

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND CURA, ACCUSED-APPELLANT.**

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

This is an appeal from the Decision dated January 19, 2004 in Criminal Case No. 12834 of Branch 64, Regional Trial Court, Tarlac City convicting accused-appellant Ferdinand Cura for violation of Section 11, Article II, Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Antecedents

Due to reports of rampant illegal drug activities, a surveillance was conducted by SPO1 Romeo Milla, PO1 Hector Niegos, Barangay Captain Jeremias Ermitanio, and some bantay bayan members at Barangay Amacalan, Gerona, Tarlac. They were able to arrest a certain Joey Austria for illegal possession of “shabu.” When they reached accused-appellant’s house, SPO1 Milla saw accused-appellant, who was playing cards on a table outside his house, hide something under the linoleum cover of the table. They proceeded to the table and when Barangay Captain Ermitanio lifted the cover of the table, two (2) plastic sachets of white crystalline substance fell therefrom. Thus, accused-appellant was arrested. One of the two sachets subjected to chemical examination yielded positive for “shabu.”

The factual details are summarized in the People’s brief as follows:

Around 1:00 in the afternoon of June 6, 2003, while SPO1 Romeo Milla, Barangay Captain Jeremias Ermitanio and Kagawad Pascua were discussing the rampant illegal drug activities at Purok 2, Barangay Amacalan in Gerona, Tarlac (TSN, September 25, 2003, p. 3), they were interrupted by Arnold Vicente, a member of the Barangay Bantay Bayan. Vicente informed them that a certain man was acting suspiciously (ibid., p. 4). With the information, SPO1 Milla called and asked his companion, SPO1 Hector Niegos to assist Vicente (id). After a while, SPO1 Niegos and Vicente returned with a man named Joey Austria, whom the two had arrested for illegal possession of methamphetamine hydrochloride (id, Ibid., p. 6).

SPO1 Milla together with other police officers, members of Barangay Bantay Bayan and Barangay officials continued to conduct surveillance in the area (Ibid., p. 7). When they reached appellant’s house, SPO1 Milla noticed four persons playing cards on a table outside appellant’s house (id; TSN, December 2, 2003, p. 2). SPO1 Milla, who saw appellant place something under the linoleum cover of the table (Ibid., p. 8), immediately told Barangay Chairman Ermitanio what he had witnessed (id). Hence, they proceeded to the table (id).

Barangay Chairman Ermitanio confiscated the cards and the bet money, and lifted the cover of the table. Two (2) heat-sealed plastic sachets containing crystalline substance fell therefrom (id; TSN, November 18, 2003, p. 7). When the police officers ascertained that the sachets contained prohibited drugs, they arrested appellant (id).

The items confiscated from appellant were turned over to the Chief Investigator of the Gerona Police Station. Subsequently, the items were submitted to Camp Olivas, in San Fernando, Pampanga for examination (Ibid., p.

9, TSN, October 14, 2003, p. 2).

The qualitative examination conducted by Engr. Marcene G. Agala, a forensic chemist at Camp Olivas, confirmed that the content of the second plastic sachet is methamphetamine hydrochloride, commonly known as shabu, a regulated drug (Exhibit B-4, Ibid., p. 6). The other plastic sachet was found to contain "tawas" (Exhibit "B-3", id)."[1]

Thus, an information was filed against accused-appellant charging him with violation of Section 11, Article II, RA No. 9165 as follows:

The undersigned 1ST Assistant Provincial Prosecutor, upon preliminary investigation conducted accuses FERDINAND CURA y ENAN, of the crime of Violation of Section 11, Article 2, R.A. 9165, as amended, committed as follows:

That on or about 1:10 o'clock in the afternoon of June 6, 2003 at Brgy. Amacalan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously possess methamphetamine hydrochloride, commonly known as shabu, weighing 0.055 gram without the corresponding license or prescription and authority to law.

CONTRARY TO LAW.[2]

When arraigned, accused-appellant pleaded "not guilty." [3] During the pre-trial, the parties stipulated only on the identity of accused-appellant. [4] Thus, trial ensued wherein the prosecution and the defense presented their respective evidence.

On January 19, 2004, the trial court rendered a Decision convicting accused-appellant, to wit:

WHEREFORE, the prosecution having established the guilt of the accused beyond the penumbra of doubt, this Court sentences Ferdinand Cura to suffer an indeterminate prison term of twelve 12 years and one 1 day of reclusion temporal as minimum to twenty 20 years as maximum and a fine of Ph300,000.00 as defined and penalized by Republic Act 9165 particularly Section II, paragraph three 3 number 3 of said law.

SO ORDERED.[5]

Hence accused-appellant filed this appeal which is anchored on the following assignment of errors:

I

THE LOWER COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[6]

The Issues

- Whether the warrantless arrest of accused-appellant was lawful; and,
- Whether the trial court erred in giving weight and credence to the testimonies of the prosecution witnesses.

The Court's Ruling

Accused-appellant was charged with violation of Section 11, Article II, Republic Act No. 9165, pertinent provisions of which read:

SECTION 11. Possession of Dangerous Drugs. – The penalty of life imprisonment to death and a fine ranging from Five Hundred thousand pesos (P500,000.00) to Ten Million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methylamphetamine hydrochloride or “shabu”, or other dangerous drugs xxx.

There is no question that out of the two (2) heat-sealed sachets recovered from accused-appellant, one yielded positive for methylamphetamine hydrochloride or “shabu” weighing 0.055 gram, as per Chemistry Report No. D-125-2003.[7]

Accused-appellant, however, contends that the “shabu” seized by the police officers was not admissible in evidence against him because at the time of its seizure and his arrest, the police were not armed with a valid search or arrest warrant and accused-appellant was merely playing cards while the “shabu” was recovered from the table and not from his possession.

The contention lacks merit.

Under Section 5(a), Rule 113, Revised Rules of Criminal Procedure, a person may be lawfully arrested even without an arrest warrant when, among others, he has just committed, is actually committing, or is attempting to commit an offense. On the other hand, search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in “plain view”; (5) when the accused himself waives his right against unreasonable searches and seizures.[8]

The seizure of the “shabu” and accused-appellant’s arrest in this case fall under the instances of valid warrantless search and arrest, as accused-appellant was actually committing a crime when he was seen by SPO1 Milla placing the “shabu” under the cover of the table. This prompted the police to approach him and search for the sachet of “shabu” which fell from the table cover. Clearly, the “plain view” doctrine finds application. As held in *People vs. Macalaba*, 395 SCRA 461 (2003):

Under the “plain view” doctrine, unlawful objects within the plain view of an officer who has the right to be in the position to have that view are subject to seizure and may be presented in evidence. Nonetheless, the seizure of evidence in plain view must comply with the following requirements: (a) a prior valid intrusion in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent; and (d) the plain view justified mere seizure of evidence without further search.

We are convinced beyond any shadow of doubt under the circumstances above discussed that all the elements of seizure in plain view exist in the case at bar. Thus, the warrantless search and seizure conducted on ABDUL, as well as his warrantless arrest, did not transgress his constitutional rights.

Notably, prosecution witness SPO1 Milla positively testified on the circumstances leading to the confiscation of the “shabu” and the eventual arrest of accused-appellant. Thus:

PROS. OVEJERA:

Q Will you tell this Court what was he doing when you saw Ferdinand Cura?

A After frisking and investigating Joey Austria, we continued making a surveillance until we reached the place of Ferdinand Cura and we noticed people playing billiards, sir and cards.

Q How about Ferdinand Cura, what was he playing?

A He was playing cards, sir.

xxx xxx xxx

Q When you saw him, did you find any illegal drugs or any contraband?

A We were approaching their table, sir, and they did not notice us but we saw that he placed something under the linoleum cover of the table.

COURT – continuing

Q What did you do when you saw that something the accused placed in the linoleum?

A It was Acting Barangay Chairman Ermitanio who confiscated the bet money and the playing cards and since I told him earlier that person inserted something under the linoleum cover of the table, then Acting Barangay Chairman lifted that cover and he saw that item, sir.

Q What item was that?

A Two (2) heat-sealed plastic sachets containing crystalline substance, sir.

(pp. 6-8, tsn, dated Sept. 25, 2003)

Acting Barangay Chairman Jeremias Ermitanio corroborated the foregoing testimony as he testified that he saw the “shabu” in plain view when it fell from the table where accused-appellant was playing cards. He further testified that he was forbidding his constituents from playing cards because it was being used as a front for people to sell “shabu.”[9]

The testimonies of SPO1 Milla and Barangay chairman Ermitanio deserve weight and credence, as there is no showing that they were ill-motivated to testify falsely against accused-appellant. Well-settled is the rule that in cases involving violations of the Dangerous Drugs Act, credence is given to testimonies of police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on their part or deviation from the regular performance of their duties.[10]

The fact that the heat-sealed plastic sachet containing “shabu” was not actually recovered from accused-appellant’s physical possession will not exonerate him, as his possession of the “shabu” need not be exclusive and may be inferred from the circumstances of the case. Accused-appellant cannot simply feign innocence since the prosecution evidence amply showed that accused-appellant placed the sachet of “shabu” under the table cover and thus, the “shabu” was under his constructive possession and control. As held in *People vs. Tira*, 430 SCRA 134, 151-152 (2004):

The essential elements of the crime of possession of regulated drugs are the following: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and, (c) the accused has knowledge that the said drug is a regulated drug. This crime is *mala prohibita*, and, as such, criminal intent is not an essential element.

However, the prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs.

Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another. (Underscoring supplied)

In any event, accused-appellant can no longer assail his warrantless arrest as the same should be raised before he entered his plea. Accused-appellant did not file a motion to quash information before he pleaded to the charge. Thus, he is deemed to have waived any perceived defect or irregularity in his arrest.[11] The ruling in *People vs. Ayangao*, 427 SCRA 428 (2004) is in point:

Appellant also assigns as error the illegality of her arrest because she was not read her Miranda rights. (This is in addition to her argument that the 15 bricks of marijuana were inadmissible since the warrantless search was invalid, not having been made pursuant to a lawful arrest.) This contention is without merit since this Court has repeatedly ruled that, by entering a plea upon arraignment and by actively participating in the trial, an accused is deemed to have waived any objection to his arrest and warrantless search. Any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived. Here, in submitting herself to the jurisdiction of the trial Court when she entered a plea of not guilty, and participated in the trial, the appellant waived any irregularity that may have attended her arrest.

Accused-appellant also claims that there were inconsistencies in the testimonies of prosecution witnesses SPO1 Milla and Barangay Chairman Ermitanio.[12] The purported inconsistencies pertain to whether accused-appellant was playing cards or pool and the number of people then playing with accused-appellant.

Suffice it to stress that even the most candid witnesses may commit mistakes and give confused and inconsistent statements.

Indeed, error-free statements cannot be expected all the time.[13] What is important is that both SPO1 Milla and Barangay Chairman Ermitanio testified on the material details of the incident. It has been held that:

As for the other alleged inconsistencies in the testimonies of the prosecution witnesses, they refer to minor and collateral matters, not to an essential element of the crime, and do not have any bearing on the essential fact testified to, that is, the killing of the victim. Moreover, minor contradictions among several witnesses of a particular incident and aspect thereof which do not relate to the gravamen of the crime charged are to be expected in view of their differences in impressions, memory, vantage points and other related factors. In fact, they bolster rather than weaken their credibility as they erase any suspicion that their testimonies have been rehearsed. What is important is that both Felipe and Benjamin were consistent in positively identifying appellant as the person who shot their father.[14]

Accused-appellant further insinuates that there was a frame-up as the “shabu” was only shown to him when he was called back by the police authorities. This lame and self-serving defense cannot stand in the face of the positive evidence of the prosecution. Notably, accused-appellant did not file any complaint, criminal or administrative, against the police officers who arrested him. Thus, frame-up as a defense should be rejected for it is easily concocted and difficult to prove. As held in *People vs. Huang Zhen Hua*, 439 SCRA 350 (2004):

The appellant’s defense of frame-up is nothing new. It is a common and standard line of defense in most prosecutions for violation of the Dangerous Drugs Law. While such defense cannot and should not always be considered as contrived, nonetheless, it is generally rejected for it can easily be concocted but is difficult to prove. Police officers are, after all, presumed to have acted regularly in the performance of their official functions, in the absence of clear and convincing proof to the contrary, or that they are motivated by ill-will.

The Court, therefore, finds no reason to depart from the trial court's findings that as between the positive testimonies of the prosecution witnesses and accused-appellant's denial, the former shall prevail. As the trial court noted:

Between the testimonies of prosecution's witnesses, SPO1 Romeo Milla and Acting Brgy. Captain Jeremias Ermitanyo and the negative assertion of the accused, the positive assertion prevails over the denial.

The defense capitalized by the accused is mere denial which as a general rule like alibi is weak especially so against a positive assertion and identification by credible witnesses for the reason that this is very easy to concoct usually a standard defense availed of by the accused without any other reliable evidence. There was no proof adduced by the accused of any ill motive by the police and the Acting Brgy. Captain why they should falsely testify against him in order to destroy the credibility. The presumption of the regularity of the performance of the police and the Brgy. Captain prevails over the denial of the accused.[15]

Then again, it is well-settled that findings of facts of the trial court, its calibration of the testimonial evidence of the parties and the assessment of the credibility and probative weight of the evidence of the parties and its conclusion anchored on its findings are given high respect, if not conclusive effect on appeal because of the unique advantage of the trial court of observing and monitoring the demeanor, conduct and deportment of the witnesses as they regale the court with their testimonies. The exception to this rule is when the trial court overlooked, ignored, misconstrued or misappreciated cogent facts and circumstances which if considered would alter the result of the case. This exception does not obtain in the present case.

As regards the penalty, the trial court erroneously imposed an "indeterminate prison term of twelve [12] years and one [1] day of reclusion temporal as minimum to twenty [20] years as maximum and a fine of Ph300,000.00." Under Section 11(3), R.A. No. 9165, the penalty for possession of less than five (5) grams of shabu is "twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos to four hundred thousand pesos," without designating the prison term as reclusion temporal. Hence, since violation of RA No. 9165, a special law, is *malum prohibitum* and said law provides for its own penalties, the imprisonment of twelve (12) years and one (1) day provided for therein should not be termed as reclusion temporal.

Accordingly, applying the Indeterminate Sentence Law, which is mandatory for its application to both *mala in se* and *mala prohibita*,^[16] the penalty should be anywhere from twelve (12) years and one (1) day to twenty (20) years.^[17] Hence, an indeterminate sentence of twelve (12) years and one (1) day as minimum, to fifteen (15) years as maximum, is hereby imposed.

WHEREFORE, accused-appellant's imprisonment is modified to an indeterminate penalty of twelve (12) years and one (1) day as minimum, to fifteen (15) years as maximum. The appealed Decision dated January 19, 2004 is affirmed in all other respects.

SO ORDERED.

De Los Santos, (Chairman) and Dimaranan-Vidal, JJ., concur.

[1] pp. 94-96, Rollo

[2] p. 1, Record

[3] p. 13, *ibid.*

[4] p. 14, *ibid.*

[5] p. 48, *ibid*

[6] p. 56, *Rollo*

[7] Exh. "B", p. 5, *Record*

[8] *People vs. Doria*, 301 SCRA 668 (1999)

[9] pp. 6-7, *tsn*, dated November 18, 2003

[10] *People vs. Dulay*, 423 SCRA 652 (2004); See also *Arcilla vs. Court of Appeals*, 418 SCRA 487 (2003); *People vs. Suzuki*, 414 SCRA 43 (2003)

[11] pp. 107-108, *Rollo*

[12] pp. 58-59, *Rollo*

[13] *People vs. Osing*, 349 SCRA 310

[14] *People vs. Sara*, 417 SCRA 431 (2003)

[15] p. 26, *Rollo*

[16] *Santiago Argoncillo vs. Court of Appeals*, 292 SCRA 113 (1998)

[17] *People vs. Martin Simon*, 234 SCRA 555 (1994)

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