

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR MASANGKAY Y ZAPANTA, ACCUSED-APPELLANT.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

Repugned in this Appeal is the Decision[1] dated 17 January 2014 of the Regional Trial Court, Fourth Judicial Region, Antipolo City, Branch 73, for violation of Sections 5(1) and 11(2), Article II, Republic Act (RA) No. 9165,[2] in Criminal Case Nos. 03-25753 and 03-25754. The court a quo adjudged, as follows:

“WHEREFORE, premises considered, accused Cesar Masangkay y Zapanta is hereby found guilty beyond any shadow of doubt of the offense charged in the Informations and is sentenced to the penalty of Life Imprisonment in Criminal Case No. 03-25754 with a fine of Php500,000.00 and in Criminal Case No. 03-25753, the same accused is hereby sentenced to suffer an Imprisonment of Twelve (12) years and One (1) day to Twenty (20) years with a fine of Php300,000.00 as provided for under Sec. 11(,) Par. (3) of RA 9165, as amended. Cesar Masangkay y Zapanta is to be immediately committed to the National Bilibid Prisons for immediate service of his sentence.

The seized specimens subject of the instant cases are ordered destroyed in the manner provided for by law.

SO ORDERED.”[3]

The Informations inculcating accused-appellant Cesar Masangkay y Zapanta (MASANGKAY) for violation of Sections 5(1) and 11(2), Article II, R.A 9165 set forth the following accusatory averments:

Criminal Case No. 03-25753

“That on or about the 10th day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess/use any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat sealed transparent plastic sachet containing 0.30 gram of white crystalline substance, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory on the white crystalline substance gave positive result to the tests for methylamphetamine hydrochloride, also known as shabu, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.”[4]

Criminal Case No. 03-25754

“That on or about the 10th day of May 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to PO1 Robert Cañgan (sic) who acted as a poseur-buyer, one (1) heat sealed transparent plastic sachet containing 0.13 gram of white crystalline substance, for and in consideration of the sum of P200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave positive result to the tests of Methylamphetamine hydrochloride, also known as shabu, a dangerous drug, in violation of the above-cited

law.

CONTRARY TO LAW.”[5]

Arraigned, MASANGKAY pled not guilty to the charge.[6] Thereafter, joint trial ensued.

The prosecution endeavored to demonstrate the inculpatory allegations in this wise:

The Antipolo City Police Station received a telephone call and a letter from a concerned citizen relative to the illegal drug activities of MASANGKAY at C. Lawis Extension, Antipolo City. A surveillance was conducted by PO1 Robert Gangan (PO1 Gangan); he and PO3 Eduardo Capuyan (PO3 Capuyan) were tasked to plan a buy bust operation against MASANGKAY. PO1 Gangan was designated as the poseur-buyer with PO3 Capuyan, as back-up. The operation was blotted and the buy-bust money was correspondingly marked. Thereafter, PO1 Gangan and PO3 Capuyan proceeded to the target area on board a tricycle. The police officers saw MASANGKAY driving a tricycle accompanied by a Jonathan Valle. PO1 Gangan called and waved at MASANGKAY, who stopped his vehicle. PO1 Gangan approached MASANGKAY and handed him the buy-bust money. He told MASANGKAY that he wanted to buy shabu. In response, MASANGKAY handed to PO1 Gangan a plastic sachet containing white crystalline substance. PO1 Gangan immediately apprehended MASANGKAY and recovered the marked money. In a trice, he bodily searched MASANGKAY and found another plastic sachet of white crystalline substance from the latter's right pocket. PO1 Gangan ordered PO3 Capuyan to arrest MASANGKAY's companion, Jonathan Valle, and recovered from the latter one plastic sachet of white crystalline substance. The duo were informed of their constitutional rights, and then brought to the police station for investigation. At the police station, PO1 Gangan marked the seized items and delivered the specimens to the crime laboratory. The specimens yielded positive for methylam-phetamine hydrochloride also known as shabu, a dangerous drug.[7]

Railing against the prosecution's imputations, the defense recounted a different version—

On the date of the incident, MASANGKAY was driving his tricycle together with his son, Mike Nico to buy medicine when PO1 Gangan suddenly flagged them down at P. Olivares St. He asked MASANGKAY about a certain person named "Ulo". PO1 Gangan threatened MASANGKAY for incarceration if he would not reveal Ulo's whereabouts. When MASANGKAY failed, he was brought to the police station and was charged with sale and illegal possession of dangerous drugs.[8]

Weighing the divergent theories of the prosecution and the defense, the court a quo rendered the assailed judgment of conviction.

Nonplussed, MASANGKAY (now, appellant) seeks refuge before Us asseverating that the court a quo gravely erred—

I

IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THAT THE PURPORTED TWO (2) PLASTIC SACHETS OF SHABU WERE THE VERY SAME ITEMS CONFISCATED.

II

IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH THE COMPLETE CHAIN OF CUSTODY.

III

IN DISREGARDING THE ACCUSED-APPELLANT'S VER-SION.

The Appeal is barren of merit.

Appellant quibbles with the prosecution's failure to establish the proper chain of custody of the shabu allegedly seized from him, in violation of Section 21 of RA No. 9165. First, there was neither a photograph taken nor a physical inventory conducted by the arresting officer. Second, the seized items were marked sans the presence of appellant and/ or his representative. Third, the marking of the confiscated items was not done at the scene of the incident. Fourth, the testimonies of the prosecution witnesses are at odds with the one who delivered the seized items to the crime laboratory for forensic examination.

Appellant's disputations deserve short shrift.

Case law teaches Us that the failure of the prosecution to show that the police officers conducted the required physical inventory and take photograph of the objects confiscated does not ipso facto render inadmissible in evidence the items seized. There is a proviso in the implementing rules stating that when it is shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused.[9] What is of utmost importance 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.[10]

In the same vein, it is settled that the failure of the policemen to immediately mark the confiscated items does not automatically impair the integrity of the chain of custody. Moreover, the failure of the policemen to mark the confiscated items at the place of arrest does not render the confiscated items inadmissible in evidence.[11]

In the case at bench, the integrity of the drugs seized remained unscathed. The record evinces that PO1 Gangan was in custody of the shabu from the time he recovered and brought it to the police station for marking and preparation of the letter-request for laboratory examination. The illegal drugs were personally delivered by PO1 Gangan and PO3 Capuyan to the PNP Crime Laboratory for examination.[12] The result of the examination yielded positive for shabu. Unarguably, the drug seized from appellant was never tampered with or switched before this was delivered to and chemically examined by the forensic chemist. Perforce, all persons who obtained and received the items seized did so in the performance of official duty.

The prosecution was able to establish beyond reasonable doubt the presence of all the elements of the illegal sale of shabu. PO1 Gangan gave a detailed account of how the sale took place from the time he approached appellant to the eventual sale of the drug, and appellant's receipt of the marked money. He recounted the circumstances leading to the consummated sale in this wise—

“Q

Where is the target area?

A

Along C. Lawis Extension, Antipolo City.

Q

Did you actually arrive in the area?

A

Yes.

Q

When you arrived in the area, what happened?

A

I saw the suspect riding in (sic) the motorcycle.

Q

When you saw the suspect riding in (sic) the motorcycle, what happened?

A

I called the suspect by waving my hand and he stopped the motorcycle.

Q

When he stopped the motorcycle, what did you do?

A

I immediately approached him and I handed to him the two one hundred peso bill and I said I want to buy shabu.

Q

When you told him you wanted to buy shabu, what was his reply?

A

He immediately handed to me one plastic sachet containing white crystalline substance.

Q

You said you wanted to buy and he gave you one plastic sachet, after that, what did you do?

A

I immediately apprehended the suspect and I also recovered the marked money.

Q

After that, what happened?

A

I searched the suspect and I also recovered one plastic sachet from his right pocket.

Q

When you also recovered one plastic sachet and you also recovered the marked money, what else happened?

x x x x x

Q

When you saw the companion who was buying, what did you do with him?

A

I ordered PO1 Capuyan to arrest the suspect?

Q

Who were arrested by Capuyan?

A

Jonathan Valle.

Q

After his companion Jonathan Valle was also arrested, what else did you do?

A

I apprised (him of) his constitutional rights and I immediately brought the suspect to our station for investigation

Q

What did you do at the station?

A

I marked all the evidences (sic) and I prepared my affidavit of arrest for purposes of inquest.”[13]

The foregoing avowal was corroborated by prosecution witness PO3 Capuyan.[14]

It bears emphasis that appellant was undisputably caught in actual possession of shabu. Actual possession exists when the drug is in the immediate physical possession or control of the accused.[15] Mere possession of a regulated drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satis-factory explanation of such possession — the onus probandi is shifted to the accused, to explain the absence of knowledge or animus possidendi.[16] Here, the prosecution tellingly established all the elements of illegal possession of dangerous drugs: one, appellant was in possession of one heat-sealed transparent plastic sachet with 0.30 gram containing methylamphetamine hydrochloride (shabu) recovered from his right front pocket when searched by the arresting officer[17]; two, such possession is not authorized by law; and, three, appellant freely and consciously possessed the said drug.[18]

A final point. It is doctrinal that findings of the trial courts, which are factual in nature and which involve credibility, are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.[19] Taking Our cue from the foregoing jurisprudential precepts, We discern no cogent reason to deviate from the findings of the court a quo. In sooth, the judgment of conviction deserves Our approbation.

WHEREFORE, the Appeal is hereby DENIED. The Decision dated 17 January 2014 of the Regional Trial Court, Fourth Judicial Region, Antipolo City, Branch 73, in Criminal Case Nos. 03-25753 and 03-25754, is AFFIRMED.

SO ORDERED.

Diamante, and Salandanan-Manahan, JJ., concur.

[1] Original Records, pp. 283-290.

[2] The Comprehensive Dangerous Drugs Act of 2002.

[3] Original Records, p. 290.

[4] Id., pp. 1-2.

[5] Original Records, pp. 21-22.

[6] Id., p. 47.

[7] TSN, 15 May 2006, pp. 5-14; 28 April 2008, pp. 4-11; 19 August 2009, p. 3.

[8] TSN, 18 April 2013, pp. 3-6 and 8.

[9] See *People v. Montevirgen*, 712 SCRA 459, 470 (11 December 2013).

[10] *Marquez v. People*, 693 SCRA 468, 474 (13 March 2013).

[11] See *Imson v. People*, 653 SCRA 826 , 834 (13 July 2011).

[12] TSN, 15 May 2006, pp. 10, 11, 12; TSN, 28 April 2008, pp. 9-11

[13] TSN, 15 May 2006, pp. 7-10.

[14] Id., 19 August 2009.

[15] *Del Castillo v. People*, 664 SCRA 430, 445 (30 January 2012), citing *People v. Tira*, 430 SCRA 134 (28 May 2004).

[16] See *People v. Posing*, 703 SCRA 62, 81 (31 July 2013).

[17] TSN, 15 May 2006, p. 8.

[18] Elements of illegal possession of dangerous drugs (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug. Ibid.

[19] See *People v. Quesido*, 695 SCRA 572, 586 (10 April 2013), citing *People v. Lapasaran*, 687 SCRA 663.

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