

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO MASCARDO SARNE, 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 Judgment[1] of the Regional Trial Court, 7[th] Judicial Region, Branch 30, Dumaguete City dated March 11, 2013 in Criminal Case No. 20115 for Violation of Section 11, Article II of Republic Act 9165 which sentenced accused-appellant as follows:

“WHEREFORE, in the light of the foregoing, the Court hereby finds the accused Renato Mascardo Sarne GUILTY beyond reasonable doubt of the offense of illegal possession of 0.69 gram of shabu in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The three (3) heat-sealed transparent plastic sachets with markings “RS-P1 to P3” all with the date 9-16-10 containing a total aggregate weight of 0.69 gram of shabu are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

SO ORDERED.”

Herein appellant was charged per the following amended information,[2] to wit:

“That on or about the 16[th] day of September, 2010 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess and keep in a big transparent sachet three (3) heat-sealed transparent plastic sachets containing a total aggregate weight of 0.69 grams of Methamphetamine Hydrochloride, locally known as “shabu,” a dangerous drug.

That accused was found positive for use of Methamphetamine as reflected in Chemistry Report No. CDT-071-10.”

Upon arraignment, accused-appellant pleaded not guilty to the crime charged.[3]

Pre-trial[4] was thereafter conducted and the parties stipulated on the following facts:

- That this Court has jurisdiction over this case and over the person of the accused.
- The identity of the accused Renato Mascardo Sarne is admitted as the accused party in this case.
- That the accused was arrested by virtue of a search warrant dated September 16, 2010 at Barangay Cadawinonan, Dumaguete City, which led to the filing of this case.
- That the accused is not authorized by law to possess the dangerous drug subject of this case.
- That the accused admitted to the existence of the confirmatory drug test which found him positive for use of Methamphetamine.

- That PCI Josephine S. Llena is an expert witness for the prosecution being the Forensic Chemist of the Negros Oriental Provincial Crime Laboratory.

Thereafter, trial ensued. The prosecution presented the following witnesses, namely: PO2 Mark Jester Ayunting,[5] SPO4 Douglas Ferrer,[6] NBI Special Investigator Marlon Manzanaris,[7] Barangay Kagawad Maria Emily Olivo,[8] DOJ representative Ramonito Astillero[9] and media representative Juancho Gallarde.[10] The version of the prosecution as summarized from the testimonies of the above witnesses, is as follows:

In the afternoon of September 16, 2010, the law enforcement operatives named above served a warrant of arrest[11] on Renato Sarne, a.k.a. Natoy, which warrant was issued in relation to Criminal Case No. 20068 entitled People of the Philippines vs. Renato Sarne, a.k.a. Natoy. The warrant was served in Barangay Cadawinonan Housing Project in Dumaguete City where accused resided. Upon arrival thereat, they found accused in his house and thereafter introduced themselves and presented to the accused the warrant of arrest. SPO4 Ferrer then effected arrest after informing the accused of his constitutional rights in a dialect known to the latter. PO2 Ayunting then proceeded to search the accused for possible weapons and other illegal items. From the pocket of accused, PO2 Ayunting found three (3) pieces of plastic sachets with suspected shabu which were all placed inside a bigger plastic sachet. He immediately marked the same as follows: “RS-P 9-16-10” for the big unsealed transparent plastic sachet containing the three (3) small sachets and “RS-P1 9-16-10,” “RS-P2 9-16-10” and “RS-P3 9-16-10” for the three (3) small sachets. Having been informed by PO2 Ayunting of his discovery, SPO4 Ferrer effected arrest on accused again for illegal possession of dangerous drugs. He was again told of his constitutional rights in a dialect known to him and he confirmed that he understood the same.

The accused, together with the seized items were then brought to the office of the NBI and an inventory[12] was conducted thereat by SI Manzanaris in the presence of the accused, DOJ representative Ramonito Astillero, media representative Juancho Gallarde, Barangay Kagawad Maria Emily Olivo and PDEA representative SI2 Ivy Claire Oledan, who were called in for that purpose. The Inventory/Receipt of Drugs and Other Property Seized[13] was duly signed by the above witnesses as well as by PO2 Ayunting and SI Manzanaris. The inventory was not conducted at the scene of the crime because the operatives did not have the necessary form for an inventory. The incident was also entered in the PDEA blotter.[14]

A written request[15] for laboratory examination for the items recovered and drug test of accused was made by PO2 Ayunting and delivered by him to the Negros Oriental Provincial Crime Laboratory Office in Dumaguete City. It was received by the forensic chemist, P/C Insp. Josephine Suico Llena. The latter remarked them as follows: Specimen “A” for unsealed plastic sachet with markings “RS-P 9-16-10,” Specimen “A-1” to “A-3” for the plastic sachets marked as “RS-P1 9-16-10,” “RS-P2 9-16-10” and “RS-P3 9-16-10.” When weighed, Specimen “A-1” was 0.19 gram; Specimen “A-2” was 0.45 gram and Specimen “A-3” was 0.05 gram. Per Chemistry Report No. D-109-10,[16] the above specimen were found positive for methamphetamine hydrochloride, a dangerous drug. Also per Chemistry Report No. CDT-071-10,[17] the urine drug test conducted on accused was found positive for the presence of Methamphetamine. PCI Llena was also able to submit Specimens “A-1” to “A-3” together with her chemistry report to the trial court during the hearing of the case.

The defense, on the other hand, presented accused[18] himself together with Virgilio Macias[19] and Rene Santillan.[20] The version of the defense as summarized from the testimonies of the above witnesses, is as follows:

On the date and time of the incident, accused, who came from the market, arrived in his house in Barangay Cadawinonan, Dumaguete City, before he could disembark from his motorcycle, a group of law enforcers accosted him. A certain Junjun Sy pinned his hands which were still in the handlebars. He disembarked and held up his hands. He was then bodily searched by a law enforcer whom he later knew as Police Officer Glenn

Corsame but the latter recovered nothing. He was then told that there is a warrant for his arrest but it was not shown to him. This was witnessed by Virgilio Macias, a childhood friend of accused, and Rene Santillan, the owner of the fighting cocks accused is the “handler” of. The two were in accused house at that time, awaiting for his return, as they intended to have a cockfight then.

According to Macias and Santillan, while they were waiting for the accused to arrive, a group barged into the premises of the residence of the accused. They recognized some of them namely: Junjun Sy, Police Officers Glenn Corsame and Mark Ayunting and a certain Marlon, who had a shotgun. These men were also looking for the accused and they told them that accused was not around. The group waited for accused and told Macias and Santillan to stay and not to use their cellular phones. One of them searched the stockroom of the accused.

Later on, someone informed them that accused was arriving, Macias and Santillan were then allowed to leave. On their way out, they saw the police officers accosting accused in his motorcycle.

According to the accused, he was then brought inside his house where his wife and an errand boy were present. The police officers informed his wife that they will be bringing accused with them. Accused was then handcuffed as they were about to leave. He was brought to the NBI Office where Ayunting showed to him shabu allegedly recovered from him. Accused denied having shabu in his possession and told Marlon Manzanaris of the NBI about it. The latter replied that he was there merely to conduct an inventory and has called witnesses for this purpose. The latter also said to the accused: “Since it is not yours, because it is already there, you just tell the truth later that that does not belong to you.”

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

Aggrieved, accused-appellant appealed the court a quo's judgment and raised the following assignments of error in his Appellant's Brief,[21] to wit:

ITHE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF POSSESSING ILLEGAL DRUGS DESPITE THE SERIOUS (SIC) OF THE CORPUS DELICTI OF THE CRIME COMPROMISING ITS INTEGRITY AND IDENTITY.

IITHE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF POSSESSION OF ILLEGAL DRUGS DESPITE THE FACT THAT THE POLICE OFFICERS VIOLATED SECTION 21 OF R.A. 9165.

IIITHE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF POSSESSING ILLEGAL DRUGS DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM FOR HAVING BEEN OBTAINED UNDER AN INVALID WARRANTLESS ARREST IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

The appeal does not merit this Court's consideration.

Appellant contends that the court a quo erred in convicting him inasmuch as the prosecution failed to prove the identity of the corpus delicti. Appellant argued that from the testimony of prosecution witness DOJ Representative Ramonito Astillero, it was revealed that the latter saw four (4) packs of shabu during the inventory yet, herein appellant was charged for possession of only three (3) packs of shabu. According to appellant, this brings into question the identity of the packs of shabu subject of the inventory and the ones submitted to the court as evidence against him.

Appellant's contention is bereft of merit. With quote with approval the findings of the court a quo, to wit:

“The accused in his memorandum on the merits further tried to point out to the court that a disinterested

witness in the person of the representative from the Department of Justice testified that there were four (4) sachets and not three (3) sachets that he saw during the inventory. In a sense, the Court finds the testimony of the DOJ representative to be accurate as there were four (4) sachets found by PO2 Ayunting, a big transparent plastic sachet which contained three (3) other smaller plastic sachets that contained shabu. Technically, it can be said that all four (4) sachets contained shabu as the big sachet contained the three (3) other sachets with shabu. Nevertheless, the principal prosecution witnesses have clearly identified the accused Sarne as the one found to be in possession of a big transparent plastic sachet with three (3) heat-sealed transparent plastic sachets containing shabu.”

Appellant further argued that the police officers violated Section 21 of R.A. 9165 when they did not conduct the inventory at the scene of the crime. Again, we do not agree with appellant.

Indeed it is true that Section 21, Paragraph 1 of Article II of R. A. No. 9165 with respect to custody and disposition of confiscated drugs, provides that:

“Section 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.”

Yet, the Supreme Court in the case of PEOPLE OF THE PHILIPPINES vs. LEONARDO RUSIANA y BROQUEL[22], has ruled that:

“In People v. Cortez,[23] this Court held that although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, “substantial compliance with the legal requirements on the handling of the seized item” is sufficient. Behind this is an acknowledgment that the chain of custody rule is difficult to comply with. Hence, exceptions must be recognized, as indeed the Implementing Rules and Regulations (IRR) of RA 9165 does. On its own, a non-compliance with Sec. 21 of RA 9165 will not invalidate an accused’s arrest or a seizure made in drug cases. What should be of 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.”

Likewise, In People of the Philippines vs. Pringas[24], the Supreme Court held: “Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused’s arrest illegal or the items seized/confiscated from him inadmissible. 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.”

Our perusal of the records of the instant case reveals that the prosecution was able to establish the following: 1) In the afternoon of September 16, 2010, police operatives served a warrant of arrest on appellant in relation to another criminal case; 2) appellant was then searched as an incident of the said arrest and three plastic sachets of shabu were found in his pocket, which sachets of shabu are placed together in a bigger sachet; 3) all sachets were

marked by PO2 Ayunting at the scene of the crime including the bigger sachet that held the three smaller sachets; 4) appellant, together with the seized items were then brought by the police operatives to the NBI office; 5) SI Manzanaris, one of police operatives who served the warrant of arrest on appellant, conducted the inventory duly witnessed by the appellant, representatives from the DOJ, the media, the barangay and the PDEA who were called in for that purpose; 6) PO2 Ayunting also signed the same as seizing officer; 7) PO2 Ayunting prepared and signed the letter request for laboratory examination and drug test; 8) PO2 Ayunting delivered the letter as well as the seized items to PNP Crime Laboratory, notably, appellant was also with him for his drug test; 9) PCI Llena received the seized items and examined the same; 10) per her Chemistry Report, the evidence confiscated from appellant were confirmed to be shabu.

As jurisprudence has shown, what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, a requisite present in the instant case.[25]

We likewise find bereft of merit appellant's contention that he was arrested without warrant and that the arrest and the consequent search and seizure, are invalid for being violative of his constitutional rights.

The records show that appellant never objected to the irregularity of his arrest before arraignment. Considering this lapse, coupled with his active participation in the trial of the case, we must abide with jurisprudence which dictates that appellant, having voluntarily submitted to the jurisdiction of the trial court, is deemed to have waived his right to question the validity of his arrest, thus curing whatever defect that may have attended the arrest. The legality of the arrest affects only the jurisdiction of the court over the person. Appellant's warrantless arrest therefore cannot, in itself, be the basis of his acquittal.[26]

The ruling of the Supreme Court in the case of ABRAHAM MICLAT, JR. y CERBO vs. PEOPLE OF THE PHILIPPINES,[27] is instructive, to wit:

“At the outset, it is apparent that petitioner raised no objection to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest. An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.

In the present case, at the time of petitioner's arraignment, there was no objection raised as to the irregularity of his arrest. Thereafter, he actively participated in the proceedings before the trial court. In effect, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.”

Moreover, we note that appellant's defense is primarily anchored on denial. He denied possessing shabu at the time of the incident.

The Supreme Court, in the case of RADITO AURELIO y REYES vs. PEOPLE OF THE PHILIPPINES,[28] has ruled that:

“We view with disfavor the defenses of denial and frame-up. Like the defense of alibi, said defenses can easily be concocted and are common and standard defenses employed in prosecutions for violations of the Dangerous Drug Act. For these defenses to prosper there must be clear and convincing evidence. In this case, petitioner failed to adduce sufficient proof in support of his defenses. There is simply no evidence to bolster his defenses

other than his self-serving assertions. Moreover, we note that the petitioner did not file any complaint for frame-up or extortion against the buy bust team. Such inaction belies his claim of frame-up and that the police officers were extorting money from him. His allegations therefore are simply implausible.

In the absence of evidence of any ill-motive on the part of the police officers who apprehended the petitioner, the presumption of regularity in the performance of official duty prevails.”

All told, the evidence adduced by the prosecution in the instant case established beyond reasonable doubt that appellant was in possession of shabu in violation of Section 11 of Article II of R.A. 9165.

WHEREFORE, the Judgment of the Regional Trial Court, Branch 30, Dumaguete City in Criminal Case No. 20115 dated March 11, 2013 convicting herein appellant for Violation of Section 11, 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. 157-166.
- [2] Records at p. 34-35.
- [3] Certificate of Arraignment, Records at p. 39.
- [4] Records at pp. 56-62.
- [5] Transcript of Stenographic Notes dated October 24, 2012.
- [6] Transcript of Stenographic Notes dated October 31, 2012.
- [7] Transcript of Stenographic Notes dated November 12, 2012.
- [8] Transcript of Stenographic Notes dated November 21, 2012.
- [9] Transcripts of Stenographic Notes dated November 21, 2012.
- [10] Transcript of Stenographic Notes dated December 11, 2012.
- [11] Records at p. 10.
- [12] Records at p. 4.
- [13] Id.
- [14] Records at p. 8.
- [15] Records at p. 1.
- [16] Records at p. 2.
- [17] Records at p. 9.
- [18] Transcript of Stenographic Notes dated February 11, 2013.
- [19] Transcript of Stenographic Notes dated January 23, 2013.
- [20] Transcript of Stenographic Notes dated January 16, 2013.

[21] Rollo at pp. 12-29.

[22] G.R. No. 186139, October 5, 2009.

[23] G.R. No. 183819, July 23, 2009.

[24] G.R. No. 175928, August 31, 2007.

[25] People vs. Rusialda, G.R. No. 188330, August 25, 2010.

[26] PEOPLE OF THE PHILIPPINES vs. JACK RACHO y RAQUERO, G.R. No. 186529, August 3, 2010 citing Valdez v. People, G.R. No. 170180, November 23, 2007.

[27] G.R. No. 176077, August 31, 2011.

[28] G.R. No. 174980, August 31, 2011.

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