

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISMAEL SARIP Y PANUNDI, ACCUSED-APPELLANT.

Ponente: BUESER, J.

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BUESER, J.:

This is an appeal by accused-appellant Ismael Sarip y Panundi (“appellant ”) from the Decision[1] dated November 4, 2013 of the Regional Trial Court, Branch 41, of Dagupan City (“trial court”), the dispositive portion of which reads -

“WHEREFORE, premises considered, judgment is hereby rendered finding accused Ismael Sarip GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II of Republic Act 9165, and pursuant thereto, he is sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and fine in the amount of Three Hundred Thousand (P300,000.00), and to pay the cost of suit.

The subject shabu is hereby forfeited in favor of the government and to be disposed of in accordance with the law.

SO ORDERED.”

The Information[2] alleged -

“That on or about the 27[th] day of October, 2011, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ISMAEL SARIP y Panundi SOLIS did then and there willfully, unlawfully and criminally have in his possession, custody and control Methamphetamine Hydrochloride (Shabu) contained in one heat-sealed plastic sachet weighing more or less 0.08 gram, without authority to possess the same.”

Upon arraignment, appellant pleaded not guilty and trial on the merits ensued.

The Facts

The prosecution presented PO2 Randy Nepascua, SPO4 Conrado Francisco, SPO1 Cresente Mendones and PO2 Elmer J. Manuel as witnesses while defense presented appellant as sole witness.

Prosecution evidence tend to establish that -

On October 27, 2011, PO2 Randy Nepascua (“PO2 Nepascua”), together with his fellow intelligence operatives from PNP Dagupan City, received information from their civilian informant that a drug transaction will take place at Sitio Silungan, Bonuan Binloc, Dagupan City. On the basis thereof, the police operatives proceeded to the target area. They were conducting patrol and surveillance when they chanced upon two individuals in the act of exchanging money and a plastic sachet. As the police officers approached, the 2 men ran. PO2 Nepascua was able to arrest one (1) of them and he turned out to be appellant. PO2 Nepascua frisked appellant and found, in the latter's hand, a plastic sachet containing white crystalline substance. PO2 Nepascua confiscated the plastic sachet and arrested appellant. Thereafter, appellant was taken to the police station.

At the police station, PO2 Nepascua marked the seized item with his initial RNN and prepared the confiscation receipt. The seized item was then indorsed to SPO1 Cresante Mendones (“SPO1 Mendones”) who kept the same inside his locker.

The following day, SPO1 Mendones prepared the letter request for laboratory examination and gave it, together with the seized item, to PO2 Nepascua. PO2 Nepascua, in turn, submitted the letter request and the seized item to the PNP Crime Laboratory for examination. Upon examination, the seized item was found positive for methamphetamine hydrochloride.

Appellant denied the allegations. He was at Bonuan Binloc Silungan, Dagupan City, at around two o'clock in the afternoon, watching a game of chess when a group of men, wearing civilian clothes, arrived and asked him if he was selling shabu. He answered in the negative but was still boarded in their car, taken to the police station and detained for three (3) days.

The Trial Court's Ruling

After due proceedings, the trial court rendered the assailed Decision and found appellant guilty beyond reasonable doubt of the crime charged, to wit -

“In the instant case, after a careful consideration of the evidence presented, the Court believes and holds that the guilt of the accused has been proved beyond reasonable. Accused Ismael Sari was caught in flagrante delicto in possession of the subject one (1) plastic sachet of shabu by PO2 Randy Nepascua in the afternoon of October 27, 2011 in Sitio Silungan, Bonuan Binloc, Dagupan City. Prosecution witness PO2 Randy Nepascua positively testified that he seized and confiscated the subject shabu from the hand of the accused after it was handed to her by another person who managed to run and escaped.”

Hence, this appeal.

Appellant raises the following -

Assignment of Errors

I
THE TRIAL COURT GRAVELY ERRED IN NOT FINDING APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

II
THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III
THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE CRIME CHARGED DESPITE THE POLICE OFFICERS NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES.

This Court's Ruling

Appellant contends that his warrantless arrest is illegal because he was merely watching a game of chess when the police officers apprehended him. Since his arrest is illegal the evidence allegedly seized from him is inadmissible. Moreover, it is rather foolish that he would peddle illegal drugs so boldly and unashamedly at 5:00 o'clock in the afternoon when the risk of getting caught is high.

The appeal has no merit.

A lawful arrest without a warrant may be made by a peace officer or a private individual under any of the following circumstances:

Sec 5. Arrest without warrant, when lawful – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.[3]

Records show that the warrantless arrest of the appellant was effected under Section 5 (a) or in flagrante delicto. The police officers witnessed the exchange of money and a plastic sachet and upon approaching the appellant, the police officers saw that the plastic sachet contained white crystalline substance and was suspected to be shabu. After the laboratory examination, the white crystalline substance turned out to be methamphetamine hydrochloride or shabu, an illegal drug.

Indeed, it is clear the appellant was arrested in flagrante delicto as he was then committing a crime in violation of the Dangerous Drugs Act in plain view of the police officers. Consequently, the seizure of the dangerous drug is legal and admissible in evidence.

Appellant's version that he was merely watching a game of chess cannot stand against the positive declarations of the arresting officers. It is well settled that positive declarations of a prosecution witness prevail over the bare denials of an accused.[4] An accused can only be exonerated if the prosecution fails to meet the quantum of proof required to overcome the constitutional presumption of innocence.[5] We find that the prosecution has met this quantum of proof in the instant case.

Appellant's assertion that it was highly improbable for him to buy illegal drugs at 5:00 o'clock in the afternoon fails to persuade this Court especially in the light of the Court's observation that of late, drug pushers have turned more daring and defiant in the conduct of their illegal activities.[6]

Anent the second issue, this Court finds that the chain of custody over the evidence seized from the appellant as unbroken and there was sufficient compliance with Section 21 of the IRR of R.A. no. 9165.

Upon arrest of the appellant, PO2 Nepascua confiscated the plastic sachet containing white crystalline substance from the former. Upon arrival at the police station, PO2 Nepascua marked the seized item with his initials "RNN." Thereafter, PO2 Nepascua prepared the confiscation receipt while SPO1 Mendones prepared the request for laboratory examination[7]. The seized item was then turned over by PO2 Nepascua to SPO1 Mendoza and the latter locked away the seized item in his locker for safekeeping. The following day, SPO1 Mendoza handed the seized item to PO2 Mendones for turn-over to the PNP Crime Laboratory. Thereafter, Police Senior Inspector Myrna Malojo-Todeno conducted the laboratory examination and found the specimen to be methamphetamine hydrochloride.[8] These were the same items identified by the prosecution witnesses and presented to the trial court as evidence.

The appellant lamented that the evidence seized was not photographed and inventoried in the presence of a member of the media, a representative from the DOJ, and an elective government official. While this factual allegation is admitted, the Court stresses that what Section 21 of the IRR of R.A. No. 9165 requires is substantial

and not necessarily perfect adherence, as long as it can be proven that the integrity and the evidentiary value of the seized items are preserved as the same would be utilized in the determination of the guilt or innocence of the accused.

Case law has it that non-compliance with the above-quoted provision of RA 9165 and its Implementing Rules and Regulations is not fatal and 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. [9]

As previously discussed, the totality of the prosecution's evidence shows the integrity of the drugs seized to be intact. Moreover, appellant did not seasonably question these procedural gaps before the trial court. Suffice it to say that objection to evidence cannot be raised for the first time on appeal.[10]

In sum, this Court finds the herein assailed Decision convicting appellant for violation of Section 11, Article II of R.A. No. 9165 as amply supported by both evidence and jurisprudence.

WHEREFORE, the appeal is DENIED. The Decision November 4, 2013 of the Regional Trial Court, Branch 41, Dagupan City is AFFIRMED in toto.

SO ORDERED.

Salazar-Fernando, R.A., (Chairperson) and Garcia, R.R. JJ., concur.

[1] Rollo, pp.28-39.

[2] Records, p.1.

[3] Section 5, Rule 113 of the Rules of Court.

[4] People vs. Macabre, G.R. No. 179941, August 24, 2009.

[5] Ibid.

[6] People vs. Eugenio, G.R. No. 146805, January 16, 2003.

[7] Evidence for the prosecution, p.5.

[8] PNP Chemistry Report Number D-113-11L, Id. at 7.

[9] People vs. Sherwin Bis, G.R. No. 191360, March 10, 2014.

[10] Ibid.

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