DAVID GUTANG Y JUAREZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 135406. July 11, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari assailing the Decision[1] dated September 9, 1998 rendered by the former Twelfth Division of the Court of Appeals in CA-G.R. CR No. 19463. The assailed Decision affirmed the judgment[2] dated October 13, 1995 of the Regional Trial Court of Pasig, Metro Manila, finding petitioner David J. Gutang guilty beyond reasonable doubt for violation of Sections 8 and 16 of RA 6425, as amended, (for illegal possession and use of prohibited drugs) as charged in Criminal Cases Nos. 2696-D and 2697-D, respectively.

The facts are as follows:

On March 5, 1994, accused-appellant David Gutang, together with Noel Regala, Alex Jimenez and Oscar de Venecia, Jr., was arrested by elements of the PNP NARCOM, in connection with the enforcement of a search warrant[3] in his residence at No. 331 Ortigas Avenue, Greenhills, San Juan, Metro Manila. When the police operatives of the PNP-NARCOM served the search warrant, which was issued by Judge Martin Villarama, Jr. of the Regional Trial Court, Branch 156, Pasig, Metro Manila, they found the petitioner and his three (3) companions inside the comfort room of the master's bedroom, at the second floor of the house.[4] During the search, the following materials were found on top of a glass table inside the master's bedroom:

- shabu paraphernalias, such as tooters;

- aluminum foil;

- two (2) burners (one small, one big);

- fourteen (14) disposable lighters;

- three (3) weighing scales;

- plastic sealant used in repacking shabu;

- several transparent plastic bags of different sizes;

- about 1.4 grams of suspected marijuana fruiting tops contained in a small white plastic;

- about 0.7 gram of suspected dried marijuana contained in a small plastic container.[5]

The PNP-NARCOM team also inspected the cars of accused Regala, Jimenez and de Venecia, Jr. which were parked inside the compound of the residence of petitioner Gutang. They found a Winchester Rayban case

(sunglasses) with an undetermined amount of suspected shabu residues and tooters in a black plastic container and aluminum foil inside the car of Regala. The cars of Jimenez and de Venecia, Jr. yielded negative results. The items which were confiscated were then brought to the crime laboratory of the Philippine National Police (PNP) at Camp Crame, Quezon City for laboratory tests. The results of the laboratory examinations showed that the said items found in the master's bedroom of the residence of petitioner Gutang were positive for marijuana and methamphetamine hydrochloride (shabu). The items found inside the car of Regala were also positive for shabu.

The findings are as follows:

"PHYSICAL SCIENCES REPORT NO. D-168-94

CASE: Alleged Viol. Of RA 6425

SUSPECTS: DAVID GUTANG Y JUAREZ
NOEL REGALA Y YORRO
ALEX JIMENEZ Y ESPINOSA
CAREY DE VENECIA Y LOCSIN

TIME AND DATE RECEIVED: 1430H, 05 MARCH 1994

REQUESTING PARTY/UNIT: C, 2[nd] SOG NARCOM
Camp Crame, Q.C.

SPECIMEN SUBMITTED:

Exh. "A" - One (1) white plastic bag containing the following:

Exh. "A-1" - One (1) white film case with dried suspected marijuana fruiting tops weighing 1.56 grams.

Exh. "A-2" - One (1) small black box with dried suspected marijuana fruiting tops weighing 0.70 gram.

Exh. "A-3" - Two (2) pieces of improvised tooter with white crystalline residue.

Exh. "A-4" - Several foil and small plastic bag with white crystalline residue.

Exh. "B" - One (1) white plastic bag marked "ROEL REGALA" containing the following:

Exh. "B-1" - One (1) Winchester case with white crystalline substance.

Exh. "B-2" - One (1) black case containing several tooters with white crystalline residue.

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of prohibited and/or regulated drug.

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave the following results:

1. Exhs. "A-1" and "A-2" - POSITIVE to the test for Marijuana, a prohibited drug.

2. Exhs. "A-3", "A-4", "B-1" and "B-2" - POSITIVE to the test for methamphetamine hydrochloride (shabu), a regulated drug.

CONCLUSION

Exhs. "A-1" and "A-2" contain marijuana, a prohibited drug.

Exhs. "A-3", "A-4", "B-1" and "B-2" contain Methamphetamine Hydrochloride (shabu) a regulated drug. xxx

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REMARKS:

TIME AND DATE COMPLETED: 1630H, Or
March 1994
(Annex "A", pp. 6-8)

On the same day, March 5, 1994, immediately after Gutang, Regala, Jimenez and de Venecia, Jr. were placed under arrest, they were brought to the PNP Crime Laboratory at Camp Crame. According to PNP Forensic Chemist Julita De Villa, their office received from PNP-NARCOM which is also based in Camp Crame a letter-request for drug dependency test on the four (4) men.[6] After receiving the said request, Mrs. Esguerra of the PNP Crime Laboratory asked the four (4) men including the petitioner to give a sample of their urine. The petitioner and his co-accused complied and submitted their urine samples to determine the presence of prohibited drugs. After examining the said urine samples, PNP Forensic Chemist De Villa came out with Chemistry Report No. DT-107-94[7] and Physical Report No. DT-107-94[8] dated March 9, 1994, showing that the said urine samples all tested positive for the presence of methamphetamine hydrochloride (shabu).

Consequently, the informations in Criminal Cases Nos. 2696-D and 2697-D were filed in court against the petitioner and his companions for violation of Sections 8 and 16 of Republic Act No. 6425, (otherwise known as the Dangerous Drugs Act) as amended by Republic Act No. 7659. Incidentally, the charge against accused Oscar de Venecia, Jr. was dismissed by the trial court in an Order[9] dated August 3, 1994 on the ground that he voluntarily submitted himself for treatment, rehabilitation and confinement at the New Beginnings Foundation, Inc., a private rehabilitation center accredited by the Dangerous Drugs Board.

Upon arraignment, petitioner Gutang entered a plea of not guilty. His co-accused, Regala and Jimenez, likewise pleaded not guilty. Thereafter, joint trial of the cases proceeded. However, petitioner Gutang did not present any evidence.

After trial, the lower court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, foregoing considered, the Court finds 1) accused DAVID GUTANG and ALEXANDER JIMENEZ in Criminal Case No. 2696-D, GUILTY beyond reasonable doubt for violation of Section 8 of R.A. 6425 as amended (Possession and use of prohibited drug); and are hereby sentenced to suffer a penalty of six (6) months of arresto mayor to two (2) years, four (4) months of prision correccional and to pay the costs; 2) In Criminal Case No. 2697-D (Possession) accused DAVID GUTANG, NOEL REGALA and ALEXANDER JIMENEZ, GUILTY beyond reasonable doubt of violation of Section 16 (ibid) and are hereby sentenced to suffer a penalty of six (6) months of arresto mayor to two (2) years, four (4) months of prision correccional and to pay the costs; 3) accused NOEL REGALA, in Criminal Case No. 2698-D (Possession of regulated drugs) is hereby sentenced to suffer a penalty of six (6) months of arresto mayor to two (2) years, four (4) months of prision correccional and to pay the costs.

"The items confiscated are ordered forfeited in favor of the government and to be disposed of in accordance with law.

"SO ORDERED."[10]

The judgment of conviction of the lower court was affirmed by the Court of Appeals.

Hence, this petition wherein the petitioner raises the following assignments of error:

I

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE RECEIPT FOR PROPERTY SEIZED; EXHIBIT "I" AND EXHIBIT "R"; THE PHYSICAL SCIENCE REPORT NO. D-168-94. EXHIBIT "D";

> THE CHEMISTRY REPORT NO. DT-107-94, EXHIBIT "L"; AND THE PHYSICAL SCIENCE REPORT NO. DT-107-94, EXHIBIT "M" ARE INADMISSIBLE IN EVIDENCE.
>
> II
> THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE PRESUMPTION OF INNOCENCE OF THE ACCUSED HAS NOT BEEN OVERCOME BY PROOF BEYOND REASONABLE DOUBT.

We affirm the conviction of the petitioner.

Petitioner insists that the trial court erred in admitting in evidence Exhibits "I" and "R", which are the Receipts of Property Seized, considering that it was obtained in violation of his constitutional rights. The said Receipts for Property Seized, which described the properties seized from the petitioner by virtue of the search warrant, contain his signature. According to petitioner, inasmuch as the said evidence were obtained without the assistance of a lawyer, said evidence are tantamount to having been derived from an uncounselled extra-judicial confession and, thus, are inadmissible in evidence for being "fruits of the poisonous tree."

We agree. It has been held in a long line of cases that the signature of the accused in the Receipt of Property Seized is inadmissible in evidence if it was obtained without the assistance of counsel.[11] The signature of the accused on such a receipt is a declaration against his interest and a tacit admission of the crime charged for the reason that, in the case at bar, mere unexplained possession of prohibited drugs is punishable by law. Therefore, the signatures of the petitioner on the two (2) Receipts of Property Seized (Exhibits I and R) are not admissible in evidence, the same being tantamount to an uncounselled extra-judicial confession which is prohibited by the Constitution.

Petitioner further contends that since the Receipts for Property Seized (Exhibits I and R) are inadmissible in evidence, it follows that the Physical Science Reports Nos. D-168-94 and DT-107-94 (Exhibit D and M) and Chemistry Report No. DT-107-94 (Exhibit L) finding the said items seized to be positive for marijuana and shabu, are also inadmissible inasmuch as they are mere conclusions drawn from the said Receipts and hence a part thereof.

We disagree. The fact that the Receipts of Property Seized (Exhibits I and R) are inadmissible in evidence does not render inadmissable the Physical Science Reports (Exhibit D and M) and the Chemistry Report (Exhibit L) inasmuch as the examined materials were legally seized or taken from the petitioner's bedroom on the strength of a valid search warrant duly issued by Judge Villarama, Jr. of the Regional Trial Court of Pasig, Metro Manila. Since the said materials were validly seized or taken from the bedroom of the petitioner in his presence, the laboratory tests conducted thereon were legally and validly done. Hence, the said Reports containing the results of the laboratory examinations, aside from the testimonial and other real evidence of the prosecution, are admissible in evidence and sufficiently proved that the petitioner used and had the said prohibited drugs and paraphernalia in his possession. In other words, even without the Receipts of Property Seized (Exhibits I and R) the alleged guilt of the petitioner for the crimes charged were proven beyond reasonable doubt.

Petitioner also posits the theory that since he had no counsel during the custodial investigation when his urine sample was taken and chemically examined, Exhibits "L" and "M", which are the respective Chemistry and Physical Reports, both dated March 9, 1994, are also inadmissible in evidence since his urine sample was derived in effect from an uncounselled extra-judicial confession. Petitioner claims that the taking of his urine sample allegedly violates Article III, Section 2 of the Constitution, which provides that:

> Sec. 2. The right of the people to be secure in their person, 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 person or things to be seized.

We are not persuaded. The right to counsel begins from the time a person is taken into custody and placed under investigation for the commission of a crime, i.e., when the investigating officer starts to ask questions to elicit information and/or confession or admissions from the accused. Such right is guaranteed by the Constitution and cannot be waived except in writing and in the presence of counsel. However, what the Constitution prohibits is the use of physical or moral compulsion to extort communication from the accused, but not an inclusion of his body in evidence, when it may be material.[12] In fact, an accused may validly be compelled to be photographed or measured, or his garments or shoes removed or replaced, or to move his body to enable the foregoing things to be done, without running afoul of the proscription against testimonial compulsion.[13] The situation in the case at bar falls within the exemption under the freedom from testimonial compulsion since what was sought to be examined came from the body of the accused. This was a mechanical act the accused was made to undergo which was not meant to unearth undisclosed facts but to ascertain physical attributes determinable by simple observation. In fact, the record shows that petitioner and his co-accused were not compelled to give samples of their urine but they in fact voluntarily gave the same when they were requested to undergo a drug test.[14]

Assuming arguendo that the urine samples taken from the petitioner are inadmissible in evidence, we agree with the trial court that the record is replete with other pieces of credible evidence including the testimonial evidence of the prosecution which point to the culpability of the petitioner for the crimes charged.

First of all, the petitioner has not satisfactorily explained the presence in his bedroom of the assorted drug paraphernalia[15] and prohibited drugs found atop a round table therein at the time of the raid.[16] Petitioner's feeble excuse that he and his co-accused were not in the master's bedroom but inside the comfort room deserves scant consideration since the comfort room is part of the master's bedroom.[17] Prosecution witness Capt. Franklin Moises Mabanag, head of the said PNP-NARCOM raiding team, testified that when petitioner was arrested, the latter showed manifestations and signs that he was under the influence of drugs, to wit:

> "By Fiscal Villanueva (To the witness)
>
> Q: Mr. Witness, why was a drug defendant (sic) test requested on the persons of David Gutang, Noel Regala, Alexander Jimenez and Oscar de Venecia?
>
> A: A drug test was made on them because when we held these persons David Gutang, Noel Regala, Alexander Jimenez and Oscar de Venecia, they showed manifestations and signs that they are under the influence of drugs.
>
> Atty. Arias:
>
> That is a conjectural answer. The witness is not authorized to testify on that.
>
> Fiscal Villanueva:
>
> We agreed as to the expertise of this witness at the time when I was qualifying him (interrupted)
>
> By Fiscal Villanueva (To the witness)
>
> Court:
>
> At any rate, that was only his observation it is not necessarily binding to the court, that is his testimony, let it remain.
>
> Atty. Arias:

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> But the rule is clear.
>
> Court:
>
> That is what he observed.
>
> Fiscal Villanueva:
>
> And what is this manifestation that you observed?
>
> Atty. Arias:
>
> Precisely, that is already proving something beyond what his eyes can see.
>
> Fiscal Villanueva:
>
> That is part of his testimony.
>
> Court:
>
> Let the witness answer.
>
> Witness:
>
> I observed they are profusely sweating and their lips are dry, I let them show their tongue and it was whitish and their faces are pale, reason why we made the necessary request for drug test."[18]

It is worth noting that the search warrant was served only after months of surveillance work by the PNP-NARCOM operatives led by Chief Inspector Franklin Mabanag in the residence of petitioner. Earlier, a confidential informant had even bought a gram of shabu from petitioner Gutang. Prosecution witness Mabanag also found, during the surveillance, persons who frequented the house of petitioner, and that the confidential informant of the PNP-NARCOM had in fact gained entry into the house. The police officers are presumed to have performed the search in the regular performance of their work. Allegedly improper motive on the part of the PNP-NARCOM team must be shown by the defense, otherwise, they are presumed to be in the regular performance of their official duties.[19] But the defense failed to do so.

All told, in the face of the evidence adduced by the prosecution, it is clear that petitioner is guilty beyond reasonable doubt of the crimes charged.

WHEREFORE, the petition is hereby DENIED. The decision of the Court of Appeals affirming the judgment of the Regional Trial Court is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Justice Consuelo Ynares-Santiago, ponente, Justices Bennie A. de la Cruz and Presbitero J. Velasco, Jr., members.

[2] Penned by Judge Mariano M. Umali, pp. 52-63, rollo.

[3] Records, p. 34.

[4] TSN, August 31, 1994, p. 68.

[5] Rollo, p. 57.

[6] Exhibit "K", Records, p. 277.

[7] Exhibit "L", Records, p. 278.

[8] Exhibit "M", Records, p. 279.

[9] Rollo, pp. 55-56.

[10] Rollo, p. 62.

[11] People vs. Lacbanes, 270 SCRA 193, 203 (1997); People vs. Bandin, 226 SCRA 299, 303 (1993); People vs. Mirantes, 209 SCRA 179, 186 (1992); People vs. Mauyao, 207 SCRA 732, 740 (1992); People vs. De Las Marinas, 196 SCRA 504, 510 (1991); People vs. De Guzman, 194 SCRA 601, 605 (1991)

[12] People vs. Tranca, 235 SCRA 455, 464 (1994)

[13] People vs. Paynor, 261 SCRA 615, 627 (1996)

[14] TSN, August 31, 1994, pp. 83, 93-94.

[15] Exhibits O, P, P-2, P-3, P-4, P-5, P-6.

[16] TSN, November 15, 1994, pp. 27, 29-30, 36.

[17] TSN, August 31, 1994, p. 68.

[18] TSN, August 31, 1994, pp. 42-44.

[19] People vs. William, 209 SCRA 808, 814 (1992); Perez vs. Rumeral, 200 SCRA 194, 201 (1991)

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