

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO CRESPO POBLETE, ALIASES: “BOY CRESPO,” “BOY POBLETE,” “BOY CORTISTA” AND “BOY NARCOM,” ACCUSED-APPELLANT.

G.R. No. 121003. April 20, 1998

Ponente: PUNO, J.

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PUNO, J.:

Accused ALBERTO CRESPO y POBLETE was charged and convicted with illegal possession of drugs and ammunitions which were found in his house by virtue of a search conducted by the police.

The Information[1] charging him with violation of Section 8, Article II, R.A. 6425, as amended, for illegal possession of prohibited drugs, reads:

“That on or about September 14, 1993, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did then and there willfully, unlawfully, feloniously and knowingly have in his possession and control (one) stick of flowering tops of Marijuana, wrapped in a(n) aluminum foil.

“Contrary to law.”

The Information[2] charging accused with violation of Section 16, Article III, R.A. 6425, as amended, for illegal possession of regulated drugs, reads:

“That on or about September 14, 1993, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did then and there willfully, unlawfully, feloniously and knowingly have in his possession and control thirteen (13) pieces of aluminum foils containing Methamphetamine Hydrochloride, also known as “SHABU”, without the corresponding license or prescription.

“Contrary to law.”

The Information[3] charging accused with violation of P.D. No. 1866 for illegal possession of ammunitions, reads:

“That on or about September 14, 1993, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did then and there willfully, unlawfully, feloniously and knowingly have in his possession and control four (4) live ammunitions for (a) .22 caliber (handgun).

“Contrary to law.”

At the arraignment, accused pled not guilty. Trial ensued.

The People’s case is founded mainly on the testimonies of the police officers who served the search warrants on accused and barangay captain TIBURCIO LUNA who was one of those who witnessed the search.

The records show that a team from the Intelligence and Operations Division of the PNP Cavite City conducted a surveillance on accused ALBERTO CRESPO. After their surveillance confirmed that accused was selling shabu, the team, headed by Asst. Chief SPO2 Amorico Alvarez, applied for warrants to search accused's house for illegal drugs and ammunitions.[4] RTC Judge Rolando D. Diaz issued the search warrants on September 14, 1993 after examining the applicant and his witnesses, SPO1 Facundo Baricuatro, Jr. and PO2 Fernando Lopez.[5]

At about 1:00 p.m. of the same day, police officers from the Intelligence Operations Division of the PNP Cavite City went to accused's house in Caridad, Cavite City, to serve the search warrants. The team was headed by Chief of Police Inspector Victor Manansala, with PO1 SPO1 Facundo Baricuatro, Jr., PO3 Vicente Abad, PO2 Fernando Lopez and PO2 Reginaldo Dela Cruz, among others, as members. Before proceeding to accused's house, the police officers informed barangay captain TIBURCIO LUNA and barangay councilor QUIRINO DEL ROSARIO about the search warrants and requested them to witness the search.[6]

Accused's house is small and has only one bedroom. A wooden divider, about 3 feet high, separated the bedroom from the sala. standing by the door of the living room, one could see the entire house. When the police officers arrived at accused's house, they identified themselves, stated their purpose and showed the warrants to accused. A heated altercation erupted between accused and SPO1 Facundo Baricuatro, Jr. as the former questioned the search of his house. The police were forced to handcuff accused to his son Regner[7] who, the police discovered, had an outstanding warrant of arrest against him involving another case.[8]

As the room was small and there was barely enough space for the police officers and the barangay officials, accused and his family were requested to sit in the sala. they faced the bedroom where they could see the search being conducted. Police officers Abad and dela Cruz began the search in the bedroom. PO1 Facundo Baricuatro, Jr. stayed in the sala and served as recorder of the items which the search may yield. The two barangay officials served as witnesses.[9]

There were two (2) cabinets in the bedroom. PO3 Abad searched the small cabinet containing clothes to the bed to make it easier for barangay councilor to witness the search. The clothes did not yield anything. PO3 Abad returned to the cabinet and opened its small drawer. He found two .22 caliber bullets, a tooter and an aluminum foil suspected to contain marijuana. He gave the items to PO1 Baricuatro, Jr. for recording. There were some pentel pens left inside the drawer.[10]

PO2 dela Cruz also conducted a search in the bedroom. He found two pieces of .22 caliber bullets in the pocket of a coat hanging inside the other cabinet. He also found a pentel pen containing 13 pieces of aluminum foil with shabu inside its drawer. He turned over the articles to PO1 Baricuatro, Jr. for recording. Dela Cruz' search was witnessed by barangay captain Luna.[11]

All the illicit articles recovered from accused's house were confiscated and recorded in the Receipt of Properties Seized which was signed by barangay captain Luna and councilor del Rosario as witnesses.[12] The police officers arrested accused and his son, Regner, who has an outstanding warrant of arrest for slight physical injuries.[13] The confiscated aluminum foils were forwarded to the National Bureau of Investigation for examination of their contents. NBI Forensic Chemist EMILIA ROSALDES found that one of the foils contained a stick of flowering tops of marijuana (1.4463 grams), while the 13 aluminum foils contained metamphetamine hydrochloride (1 gram).[14]

For his part, accused denied owning the illicit items found by the police in his house. He charged that the policemen were lying when they testified that barangay captain Luna was present in the bedroom during the search.[15] He claimed that the bedroom search of PO3 Abad, as witnessed by councilor del Rosario, was negative. He explained that the pens found in the drawer were all Snowman pentel pens used by his daughter in

school. He alleged that the black Pilot pen and thirteen (13) pieces of aluminum foil containing shabu discovered by PO2 dela Cruz did not belong to him.[16]

On cross-examination, accused admitted that he knows councilor del Rosario as he used to be their barangay captain. He also admitted that he has been previously arrested in another drug case.[17]

Councilor QUIRINO DEL ROSARIO testified for the accused. He declared that the barangay captain was outside accused's house and did not personally witness the search. On his part, he stood behind PO3 Abad to see how he would conduct the search. PO3 Abad sifted the clothes in the laundry basket but found nothing. He searched one of the two cabinets and examined the clothes therein. He searched the drawer inside the cabinet but found only some papers and pens. He proceeded to check the other cabinet. PO2 dela Cruz entered the bedroom and went to the cabinet they earlier inspected. After a while, dela Cruz announced that he found two bullets and a foil containing marijuana inside the pocket of the coat hanging in the cabinet. Thereafter, dela Cruz again declared that he may have found something inside a pen. Its contents were poured out and the police suspected them to be shabu. However, councilor del Rosario could not tell whether the pen was one of those they earlier found in the drawer.[18]

The defense then presented barangay captain TIBURCIO LUNA to confirm the testimony of councilor del Rosario. However, Luna firmly asserted that he was standing by the door of the bedroom during the search. He stressed that from that position, he witnessed the entire search conducted by the police.[19]

MARILYN CRESPO, the 13-year old daughter of accused, testified that in September 1993, she owned three pentel pens: a yellow, green and blue Snowman pen she used in her Science and Home Economics classes. She kept these pens in the cabinet in their bedroom. These pens were not confiscated by the police. She averred that the Black Pilot pen taken by the police from their house does not belong to her.[20]

On December 20, 1994, Judge Rolando D. Diaz[21] found accused guilty of the crimes charged.[22] The dispositive portion of his Decision reads:

x x x

“WHEREFORE, in view of the foregoing, the Court finds the accused Alberto Crespo y Poblete guilty beyond reasonable doubt in Crim. Case No. 291-93 of illegal possession of ammunitions as defined and penalized under PD 1866 and he is hereby sentenced to reclusion perpetua; in Crim. Case No. 292-93, he is hereby found guilty of a violation of Sec. 8, Art. II, RA 6425, as amended, and he is hereby sentenced to an indeterminate prison term of, from Six (6) months and One (1) day of prision correccional, as minimum, to Two (2) years and Four (4) months of prision correccional, as maximum, to pay a fine of P10,000.00 without subsidiary imprisonment in case of insolvency; and in Crim. Case No. 293-93, he is hereby found guilty of a violation of Sec. 16, Art. III, RA 6425, as amended, and he is hereby sentence to an indeterminate prison term of Six (6) months and One (1) day of prision correccional as maximum, to pay a fine of P10,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs in all instances.

“The Four (4) live .22 caliber bullets are hereby confiscated in favor of the government, as well as the marijuana and shabu are all confiscated in favor of the government.

“SO ORDERED.”[23]

Hence this petition where accused contends that:

“THE HONORABLE TRIAL COURT COMMITTED GRAVE ERROR IN UPHOLDING THE CLAIM OF THE PROSECUTION’S WITNESSES THAT MARIJUANA, FOUR (4) BULLETS AND THIRTEEN (13) PIECES OF ALUMINUM FOIL CONTAINING SUSPECTED SHABU WERE INDEED RECOVERED IN

THE HOUSE OF ACCUSED-APPELLANT.”

In the main, appellant relies on the testimony of councilor del Rosario casting doubt on whether the police, especially PO2 dela Cruz, found in his house the aforementioned illicit items during their search. He also assails the police for handcuffing him to his son which prevented him from witnessing their search.

We find no merit in the petition.

Deeply entrenched in our jurisprudence is the rule that when the credibility of witnesses is in issue, appellate courts will not disturb the findings of the court a quo in the absence of any showing that its calibration of credibility was flawed.[24] In the case at bar, we find that councilor del Rosario’s testimony is not sufficient to cast reasonable doubt on appellant’s guilt. His testimony was refuted by the barangay captain who categorically declared that he witnessed the search as he was by the door of the bedroom at the time. The police officers likewise confirmed that the barangay captain was a witness during the search. The lawful manner the search was conducted was duly proved by the police officers. There is nothing in the records to show that the police officers and the barangay captain were actuated by any ill-motive in imputing the crimes to appellant. Their testimonies carried great details and tallied in every respect with the written statements they executed immediately after the search. In contrast, the testimony of barangay councilor del Rosario is open to doubt. He himself signed the Receipt of Property Seized which listed the illegal articles found by the police officers in the house of appellant. He did not make any reservation when he signed said Receipt.

We reject the claim that appellant and his family were prevented from witnessing the search. As explained by PO1 Baricuatro, Jr., the bedroom was quite small and could accommodate only the officers searching the room and the barangay officials witnessing the search. Appellant, his son and wife were left in the sala, but they were able to witness the conduct of the search as the sala were facing the bedroom and there was no partition between the two. Indeed, appellant’s house was so small that a person standing by the door of the living room could easily see the entire house, including the bedroom.[25] The records also show that there were times when appellant’s wife entered the bedroom and looked over the shoulder of PO2 dela Cruz while the latter was conducting the search.[26] There is no truth to the allegation of appellant that he was handcuffed to prevent him from witnessing the search. It was necessary to handcuff appellant to his son as appellant engaged PO1 Baricuatro, Jr. in a heated argument prior to the search. The altercation was delaying the conduct of the search. The police also discovered that appellant’s son, Regner, had an outstanding warrant of arrest against him. Hence, to enable the police to start with the search and to prevent Regner from escaping, the police were forced to handcuff the two to each other.[27] The act, however, did not prevent them from witnessing the search. In fact, Regner, even while handcuffed to his father, entered the bedroom twice when PO2 dela Cruz found two bullets in the drawer.[28] On the whole, we find that the evidence of the prosecution proved the guilt of appellant beyond reasonable doubt.

We now come to the penalty.

The trial court erred in imposing on appellant the penalty of reclusion perpetua in Criminal Case No. 291-93 for illegal possession of ammunition. The range of penalty provided for said offense under Section 1 of P.D. 1866 is reclusion temporal in its maximum period to reclusion perpetua.[29] As no aggravating or mitigating circumstance was alleged in the Information or proven during the trial, the indeterminate sentence imposable on appellant for the offense of simple illegal possession of ammunition should be within the range of ten (10) years and one (1) day to twelve years of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day to twenty (20) years of reclusion temporal, as maximum.[30]

In Criminal Case No. 292-93, for violation of Section 8, Article II of R.A. 6425 (illegal possession of prohibited drugs - - 1.45 grams of marijuana), appellant was sentenced to an indeterminate term of imprisonment from six

(6) months and one (1) day of prision correccional, as minimum, to two (2) years and four (4) months of prision correccional, as maximum, and to pay a fine of P10,000.00 without subsidiary imprisonment in case of insolvency. In Criminal Case No. 293-93, for violation of Section 16, Article III of R.A. 6425 (illegal possession of regulated drugs - - one gram of shabu or methamphetamine hydrochloride), appellant was sentenced to an indeterminate prison term of six (6) months and one (1) day of prision correccional, as minimum to four (4) years, two (2) months and One (1) day of prision correccional, as maximum, and to pay a fine of P10,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs in all instances. In both cases, we delete the penalty of fine imposed on appellant as the second paragraph in Section 20 of R.A. 6425, as amended by Section 17 of R.A. 7659, provides only for the penalty of imprisonment.[31]

IN VIEW OF THE FOREGOING, the conviction of accused-appellant ALBERTO CRESPO y POBLETE is AFFIRMED, subject to the following MODIFICATIONS as to the penalty: (a) in Criminal Case No. 291-93, appellant is sentenced to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and; (b) the fines imposed on appellant in Criminal Case Nos. 292-93 and 293-93 are deleted. Costs against appellant.

SO ORDERED.

Regalado, (Chairman), Melo, Mendoza, and Martinez, JJ., concur.

[1] Rollo, p. 11.

[2] Rollo, p. 12.

[3] Ibid., p. 10.

[4] Testimony of PO3 Vicente Abad, February 21, 1994 TSN pp. 5-6.

[5] Exhibits "I" and "J", Folder of Exhibits, at pp. 9-10; January 24, 1994 TSN, p. 38.

[6] Testimony of PO1 Facundo Baricuatro, Jr.; January 17, 1994 TSN, pp. 3-10.

[7] Ibid; Testimony of PO3 Abad, February 21, 1994 TSN, pp. 42-45.

[8] Testimony of PO1 Facundo Baricuatro, Jr.; January 17, 1994 TSN, pp. 9.

[9] Testimony of PO3 Abad; February 21, 1994 TSN, at pp. 9, 12-13, 18.

[10] Ibid., pp. 25-30.

[11] Ibid., pp. 38-40; Testimony of PO2 dela Cruz, March 9, 1994 TSN, pp. 6, 8, 24.

[12] Testimony of councilor del Rosario; May 31, 1994 TSN, p. 7.

[13] Testimony of PO1 Baricuatro, Jr., January 24, 1994 TSN, at p. 36.

[14] Exhibits "B" and "C", respectively; Folder of Exhibits, at pp. 2-3; Testimony of Forensic Chemist Rosaldes, January 24, 1994 TSN, pp. 3-7.

[15] Ibid., pp. 15-16.

[16] Ibid., pp. 8-13.

[17] Ibid., p. 33.

- [18] Testimony of councilor del Rosario, May 31, 1994 TSN, pp. 8-41.
- [19] August 23, 1994 TSN, pp. 6-8.
- [20] August 30, 1994 TSN, pp. 4-10.
- [21] Presiding Judge, RTC Fourth Judicial Region, Branch XVII, Cavite City.
- [22] Decision; Rollo, pp. 22-30.
- [23] Ibid., at pp. 29-30.
- [24] *People v. Taton*, G.R. 122757-61, November 28, 1997.
- [25] Testimony of Abad; February 21, 1994 TSN, p. 22.
- [26] Testimony of PO2 dela Cruz, March 9, 1994 TSN, p. 38.
- [27] Testimony of PO1 Baricuatro, Jr.; January 17, 1994 TSN, p. 9.
- [28] Testimony of PO2 dela Cruz; March 9, 1994 TSN, p. 19.
- [29] P.D. 1866, the law penalizing unlawful possession of firearms and ammunition, was amended by R.A. 8294 on July 7, 1997, decreasing the penalty for said offense. However, the provisions of said law would not benefit the accused as the law does not apply to those whose conviction under P.D. 1866 is on appeal. Accused herein has not manifested any intention to withdraw his present appeal.
- [30] *Padilla v. Court of Appeals*, G.R. 121917, March 12, 1997, 269 SCRA 402, 431-432, citing *People v. Lian*, G.R. 115988, March 29, 1996, 255 SCRA 532, 542.
- [31] Appellant committed the crimes of illegal possession of drugs on September 14, 1993, while R.A. 6425, which reduced the penalties therefor took effect on December 31, 1993. As the provisions of the amendatory law are favorable to accused, he same is given retroactive application.

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