

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL RABAGO SANCHEZ, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Subject of this appeal[1] is the Decision[2] of the Regional Trial Court(RTC), Branch 58, Cebu City, in Criminal Case No. CBU-80254, dated June 2, 2009, finding accused-appellant Joel Rabago Sanchez guilty of violation of Section 11 of Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of imprisonment and to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

The Information[3] charging accused-appellant Sanchez of illegal possession of shabu reads:

“That on or about the 2[nd] day of June 2007, at about 8:50 a.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without being authorized by law, did then and there have in his possession and under his control the following:

two (2) plastic packets having a total weight of 0.04 gram of white crystalline substance locally known as “shabu”, containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Cebu City, Philippines, June 4, 2007.”[4]

When arraigned, accused-appellant Sanchez pleaded not guilty. Thereafter, trial ensued.

The prosecution presented as its witnesses SPO3 Eugenio Teves,[5] SPO2 Timoteo Lopezbaños[6] and PO3 Jonathan Almendra.[7] With their testimonies, prosecution offered the following exhibits: the letter request for laboratory examination[8]; two small plastic packs of shabu respectively marked with “JRS-01, 06-02-07” and “JRS-02, 06-02-07”[9]; and, the chemistry report dated June 3, 2007.[10]

With these pieces of evidence, the summary of prosecution's version of facts tends to establish the following:

On June 2, 2007, at around 8:45 o'clock in the morning, while on duty as beat patrol at Magallanes Street, in front of Central Lumber, PO3 Jonathan Almendra saw a man chasing the accused. The man was shouting that he had been robbed by the accused. Upon hearing this and upon seeing the victim running after the accused, PO3 Almendra and one PO2 Arellano chased and apprehended the accused. The police officers recovered from the accused's waistline a .38 cal. revolver and the cell phone taken from the victim, which were tucked in his waistline.[11]

After a minute or two, more police officers arrived at the scene.[12] The group of police (Officers Lopezbaños, Teves, Lumayag, Victorioso, and Lanza) was headed by SPO3 Eugenio Teves, who received through a phone call a report of the on-going robbery in Magallanes Street.[13] When SPO3 Teves arrived together with his team, he saw the accused already handcuffed by Officers Almendra and Arellano. SPO3 Teves then talked to the victim who told the former that the accused robbed him of a Sony Ericsson cellular phone.[14]

When asked by SPO3 Teves if the accused had been thoroughly frisked, officers Almendra and Arellano answered that they only frisked the accused on his waistline. So, SPO3 Teves, as a matter routine check-up, searched the accused for any sharp or concealed weapon in his possession. As he searched accused's pockets, he recovered two packs of white crystalline substance placed in a sachet in accused's right side front pocket.

The police then brought the accused and the seized items to the police station. When the police arrived at their station, SPO3 Teves then marked the plastic sachets of shabu with the initials of the accused. These marked sachets were then handed to officer Babiera for investigation. Officer Babiera then prepared a letter request for the laboratory examination of the contents of the sachets. Thereafter, the letter request together with the marked sachets were handed to Officer Labating who, together with SPO3 Teves and other police, delivered the said request and marked sachets to the PNP Crime Laboratory.[15]

Upon release of the result of the laboratory examination, the crystalline substance was found to be positive for the presence of Methamphetamine hydrochloride, a dangerous drug.[16]

For the defense, accused-appellant Sanchez presented himself as witness. His testimony is summarized as follows:

On June 2, 2007, at 8:45 o'clock in the morning, accused Joel Rabago Sanchez was at the meat section of the market waiting for customers for hauling. A certain Lolita requested him to carry her products (vegetables and meat bones) to the corner near a lumber yard. On his way home, he saw men running. According to him, there were robbers at that time and the police officers were running after those robbers. He narrated that the police were not able to catch the robbers, so they arrested him. He added that he was told by the police that he was one of the suspects of a robbery incident, which he denied. He denied being part of the robbery and claimed that the .38 caliber pistol and the two plastic sachets containing shabu were planted evidence. He further testified that he was mauled by the police in order to admit the robbery.[17]

On June 2, 2009, the RTC, after finding that the prosecution has established all the elements of the offense charged, rendered a Decision[18] convicting accused-appellant Sanchez of violation of Section 11, Article II of RA No. 9165, the dispositive portion of which reads:

“Accordingly, this court finds the accused guilty as charged and hereby sentences him to suffer the penalty of imprisonment of from twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of P300,000.00.

The full period of preventive detention shall be credited in the service of his sentence.

Exhibit “B” shall be confiscated in favor of the state for proper disposition.

SO ORDERED.”[19]

Hence, accused-appellant presents this appeal before Us and assigns to the RTC the following errors:

I. “THE TRIAL COURT ERRED IN RULING THAT THE WARRANTLESS HOT PURSUIT ARREST WAS VALID.

II. THE TRIAL COURT COMMITTED AN ERROR IN RULING THAT THE SEARCH WAS PERMITTED BEING INCIDENTAL TO A LAWFUL ARREST.

III. THE TRIAL COURT FAULTED IN AFFIRMING THE IDENTITY OF THE SEIZED DRUGS DESPITE NON-COMPLIANCE WITH SECTION 21 OF RA 9165.”[20]

In his brief,[21] accused-appellant basically argues that his warrantless arrest was illegal, consequently the search conducted on his person was illegal too, and that the seized dangerous drug in his possession was merely planted.

He further argues that the seized dangerous drug was a fruit of an unlawful search and that its identity was not properly proven because its chain of custody was tainted with irregularities.

The appeal is bereft of any merit.

We affirm the findings of the trial court as regards the first and second assigned errors.

Preliminarily, We note that accused-appellant raised the illegality of his arrest for the first time on appeal. Nothing in the records shows that accused-appellant assailed the illegality of his arrest before his arraignment. "It has been consistently ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived." [22]

Be that as it may, it is necessary for Us to ascertain whether or not the search which yielded the alleged contraband was lawful since accused-appellant raised this error in order to question the admissibility of the seized dangerous drug.

On one hand, the prosecution posits that the search conducted on the accused-appellant when they seized the dangerous drug was incidental to a lawful arrest. On the other hand, accused-appellant

argues otherwise, since he claims that the alleged robbery, the cause for his arrest, was not convincingly proven.

Accused-appellant's testimony that he was arrested by the police for no reason at all is incredulous. Basically, his defense is denial. Indeed, denial may be a legitimate defense, but in order to be believed, the same must be substantiated by clear and convincing evidence. [23] We apply the oft-repeated rule that denial, like alibi, crumbles in the face of positive testimony.

We underscore that the prosecution presented PO3 Almendra, the officer who arrested the accused-appellant for robbery. PO3 Almendra clearly and categorically testified that accused-appellant was arrested since he had just committed a crime at that time, thus:

"Fiscal Acosta:

Q:

Mr. Witness, where were you on June 2, 2007 at around 8:45 in the morning?

A:

I was at Magallanes in front of Central Lumber.

Q:

What were you doing in the said place at that time?

A:

We were on duty as beat patrol.

Q:

What happened then as you were in the said place?

A:

I saw a man chasing a person and shouting that he was robbed.

Q:

How far were you from the said person at that time?

A:

About fifteen (15) meters.

Q:

What did you do then?

A:

We apprehended the suspect as we have seen him while we were across the street.

Q:

You said that in a fifteen meters (sic) distance you heard a person running and shouting that he was robbed, in front of him was there any person at that time that he was chasing?

A:

The victim pointed to us the suspect and informed us that he was robbed.

Q:

How many were you who chased the suspect?

A:

Only the two of us, I and PO2 Perellano.

Q:

What happened in that chase?

A:

We were able to apprehend the suspect and we were able to confiscate from him .38 cal. revolver and the cellphone.

Q:

What was the cellphone all about?

A:

The item robbed by the suspect.”[24]

Clearly, under the above circumstances, accused-appellant was arrested under a hot-pursuit arrest as he had, in fact, just committed a crime and that the police officers personally saw the victim of robbery running after the accused-appellant.

We are not inclined to disbelieve the above testimony just because a record of police blotter involving the robbery was not presented or the complaint/information was shown to the court. We bear to emphasize that the categorical testimony of PO3 Almendra himself, even without the documentary evidence being asked by accused-appellant, is enough to prove the existence of robbery, the cause why accused-appellant was arrested. There is no showing that PO3 Almendra had ill-motives against accused-appellant which caused him to arrest the latter without any reason

at all.

Besides, accused-appellant himself admitted that there were other cases filed against him which arose from the same incident. He admitted that different cases such as illegal possession of firearms, violation of COMELEC gun ban, and robbery were filed against him in other branches of the Regional Trial Court.[25]

Being that the arrest was lawful, the police officers were justified to conduct a search without warrant. It has been held that a warrantless search incidental to a lawful arrest may be made “for the seizure of dangerous weapons or anything which may be used as proof of the commission of an offense. It may extend beyond the person of the one arrested to include the premises or surroundings under his immediate control.”[26]

As in this case, when the police, PO3 Almendra, with his companion, arrested accused-appellant, they immediately searched within the permissible area of search, that is, the body of the accused-appellant. They were able to recover a firearm and the cellphone of the robbery victim tucked in his waist. After a minute or two, police reinforcements arrived, including SPO3 Teves. SPO3 Teves, wanting to be assured that there is no more sharp or any concealed weapon, frisked the accused-appellant in the presence of PO3 Almendra and the other police officers. And, while searching on accused-appellant's pocket, SPO3 Teves recovered two sachets of white crystalline substance.[27]

Accused-appellant claims that the seized contraband in his possession was a planted evidence. He puts malice on the act of SPO3 Teves conducting another search on the accused-appellant even after PO3 Almendra had already searched him. This assertion, however, was convincingly belied by the testimonies of the police officers who conducted the search. SPO3 Teves testified that he conducted body frisking in order to make sure that accused-appellant was not anymore concealing any weapon. A portion of his testimony is as follows:

“Q:

What did you do then?

A:

I asked the two police officers if the suspect was thoroughly frisked,

Q:

Then?

A:

They said that they only frisked the waistline. As a routine check-up I again frisked the suspect for any sharp or concealed weapon on (sic) his possession.

Q:

What did you recover if any?

A:

When I searched his pocket I recovered two packs of white crystalline substance placed in a sachet.”[28]

Meanwhile, PO3 Almendra testified that they were not able to conduct a thorough search on accused-appellant as he already resisted, thus:

“Q:

After that what happened?

A:

When Teves conducted a body frisking on the suspect two plastic packs containing white crystalline substance was recovered.

Q:

Where were you when the body frisking was done by Teves?

A:

I was in front of them.

Q:

So, you have seen the pack of shabu?

A:

Yes, sir.

Q:

Earlier you said that you recovered from the accused .38 caliber revolver, where did you recover the same?

A:

From his waistline.

Q:

What about the cellphone?

A:

In front of his waistline.

Q:

You did not conduct body frisking?

A:

Not anymore because he already resisted.[29]

From the foregoing testimonies, the police officers were able to categorically explain that they conducted a second search to assure themselves that no other weapon was concealed in the accused-appellant's body, but they were able to recover a dangerous drug while conducting a body search. Considering that what yielded the search was a contraband, the police officers had the right to seize the same from accused-appellant.

Thus, We cannot give merit on the claim of the accused-appellant that the dangerous drug seized from him was planted. This defense must be proven by clear and convincing evidence. Notably, accused-appellant did not even present any proof of ill-motive on the part of the police who arrested him. As such, We agree with the trial court when it arrived with its conclusion and held that:

“While it has been shown in certain cases decided by the Supreme Court that planting evidence happens, the Court also ruled that this circumstance must be established by clear and convincing evidence as it is a convenient excuse for persons arrested for violation of R.A. 9165.”[30]

Further, We agree with the trial court when it ruled that the police officers who arrested and conducted a search on accused-appellant are presumed to have performed their duties in a regular manner. Even the Supreme Court, in *People v. Mamaryl*,^[31] has ruled that this presumption of regularity in the performance may even prevail over the presumption of innocence of the accused when the former is buttressed by evidence, to wit:

“Indeed it is a constitutional mandate that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved and that on the other hand, it is in the Rules of Court that. –

“The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

“xxx

“m. That official duty has been regularly performed;(Emphasis supplied)

xxx”

“In the case at hand, the so-called frame-up was virtually pure allegation bereft of credible proof. The narration of the police officer who implemented the search warrant, was found after trial and appellate review as the true story. It is on firmer ground than the self-serving statement of the accused-appellant of frame-up. The defense cannot solely rely upon the constitutional presumption of innocence for, while it is constitutional, the presumption is not conclusive. Notably, the accused-appellant herself stated in her brief that “no proof was proffered by the accused-appellant of the police officers’ alleged ill motive.”

“Stated otherwise, the narration of the incident by law enforcers, buttressed by the presumption that they have regularly performed their duties in the absence of convincing proof to the contrary, must be given weight.”^[32]

Likewise, the Supreme Court, in *Sy v. People*,^[33] held that credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, without contrary evidence to prove otherwise, thus:

“To stress, in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses, especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Moreover, in the absence of proof of motive to falsely impute such a serious crime against the appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over petitioner’s self-serving and uncorroborated denial.”

Considering that the prosecution has proven that the search on the accused which yielded the dangerous drug was valid as it is a search incidental to a lawful arrest, then such dangerous drug seized from the accused-appellant is admissible as evidence against him.

Moving on the third error, that is, the alleged non-compliance with Section 21 of R.A. 9165, accused-appellant presented the following irregularities in the chain of custody:

“1) The confiscated two packs of shabu were not marked immediately after confiscation in the presence of the accused.

2) The marking was irregularly made as it used the initials of the accused-appellant and not the apprehending officer’s.

3) No physical inventory in the presence of the accused-appellant, a representative from the media, the DOJ and any elected public official.

4) The apprehending officer failed to place the seized dangerous drug in a plastic container and the same was

not properly sealed.

5) The forensic chemist failed to testify on how the seized dangerous drug was kept prior to the presentation in court.

6) The apprehending officer failed to proffer justifiable ground for non-compliance and that it failed to prove that the integrity and evidentiary value of the seized items are properly preserved.”[34]

Before We discuss the alleged irregularities, We bear to emphasize Supreme Court's pronouncement “that the implementing rules (of R.A. No. 9165) offer some flexibility when a proviso added that ‘non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.’ The same provision clearly states as well, that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved. Hence, the same Court held that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items.[35]

Based on the records and evidence of the prosecution, We believe that the identity of the seized dangerous drug was properly proven and that its integrity and evidentiary value were properly preserved.

First. Although it is true that the markings were made already in the police station, SPO3 Teves explained that the markings could not be made where they arrested the accused since such place was crowded. In any case, he testified that he was the one in possession of the seized dangerous drug from the time it was seized from the accused until he marked it in the police station when they arrived.[36]

Second. The markings used by SPO3 Teves were not his own initials but the initials of the accused-appellant. These markings using the initials of the accused-appellant do not render the seized contraband inadmissible. The evidence of the prosecution convincingly shows that the marked dangerous drug was properly identified by those who saw it from the time it was seized until it was marked.[37] Moreover, the person who marked the same, SPO3 Teves, testified that he was the one who made the markings thereon, thus he can readily identify the same.[38] As such, the identity of the seized dangerous drug was not compromised.

Third. Although there was no inventory in the presence of the media, a representative of DOJ and any elected public official, the integrity and evidentiary value of the seized dangerous drug were preserved considering the fact that it was only SPO3 Teves who had custody of the same from the seizure until its marking. No other person was in possession of the seized dangerous drug until he personally handed it to the investigator. And, although the same was handed to the investigator, SPO3 Teves was there and present while the investigation was done.[39]

Fourth. As already intimated in the two preceding paragraphs, SPO3 Teves was able to preserve the integrity and evidentiary value of the seized dangerous drug even without placing it in plastic containers. Further, since the contraband was already inside the plastic sachets, SPO3 Teves only had to mark the same for proper identification. And, during the hearing SPO3 Teves and PO3 Almendra positively identified that the marked dangerous drug was the same contraband seized from the accused at that time of his arrest.

Fifth. The accused-appellant cannot anymore question the failure of the prosecution to present the forensic chemist who examined the seized crystalline substance inside the plastic sachets, as this non-presentation was pursuant to the defense's admission on the existence, due execution, and the findings of the chemistry report marked as Exhibit “C”, which stated that the seized dangerous drugs with markings “JRS-01, 6-02-07” and JRS-02, 06-02-07” are found to be positive of Methamphetamine hydrochloride or shabu.[40] In any case, the testimony of the other witnesses show that the seized dangerous drug was not tampered or replaced. SPO3 Teves

testified that after he handed the request for laboratory examination of the seized contraband to one officer Labating, he also went and accompanied the latter to the crime laboratory.[41]

From the foregoing, the prosecution was able to present logical justifications why the police was not able to strictly adhere to the requirements of Section 21 of R.A. No. 9165, and, more importantly, it was able to convincingly demonstrate that the integrity and the evidentiary value of the seized dangerous drug was duly preserved consistent with the chain of custody rule. As held by the Supreme Court, “as long as the chain of custody remains unbroken, even though the procedural requirements provided for in Sec. 21 of RA 9165 was not faithfully observed, the guilt of the accused will not be affected.”[42]

The trial court correctly held that the prosecution has established by proof beyond reasonable doubt that accused-appellant committed the crime charged, that is, illegal possession of prohibited drugs. Indeed, the evidence presented by the prosecution was not adequately defeated as it was able to satisfy the following elements of illegal possession of prohibited drugs: “(1) accused is in possession of the prohibited drugs; (2) such possession is not authorized by law; and (3) accused consciously and freely possessed the prohibited drugs.”[43] Hence, his conviction was proper.

WHEREFORE, the instant appeal is DENIED. Accordingly, the Decision of the Regional Trial Court, Branch 58, Cebu City, in Criminal Case No. CBU-80254, dated June 2, 2009 is hereby AFFIRMED.

SO ORDERED.

Hernando, and Azcarraga-Jacob, JJ., concur.

[1] Records, pp. 82-83.

[2] Records, pp. 74-79.

[3] Records, pp. 1-2.

[4] Ibid., p. 1.

[5] TSN dated July 28, 2008.

[6] TSN dated September 22, 2008.

[7] TSN dated January 5, 2009.

[8] Marked as Exhibit “A”, Records, p. 66.

[9] Marked as Exhibit “B”, under court custody.

[10] Marked as Exhibit “C”, Records, p. 67

[11] TSN dated January 5, 2009, pp. 3-5.

[12] TSN dated March 30, 2009, p. 3.

[13] TSN dated July 28, 2008, p. 3.

[14] Ibid., at p. 4.

[15] Id. at pp. 5-6

[16] Supra, note 10.

- [17] TSN dated May 26, 2009.
- [18] Supra, note 2.
- [19] Ibid., p. 79.
- [20] Rollo, p. 38.
- [21] Rollo, pp. 36-53.
- [22] Sy v. People, G.R. No. 182178, August 15, 2011.
- [23] Ibid.
- [24] TSN dated January 5, 2009, p. 4.
- [25] TSN dated May 26, 2009, pp. 5-6.
- [26] Espano v. CA, G.R. No. 120431, April 1, 1998.
- [27] See TSN dated January 5, 2009, p. 5 and TSN dated July 28, 2008, p. 4.
- [28] TSN dated July 28, 2008, p. 4.
- [29] TSN dated January 5, 2009, p. 5.
- [30] Decision dated June 9, 2009, Records, p.79.
- [31] G.R. No. 171980, October 6, 2010.
- [32] Emphasis and underscoring original.
- [33] G.R. No. 182178, August 15, 2011.
- [34] See Appellant's Brief dated June 6, 2011, Rollo, pp. 44-51.
- [35] People v. Manlangit, G.R. No. 189806, citing People v. Rosialda, G.R. No. 188330, August 25, 2010, also citing People v. Rivera, G.R. No. 182347, October 17, 2008. Emphasis supplied.
- [36] TSN dated July 28, 2008, pp. 5-6.
- [37] TSN dated January 5, 2009, pp. 5-6.
- [38] Supra, note 36.
- [39] TSN dated July 28, 2008, p. 6, and TSN dated August 11, 2008, p. 3.
- [40] TSN dated May 5, 2009 and Decision dated June 2, 2009.
- [41] TSN dated July 28, 2008, p. 6.
- [42] Supra, note 36.
- [43] Supra, note 32.

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