

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO SUBIDO Y MAMANGON, ACCUSED-APPELLANT.

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

This is an appeal from the Decision[1] dated 2 July 2012 of the Regional Trial Court of Manila, Branch 53, finding accused-appellant Francisco Subido y Mamangon GUILTY beyond reasonable doubt of violation of Section 11 (3), Article II of Republic Act No. 9165[2] (illegal possession of prohibited drugs) in Criminal Case No. 05-237988. The decretal portion of the said Decision reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused FRANCISCO SUBIDO Y MAMANGON GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and is hereby sentenced to suffer imprisonment of TWELVE (12) YEARS, ONE (1) DAY as minimum to FOURTEEN (14) YEARS as maximum, and to pay a fine of P30,000.00

Cost against the accused.

SO ORDERED."[3]

THE ANTECEDENTS

The indictment of accused-appellant Francisco Subido (hereafter Appellant) stemmed from the Information[4] filed against him which pertinently reads:

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That on or about July 06, 2005, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drugs, did then and there wilfully, unlawfully, and knowingly have in his possession and under his custody and control one (1) heat sealed transparent plastic sachet containing ONE POINT ZERO ONE SEVEN (0.017) grams of white crystalline substance known as SHABU, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

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When arraigned, Appellant pleaded "not guilty" to the charge against him.[5] Both the Prosecution and the Defense made the following admissions: 1.) the identity of Appellant; and 2.) the court a quo has jurisdiction over the person of the accused and the subject matter of the case.[6] Thus, on 11 October 2005, pre-trial was deemed terminated.

Trial ensued thereafter, with the Prosecution presenting 1.) Police Officer (PO) 1 Michael Castillo; 2.) PO2 Neil Valenzuela. Other Prosecution witnesses, such as Police Senior Inspector (PS/Insp.) Jay Bayanbayan (the police Investigator of the Station Anti-Illegal Drug (SAID), PO1 Arnel Olguera and PS/Insp. Miladenia Tapan (Forensic Chemist) were not called to the witness stand since the Prosecution and the Defense stipulated on their respective

testimonies.[7]

On the other hand, the Defense presented Appellant's testimony.

THE FACTS

(As culled from the Records)

The Prosecution's version is synthesized by the Office of the Solicitor General as follows:[8]

On 06 July 2005 at around 10:00 a.m., PO1 Michael Castillo ("PO1 Castillo"), PO2 Neil Valenzuela ("PO2 Valenzuela") and PO1 Arnel Olguera ("PO1 Olguera") of the Alvarez Police Community Precinct ("Alvarez PCP") were dispatched by their desk officer to look into a robbery hold-up incident involving a certain "Chokoy" (later identified as appellant) at the SANTRANS Bus Terminal located at the corner of Lope De Vega St., and Rizal Avenue, Manila.

When they reached the place of the incident, PO2 Valenzuela together with PO1 Castillo and PO1 Olguera, stepped inside one of the buses parked therein. There they saw appellant lying at the back seat of the bus. When he saw the police officers, appellant stood up and threw away a small plastic sachet on the floor. PO2 Valenzuela picked up the plastic sachet and noticed that it contained a white crystalline substance suspected to be shabu. When PO2 Valenzuela told his companions what he saw, PO1 Castillo and PO1 Olguera pounced on appellant and arrested him. After informing him of his constitutional rights, appellant was brought to the Alvarez PCP.

From the place of the incident up to the Alvarez PCP, PO2 Valenzuela was in possession of the plastic sachet recovered from appellant. Upon reaching the police station, PO2 Valenzuela, in the presence of the desk officer as well as PO1 Castillo, PO1 Olguera and appellant, immediately marked the plastic sachet with appellant's initials "FSM." From the Alvarez PCP and with the specimen still in PO2 Valenzuela's hand, they brought appellant to the Jose Reyes Memorial Hospital for medical examination. Thereafter, they turned over appellant as well as the specimen to the Station Anti-illegal Drugs (SAID) at the Sta. Cruz Police Station for investigation.

At the SAID Unit, PS/Insp. Jay Baybayan investigated the case and in the course of his investigation he prepared the Request for Laboratory Examination. Thereafter, they brought the specimen to the Western Police District (WPD) Crime Laboratory for examination.

PSI Miladenia Tapan ("PSI Tapan"), forensic chemist at the WPD Crime Laboratory, conducted the laboratory examination on the specimen. After performing physical, chemical and confirmatory tests on the samples of the specimen, she found the specimen to be positive for "methamphetamine (sic) hydrochloride," otherwise known as shabu, a dangerous drug."

In his Brief,[9] Appellant's version of the facts was narrated as follows:

"7. Accused Francisco Subido (SUBIDO for brevity), vehemently denied he was caught in possession of dangerous drugs on the date of the incident (July 6, 2005). In truth, he was calling for bus passengers bound for Sapang, Palay, when two (2) police officers approached him. They told him that they are only verifying a hold-up incident that occurred last July 4, 2005. Subido went with them at the police station. However, when they arrived thereat, he was detained and informed that someone pointed to him as the one who took the cell phone of a female victim.

7.1 He was later transferred to police station 3 and was charged with illegal possession of dangerous drugs. The police officers, in exchange, ask that his wife give them Five Thousand Pesos (P5,000.00), which the latter failed to give. Thus, the instant case was instituted against him."

On 2 July 2012, the court a quo rendered the assailed Decision.

Aggrieved, Appellant appealed the Decision of the court a quo raising following assignment of errors:

I THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

II THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE WITH CERTAINTY THE CORPUS DELICTI OF THE OFFENSE CHARGED.[10]

THIS COURT'S RULING

Appellant contends that the court a quo erred in convicting him despite the Prosecution's alleged failure to prove his guilt beyond reasonable doubt.

The appeal fails.

In a prosecution for illegal possession of dangerous drugs, the following elements must be proven with moral certainty: (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 the said drug.[11]

In this case, all the elements are present.

First, the evidence on record established beyond reasonable doubt that Appellant was caught in possession of one (1) transparent plastic sachet containing shabu, a prohibited drug. The Prosecution's witnesses PO2 Valenzuela and PO1 Castillo testified that when Appellant saw them board the bus he threw a small transparent plastic sachet containing white substance on the floor.[12] Suspecting that the white substance inside the plastic sachet contained shabu, PO2 Valenzuela picked up the same to be chemically examined, while PO1 Castillo and PO1 Olguera arrested Appellant. Upon examination by Forensic Chemist P/SInsp. Tapan, the white crystalline substance contained in the plastic sachet yielded positive results for the presence of methamphetamine hydrochloride or shabu.[13]

Second, the record is bereft of any evidence to show that Appellant is authorized by law to possess such prohibited drugs.

Third, mere possession of a prohibited drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satisfactory explanation of such possession.[14] Hence, the burden of evidence is shifted to the accused to explain the absence of knowledge or animus possidendi.[15] Unfortunately here, Appellant miserably failed to discharge that burden. Appellant was not able to satisfactorily explain his lack of knowledge or animus possidendi of the shabu recovered in his possession.

To rebut the overwhelming evidence for the Prosecution, all that Appellant could offer was the defense of bare denial. Time and again, this Court held that the defense of denial, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act.[16] To merit consideration, it has to be substantiated by clear and convincing evidence, which, Appellant failed to do.

What further fortifies the credibility of the testimonies of PO2 Valenzuela and PO1 Castillo is the presumption of regularity in the performance of official functions. The presumption remains unrebutted because the Defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive.[17] Here, there is no showing that the PO2 Valenzuela and PO1 Castillo were moved by ill motives to impute such a serious crime as possession of illegal drugs against the

Appellant. Indeed, the court a quo correctly applied the presumption of regularity in the performance of official duty and held the same to prevail over Appellant's self-serving and uncorroborated denial.

Moreover, it is well-settled that that the findings of fact of the trial court as well as its calibration of the evidence of the parties, its assessment of the credibility and probative weight of the witnesses, and its conclusion based on its findings are accorded by the appellate court high respect, if not conclusive effect.[18] Given the opportunity to observe the witness on the stand, the trial judge is in a vantage position to assess the demeanor of the witnesses and determine if they are telling the truth or not.[19] It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that the appellate court will re-calibrate and evaluate the factual findings of the court below.[20] Here, We see no reason to depart from the foregoing rule.

Appellant further posits that his conviction for illegal possession of dangerous drugs must be set aside on the ground of the alleged failure of the arresting officers to strictly comply with the requirements of Section 21, paragraph 1, Article II of RA No. 9165.

We are not persuaded.

Section 21, paragraph 1, Article II of RA No. 9165 provides for the custody and disposition of the confiscated illegal drugs, to wit:

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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;

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In relation thereto, Sec. 21 (a) of the Implementing Rules and Regulations (IRR) of RA No. 9165, provides:

xxx xxx (a) The apprehending officer/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; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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 . . . (Boldface supplied for emphasis) xxx xxx

Undoubtedly, granting *arguendo* that the arresting officers failed to strictly implement the post-operational requirements of the seized drugs as stated under Section 21 of RA 9165, the afore-quoted provision of the IRR of RA No. 9165 offers some flexibility with regard to the custody and disposition of the confiscated illegal drugs. Even jurisprudence has it that non-compliance with the procedures under Section 21 (a), Article II of RA No. 9165 shall not invalidate the legitimate drug operation conducted by the police operatives.[21] On this point, the pronouncement of the Supreme Court in *People vs. Dela Rosa*[22] is instructive, thus:

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Even granting arguendo that the prosecution failed to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to the aforesaid guidelines, the same is not fatal and does not automatically render appellant's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as it would be utilized in the determination of the guilt or innocence of the accused.

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What is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[23] In *People v. Dela Cruz*,[24] the Supreme Court enunciated:

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As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

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Upon careful perusal of the entire records of this case, We rule that the Prosecution has, by its evidence, established with certainty that the police authorities indeed complied with the required unbroken chain in the handling and custody of the subject dangerous drugs seized from Appellant and that the integrity and evidentiary value of the seized items were preserved, viz:

a.) on 6 July 2005, Appellant was apprehended by PO1 Castillo and PO1 Olguera after PO2 Valenzuela picked up the plastic sachet containing white crystalline substance that Appellant threw to the floor. The plastic sachet of shabu that PO2 Valenzuela seized from Appellant remained in the former's possession until he and his fellow officers reached the Alvarez Police Station;[25]

b.) upon reaching the police station, PO2 Valenzuela promptly marked the plastic sachet containing shabu with Appellant's initials "FMS".[26] Thereafter, PO2 Valenzuela turned over Appellant and the drugs seized to PS/Insp. Jay Baybayan of the Anti-Illegal Drugs Unit for investigation. PS/Insp. Baybayan then prepared the Joint Affidavit of Apprehension, Booking Sheet and Arrest Report, Letter Referral for Inquest and Request for Laboratory Examination.[27]

c.) together with the Request for Laboratory Examination, the plastic sachet was brought to the Western Police District Crime Laboratory Office for testing. Upon receipt of the subject drugs, the same was examined by forensic chemist Miladenia Tapan who found the same to be positive for shabu, a dangerous drug, as evidenced by Chemistry Report No. D-6178-05;[28]

e.) the seized drugs was turned over to the custody of the Prosecution and when it was presented during trial, PO2 Valenzuela identified the plastic sachet containing shabu seized from Appellant.[29]

All told, as the illegal possession of drugs had been established beyond reasonable doubt, this Court is constrained to uphold Appellant's conviction.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision dated 2 July 2012 of the Regional Trial Court of Manila, Branch 53, in Criminal Case No. 05-237988 is hereby **AFFIRMED**.

SO ORDERED.

De Leon, M.M., Chairperson and Antonio-Valenzuela, N.G., JJ., concur.

- [1] Penned by Judge Reynaldo A. Alhambra, Rollo, pp. 13-15
- [2] Otherwise known as the Comprehensive Dangerous Act of 2002.
- [3] Rollo, p. 15
- [4] filed by Assistant City Prosecutor Marcial C. Distor, Records, p.1
- [5] On 5 August 2005. Records, p. 10
- [6] See Pre-Trial Order dated 11 October 2005, Records, pp. 24-25
- [7] See Records, p. 37, p. 44; TSN dated 3 February 2006, p. 5
- [8] See Appellees' Brief, Rollo, pp. 55-69
- [9] Appellant's Brief, Rollo, pp. 28-40
- [10] Id., p. 33
- [11] People vs Mendoza, G.R. No. 186387, August 31, 2011
- [12] TSN dated 3 February 2006, p. 6; See also TSN dated 28 May 2006, p. 8
- [13] Records, p. 23
- [14] Sy vs People, G.R. No. 182178, August 15, 2011
- [15] People vs Villahermosa, G.R. No. 186465, June 01, 2011
- [16] People vs Biyala, G.R. No. 177224, April 11, 2012
- [17] Ambre vs. People, G.R. No. 191532, August 15, 2012
- [18] See Managan vs Court of Appeals, G.R. No. 139908, March 10, 2004
- [19] People vs Genita, Jr., G.R. No. 126171, March 11, 2004
- [20] People vs Alhambra, G.R. No. 207774, June 30, 2014
- [21] See Zalameda vs People, G.R. No. 183656, September 04, 2009. See also People vs Campomanes G.R. No. 187741, August 08, 2010
- [22] G.R. No. 185166. January 26, 2011.
- [23] People v. Pagkalinawan, G.R. No. 184805, March 3, 2010, 614 SCRA 202, 218, citing People v. Naquita, 560 SCRA 430, 448 (2008).
- [24] G.R. No. 181545, October 8, 2008, 568 SCRA 273, citing Lopez v. People, G.R. No. 172953, April 30, 2008, 553 SCRA 619.
- [25] TSN dated 3 February 2006, p. 19
- [26] TSN dated 3 February 2006, p. 7

[27] Records, p. 3; p. 4; p. 2 and p. 22

[28] Records, p. 23

[29] TSN dated 3 February 2006, Id., p. 8

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