

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO DUNALDO Y TIBAJARES, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

Before us is an appeal seeking to annul and reverse the joint Decision[1] of the Regional Trial Court, 6[th] Judicial Region, Branch 36, Iloilo City dated January 10, 2013 in Criminal Cases Nos. 07-64202 and 07-64203 for Violations of Section 11 and Section 12, respectively, of Article II of Republic Act 9165 which sentenced accused-appellant as follows:

“WHEREFORE, judgment is hereby rendered as follows:

1. Finding accused Rolando Dunaldo y Tibajares a.k.a. Ronaldo Tibajares, alias “Tiwi” Guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 under Criminal Case No. 07-64202 and sentencing him to suffer an indeterminate penalty of imprisonment ranging from Twelve (12) Years and One (1) Day, as minimum to Fourteen (14) Years, as maximum and to pay the fine of Three Hundred Thousand (P300,000.00) Pesos; and
2. Finding accused Rolando Dunaldo y Tibajares a.k.a. Ronaldo Tibajares, alias “Tiwi” Guilty beyond reasonable doubt of violation of Section 12, Article II of Republic Act No. 9165 under Criminal Case No. 07-64203 and sentencing him to suffer an indeterminate penalty of imprisonment ranging from Two (2) Years and One (1) Day to Four (4) Years and to pay the fine of Ten Thousand (P10,000.00) Pesos.

Accused is entitled to the full benefits of his preventive detention provided he abides with the disciplinary rules and regulations imposed upon convicted prisoners pursuant to the provisions of Article 29 of the Revised Penal Code.

The shabu (Exhibits “K” and “L”) subject of Criminal Case No. 07-64202, which is illegal per se, and the drug paraphernalia (Exhibits “N,” “O-1” up to “O-3” and “P-1” to “P-2”) subject of Criminal Case No. 08-64203 (sic) are confiscated in favor of the government and the Branch Clerk of Court is directed to turn over said items to the Philippine Drug Enforcement Agency, Region 6, for proper disposition pursuant to existing rules and regulations.

SO ORDERED.”

Herein accused-appellant was charged per the following informations, to wit:

For Criminal Case No. 07-64202[2]

“That on or about 7:20 o'clock in the evening of October 20, 2006, in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating with BRYAN SALVACION and HENRY ALIMEN, alias “Andong,” both at large, working together and helping one another, altogether during their meeting, did then and there willfully, unlawfully and criminally in the presence of one another have in their possession and control 0.120 gram of methamphetamine hydrochloride (shabu), a dangerous drugs, without the authority to possess the same.”

For Criminal Case No. 07-64203[3]

“That on or about the 7:20 o'clock in the evening of October 20, 2006, in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating with BRYAN SALVACION and HENRY ALIMEN, alias “Andong,” both at large, working together and helping one another, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally have in their possession and control in the presence of one another, the following one (1) pc. folded and elongated-cut small aluminum foil, three (3) pcs. small rolled aluminum foil and two (2) disposable lighters, all paraphernalia/equipment fit and intended for administering, consuming and introducing into the body Methamphetamine Hydrochloride (shabu), a dangerous drug, without the authority to possess the same.”

Upon arraignment, accused-appellant pleaded not guilty to the crimes charged.[4]

Pre-trial[5] was thereafter conducted and the parties stipulated on the following facts:

- The prosecution and defense stipulated that the Court has jurisdiction to try the two (2) criminal cases.
- Accused admitted that he is the same Rolando Dunaldo y Tibajares as charged in the informations.

Thereafter, joint trial ensued. The prosecution presented the following witnesses, namely: PO1 Emmanuel Decrepito,[6] PO2 Mark Olano,[7] PO1 Arnulfo Parita,[8] and P/Supt. Rea Villavicencio.[9] The gist of their testimonies are as follows:

Armed with a search warrant,[10] the police operatives mentioned above went to the house of herein accused-appellant to implement the same at around 7:00 O'clock in the evening of October 20, 2006. Upon arrival in the area, they saw through the window of accused-appellant's house, several people who appeared to be sniffing shabu. The said person noticed the presence of the police operatives though and a gun shot suddenly rang. Several people jumped off the window as the operatives rushed inside the house. Upon entering the house, the operatives then held accused-appellant and his companion as the latter were going out of the rooms thereat. Barangay officials were immediately summoned and upon their arrival, PO1 Decrepito searched the accused and was able to recover from the latter's pocket, two (2) plastic sachets of shabu.[11] PO2 Olano and PO1 Parita entered the room and immediately saw various drug paraphernalia on top of the bed. They gathered the same and PO1 Parita, who was designated as the exhibit custodian, made a list of all the items recovered. Accused-appellant and the recovered items were brought to the Office of the Intelligence Section and it was there where PO1 Parita marked the recovered items. The following day, PO1 Parita brought all the recovered items as well as the accused-appellant, to the Iloilo City Prosecution Office where said items were inventoried[12] before Prosecutor Jeremy Bionat. Also present thereat was a barangay official and a media representative. After the inventory, all the items and the warrant were returned[13] to Judge Rene S. Hortillo, together with a request that the police operatives remain to have custody of the seized items. Thereafter, PO1 Parita submitted to the PNP Crime Laboratory a Request for Laboratory Examination[14] together with the seized two (2) plastic sachets of white crystalline substance as well as the one (1) cut aluminum foil[15] and three (3) small rolled aluminum foils.[16] The specimen were then examined by forensic chemist P/Supt. Rea Villavicencio and per her Chemistry Report,[17] the examined items were found positive for methamphetamine hydrochloride, a dangerous drug.

The defense, on the other hand, did not present testimonial or documentary evidence because, according to his counsel, accused was uncooperative.

Based on the foregoing, the Court a quo rendered its decision in the manner and tenor quoted above.

Aggrieved, accused-appellant appealed the court a quo's decision and raised the following assignments of error in his Appellant's Brief,[18] to wit:

1. THE COURT A QUO GROSSLY VIOLATED ACCUSED' CONSTITUTIONAL AND STATUTORY RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.
2. THE COURT A QUO ERRED IN NOT ALLOWING THE ACCUSED TO PRESENT EVIDENCE ON HIS BEHALF.

The appeal does not merit this Court's consideration.

Accused-appellant contends that his constitutional right was violated inasmuch as he was charged with violation of Sections 13 and 14, Article II of Republic Act 9165 but was convicted for violation of Sections 11 and 12 of the same law. He further contends that to convict him of an offense other than charged in the information, is violative of his constitutional right to be informed of the nature and cause of the accusation against him.

We do not agree with accused-appellant.

Under Section 4, Rule 120 of the Revised Rules of Criminal Procedure, when there is a variance between the offense charged in the complaint or information, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.[19]

In the instant case, accused-appellant was charged under Sections 13 and 14 of Article II of R.A. 9165 which read as follows:

“Section 13. Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings. – Any person found possessing any dangerous drug during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons, shall suffer the maximum penalties provided for in Section 11 of this Act, regardless of the quantity and purity of such dangerous drugs.

Section 14. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings. - The maximum penalty provided for in Section 12 of this Act shall be imposed upon any person, who shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons.”

After trial on the merits, the court a quo convicted him under Sections 11 and 12 of R.A. 9156, which provide that:

“Section 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

XXX

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

XXX

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act."

From the foregoing it is clear that the offenses for which accused-appellant was charged under the informations quoted above, necessarily include the offenses he was convicted for.

The Supreme Court, in the case of EDGAR Y. TEVES and TERESITA Z. TEVES vs. THE SANDIGANBAYAN,[20] has ruled that:

"It is clear that the essential ingredients of the offense proved constitute or form part of those constituting the offense charged. Put differently, the first and second elements of the offense charged, as alleged in the information, constitute the offense proved. Hence, the offense proved is necessarily included in the offense charged, or the offense charged necessarily includes the offense proved. The variance doctrine thus finds application to this case..."

In another case entitled PEOPLE OF THE PHILIPPINES vs. ALVIN ABULON y SALVANIA,[21] the Supreme Court has ruled that:

"...Following the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120, Rules of Criminal Procedure, appellant can be found guilty of the lesser crime of acts of lasciviousness. Said provisions read:

Sec. 4. Judgment in case of variance between allegation and proof. – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or

necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Sec. 5. When an offense includes or is included in another. – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.”

Anent accused-appellant's second assignment of error to the effect that the court a quo erred in not allowing the accused to present evidence on his behalf, we likewise find the same bereft of merit.

Our perusal of the records of the case reveals that herein accused-appellant was given several opportunities to present evidence but failed to do so. For instance, per Order dated November 21, 2011,[22] when the case was called for the presentation of evidence for the defense, accused-appellant's counsel manifested that she could not locate her client thus, she was prompted to postpone the same. Also, on the May 16, 2012 hearing, accused failed to appear thereby prompting the court to reset the case again.[23] On October 20, 2012, the accused failed to appear again prompting another resetting.[24] Finally, on the hearing scheduled on November 28, 2012, accused-appellant's counsel finally manifested that the defense cannot present any witness considering that accused-appellant was no longer communicating with his counsel thereby prompting the court to declare the cases against him as submitted for decision.[25] Clearly, accused-appellant cannot deny that he was given ample opportunity to present evidence.

Accused-appellant's contention that his failure to testify and present evidence was due to the fault of his counsel who filed numerous postponements and that he was even surprised when his counsel manifested that the defense will not present evidence, cannot be given merit.

The Supreme Court, in the case of GREGORIO DIMARUCOT y GARCIA vs. PEOPLE OF THE PHILIPPINES,[26] has ruled that:

“Petitioner cannot simply harp on the mistakes and negligence of his lawyer allegedly beset with personal problems and emotional depression. The negligence and mistakes of counsel are binding on the client.[27] There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of one's property or liberty through a technicality. However, in this case, we find no reason to exempt petitioner from the general rule. [28]”

As in the above cited case, accused-appellant failed to establish that his counsel acted with gross negligence, hence, the exception to the rule does not apply in the instant case.

Likewise instructive is the ruling of the Supreme Court in the case of MELCHOR L. LAGUA vs. THE HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,[29] to wit:

“Nothing is more settled than the rule that the negligence and mistakes of counsel are binding on the client.[30] Otherwise, there would never be an end to a suit, so long as counsel could allege its own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law.

The rationale for this rule is reiterated in the recent case *Bejarasco v. People*:

The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself.

It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough." [31]

Finally, since the evidence adduced by the prosecution in the instant case established beyond reasonable doubt that accused-appellant was in possession of shabu and shabu paraphernalia in violation of Sections 11 and 12 of Article II of R.A. 9165, then there is no reason to disturb the decision of the court a quo.

WHEREFORE, the joint Decision of the Regional Trial Court, Branch 36, Iloilo City in Criminal Cases Nos. 07-64202 and 07-64203 dated January 10, 2013 convicting herein accused-appellant for Violation of Sections 11 and 12, Article II of Republic Act No. 9165 is hereby AFFIRMED in toto.

SO ORDERED.

Maxino, P.A., and Francisco, R.C., JJ., concur.

[1] Records at pp. 328-346.

[2] Records at p. 1 of Criminal Case No. 07-64202.

[3] Records at p. 1 of Criminal Case No. 07-64203.

[4] Certificate of Arraignment for Criminal Case No. 07-64202; Records at p. 5. Certificate of Arraignment for Criminal Case No. 07-64203; Records at p. 33

[5] Pre-trial Order, Records at pp. 47-49.

[6] Transcripts of Stenographic Notes dated April 12, 2010 and February 15, 2010.

[7] Transcript of Stenographic Notes dated June 28, 2011.

[8] Transcript of Stenographic Notes dated March 3, 2008.

[9] Transcript of Stenographic Notes dated November 26, 2007.

[10] Exhibit "A," Records at p. 22.

[11] Exhibit "K" and Exhibit "L" marked ATP-1 and ATP-1B.

[12] Exhibit "D," Records at p. 21.

[13] Exhibit "B," Records at p. 23.

[14] Exhibit "E," Records at p. 256.

[15] Exhibit "N," marked ATP-2.

[16] Exhibit "O-1" to "O-3"

[17] Records at p. 13.

[18] Rollo at pp. 12-24.

[19] PEOPLE OF THE PHILIPPINES VS. ALEJANDRO RELLOTA Y TADEO; G.R. No. 168103 [Formerly G.R. Nos. 155930-32], August 3, 2010 citing Dado v. People, 440 Phil. 520, 539 (2002).

[20] G.R. No. 154182. December 17, 2004.

[21] G.R. No. 174473, August 17, 2001.

[22] Records at p. 281.

[23] Records at p. 300.

[24] Records at p. 319.

[25] Records at p. 327.

[26] G.R. No. 183975, September 20, 2010.

[27] Polintan v. People, G.R. No. 161827, April 21, 2009, 586 SCRA 111, 116, citing Sapad v. Court of Appeals, G.R. No. 132153, December 15, 2000, 348 SCRA 304, 308.

[28] Cariño v. Espinoza, G.R. No. 166036, June 19, 2009, 590 SCRA 43, 47, citing Estate of Felomina G. Macadangdang v. Gaviola, G.R. No. 156809, March 4, 2009, 580 SCRA 565, 572-573.

[29] G.R. No. 173390, June 27, 2012. [30] Sapad v. Court of Appeals, 401 Phil. 478, 483 (2000).

[31] G.R. No. 159781, 2 February 2011, 641 SCRA 328, 330-331.

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