried for violation of Section 11, Article II, Republic Act No. 9165 [R.A. No. 9165], otherwise known as the "*Comprehensive Dangerous Drugs Act of 2002*", upon an Information,<sup>[3]</sup> the accusatory portion of which reads:

"That on or about the 22<sup>nd</sup> day of December 2002, in the Municipality of Lucban, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) heat-sealed transparent plastic sachet s each containing Methylamphetamine

Hydrochloride (shabu), a dangerous drug, weighing 0.22 grams and 0.05 gram, respectively, or with a total weight of 0.27 gram.

Contrary to law."

On the trial that ensued, the prosecution presented four witnesses, namely: 1) SPO1 Antonio Abraham [*SPO1 Abraham*]; 2) PO3 Mario de Asis [*PO3 de Asis*]; 3)

PO3 Rolando Reyes [*PO3 Reyes*]; and 4) Police Senior Inspector (PSI)-Forensic Chemist Zaide F. Abrera [*PSI Abrera*] of the Quezon Crime Laboratory Office in Lucena City. SPO1 Abraham, PO3 de Asis and PO3 Reyes were assigned at the Lucban Police Station.

SPO1 Abraham testified that on December 22, 2002, at about 7 o'clock p.m., he and his co-policemen, PO3 de Asis, PO3 Reyes, PO2 Joe Zoleta [*PO2 Zoleta*] and PO1 Dexter Villalon, Jr. [*PO1 Villalon*] were tasked by Senior Inspector Ronnie Miralles to conduct an operation against wanted persons in Lucban City, Quezon. As team leader, he hired a van and they patrolled around Lucban, Quezon. At Monda Road, Barangay 4, Lucban, they saw the subject person, Tirso Villarivera, who had been wanted by the RTC-Lucena City, Branch 57 and 59, for violation of R.A. No. 6425 or the Dangerous Drugs Law. As a warrant officer of Lucban Philippine National Police (PNP), he knew Accused-Appellant personally for quite a long time as one of those wanted persons for violation of R.A. No. 6425. They approached Accused-Appellant, showed and read to him the warrant for his arrest. When Accused-Appellant resisted arrest, the team handcuffed him, and PO3 de Asis and PO3 Reyes searched his body. He was brought to the Lucban police station and the incident was blotted before the desk officer on duty, Police Officer Fidel Obnamia. Thereafter, Villarivera was turned over to the Bureau of Jail Management and Penology of Lucban where he was detained.<sup>[4]</sup>

On cross-examination, SPO1 Abraham testified that when PO3 de Asis and PO3 Reyes searched Accused-Appellant's body, they recovered two (2) plastic sachets of shabu, a fan knife, lighter, scissors and money in the amount of P1,966.75. However, he admitted that he did not actually see how the said items were recovered from Accused-Appellant since police officers de Asis, Reyes and Villalon were far from him. On redirect, he clarified that the confiscation of the items was relayed to him by police officers de Asis, Reyes and Villalon. On re-cross, he reiterated that he had no personal knowledge that the items were confiscated from Accused-Appellant.<sup>[5]</sup>

Prosecution witness PSI Zaide Fausto Abrera, a forensic chemist, testified that she conducted the laboratory tests of the specimen placed in plastic sachets upon request of the Chief of Police of Lucban City, Ronnie Pabellon Miralles [*Miralles*]. Upon examination of the contents of the plastic sachets, she concluded that the specimens were positive for shabu, a dangerous drug.<sup>[6]</sup> She identified the letter request (Exhibit B)<sup>[7]</sup> signed by Miralles and Chemistry Report No. D-515-02 (Exhibit A),<sup>[8]</sup> which disclosed her findings on the white crystalline substance placed in plastic sachets (Exhibits "C-1, C-1-a, C-1-b). After examination, she indorsed the sachets of shabu to the evidence custodian. On cross-examination, PSI Abrera testified that she was not the one who received the letter request and the 2 sachets of shabu. She further stated that when the subject sachets of shabu were turned over to her, the markings "mva" were already there. She further declared that she did not know how the police officers came into possession of the sachets of shabu and from whom those sachets came from.<sup>[9]</sup>

The prosecution's third witness, PO3 Mario de Asis testified that he was part of the team that arrested Accused-Appellant, while the latter was along Monda Road Emilio Jacinto St., Barangay 4 Lucban, Quezon, on the basis of a warrant of arrest in the possession of SPO1 Abraham. Before the arrest, SPO1 Abraham introduced the team as police officers and then showed Accused-Appellant the warrant for his arrest. He

further testified that as a standard operating procedure, he searched the body of Accused-Appellant and found in his possession a fan knife, 2 plastic sachets of shabu and a cash of more or less P1,000.00 and that Accused-Appellant voluntarily gave him the items. He placed his initials "mva" on the plastic sachets, put them in a bigger plastic with his signature and attached it to a coupon bond and had it examined at the Quezon Provincial Crime Laboratory Office in Lucena City.<sup>[10]</sup> On cross-examination, PO3 de Asis admitted that he did not see the warrant of arrest and could not recall the judge who issued the same. He also admitted that he did not mark the subject specimen at the place where they arrested Villarivera. He marked them only when they arrived at the police station of Lucban City.<sup>[11]</sup>

The last Prosecution witness, PO3 Rolando Reyes testified that he was the driver of the van and he saw how Accused-Appellant was arrested by his co-police officers on December 22, 2002 on the basis of a warrant of arrest issued by the court. He however did not see the warrant of arrest as it was in the possession of SPO1 Abraham. He declared that it was SPO1 Abraham, PO3 de Asis, PO1 Villalon and PO2 Zoleta who arrested Accused-Appellant and they brought him to the police station. He was not the one who recovered the 2 sachets of shabu from Accused-Appellant. On cross-examination, he admitted that he did not know the warrant of arrest as it was merely relayed to him by SPO1 Abraham. He further admitted that he did not see the alleged shabu subject matter of the case.<sup>[12]</sup>

After the prosecution rested its case, the defense presented Accused-Appellant and a certain Marcelito Suarez.

In proving his defense of denial, Accused-Appellant testified that on December 22, 2002, at about 7 o'clock p.m., while he, alias Odong and Payo were playing *cara y cruz*, a van arrived where four policemen alighted from it. As they were gambling, he ran away and was chased by the policemen along Monda Road. Three other men helped to catch him. When they grabbed him, all of them helped each other to handcuff him on his back. While he was being handcuffed, he asked why he was being arrested and someone told him that he has a pending case. He also asked the police officers to show him the warrant of arrest but they did not produce any, and instead, they just kept silent. When asked by the court if he is aware of the pending cases against him before Judge Lagos (Branch 57), Judge Alpajora (Branch 59) and Judge Encomienda, Villarivera replied "I do not know". However, when asked by his lawyer, he declared that he has a frustrated murder case before Judge Alpajora, violation of RA 6425 case before Judge Lagos, and illegal possession of deadly weapon case before Judge Encomienda. He also declared that he asked the arresting officers twice about the warrant for his arrest, first when he was inside the van, and at the municipal hall of Lucban. He was told by the police officers not to say anything and to just explain in the police station. At the police station, the police officers undressed him and found in his possession a fan knife, a wallet containing P1,000.00 and P999.75 in his pocket. He stressed that the case for illegal possession of dangerous drugs was filed since the police officers have a grudge against him as they failed to find drugs in his possession on two separate raids.<sup>[13]</sup>

To corroborate his defense, Marcelito Suarez testified that on December 22, 2002, at about 6:00 p.m. to 7:00 p.m., while he was standing at E. Jacinto St., he saw Accused-Appellant playing *cara y cruz* with other persons. A van arrived and three armed men in civilian clothes alighted from it. They approached and grabbed Accused-Appellant, searched his body but nothing was found from him. Suarez

further stated that there was no warrant of arrest or any document shown to Accused-Appellant.<sup>[14]</sup> On cross-examination, he stressed that he was at the place as a “tambay” and he focused on the search and frisk of Accused-Appellant's body by the police officers. He was only 3 arms-length away from the place where Accused-Appellant was, that was illuminated by light from the electric post. One day after the incident, he and his friends went to the police station and asked Accused-Appellant why he was apprehended since he was caught only playing *cara y cruz*. They also asked the jail guard why he was incarcerated.<sup>[15]</sup>

On April 5, 2010, the RTC, Branch 55, Lucena City, promulgated the assailed Decision<sup>[16]</sup> convicting the Accused-Appellant of illegal possession of dangerous drugs.

Hence, the present appeal.

Accused-Appellant anchors the present recourse on the following assignment of errors:

## “I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY FOR VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165 DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY OF THE CORPUS DELICTI BEYOND REASONABLE DOUBT.

## II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THE PROPER CHAIN OF CUSTODY OF THE SEIZED DANGEROUS DRUGS.”<sup>[17]</sup>

The issues for resolution are as follows:

- 1) Whether the identity of the corpus delicti had been proven beyond reasonable doubt; and
- 2) Whether there was failure to prove the chain of custody of the seized dangerous drugs.

In arguing for his acquittal, Accused-Appellant contends that the prosecution failed to prove the identity of the dangerous drugs in view of its failure to present evidence with respect to the precautions taken to preserve the integrity of the subject evidence. He stresses that the lack of inventory and photograph of the seized item is a fatal defect committed by the arresting officers. Thus, in view of such non-compliance, the presumption of regularity in the performance of duties should not had been applied by the court *a quo*.

### ***We find the appeal meritorious.***

It is an oft-stated doctrine that factual findings of the trial court, its calibration of the testimonies of witnesses and its assessment of their probative weight are given high respect if not conclusive effect, unless the trial court ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance,

which, if considered, will alter the outcome of the case.<sup>[18]</sup> Under the factual milieu of the case, We find that the court *a quo* committed a reversible error in its appreciation of evidence, hence, We cannot sustain the same.

The testimony of PO3 de Asis that the subject shabu was seized from Accused-Appellant was not corroborated by any member of the apprehending team. Indeed, there were contradictions and inconsistencies in the testimonies of the prosecution witnesses which are too serious to be simply brushed aside. The team leader, SPO1 Abraham categorically stated that after they approached Accused-Appellant and read to him the warrant for his arrest, Accused-Appellant was handcuffed when he resisted arrest, and it was PO3 de Asis and PO3 Reyes who searched his body and found the subject sachets of shabu.<sup>[19]</sup> On cross-examination, SPO1 Abraham, however, admitted that he did not actually see how the item was recovered from Accused-Appellant since police officers de Asis, Reyes and Villalon were 2 arms-length away from him. He clarified that he had no personal knowledge of the seizure of the item from Accused-Appellant since it was only told to him by police officers de Asis, Reyes and Villalon.<sup>[20]</sup>

Moreover, PO3 Reyes testified that it was police officers Abraham, de Asis, Villalon and Zoleta who arrested Accused-Appellant. He admitted that he was not the one who recovered the subject sachets of shabu from Accused-Appellant and he did not see the alleged shabu subject matter of the case.<sup>[21]</sup> Clearly, the manner and circumstances on how the subject shabu came into the possession of SPO3 de Asis were not established with moral certainty.

The existence of the dangerous drug is condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs it being the very *corpus delicti* of the crimes.<sup>[22]</sup> In the prosecution of cases involving dangerous drugs, Section 21, paragraph 1 of R.A. No. 9165 lays down the procedural requirements as follows:

"Section 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Corollary, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, states:

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