

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. INA SENO MACARAMPAT, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

This is an appeal from the April 17, 2012 Judgment[1] of the Regional Trial Court Branch 25, Cagayan de Oro City in Criminal Case No. 2010-634 for violation of Section 26 (b), Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, the dispositive portion of which states:

“WHEREFORE, premises considered, this Court hereby finds the accused INA SENO MACARAMPAT GUILTY BEYOND REASONABLE DOUBT of violating Section 11, Article II of RA 9165, which is necessarily included in the offense charged, and hereby sentences her to an indeterminate sentence ranging from Twelve [12] years and one [1] day to twelve years [12] and six [6] months of reclusion temporal, and to pay a Fine in the amount of Three Hundred Thousand Pesos [P300,000.00] without subsidiary imprisonment in case of non-payment of Fine.

The period of her preventive detention shall be credited in full in favor of the accused.

Let the penalty imposed on the accused be a lesson and an example to all who have the criminal propensity, inclination and proclivity to commit the same forbidden acts, that crime does not pay, and that the pecuniary gain and benefit which one can derive from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted and penalized to the full extent of the law.

SO ORDERED.”

Accused Ina Seno Macarampat’s conviction stemmed from an Information dated June 17, 2010,[2] the pertinent portion of which reads:

“That on or about June 11, 2010, at more or less 3:30 o’clock in the afternoon, at Karinugan, Balulang, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly by overt act, attempt to sell and/or offer for sale by showing, after being asked if she has a stock of shabu for sale, and give away to a poseur buyer/decoy two (2) pieces heat sealed cellophane pack containing white crystalline substance (shabu) weighing 0.03 gram[s], accused knowing the same to be a dangerous drug.”

Duly assisted by counsel, accused was arraigned on July 2, 2010 wherein she pleaded not guilty to the offense charged against her.[3] Presently, the accused is detained at the Correctional Institute for Women- DAPECOL, Davao del Norte.[4] Her petition for bail was denied per Resolution promulgated on May 24, 2013.[5]

The facts of the case are as follows:

The prosecution presented PO3 Abner Tagam[6] and PO2 Cyrus Baillo[7] to attest that on June 11, 2010, at about

1:00 or 1:30 p.m., their confidential informant came to their office to report the rampant selling of drugs by one Ina Seno Macarampat at Karinugan, Carmen. In response thereto, the police authorities immediately informed their chief and prepared a pre-operation report with the coordination form addressed to the PDEA Office. Commanding officer PCI Nomio Radam conducted a short briefing instructing PO3 Tagam and his team, including PO2 Baillo, together with the confidential informant, to conduct a monitoring and surveillance on the accused and the area reported.

On the same day, at about 3:30 p.m., the operatives proceeded to the area. PO3 Tagam and the informant went to the accused's house while the rest of the police authorities were positioned strategically about 20 meters, more or less, from them. Seeing the accused standing outside her house, the informant, with PO3 Tagam following behind, approached the accused and inquired if the latter had available stocks of shabu. The accused then took her red wallet and drew two (2) plastic sachets which both contained white crystalline substance suspected to be shabu. PO3 Tagam immediately introduced himself as a police officer, apprehended the accused, and rang PO2 Baillo's cellphone; the pre-arranged signal for the latter to respond. Immediately, PO2 Baillo went to the scene and arrested the accused while PO3 Tagam secured the items including the red wallet. As the area was already converged with other Muslims and a lot of people were interfering with the operations, the operatives opted to mark, make the inventory and photograph the items in their office. All that time, the seized items were handled by PO3 Tagam who placed them together in a transparent cellophane.

At the police station, PO3 Tagam marked the items with his initials "AAT", the name of the accused "INA", and the date of seizure, before preparing the inventory report.[8] After the request for laboratory examination was issued, PO3 Tagam and PO2 Baillo personally brought the specimen to the crime laboratory on the same day at 7:20 p.m.[9] Per Chemistry Report dated June 12, 2010, the examination of the submitted specimen was completed at 1:30 a.m. and it yielded positive for the presence of methamphetamine hydrochloride or shabu.[10] The tests conducted on the accused's urine also gave the same positive results for the presence of shabu. The urine examination was completed on even date at 2:00 a.m.[11]

During trial, the police officers duly identified before the court a quo the accused and the seized items through the markings thereon.

The accused, on the other hand, maintains that on June 11, 2010, at about 3:30 p.m., she was in their house at Macanhan, Carmen with her daughter. She was taking a bath when she heard a commotion. She went to check it and saw unidentified men inside their house. She ran to her room but it was too late as the men took hold of her and her daughter. She asked why they were arrested but got no answer. Instead, the men escorted her and her daughter outside the house and boarded them in a van going to the police station. At the police precinct, the police authorities allegedly demanded P100,000.00 in exchange for her and her daughter's release. She refused because she did not have such amount but her daughter was eventually freed out of the authorities' pity. The accused avers that she was never informed of her charges much more her rights and that no drugs were ever found in her or her daughter's possession.[12]

The accused's daughter recounts that she and her mother were at their house on June 11, 2010 preparing to go to the night café when suddenly an intruder, chased by several other unidentified men, came running inside their house. Her mother was then taking a bath but came out after hearing the commotion. The unidentified men then arrested her, her mother and the intruder. They were taken to the police station.[13]

The accused and her daughter attest that the police authorities who appeared before the court and testified for the prosecution are not the same persons who arrested and demanded money from them. But the accused denies knowing the arresting officers or that she had any quarrel with them.

On cross-examination, it was established that several Muslims lived within the accused's neighborhood.

The court a quo rendered the assailed judgment holding that the arrest and seizure was valid although they intended to conduct only a surveillance as the illegal act was done in plain view; that the police authorities were able to sufficiently explain why the inventory was done only at the police station and not at the scene of the crime; that considering the hostile crowds, prudence dictates that they should leave the scene; that the chain of custody was established as PO3 Tagam had been in possession of the seized items from the area up to their office and he was the only person who came into contact with it until it was surrendered to the crime laboratory; that not only did he make the markings thereon but he also personally delivered it to the laboratory for examination; and that there was no reason why the police officers would single out the accused. However, the court a quo found that attempt to sell was not sufficiently established thus, the accused was only found guilty of the crime proven which is necessarily included in the offense charged which is possession of shabu.

Hence, this appeal with the accused asseverating that if the attempt to sell illegal drugs was not proven, the accused could not also be convicted of possession; that the illegal drugs were fruits of poisonous tree; that the records do not show that the seized items were the same ones presented in court; that the authorities failed to follow the procedure required on the seizure and custody of drugs without justifiable grounds.[14]

Our Ruling

The appeal utterly lacks merit.

We first resolve the issue as to the integrity of the corpus delicti which is essential in determining the accused-appellant's guilt.

Section 21 of RA 9165 reads:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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. 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 x x x.

It is worthy to note that the inventory and photograph of the seized items may be conducted at the apprehending team's office. Marking upon immediate confiscation does not exclude the possibility that marking can be at the police station or the office of the apprehending team.[15] The above provision likewise provides that non-compliance with the requirements shall not render void and invalid the seizure and custody of the items as long as (1.) there is justifiable grounds for the non-compliance and (2.) the integrity and evidentiary value of the seized items are preserved by the apprehending team. Apparently, strict application of the above-mandated

procedures is not without exceptions.

In this case, it was indubitably admitted that the police authorities only marked, inventoried, and photographed the seized items at their office and not immediately at the crime scene. It is therefore important to establish that: 1.) there was a justifiable reason for the departure of the mandated procedures; and 2.) the integrity and evidentiary value of the seized items have been properly preserved.

We find both conditions at hand.

Based on the testimonies of the apprehending and responding officers, which were barely refuted by the accused-appellant, upon the accused-appellant's arrest, people started converging and interfering with the operations with Muslims surrounding the arresting officers. We find this sufficient reason for the operatives to immediately leave the premises lest a commotion may occur. Consequently, the marking and the inventory of the seized items made at the apprehending team's office is warranted. Moreover, from the records of this case, it was proved that the integrity and evidentiary value of the corpus delicti was aptly preserved. The chain of custody was adequately established and it was evidently shown that from the moment the items were seized up to its delivery to the crime laboratory for examination, only one (1) person was in custody thereof and that was PO3 Tagam. Per testimonies of the operatives, PO3 Tagam recovered the sachets of shabu from the accused-appellant, including the latter's red wallet from where the sachets were drawn, placed them in a cellophane, proceeded to their office, made the necessary markings and inventory thereon, and thereafter, personally delivered them to the crime laboratory. All those time, the confiscated items were in the safekeeping of PO3 Tagam and this was attested to by PO2 Baillo. During the hearing, the items presented therein were duly identified by the witnesses as the same ones taken from the accused-appellant based on the markings made by PO3 Tagam. In the case of *People v. Castro*,^[16] the Supreme Court ruled:

"...the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with..."

Concomitantly, it is Castro who bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers, as well as a presumption that said public officers properly discharged their duties. Since Castro failed to discharge such burden, it cannot be disputed that the drugs seized from him were the same ones examined in the crime laboratory. The prosecution, therefore, established the crucial link in the chain of custody of the seized drugs."

In the case at bench, no ill-motive or bad faith to corrupt the seized items is imputed on the apprehending officers. The police authorities are entitled to the presumption of the regularity of the performance of their duties. Without proof to the contrary, the integrity of the evidence is presumed to be preserved.

Consequently, although there was no rigid application of the procedures set forth by the law on the immediate marking, inventory or photograph of herein seized items, the prosecution satisfactorily showed that such departure is justified and that the integrity and evidentiary value of the corpus delicti was properly preserved.

Anent the accused-appellant's contention that if the attempted selling of prohibited drugs could not be proven, this would also negate conviction of possession, an offense necessarily included in the offense charged, We do not agree.

In the case of *People v. Posada*,^[17] the accused were acquitted of the charge of illegal sale of drugs but convicted for illegal possession thereof. As declared by the High Court:

"Notwithstanding the above-discussion, we convict both Roger and Emily of illegal possession of prohibited drugs despite the fact that they were charged for the sale of illegal drugs, because possession is necessarily

included in sale of illegal drugs.

Section 4, Rule 120 of the Rules of Court provides:

Sec. 4. Judgment in case of variance between allegation and proof. – When there is 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.

Since sale of dangerous drugs necessarily includes possession of the same, the accused-appellants should be convicted of possession.”

Likewise, in *People v. Hong Yeng and Tsien Chua*,^[18] the Supreme Court held that:

“Absence of proof of consummation, the accused may be acquitted for illegal sale of drugs. Nonetheless, accused may be convicted for ‘illegal possession of prohibited drugs’-penalized in Section 8 of Republic Act (R.A.) 6425, as amended-as possession is necessarily included in the crime charged in the Information...

Appellant’s exoneration from the sale of prohibited drugs does not spell freedom from all criminal liability as they may be convicted for illegal possession of prohibited drugs under Section 8 of R.A. 6425. This Court has consistently ruled that possession is necessarily included in the sale of illegal drugs.

Given that illegal possession is an element of and is necessarily included in the illegal sale of prohibited drugs, the Court will now determine appellant’s culpability under Section 8. (*Italics for emphasis*)

Analogously, in an attempt to sell prohibited drugs, possession thereof is included in the crime charged and as a result, the accused may be convicted only of possession if proved. This is allowed by the Rules and has been consistently applied in a litany of cases. The case of *People v. Manansala*,^[19] reiterates that illegal possession, being an element of illegal sale, is necessarily included in the illegal sale.

In the case before Us, the Information charges the accused-appellant of an attempt to sell two (2) sachets of shabu by showing them to the poseur-buyer and allegedly offering them for sale. The statement sufficiently entails that the accused-appellant was in possession of the illicit drugs, an element indispensable for the sale thereof. True that the allegations in the information are on the accused-appellant’s attempt to sell and not on her possession of the dangerous drugs but this does not defeat the accused-appellant’s right to be properly informed of the accusations against her because the facts set forth in the information sufficiently alleged her possession of two (2) sachets of shabu as subject of the purported sale, the same illicit drugs upon which the accused-appellant’s conviction for possession is founded. As held in *People v. Manansala*,^[20]

“...only the prohibited drugs alleged in the information to be the subject of the illegal sale is considered competent evidence to support the conviction of the accused for the illegal possession. As such, the illegal possession is either deemed absorbed by or is considered a necessary element of the illegal sale. On the other hand, any other illegal substance found in the possession of the accused that is not part of the subject of the illegal sale should be prosecuted under a distinct and separate information charging illegal possession; otherwise, the fundamental right of the accused to be informed of the nature and cause of the accusation against him would be flagrantly violated. The rule is that when there is a variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged.” (*Emphasis supplied*)

In the instant case, albeit evidence to support an attempted sale was wanting, there was sufficient proof showing that the accused-appellant presented before the police authorities two (2) sachets later proven to contain shabu, the same drugs subject of the attempted sale as alleged in the Information. Hence, the court a quo correctly considered

the drugs recovered from the accused-appellant as basis to determine her guilt based on possession thereof.

The elements of illegal possession of prohibited drugs are: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[21] In the case at bench, the prosecution undoubtedly established the elements. It cannot be denied that the accused-appellant was in possession of a prohibited drug later confirmed to be shabu. PO3 Tagam saw her take the sachets containing the shabu from her red wallet showing them to the confidential informant. She freely possessed the illegal drugs without proof of authority by law. This prompted the accused-appellant's arrest in flagrante delicto despite the fact that the operations was only supposed to be a surveillance to confirm that there indeed was rampant sale of illegal drugs by the accused-appellant as reported by the confidential agent. When an accused is caught in flagrante delicto, the police officers are not only authorized but are duty-bound to arrest even without a warrant.[22]

Herein accused-appellant failed to rebut the operatives' testimonies of her possession nor was she able to convince that she was authorized to possess the illegal drugs. Nothing was proffered to doubt the veracity of PO3 Tagam's testimony nor was there motive for the police authorities to falsely implicate her in the crime. Hence, the operatives' testimonies deserve credence. Thus, accused-appellant's conviction should be sustained.

WHEREFORE, the instant appeal is DISMISSED. The April 17, 2012 Judgment of the Regional Trial Court Branch 25, Cagayan de Oro City in Criminal Case No. 2010-634 is hereby AFFIRMED.

SO ORDERED.

Camello (Chairperson) and Lopez, JJ., concur.

[1] Records, pp. 90-100.

[2] Records, p. 3.

[3] Records, p. 15.

[4] Records, p. 92.

[5] Rollo, p. 115-119.

[6] TSN, October 11, 2010.

[7] TSN, February 22, 2011.

[8] Records, p. 62.

[9] Records, p. 58.

[10] Records, p. 60.

[11] Records, p. 61.

[12] TSN, March 13, 2012.

[13] TSN, September 27, 2012.

[14] Records, pp. 59-69.

[15] People v. Alejandro, G.R. No. 176350, August 10, 2011.

[16] G.R. No. 194836, June 15, 2011.

[17] G.R. No. 194445, March 12, 2012.

[18] G.R. No. 181826, January 9, 2013.

[19] G.R. No. 175939, April 3, 2012.

[20] Supra.

[21] Asiatico v. People, G.R. No. 195005, September 12, 2011.

[22] Zalameda v. People, G.R. No. 183656, September 4, 2009.

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