

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR NO. 01475, July 11, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NARCISO LUMAPAK ALIAS "TEBAN", ACCUSED-APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

Subject of this appeal is the Joint Judgment^[1] of the Regional Trial Court(RTC), Branch 17, Cebu City, in Criminal Cases Nos. CBU-70274 and CBU-70275, dated January 28, 2010, finding accused-appellant Narciso Lumapak guilty of violating Sections 11 and 12 of Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant Narciso Lumapak ("accused Lumapak") was charged in two Informations with illegal possession of dangerous drugs and of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sections 11 and 12, Article II of R.A. No. 9165, thus:

CBU-70274

"That on or about the 10th day of July 2004, at about 3:30 P.M. 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 under his control the following: Five (5) heat-sealed transparent plastic packets of white crystalline substance with a total weight of 0.15 gram, locally known as "shabu", containing Methylamphetamine Hydrochloride, a dangerous drug, without being authorized by law.

CONTRARY TO LAW."^[2]

CBU-70275

"That on or about the 10th day of July 2004, at about 3:30 P.M. In the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without any lawful purpose, did then and there, have in his possession and control the following:

- a) twelve (12) pcs. unused tin foil;
- b) one (1) roll tin foil;
- c) 38 pcs. empty small plastic packs

- d) 20 pcs. big empty plastic packs
- e) one (1) pair of scissors;
- f) one (1) unit cellular phone (Nokia 5210);
- g) one (1) disposable lighter;
- h) two (2) pcs. blades

fit or intended for smoking, consuming, administering, ingesting, or introducing any dangerous drug into the body.

CONTRARY TO LAW.”^[3]

The facts as presented by the prosecution rely mainly on the testimony of its witness PO1 Eriberto Dacalos,^[4] thus:

At dawn of July 10, 2004, at around 3:30, a group of police officers, namely, SPO2 Edmund Junco, PO3 Delfin Bontuyan, PO2 Pablo Gentalian, PO2 Roel Leyson, and PO1 Eriberto Dacalos, implemented a search warrant in the house of accused Lumapak at Sitio Kalubihan, Brgy. Talamban, Cebu City.^[5]

The search warrant was issued by Hon. Judge Simeon Dumdum upon application of PSInsp Germano Mallari. This application arose from the information the police received that a certain Narciso Lumapak was engaged in illegal sale of drugs in Sitio Kalubihan, Brgy. Talamban Cebu City. To verify this information, PO2 Gentalian and PO1 Dacalos were ordered to conduct a surveillance and investigation. As part of their investigation, the two police officers conducted a “test-buy”, and they succeeded in purchasing from accused Lumapak one sachet of a suspected illegal drugs. Having taken a specimen, the officers took the same to the PNP Crime Laboratory for examination. The results of the examination confirmed that the content of the sachet they bought from accused Lumapak was positive of Methamphetamine Hydrochloride or “shabu”.^[6]

With this confirmation, the team of police armed with the search warrant, as previously mentioned, headed to the residence of accused Lumapak to implement the search.

When the group arrived at accused Lumapak's residence, the police knocked on its door.^[7] Accused Lumapak himself opened the door, but, upon seeing the group, he did not allow the police to enter his house. SPO2 Junco, thus, informed accused Lumapak that they are from CIDG and that they were there to implement a search warrant. SPO2 Junco then showed him the search warrant. At that same time, accused Lumapak was joined by his wife and son.^[8]

The search did not commence until the barangay tanods arrived at the scene. Accused Lumapak conceded to let the police enter his house upon learning the arrival of the tanods.^[9] PO1 Dacalos and PO2 Gentalian, who were assigned as searchers, then searched the house while the tanods acted as witnesses. Accused

Lumapak, meanwhile, followed through wherever the police searchers were searching. The house was not big enough to fit in five police officers, including the tanods and the accused, so only the tanods and the searchers together with the accused were inside the house during the search.^[10]

In his search, PO1 Dacalos found five (5) sachets of the alleged shabu and the alleged drug paraphernalia including a cellphone (Nokia 5210) and cash amounting to Eleven Thousand Pesos (P11,000.00) placed on the second layer of a small table beside a bed. Doing further search on the table, PO1 Dacalos also found in plain view bullets and a 9mm pistol. All these were witnessed by the tanods and accused Lumapak himself.^[11]

These recovered items were then given by PO1 Dacalos to the officer assigned as recorder, PO3 Bontuyan.^[12] PO3 Bontuyan made two inventory receipts, one for the illegal drugs and paraphernalia and one for the bullets and the 9mm pistol. Both receipts were signed by SPO2 Junco. The same were also signed by the tanods. These receipts were then shown to accused Lumapak, but accused Lumapak only signed the inventory receipt for illegal drugs but not the receipt for the bullets and the firearm.^[13]

After conducting the search, the police brought the recovered items to their office. The alleged shabu and drug paraphernalia were then marked by PO2 Leyson and PO1 Dacalos. After the marking, the said officers submitted the alleged shabu, with a letter-request for examination signed by one Salvador Manga, to the PNP Crime Laboratory for examination.^[14] The drug paraphernalia, meanwhile, were left at the office in the care of PO2 Leyson.^[15]

The examination of the alleged shabu contained in the five (5) heat-sealed transparent packets marked from "NL1" to "NL5", with a total net weight of 0.15 grams, showed positive result for the presence of Methamphetamine Hydrochloride or shabu, a dangerous drug.^[16]

For the defense, it presented the following facts mainly based on accused Lumapak's testimony,^[17] which was corroborated by his wife,^[18] thus:

On July 10, 2004, at around 2:00 in the morning, accused Lumapak came home from a visit to his mother who suffered a stroke. Then, he had a meal with his son before going to bed.^[19]

He had just gone to bed when he heard a loud noise from the outside. He heard the door being banged. So, he got up from bed and, without him opening the door, he saw two people in civilian clothes entering their house. The bed was not that far from the door, so he immediately saw the violent entrance of the strangers. Apparently, the door locked with a chain was forcibly opened.^[20]

He was shocked when a flashlight suddenly beamed on his face and a gun pointed at him. He then turned on the lights in order to see clearly. His wife and his son also stood up, but all three of them were immediately brought outside the house. His wife recognized that one of the persons who barged in their house was PO3 Bontuyan, their neighbor, who she knew as a police officer.^[21]

Outside the house, accused Lumapak was shown a paper, which the police officers identified as a search warrant. While he, his wife and his son were outside, the police officers, together with two tanods, conducted a search inside their house. He did not know what happened inside. And, after almost two hours of waiting outside, he saw the police officers picked up something in front of the door. He noticed that what the police picked was a black deodorant case. The police officers then opened the deodorant case and poured its contents. Plastic packs then slid out from the case. Seeing these contents, the police then announced that they found shabu and straight off handcuffed accused Lumapak. All these happened without accused Lumapak witnessing the search and without any photograph being taken and any media personnel.^[22]

After confiscating the alleged shabu, the police also found some ammunitions and a pistol, which they also took together with accused Lumapak's cash amounting to Twelve Thousand Pesos (P12,000.00), but his wife pleaded that they be given at least One Thousand Pesos (P1,000.00) for their provision. The police then brought accused Lumapak to the CIDG office at Camp Sotero Cabahug, where he learned that he was being charged of illegal possession of shabu.^[23]

Accused Lumapak's testimony mainly narrated that the charges against him for illegal possession of shabu and drug paraphernalia were merely fabricated.

After joint trial, the trial court convicted accused Lumapak of illegal possession of dangerous drugs and drug paraphernalia under Sections 11 and 12 of RA 9165 in a Joint Judgment ruling as follows:

"WHEREFORE, premises considered, the Court finds accused NARCISO LUMAPAK GUILTY of the offenses charged in CBU-70274 and CBU-70275 beyond reasonable doubt. Accordingly, accused NARCISO LUMAPAK alias "Teban" is hereby sentenced as follows:

a) In CBU-70274, he is sentenced to suffer the penalty by imprisonment ranging from twelve (12) years and 1 day as minimum to fourteen (14) years as maximum, also a fine of P300,000.00;

b) In CBU-70275, he is sentenced to suffer the penalty by imprisonment ranging from six (6) months and 1 day as minimum to two (2) years as maximum, plus a fine of P10,000.00.

Let the articles subject matter hereof be disposed in accordance with law.

SO ORDERED."^[24]

Aggrieved by this ruling, accused Lumapak, through this appeal, comes to this Court assigning to the trial court this lone error:

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."^[25]

In convicting accused Lumapak of illegal possession of dangerous drugs and drug paraphernalia, the trial court gave more emphasis on the validity of the search and its effect on the admissibility of the evidence obtained by virtue thereof. It ruled that the prosecution established the propriety of the search undertaken and considered the same valid, thus the evidence obtained therein are admissible. With this admissible evidence against the accused, the trial court concluded that the elements of illegal possession of dangerous and drug paraphernalia were established beyond reasonable doubt, more particularly, that accused Lumapak was in possession of shabu. The trial court also dismissed accused Lumapak's claim that the charges against him were fabricated by reasoning that accused Lumapak failed to establish ill-motives on the part of the officers in the conduct of the search as accused himself admitted that he had no previous altercation with PO3 Bontuyan, his neighbor, that would impel the latter to get back on him.^[26]

In his Brief,^[27] accused Lumapak mainly argues that the prosecution failed to establish his guilt beyond reasonable doubt because it failed to prove that the police officers followed the chain of custody rule in order to establish the *corpus delicti* of the crimes charged, thus rendering its evidence against the accused doubtful.

The Office of the Solicitor General (OSG) in its Brief,^[28] meanwhile, chiefly contends that the chain of custody was properly proven by the prosecution, and that, assuming there was non-compliance of Section 21 of RA No. 9165, the police officers were able to preserve the integrity and evidentiary value of the seized illegal drugs and paraphernalia.

Accused Lumapak's appeal is impressed with merit.

As can be gleaned from the trial court's decision, the same did not make any finding whether the *corpus delicti* of the crimes charged were established beyond doubt. It summarily concluded that the elements of the crimes were proven without looking into whether the identity and integrity of the *corpus delicti* have been preserved.

There is no question that the conduct of the search was by virtue of a valid search warrant. However, it must be noted that the search and seizure was pursuant to an alleged illegal possession of dangerous drugs, thus, proper procedure in accordance with Section 21 of RA No. 9165 should have been complied with. To rule that the search was validly effected without assessing whether there was compliance or, at least, substantial compliance with the legal procedure constitutes a grave error.

The elements of the offense of illegal possession of dangerous drugs, are the following: first, the accused was in possession of an item or object, which is identified to be a prohibited or dangerous drug; second, such possession was not authorized by law; and third, the accused freely and consciously possessed the drug.^[29]

It is already a jurisprudential guideline that in the prosecution of illegal possession of dangerous drugs, the dangerous drugs itself constitutes the very *corpus delicti* of the offense. Hence, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt.

To successfully prosecute a case involving illegal drugs, the identity and integrity of