

SECOND DIVISION

[CA-G.R. CR No. 34205, November 14, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FEDERICO ICAWAT Y TELO @ "PEDRING", ACCUSED-APPELLANT.**

DECISION

GARCIA, R.R., J.:

Before Us is an appeal from the Decision^[1] dated September 27, 2010 of the Regional Trial Court, Branch 16, Manila in Criminal Case No. 03-213441 finding herein accused-appellant Federico Icawat y Telo @ Pedring guilty beyond reasonable doubt of the crime of illegal possession of zero point eight six nine (0.869) and zero point six six two (0.662) gram of *methamphetamine hydrochloride* or *shabu*, defined and penalized under Section 11, Article II of RA No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, and imposing upon him the penalty of imprisonment of six (6) years and one (1) day to eight (8) years; and to pay a fine in the amount of One Hundred Thousand Pesos (P100,000.00), the dispositive portion of which reads:

WHEREFORE, prosecution having proven the guilt of the accused beyond reasonable doubt, FEDERICO ICAWAT y TELO @ PEDRING is hereby CONVICTED.

Accused is hereby sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day to eight (8) years and to pay a fine of One Hundred Thousand Pesos (P100,000.00).

The Branch Clerk, Atty. Rechie N. Ramos-Malabanan is ordered to turn over two (2) heat-sealed transparent plastic sachets containing zero point eight six nine (0.869) and zero point six six two (0.662) gram of white crystalline substance known as shabu to the Philippine Drug Enforcement Agency for proper disposition.

SO ORDERED.^[2]

THE FACTS

In an Information^[3] dated April 28, 2003, appellant Federico Icawat y Telo was charged with violation of Section 11, Article II of RA No. 9165 committed as follows:

That on or about APRIL 24, 2003, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody, to wit: TWO (2) heat-sealed transparent plastic sachets containing ZERO POINT EIGHT SIX NINE (0.869) & ZERO POINT SIX SIX TWO (0.662) [*gram*] of white crystalline substance containing methylamphetamine hydrochloride known as "SHABU", a dangerous drug.

CONTRARY TO LAW.^[4]

During the arraignment on June 26, 2003, appellant, with the assistance of counsel, pleaded *not guilty*.^[5] Thereafter, trial on the merits ensued.

The version of the prosecution, as related by prosecution witness PO2 Jason^[6] Magbintang^[7], may be summarized as follows:

On April 24, 2003, OIC Police Inspector Kimberly Molitas of the District Drug Enforcement Group of the Western Police District formed a team to conduct surveillance at Sta. Mesa, Manila. The team was composed of team leader PO3 Rodolfo Ederina, prosecution witness PO2 Jason Magbitang, Po2 Rizaldy Liangco, PO1 Alexander delos Santos and a Po2 Francia.

On that same day of April 24, 2003, at about 4:50 p.m., a confidential informant met the surveillance team along Kaimito Street, Sta. Mesa, Manila. After a short briefing, the confidential informant pointed to a male person, who was later identified as appellant, standing about twelve (12) meters away. Later, another man approached and conversed with appellant. The unidentified man took two (2) plastic sachets, both of which contained white crystalline substance suspected to be *shabu*, and handed them to appellant. After the exchange, appellant left the unidentified man and walked towards the location of the surveillance team. While walking, appellant examined the two (2) plastic sachets in his hand before slipping them into his pocket. When appellant passed by the surveillance team, he was accosted by the surveillance team who identified themselves as police officers. Appellant tried to run, but he was caught by the policemen. Thereafter, prosecution witness PO2 Jason Magbintang asked appellant to empty his pockets. Appellant brought out two (2) heat-sealed plastic sachets containing white crystalline substance suspected to be *shabu*. Appellant was placed under arrest and brought to the police station. Upon arrival at the police station, prosecution witness PO2 Jason Magbintang marked the two (2) sachets he confiscated "FIT-1" and "FIT-2", respectively, "FIT" being appellant's initials.

In Chemistry Report Number D-927-03^[8] dated April 24, 2003, Forensic Chemist Police Inspector Judy cel A. Macapagal found that the plastic sachets marked "PIT-1" and "PIT-2" gave positive result for *Methamphetamine hydrochloride*, also known as *shabu*, weighing zero point eight six nine (0.869) and zero point zero six six two (0.662) gram, respectively.

On the other hand, the testimony of PO1 Alexander delos Santos was dispensed with

after the parties stipulated that during the surveillance, he acted as a back-up/perimeter guard and that he did not see the actual arrest of appellant.^[9]

For the defense, two (2) witnesses were presented, namely: appellant^[10] himself; and his common-law wife Lourdes Cabiso^[11].

Appellant raised the defense of denial and frame-up. In the afternoon of April 24, 2010, he was inside his house at Kaimito Street, Old Sta. Mesa, Manila. He was sleeping since he was not required to go to his work until 7:00 p.m., being on a night shift as mason. Inside the house with him were his common-law wife Lourdes Cabiso and his siblings. At around 4:50 p.m., appellant was awakened when three men in civilian clothes holding guns entered his house. One of the police officers, PO2 Jason Magbintang demanded where appellant gets his drugs, which appellant did not answer. Meanwhile, the other police officers searched his house as if looking for something. Thereafter, appellant was advised by the policemen go to the station for investigation, during which, they kept asking him about his source of drugs. When appellant insisted that he did not know anything about any drugs, he was threatened to be detained. Appellant also testified that the first time he saw the sachets was during the trial of the instant case.

The testimony of appellant was corroborated by his common-law wife Lourdes Cabiso who testified that on April 24, 2003, at around 3:45 p.m., she was outside their house in Kaimito St., Old Sta. Mesa, Manila, doing laundry. Suddenly, men in civilian clothes arrived looking for appellant. Cabiso asked them what was the problem, but she was ignored. The men simply entered their house. They found appellant in a room lying on a bed. Appellant was immediately handcuffed and placed under arrest.

In the assailed Decision^[12] dated September 27, 2010, the court *a quo* found appellant guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs. It gave credence to the testimony of the prosecution witness that during a surveillance operation, appellant was seen *in flagrante delicto* holding in his hands two (2) plastic sachets containing *shabu*. The pertinent portions of the decision are quoted:

Permissible Warrantless Arrest

The Rules of Court recognizes the following permissible warrantless arrests, to wit: (1) arrests in flagrante delicto, (2) arrests effected in hot pursuit, and (3) arrests of escaped prisoners[.] Hence, the evidence cannot be considered fruit of the poisonous tree and admissible against the accused.

Elements of Illegal Possession of Drugs

As enumerated by the Supreme Court in the case of People vs. Tee x x x, the elements of illegal possession of dangerous drugs are the following:

- 1.) That the accused is in possession of the object identified as prohibited or regulated drug;

- 2.) That such possession is not authorized by law and
- 3.) That the accused freely and consciously possessed said drug.

The abovesaid elements were proven beyond reasonable doubt by the testimony of the prosecution witnesses.

X X X

In illegal possession of shabu, the victim is the offender/accused himself, who succumbed to the temporary effects of the illegal drugs to forget his problems or situation whether economic, personal, mental or emotional. The offender needs rehabilitation rather than long incarceration.

X X X

In the same vein, it is likewise the state's responsibility to assist those who fall prey to illegal drugs possession; to turn a new lease on life and not to suffer the rigors [of] prolonged incarceration. Let them be absorbed in the main stream of society as productive individuals during prime years of life to become tax payers rather than tax eaters. They ought to be incarcerated for a reasonable length of time commensurate to the weight of substance caught in the respective possession.^[13]

Hence, this appeal in which appellant raised the following **ASSIGNMENT OF ERRORS**^[14], to wit:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ARREST OF APPELLANT WAS LAWFUL AND THAT THE SACHETS OF SHABU ALLEGEDLY RECOVERED FROM HIM WAS ADMISSIBLE IN EVIDENCE;

II

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT THE PROSECUTION FAILED TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUGS; AND

III

THE COURT A QUO GRAVELY ERRED WHEN IT OVERLOOKED THE POLICE OFFICERS' FAILURE TO COMPLY WITH SECTION 21 OF R.A. NO. 9165.

THE ISSUE

The sole issue in the instant case is whether or not the court *a quo* correctly found appellant guilty beyond reasonable doubt of the crime of illegal possession of zero point eight six nine (0.869) and zero point six six two (0.662) gram of *shabu*.

THE RULING

The instant appeal is impressed with merit.

The present Constitution guarantees the right of the people against warrantless searches and seizures. Thus, a person may not be searched unless there is a judicial warrant, otherwise, it becomes unreasonable, and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding. Sections 2 and 3, Article III of the 1987 Constitution read:

SEC. 2. The **right of the people** to be secure in their persons, houses, papers, and effects **against unreasonable searches and seizures** of whatever nature and for any purpose **shall be inviolable**, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

SEC. 3. x x x

(2) Any **evidence obtained in violation** of this or the preceding section **shall be inadmissible for any purpose in any proceeding**. [*Emphasis supplied.*]

The rule admits of exceptions, one of which is where the warrantless search and seizure are incidents of a lawful arrest.^[15] Such is considered reasonable and valid under Rule 126, Sec. 13 of the Revised Rules on Criminal Procedure, which states that:

Sec. 13. *Search incident to a 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.

There is no question that the instant case involves a warrantless search and seizure as an incident to appellant's arrest. As such, the admissibility of the two (2) sachets containing *shabu* allegedly obtained from appellant hinges on the legality of his arrest, which was likewise done without a warrant.