

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTHONY RAYMUNDO Y GARCIA, ACCUSED-APPELLANT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is an appeal from the Decision[1] dated 11 January 2012 of the Regional Trial Court Branch 269 of Valenzuela City convicting the accused-appellant Anthony Raymundo y Garcia (appellant) in Criminal Case No. 541-V-10 for violation of Section 11, Article II of Republic Act No. 9165, otherwise known as “Comprehensive Dangerous Drugs Act of 2002” (RA 9165). He was acquitted in Criminal Case No. 542-V-10 for violation for Section 12, Article II of RA 9165, while his co-accused were all acquitted in both criminal cases.

The Information in Criminal Case No. 541-V-10 charging the appellant, Anthony S. Raymundo, Jr., Louie S. Raymundo, Valentino G. Garcia, and Rommel D. Tobias, alleges:

“On or about July 8, 2010, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their possession and control three (3) pcs. of heat-sealed transparent plastic sachet containing zero point zero one (0.01), zero point zero two (0.02) and zero point zero five (0.05) respectively; and four (4) heat-sealed transparent plastic sachet containing zero point zero three (0.03), zero point zero four (0.04), zero point zero three (0.03) and zero point zero three (0.03) respectively, for a total of zero point twenty one grams of Methylamphetamine Hydrochloride (Shabu), knowing the same to be a dangerous drug.

Contrary to Law.”[2]

When arraigned, all the accused pleaded not guilty to the charges, whereupon trial ensued. In the course of the trial, the prosecution presented the testimonies of PCI Stella Ebuén, SPO2 Ronald Sanchez, PO2 Freddie Lim, Karen Velarde and Mario Dulap which tend to establish the following facts:

At around 5:00 a.m. on 8 July 2010, the police operatives of Valenzuela City served a search warrant issued by Judge Nancy Rivas-Palmones of Valenzuela City Regional Trial Court at the house of the appellant. They were accompanied by their informant who had conducted a test buy sometime on 29 June 2010. Upon arriving at the appellant's house, they first knocked at the door and identified themselves as police authorities. They announced that they were armed with a search warrant and ordered the people inside the house to open the door. When they refused to open the door, the SWAT team opened it. The police operatives saw at the sala Lorena Raymundo, the daughter of the appellant, and her husband, Rommel Tobias. They informed Lorena of the search warrant against her father. When they knocked at the rooms, the other occupants, namely, Louie Raymundo and Anthony S. Raymundo, Jr. were all awakened and startled. They were all grouped together at the sala, including Valentino Raymundo who was then sleeping in another house adjacent to appellant's house.[3]

SPO2 Ronald Sanchez discovered three heat-sealed plastic sachets containing white crystalline substances, five aluminum foil strips, and two disposable lighters at the back of the stairs leading to the second floor and on the

top of the speaker at the sala. On the other hand, PO2 Freddie Lim discovered four heat-sealed plastic sachets containing white crystalline substances, three aluminum foil strips and a cigarette pack on the top of the TV rack. SPO2 Salvadora, who was tasked as photographer, took pictures of the discovered items. The inventory of the seized items was conducted at house of the appellant and the Receipt of Property Seized was signed by Lorena Raymundo.[4]

The appellant, who was on duty at that time as a Barangay Tanod of Barangay Malinta, Valenzuela City, was picked up at the Barangay Hall by a certain “Capt. Boyet Francisco” and his companions. He was brought to the covered court of Barangay Malinta which served as the command post of the police operation.

Anthony Raymundo, Jr., Louie Raymundo, Valentino Raymundo, and Rommel Tobias were also brought by the police operatives to the covered court. At the covered court, PCI Stella Ebuena, a forensic chemical officer of the Northern Police District Crime Laboratory Office, conducted an initial laboratory examination of the recovered items. She issued the Initial Laboratory Report[5] which showed that the white crystalline substances seized by SPO2 Sanchez and PO2 Lim at the house of the appellant tested positive for the presence of methylamphetamine hydrochloride or shabu.[6]

Thereafter, the appellant, and his co-accused, Valentino Raymundo, Anthony S. Raymundo, Jr., Louie Raymundo, and Rommel Tobias were brought to the police station for booking. They were then brought to the NPD-PNP Crime Laboratory for drug test. In the meantime, the drugs seized from the accused were kept in the custody of PCI Ebuena.[7] The confirmatory laboratory examination conducted by PCI Ebuena likewise confirmed that the substances inside the heat-sealed plastic sachets were positive for methylamphetamine hydrochloride or shabu, as shown by Physical Science Report No. D-174-10.[8]

For its part, the defense presented the testimonies of the accused-appellant Anthony G. Raymundo, Valentino G. Raymundo, Anthony S. Raymundo, Louie S. Raymundo, Rommel Tobias, Wilito Pamatian, and Lorena Raymundo. Their version of the 8 July 2010 incident is as follows:

In the early morning of 8 July 2010, Lorena Raymundo, Rommel Tobias, Louie Raymundo, and Anthony Raymundo, Jr. were all sleeping in the house of the appellant when they were suddenly awakened by the police operatives who forcibly entered the said house.[9] Except for Lorena, all the occupants, including Valentino who was sleeping in the adjacent house, were handcuffed, herded to the sala, ordered to lie down facing the ground, and told not to move. The police officers immediately searched the entire house without showing the search warrant to any of the occupants of the house.[10] It was only after the search was finished that they showed to Lorena a copy of the search warrant.[11] After an hour had lapsed, they were brought to the covered court in Dulong Tangke for verification.[12] Thereafter, they were brought to the police station and was detained therein.

Meanwhile, the appellant was not in the house at the time of the search because he was on duty as Barangay Tanod of Barangay Malinta, Valenzuela. He was later picked up at the Barangay Hall by a certain “Capt. Boyet Francisco”, “Sir Ramos” and “Victoriano” and was brought to the covered court for verification.[13] He was also later detained at the police station together with the other accused.

Accused filed a motion to suppress evidence which was denied by the trial court. After the trial has been concluded, the lower court rendered the assailed Decision convicting the appellant of illegal possession dangerous drug. He was however acquitted of illegal possession of drug paraphernalia. Also, all the other accused were acquitted in both charges. The dispositive portion of the Decision reads:

“WHEREFORE, accused ANTHONY RAYMUNDO, SR. y GARCIA, also known as Tune, is hereby found GUILTY beyond reasonable doubt of illegal possession of a dangerous drug, in violation of Section 11, Article II of Republic Act No. 9165, and hereby imposed an indeterminate prison sentence of 12 years and one day as

minimum, to 15 years, as maximum, and a fine of P300,000.00. Said accused is, however ACQUITTED of the offense of violation of Section 12 of RA 9165.

For insufficiency of evidence, accused VALENTINO RAYMUNDO y GARCIA @ VANNY, ANTHONY RAYMUNDO, JR. y SERATO @ TON-TON, LOUIE RAYMUNDO y SERATO, and ROMMEL TOBIAS y DORIA are hereby ACQUITTED of the offenses charged against them.

The Acting Branch Clerk of Court is hereby directed to turn over with dispatch the specimen evidence to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Cost against accused Anthony Raymundo, Sr.

SO ORDERED.”

In convicting the appellant, the lower court gave full faith and credence to the version of the prosecution. It ruled that the elements of the crime of illegal possession of dangerous drugs under Section 11, Article II of RA 9164 were duly proved in this case. It held that as the owner of the house where the dangerous drugs were found, appellant exercises dominion and control over the same. Hence, he had constructive possession of the said dangerous drugs. It also held that the prosecution has proven that such possession was not authorized by law, and that he freely and consciously possessed the dangerous drugs.

Hence, the instant appeal. Accused-appellant assigns the following errors:

- THE LOWER COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE EVIDENCE ADDUCED BY THE PROSECUTION MISERABLY FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

- THE LOWER COURT ERRED IN NOT EXCLUDING THE EVIDENCE OBTAINED OR SECURED IN AN ILLEGAL SEARCH BY VIRTUE OF A GENERAL SEARCH WARRANT.[14]

With regard to the issue of whether the search warrant was in the nature of a general search warrant, We rule in the negative.

Section 2, Article III of the Constitution provides:

“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.” [Underscoring Ours].

The rule is that the description of the place to be searched is sufficient if the officer serving the warrant can, with reasonable effort, ascertain and identify the place intended[15] and distinguish it from other places in the community.[16] A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.[17]

In this case, the search warrant specifically orders the “search of the premises of the ANTHONY RAYMUNDO a.k.a. Tune of unnumbered house at Dulong Tangke St., Malinta, Valenzuela City”. It appears on record that the police authorities did not encounter difficulty in ascertaining and identifying the premises described in the search warrant because they were accompanied by their informant who executed a sworn statement which was the basis for the issuance of the search warrant. Thus, this informant had a personal knowledge and was familiar to the exact location of the appellant's premises.

With regard to the first assigned error, appellant contends that the lower court erred when it ruled that he was deemed to have constructive possession of the illegal substances by the mere fact that he was the owner of the house in which these substances were found. He adds that considering the quantity of the seized drugs was so minute, it was possible that somebody has brought the same inside his house without his consent.

Appellant's contention is meritorious.

In every prosecution for the illegal possession of shabu, the following essential elements must be established: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.[18]

Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[19] Constructive possession is the relation between the owner of the drug and the drug itself when the owner is not in actual physical possession, but when it is still under his control and management and subject to his disposition.[20]

In this case, the prosecution failed to establish beyond reasonable doubt that the accused had either actual or constructive possession of the prohibited drugs. First, the appellant was not caught in actual possession of the prohibited drugs because he was not present at the time the police operatives executed the search warrant. Second, the prosecution likewise failed to prove that he had a constructive possession of the prohibited drugs. The particular locations where the prohibited drugs were found in his house do not indicate, with moral certainty, that the appellant had an exclusive dominion or control over them. SPO2 Ronald Sanchez testified that he found some of the confiscated prohibited drugs at the back of the stairs leading to the second floor and on top of the speaker in the sala. On the other hand, PO2 Freddie Lim testified that he discovered some of the confiscated prohibited drugs on the top of the TV rack which was located also in the sala.

It must be stressed that the appellant's children, namely, Anthony Raymundo, Jr. Louie Raymundo, and Lorena Raymundo, and the latter's husband, Rommel Tobias, were all sleeping in the appellant's house at the time of the implementation of the search warrant. Hence, there is a possibility that it was not the appellant who brought in the prohibited drugs inside his house. Consequently, it cannot be concluded with moral certainty that it was the appellant, to the exclusion of the other occupants of his house, who had the dominion and control over the stairs and the sala where the prohibited drugs were found by the police operatives.

The lower court's reliance of the Supreme Court's ruling in *People vs. Tira*[21] regarding constructive possession of illegal drugs is misplaced. In that case, the Supreme Court deemed the accused spouses in constructive possession of the prohibited drugs because they were found under the bed in the inner room of their house with no other persons as occupants. Hence, the Supreme Court ruled that the accused spouses had the constructive possession of the illegal drugs.

Also, in several cases, the Supreme Court applied the concept of constructive possession only when there was a clear showing of the dominion and control of the accused over the premises where the prohibited drugs were found. Thus:

In *People v. Torres*,[22] the Supreme Court held that there was constructive possession of prohibited drugs because they were found inside the second deck of a wooden cabinet in the bedroom of the accused.

In *Abuan v. People*,[23] the Supreme Court affirmed the finding that the accused was in constructive possession of prohibited drugs which had been found in the drawer located in her bedroom.

In *Quelnan vs. People*[24], the Supreme Court ruled that there was constructive possession of the prohibited drugs because they were found on the top of the table in a studio-type condominium solely owned and occupied by the accused.

Clearly, the circumstances in the above cases uniformly show that each of the accused therein had full dominion and control over the premises where the prohibited drugs were found. In contrast, the prohibited drugs in this case were found by the police operatives in common areas of the house---at the stairs and at the sala. The prosecution failed to show that it was only the appellant who had an access to these premises, to the exclusion of the other occupants of the house. Under the circumstances, We cannot rule that the appellant had a constructive possession of the prohibited drugs. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.[25]

WHEREFORE, the appeal is GRANTED. The assailed Decision dated 11 January 2012 in Criminal Case No. 541-V-10 is REVERSED and SET ASIDE. Appellant Anthony G. Raymundo is ACQUITTED of violation of Section 11, Article II of Republic Act No. 9165, otherwise known as “Comprehensive Dangerous Drugs Act of 2002” (RA 9165).

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, at 62-78.

[2] *Id.*, at 1.

[3] *Id.*, at 89.

[4] *Id.*, at 89.

[5] *Id.*, at 28.

[6] *Id.*, at 89-90.

[7] *Id.*, at 90.

[8] *Id.*, at 25.

[9] TSN, 18 July 2011, at 6.

[10] TSN, 22 August 2011, at 6.

[11] TSN, 22 August 2011, at 6.

[12] TSN, 18 July 2011, at 7.

[13] *Id.*, TSN, 18 July 2011, at 13.

- [14] Id., at 30
- [15] People vs. Veloso, 48 Phil. 169, 180 (1925).
- [16] Ex parte Flores, 452 SW 2d 443, 444 (1970).
- [17] People vs. Tee, G.R. Nos. 140546-47. January 20, 2003.
- [18] People vs. Dela Cruz, G.R. No. 182348 , 20 November 2008.
- [19] Del Castillo vs. People, G.R. No. 185128, 30 January 2012.
- [20] People vs. Posada, et al., G.R. No. 19445, 12 March 2012.
- [21] G.R. No. 139615. May 28, 2004.
- [22] G.R. No. 170837, 12 September 2006.
- [23] G.R. No. 168773, 27 October 2006.
- [24] G.R. No. 166061, 6 July 2007.
- [25] Del Castillo vs. People, G.R. No. 185128, 30 January 2012.

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