PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO ICAWAT Y TELO @ “PEDRING”, ACCUSED-APPELLANT.

Ponente: GARCIA, R.R., J.

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GARCIA, R.R., J.:

Before Us is an appeal from the Decision[1] dated September 27, 2010 of the Regional Trial Court, Branch 16, Manila in Criminal Case No. 03-213441 finding herein accused-appellant Federico Icawat y Telo @ Pedring guilty beyond reasonable doubt of the crime of illegal possession of zero point eight six nine (0.869) and zero point six six two (0.662) gram of methamphetamine hydrochloride or shabu, defined and penalized under Section 11, Article II of RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposing upon him the penalty of imprisonment of six (6) years and one (1) day to eight (8) years; and to pay a fine in the amount of One Hundred Thousand Pesos (P100,000.00), the dispositive portion of which reads:

> WHEREFORE, prosecution having proven the guilt of the accused beyond reasonable doubt, FEDERICO ICAWAT y TELO @ PEDRING is hereby CONVICTED.
>
> Accused is hereby sentenced to suffer the penalty of imprisonment of sic (6) years and one (1) day to eight (8) years and to pay a fine of One Hundred Thousand Pesos (P100,000.00).
>
> The Branch Clerk, Atty. Rechie N. Ramos-Malabanan is ordered to turn over two (2) heat-sealed transparent plastic sachets containing zero point eight six nine (0.869) and zero point six six two (0.662) gram of white crystalline substance known as shabu to the Philippine Drug Enforcement Agency for proper disposition.
>
> SO ORDERED.[2]

THE FACTS

In an Information[3] dated April 28, 2003, appellant Federico Icawat y Telo was charged with violation of Section 11, Article II of RA No. 9165 committed as follows:

> That on or about APRIL 24, 2003, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody, to wit: TWO (2) heat-sealed transparent plastic sachets containing ZERO POINT EIGHT SIX NINE (0.869) & ZERO POINT SIX SIX TWO (0.662) [gram] of white crystalline substance containing methylamphetamine hydrochloride known as “SHABU”, a dangerous drug.
>
> CONTRARY TO LAW.[4]

During the arraignment on June 26, 2003, appellant, with the assistance of counsel, pleaded not guilty.[5] Thereafter, trial on the merits ensued.

The version of the prosecution, as related by prosecution witness PO2 Jason[6] Magbintang[7], may be summarized as follows:

On April 24, 2003, OIC Police Inspector Kimberly Molitas of the District Drug Enforcement Group of the

Western Police District formed a team to conduct surveillance at Sta. Mesa, Manila. The team was composed of team leader PO3 Rodolfo Ederina, prosecution witness PO2 Jason Magbitang, Po2 Rizaldy Liangco, PO1 Alexander delos Santos and a Po2 Francia.

On that same day of April 24, 2003, at about 4:50 p.m., a confidential informant met the surveillance team along Kaimito Street, Sta. Mesa, Manila. After a short briefing, the confidential informant pointed to a male person, who was later identified as appellant, standing about twelve (12) meters away. Later, another man approached and conversed with appellant. The unidentified man took two (2) plastic sachets, both of which contained white crystalline substance suspected to be shabu, and handed them to appellant. After the exchange, appellant left the unidentified man and walked towards the location of the surveillance team. While walking, appellant examined the two (2) plastic sachets in his hand before slipping them into his pocket. When appellant passed by the surveillance team, he was accosted by the surveillance team who identified themselves as police officers. Appellant tried to run, but he was caught by the policemen. Thereafter, prosecution witness PO2 Jason Magbintang asked appellant to empty his pockets. Appellant brought out two (2) heat-sealed plastic sachets containing white crystalline substance suspected to be shabu. Appellant was placed under arrest and brought to the police station. Upon arrival at the police station, prosecution witness PO2 Jason Magbintang marked the two (2) sachets he confiscated “FIT-1” and “FIT-2”, respectively, “FIT” being appellant's initials.

In Chemistry Report Number D-927-03[8] dated April 24, 2003, Forensic Chemist Police Inspector Judycel A. Macapagal found that the plastic sachets marked “PIT-1” and “PIT-2” gave positive result for Methamphetamine hydrochloride, also known as shabu, weighing zero point eight six nine (0.869) and zero point zero six six two (0.662) gram, respectively.

On the other hand, the testimony of PO1 Alexander delos Santos was dispensed with after the parties stipulated that during the surveillance, he acted as a back-up/perimeter guard and that he did not see the actual arrest of appellant.[9]

For the defense, two (2) witnesses were presented, namely: appellant[10] himself; and his common-law wife Lourdes Cabiso[11].

Appellant raised the defense of denial and frame-up. In the afternoon of April 24, 2010, he was inside his house at Kaimito Street, Old Sta. Mesa, Manila. He was sleeping since he was not required to go to his work until 7:00 p.m., being on a night shift as mason. Inside the house with him were his common-law wife Lourdes Cabiso and his siblings. At around 4:50 p.m., appellant was awakened when three men in civilian clothes holding guns entered his house. One of the police officers, PO2 Jason Magbintang demanded where appellant gets his drugs, which appellant did not answer. Meanwhile, the other police officers searched his house as if looking for something. Thereafter, appellant was advised by the policemen go to the station for investigation, during which, they kept asking him about his source of drugs. When appellant insisted that he did not know anything about any drugs, he was threatened to be detained. Appellant also testified that the first time he saw the sachets was during the trial of the instant case.

The testimony of appellant was corroborated by his common-law wife Lourdes Cabiso who testified that on April 24, 2003, at around 3:45 p.m., she was outside their house in Kaimito St., Old Sta. Mesa, Manila, doing laundry. Suddenly, men in civilian clothes arrived looking for appellant. Cabiso asked them what was the problem, but she was ignored. The men simply entered their house. They found appellant in a room lying on a bed. Appellant was immediately handcuffed and placed under arrest.

In the assailed Decision[12] dated September 27, 2010, the court a quo found appellant guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs. It gave credence to the testimony of the prosecution

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witness that during a surveillance operation, appellant was seen in flagrante delicto holding in his hands two (2) plastic sachets containing shabu. The pertinent portions of the decision are quoted:

> Permissible Warrantless Arrest
>
> The Rules of Court recognizes the following permissible warrantless arrests, to wit: (1) arrests in flagrante delicto, (2) arrests effected in hot pursuit, and (3) arrests of escaped prisoners[.] Hence, the evidence cannot be considered fruit of the poisonous tree and admissible against the accused.
>
> Elements of Illegal Possession of Drugs
>
> As enumerated by the Supreme Court in the case of People vs. Tee x x x, the elements of illegal possession of dangerous drugs are the following:
>
> 1.)
>
> That the accused is in possession of the object identified as prohibited or regulated drug;
>
> 2.)
>
> That such possession is not authorized by law and
>
> 3.)
>
> That the accused freely and consciously possessed said drug.
>
> The abovecited elements were proven beyond reasonable doubt by the testimony of the prosecution witnesses.
>
> x x x
> In illegal possession of shabu, the victim is the offender/accused himself, who succumbed to the temporary effects of the illegal drugs to forget his problems or situation whether economic, personal, mental or emotional. The offender needs rehabilitation rather than long incarceration.
>
> x x x
> In the same vein, it is likewise the state's responsibility to assist those who fall prey to illegal drugs possession; to turn a new lease on life and not to suffer the rigors [of] prolonged incarceration. Let them be absorbed in the main stream of society as productive individuals during prime years of life to become tax payers rather than tax eaters. They ought to be incarcerated for a reasonable length of time commensurate to the weight of substance caught in the respective possession.[13]

Hence, this appeal in which appellant raised the following ASSIGNMENT OF ERRORS[14], to wit:

> ITHE COURT A QUO GRAVELY ERRED IN FINDING THAT THE ARREST OF APPELLANT WAS LAWFUL AND THAT THE SACHETS OF SHABU ALLEGEDLY RECOVERED FROM HIM WAS ADMISSIBLE IN EVIDENCE;
>
> IITHE COURT A QUO GRAVELY ERRED IN NOT FINDING THAT THE PROSECUTION FAILED TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUGS; AND

> IIITHE COURT A QUO GRAVELY ERRED WHEN IT OVERLOOKED THE POLICE OFFICERS' FAILURE TO COMPLY WITH SECTION 21 OF R.A. NO. 9165.

THE ISSUE

The sole issue in the instant case is whether or not the court a quo correctly found appellant guilty beyond reasonable doubt of the crime of illegal possession of zero point eight six nine (0.869) and zero point six six two (0.662) gram of shabu.

THE RULING

The instant appeal is impressed with merit.

The present Constitution guarantees the right of the people against warrantless searches and seizures. Thus, a person may not be searched unless there is a judicial warrant, otherwise, it becomes unreasonable, and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding. Sections 2 and 3, Article III of the 1987 Constitution read:

> 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.
>
> SEC. 3. x x x
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. [Emphasis supplied.]

The rule admits of exceptions, one of which is where the warrantless search and seizure are incidents of a lawful arrest.[15] Such is considered reasonable and valid under Rule 126, Sec. 13 of the Revised Rules on Criminal Procedure, which states that:

> Sec. 13. Search incident to a lawful arrest. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

There is no question that the instant case involves a warrantless search and seizure as an incident to appellant's arrest. As such, the admissibility of the two (2) sachets containing shabu allegedly obtained from appellant hinges on the legality of his arrest, which was likewise done without a warrant.

Appellant contends that his warrantless arrest was illegal. Resultantly, the court a quo erred in finding him guilty beyond reasonable doubt of illegal possession of dangerous drugs on the basis of the subject sachets which are inadmissible in evidence being fruits of an illegal warrantless search and seizure.

We agree.

This Court has thoroughly reviewed the records of the case at bench and finds that appellant's warrantless arrest is not lawful and, as a consequence thereof, the search of his person and the seizure of the subject drugs are likewise illegal.

Section 5(a), Rule 113 of the Rules of Court provides that a peace officer or a private person may, without warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or

is attempting to commit an offense. This is known as an arrest in flagrante delicto. In People of the Philippines vs. Villareal[16], the Supreme Court ruled that to constitute a valid in flagrante delicto arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[17]

The prosecution attempted to establish the two aforementioned elements based solely on the testimony of witness PO2 Jason Magbintang. Unfortunately, his testimony is incredible and not worthy of belief. It is highly improbable for PO2 Magbintang, standing twelve (12) meters away, to have seen the unidentified man hand over to appellant two (2) small transparent plastic sachets containing only zero point eight six nine (0.869) and zero point six six two (0.662) of white crystalline substance. Moreover, it is contrary to human experience for appellant, after his illegal transaction with the unidentified man, to brandish illegal contraband in broad daylight while walking in a public street where there are many pedestrians and vehicles passing by. Finally, it is mind-boggling why the police officers would arrest only appellant, who was merely the recipient in the alleged illegal transaction, while letting the purported source of the shabu go away. Well settled is the rule that evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible, reasonable and in accord with human experience in itself.[18]

Clearly, there is a dearth of evidence to justify the in flagrante delicto arrest of appellant and the ensuing search of his person incidental to the arrest.

This Court is aware of the principle that findings of facts and assessment of credibility of witness are matters best left to the trial court who had the front-line opportunity to personally evaluate the witnesses' demeanor, conduct, and behavior while testifying[19]. However, such rule is not without exceptions. Such findings may be reviewed if there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case[20]. This is the case here. Indubitably, an appeal in a criminal case opens the whole case for review. This Court is clothed with ample authority to review matters, even those not raised on appeal, if it is necessary in arriving at a just disposition of the case. Every circumstance in favor of the accused shall be considered. This is in keeping with the constitutional mandate that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt.[21]

It must be reiterated that without valid justification for the in flagrante delicto arrest of appellant, the search of his person incidental to said arrest, and the eventual seizure of the shabu from his possession, are also considered unlawful. Consequently, the seized sachets of shabu are inadmissible evidence. Without the corpus delicti for the crime charged, then appellant must be acquitted. In People of the Philippines vs. Delos Reyes[22], the Supreme Court ruled that:

> Without valid justification for the in flagrante delicto arrests of accused-appellants, the search of accused-appellants' persons incidental to said arrests, and the eventual seizure of the shabu from accused-appellants' possession, are also considered unlawful and, thus, the seized shabu is excluded in evidence as fruit of a poisonous tree. Without the corpus delicti for the crime charged, then the acquittal of accused-appellants is inevitable.

Even granting that appellant validly waived the inadmissibility of the evidence procured, much is still to be desired from the prosecution's ability to establish the chain of custody of the seized evidence.

The chain of custody is basically the duly recorded authorized stages of transfer of custody of seized dangerous drugs, from their seizure or confiscation to receipt in the forensic laboratory for examination to safekeeping to

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presentation in court for destruction. The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. Thus, the chain of custody requirement has a two-fold purpose: (1) the preservation of the integrity and evidentiary value of the seized items, and (2) the removal of unnecessary doubts as to the identity of the evidence.[23]

In order to establish the chain of custody, the following links must be established: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[24]

In the case at bench, the testimony of prosecution witness PO2 Jason Magbintang was only able to establish the first and second links. PO2 Magbintang testified that he was the one who confiscated the seized drugs from appellant, marked them “FIT-1” and “FIT-2” at the police station, and turned them over to an unnamed investigator on duty.[25]

Unfortunately, there is a dearth of evidence to establish the two remaining links in the chain of custody. The records are wanting of evidence showing the manner of handling of the evidence, precautions taken, and other significant circumstances after the investigator took custody of the seized shabu until the same was turned over to the court a quo. The records are silent with regard to what the investigator did with the seized shabu, how these got to the forensic chemist, and how they were kept before being adduced in evidence at trial.

The prosecution's sole evidence in its attempt to complete the chain of custody was to offer as evidence the alleged documentation which accompanied the subject drugs upon their delivery to the crime laboratory which it marked as Exhibit “C”. However, a perusal thereof showed that it was not a request for a qualitative examination of the subject drugs, but a request that appellant be subjected to drug testing.[26] It cannot thus prove that the two (2) sachets was delivered to the crime laboratory by the police investigator and was received by the forensic chemist who performed the examination thereof.

Worse, there was a discrepancy in the markings of the alleged shabu seized from appellant which the prosecution failed to explain. Prosecution witness PO2 Jason Magbintang testified that he marked the two (2) sachets with appellant's initials, “FIT-1” and “FIT-2”[27]. However, the Chemistry Report No. D-927-03[28] prepared by Forensic Chemist Police Inspector Judycel A. Macapagal; the Booking Sheet and Arrest Report[29] dated April 24, 2003 prepared by prosecution witness PO2 Jason Magbintang; and the Joint Affidavit of Apprehension[30] dated April 25, 2003 signed by PO2 Jason Magbintang and the rest of the surveillance team, were all unanimous that the markings on the subject sachet were “PIT-1” and “PIT-2”, respectively, and not “FIT-1” and “FIT-2”. This leads to the conclusion that there may have been switching of evidence.

Indubitably, there was a break in the chain of custody of the seized substances. The failure of the prosecution to establish the evidence's chain of custody is fatal to its case. Under no circumstance can we consider or even safely assume that the integrity and evidentiary value of the drug was properly preserved by the apprehending officers. There can be no crime of illegal sale of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drugs.

WHEREFORE, premises considered, the appeal is hereby GRANTED. The Decision[31] dated September 27, 2010 of the Regional Trial Court, Branch 16, Manila is REVERSED and SET ASIDE. Accused-appellant Federico Icawat y Telo alias Pedring is hereby ACQUITTED on the ground of reasonable doubt.

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SO ORDERED.

Salazar-Fernando, R.A., (Chairperson), and Bueser, D.Q., JJ., concur.

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[1] Penned by Presiding Judge Carmelita S. Manahan; Rollo, pp 22-28.

[2] Id., at p 28.

[3] Rollo, p 9; Records, p 1.

[4] Ibid.

[5] See Certificate of Arraignment dated June 26, 2003, Records, p 32; and Order dated June 26, 2003, Records, p 33.

[6] Also spelled as Jayson.

[7] TSN dated October 3, 2005; TSN dated March 29, 2007.

[8] Exhibit D, Records, p 5.

[9] Minutes of the Hearing dated December 9, 2008, Records, p 71.

[10] TSN dated March 30, 2010.

[11] TSN dated August 17, 2010.

[12] Supra, at note 1.

[13] Id., pp 26-28.

[14] Rollo, p 58

[15] Miclat vs. People of the Philippines, G.R. No. 176077, August 31, 2011.

[16] G.R. No. 201363, March 18, 2013.

[17] Ibid; See also Ambre vs. People of the Philippines, G.R. No. 191532, April 15, 2012.

[18] People of the Philippines vs. Calumpang and Omatang, G.R. No. 158203, March 31, 2005.

[19] Spouses Paragas vs. Heirs of Dominado Balacano, G.R. No. 168220, August 31, 2005; Corpuz vs. People of the Philippines, G.R .No. 180016, April 29, 2014.

[20] Santiago Lighterage Corporation vs. Court of Appeals, et al., G.R. No. 139629, June 21, 2004; Raga vs. People of the Philippines, G.R. No. 200597, February 19, 2014; Metropolitan Fabrics, Inc. vs. Prosperity Credit Resources, Inc., G.R. No. 154390, March 17, 2014.

[21] People of the Philippines vs. Racho, G.R. No. 186529, August 3, 2010.

[22] G.R. No. 174774, August 31, 2011.

[23] People of the Philippines vs. Morate, G.R. No. 201156, January 29, 2014.

[24] People of the Philippines vs. Caranto, G.R. No. 193768, March 5, 2014.

[25] TSN dated October 3, 2005, p 5.

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[26] See Records, p 7.

[27] TSN dated October 3, 2005, pp 5-6.

[28] Exhibit “D”, Records, p 5.

[29] Exhibit “B”, Records, p 2.

[30] Exhibit “A”, Records, p 3.

[31] Supra at note 1.

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