

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIBEL LAGMAN AND ZENG WA SHUI, APPELLANTS.

G.R. No. 168695. December 08, 2008*

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the June 6, 2005 Court of Appeals Decision[1] affirming that of the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 59 convicting herein appellants Zeng Wa Shui (Zeng) alias "Alex Chan," and Maribel Lagman (Maribel) of violation of Republic Act (RA) 6425 (Dangerous Drugs Act), as amended by RA 7659.

Culled from the 7-volume trial court records of the case are the following facts:

After receiving reports of clandestine operation of shabu laboratories in Pampanga, the National Bureau of Investigation (NBI) conducted in January 1996 surveillance of a piggery farm in Porac which was reportedly being used as a front therefor.

From the surveillance, it was gathered that three Chinese nationals, namely Zeng Wa Shui (Zeng), Li Wien Shien (Li) and Jojo Gan (Gan) occupied the farm, and Maribel frequented the place while Zeng and Li would go over to her rented house in 2609 San Francisco, Balibago, Angeles City which she was sharing with her Chinese common-law husband, Jose "Bobby" Yu.

In the early morning of March 14, 1996, two NBI teams, armed with search warrants, simultaneously raided the Porac farm and the Balibago residence.

The search of the farm, covered by Search Warrant No. 96-102, yielded no person therein or any tell-tale evidence that it was being used as a shabu laboratory. Only pigs in their pens, and two (2) containers or drums the contents of which when field-tested on-the-spot by NBI chemist Januario Bautista turned out to be acetone and ethyl,[2] were found.

The leader and members of the raiding team thereupon brought their vehicles inside the farm and closed its gates, expecting that the suspected operators would arrive. At around 10 a.m., a car driven by Li arrived and entered the premises after the NBI operatives opened the gates.

A search of Li's vehicle, a blue Toyota Corolla sedan, yielded a digital weighing scale and a packet with crystalline substance weighing approximately 317.60 grams which when field-tested by NBI Chemist Januario Bautista, was found positive for shabu.

At around 12:00 noon, Zeng arrived at the farm on board an L-300 Mitsubishi van bearing a blue drum containing liquid which, when field-tested on the spot also by NBI Chemist Bautista, was found positive for shabu.[3]

With respect to the search of the Balibago residence by the other NBI team by virtue of Search Warrant No. 96-101, since Maribel was out, she was fetched from her place of business. They found two padlocked rooms

inside the house, but with Maribel claiming that she did not have any keys thereto, the team forcibly opened the rooms which yielded 18 big plastic containers containing liquid substance, 30 sacks containing a white powdery substance, 10 plastic containers also containing a white powdery substance, plastic gallons, a refrigerator, a big blower, pails, plastic bags, a big glass flask, and a .25 caliber handgun.

The liquid substance contained in 6 of the 18 plastic containers was subjected to a chemical field-test and was found positive for shabu. The contents of the drums turned out to be alcohol solvents; the powder in the sacks was determined to be ephedrine hydrochloride; and the liquid in the 10 plastic containers was determined to be sodium hydroxide. These chemicals are used in the manufacture of shabu.

Two separate informations against Maribel were thus filed before the Regional Trial Court (RTC) of Angeles City, the first for possession of 527 kilograms of shabu in liquid form, docketed as Criminal Case No. 96-377, and the second for possession of 1,615 kilograms of ephedrine hydrochloride, a controlled substance, docketed as Criminal Case No. 96-378. Thus she was charged as follows:

Crim. Case No. 96-377:

That on or about March 14, 1996 in Angeles City, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or use any regulated drug, did then and there willfully, unlawfully, feloniously and knowingly have in her possession approximately 527 kilograms of Methamphetamine Hydrochloride, a regulated drug in violation of the above-cited law.

CONTRARY TO LAW.

Crim. Case No. 96-378:

That on or about March 14, 1996 in Angeles City, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or use any regulated drug, did then and there willfully, unlawfully, feloniously and knowingly have in her possession approximately 1,615.0 kilograms of Ephedrine Hydrochloride, a regulated drug in violation of the above-cited law.

CONTRARY TO LAW.

On the strength of the confiscated regulated substances found in his vehicle, Li was indicted before the RTC of Angeles City, in Criminal Case No. 96-379, for violation of Section 16 vis-à-vis Section 2(e), (f), (m), Article III of the Dangerous Drugs Act, viz:

That on or about March 14, 1996 in Porac, Pampanga and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or use any regulated drug, did then and there willfully, unlawfully, feloniously and knowingly have in his possession approximately 317.60 grams of Methamphetamine Hydrochloride, a regulated drug, in violation of the above-cited law.

CONTRARY TO LAW.

And Zeng was indicted in Criminal Case No. 96-380, for violation of Article I vis-à-vis Section 21 also of the Dangerous Drugs Act, viz:

That on or about March 14, 1996 in Porac, Pampanga and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or use any regulated drug, did then and there willfully, unlawfully, feloniously and knowingly have in his possession approximately 78 kilograms of Methamphetamine Hydrochloride, a regulated drug in violation of the above-cited law.

CONTRARY TO LAW.

The cases were consolidated in Branch 59 of the Angeles City RTC.

Maribel disclaimed knowledge that regulated substances and paraphernalia were being kept in the padlocked rooms in the house which she had since 1994 been sharing with Yu who had disappeared. She averred that it was Yu who placed the containers and sacks in the rooms which he padlocked in November 1995 and January 1996, telling her that they were fertilizers and restaurant items belonging to a friend who was to pick them up; that it was Yu who shouldered the rent of the house and provided the household expenses; and that Yu was away most of the time because he was based in Manila and would only go to the house once a month for a three-day visit.

Maribel admitted that Zeng had gone to her house for a visit, and that she was twice brought by Yu to the piggery in Porac to meet his other Chinese friends. She denied, however, any knowledge of Yu's activities, averring that she was not home most of the time as she was tending to a store at the public market which she co-owns with her mother.

Li denied knowledge of or involvement in the alleged operation of the shabu laboratory. He even denied knowing Gan and averred that he only went to the farm to buy piglets.

Zeng denied knowing Maribel or Li. He admitted knowing Gan, however, and having gone to the piggery four times as Gan wanted to hire him as manager of the piggery.

By Decision[4] dated July 20, 1988,[5] the trial court acquitted Li but convicted Zeng and Maribel, imposing upon them the death penalty and ordering them to pay a fine of P1,000,000 and P2,000,000, respectively.

Zeng and Maribel appealed to the Court of Appeals.

Zeng contended that the alleged shabu found inside the blue plastic container was inadmissible in evidence, it having been illegally obtained; and that the prosecution failed to prove a basic element of the crime charged - that he did not have authority to possess those substances.

For her part, Maribel insisted that the evidence seized by virtue of the search warrant was not admissible against her as the warrant did not specifically state her name; and that the prosecution failed to prove her actual or constructive possession or intent to possess the substances. She reiterated her claim that she had no knowledge that dangerous drugs/substances were being kept in the locked rooms of her house, she having believed her common-law husband's above-stated explanation.

The Court of Appeals affirmed Maribel's and Zeng's conviction by Decision[6] dated June 6, 2006, and denied Maribel's motion for reconsideration by Resolution[7] dated March 30, 2007; hence they interposed the present appeal.

Maribel faults the appellate court for affirming that Search Warrant No. 96-101 is valid and the pieces of evidence seized by virtue thereof are admissible; for ruling that she had constructive possession of the substances found in her rented house; and for failing to consider the documentary evidence she submitted, such as her loan applications and Deed of Sale of her car which, to her, proves that she had no knowledge of the drug syndicate's operations; otherwise, there would have been no need to borrow money or sell her car.

Zeng, on the other hand, insists that the 78 kilograms of methamphetamine hydrochloride in liquid form contained in the blue plastic container was illegally obtained and was not even formally offered in evidence, hence, the same should have been excluded; that the prosecution failed to prove that he had no authority to possess the alleged shabu confiscated from his person; and that the conclusion that the liquid contents of the blue plastic drum is methamphetamine hydrochloride is erroneous, no quantitative test as to its purity having been conducted.

The petition fails.

The essential elements of the crime of illegal possession of regulated drugs are the following: 1) the actual possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely or consciously possessed the said drug.[8]

[Illegal possession of regulated drugs] 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.[9] (Emphasis and underscoring supplied)

The finding of illicit drugs and paraphernalia in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof which, standing alone, is sufficient to convict.[10]

Maribel failed to present any convincing evidence to rebut the presumption of knowledge and possession of the regulated substances and paraphernalia found in her residence. As tenant of the house, she had full access to, full control of and dominion over the rooms.

On why she did not even check the rooms, if what were stored therein in November 1995 and January 1996 were indeed fertilizer and restaurant paraphernalia which the alleged owners would allegedly pick up anytime, and why she did not have keys thereto, assuming that indeed she had none, she proffered no explanation.

As for Maribel's argument that there would have been no need for her to borrow money or sell her car if she was involved in the operations of a drug ring, the same is a non sequitur. In any event, it does not suffice to rebut the presumption of her constructive knowledge and possession of the regulated substances.

Respecting her contention that Search Warrant No. 96-101 is invalid for not having identified her with particularity, the same does not lie. Under Sec. 3 and 4, Rule 126 of the Rules of Court, the requirements for the issuance of a valid search warrant are:

Sec. 3. Requisites for issuing search warrant.

A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the judge or such other responsible officer authorized by law 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 things to be seized.

Sec. 4. Examination of complainant; record. -

The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted." (Emphasis and underscoring supplied)

Contrary to Maribel's contention, the aforementioned Rule does not require that the search warrant should identify with particularity the person against whom it is directed. It suffices that the place to be searched and things to be seized are described. The pertinent portion of Search Warrant No. 96-101[11] reads:

x x x x

It appearing to the satisfaction of the undersigned after examining under oath SA Renato M. Vafflor of NBI and his witness that there are reasonable grounds to believe that Violation of Sec. 14-A of RA 6425 as amended has been committed or is about to be committed and there are good and sufficient reasons to believe that @ROMEO/JOSEPH/TITO YU/ALEX CHAN @ APE" and/or OCCUPANTS of 2609 San Francisco Street, Angeles City has in his/their possession or control the following:

- Methylamphetamine (Shabu) in liquid or crystal form;
- Phenyl-2-Propanone, Ephedrine, Pseudo-ephedrine, forensic acid, Benzylmethylketone and ethanol;
- Weighing scale, burner, graduated cylinder, beakers, glassware, melting point apparatus, titration apparatus, refrigerators, freezers.

x x x x (Emphasis supplied)

Clearly, the wording of Search Warrant No. 96-101 sufficiently complies with the requirement for a valid search warrant as it describes the place to be searched and the items to be seized.

As for Zeng's arguments, they are a mere rehash of those already raised before the appellate court. As correctly held by the appellate court, the testimonies of five members of the NBI raiding team that a blue drum containing liquid was found in the van driven by Zeng -- which liquid, when field-tested, was found to be methamphetamine hydrochloride -- deserves full faith and credence, absent any showing that these officers were not properly performing their duty or that they were inspired by any improper motive.

As to the contention that the blue drum was not included as subject of Search Warrant No. 96-102, hence, illegally obtained, the same fails. No doubt, the Constitution prohibits search and seizure without a judicial warrant, and any evidence obtained without such warrant is inadmissible for any purpose in any proceeding. The prohibition is not absolute, however. 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; and (5) when the accused himself waives his right against unreasonable searches and seizures.

The search made on the van driven by Zeng falls within the purview of the "plain view" doctrine.

Objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The 'plain view' doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.[12] (Emphasis and underscoring supplied)

Search Warrant No. 96-102 named Zeng, a.k.a. "Alex Chan," as one of the subjects thereof. When he arrived in his L-300 van at the piggery during the NBI's stakeout, he came within the area of the search. The drum alleged to have contained the methamphetamine was placed in the open back of the van,[13] hence, open to the eye and hand of the NBI agents. The liquid-filled drum was thus within the plain view of the NBI agents, hence, a product of a legal search.

Zeng's claim that the prosecution failed to prove that he had no license or authority to possess methamphetamine

hydrochloride likewise fails. The general rule is that if a criminal charge is predicated on a negative allegation, or that a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. However, this rule is not without exception.

Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the onus probandi rests upon him. Stated otherwise, it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control. For example, where a charge is made that a defendant carried on a certain business without a license (as in the case at bar, where the accused is charged with the sale of a regulated drug without authority), the fact that he has a license is a matter which is peculiarity within his knowledge and he must establish that fact or suffer conviction.[14] (Emphasis supplied)

In the case at bar, the negative averment that Zeng had no license or authority to possess shabu could have easily been disproved by presenting a copy of the license or authority or any other document evidencing authority to possess it. This he failed to do.

As to Zeng's contention that no quantitative examination was conducted to establish the purity of the methamphetamine hydrochloride contained in the drum, which should have been the basis of determining the imposable penalty per Dangerous Drugs Board Resolution No. 3, dated May 9, 1979, requiring that both qualitative and quantitative examination should be done on seized drugs, the same fails too.

The NBI forensic chemist already testified that the liquid contained therein, when subjected to laboratory examination, tested positive for methamphetamine hydrochloride. Such finding is presumed to be representative of the entire contents of the container unless proven otherwise.[15] No contrary proof was presented by Zeng, however.

More importantly, what the Dangerous Drugs Act punishes is the possession of the dangerous or regulated drugs or substances without authority. Whether the substance is pure or unadulterated is not material; hence, quantitative examination of the substance to determine its purity is not indispensable for conviction. Neither does it affect the penalty imposed, for any person who "unless authorized by law" possesses shabu or methylamphetamine hydrochloride, shall be punished with reclusion perpetua to death; and a fine ranging from five hundred thousand pesos to ten million pesos if two hundred (200) or more grams thereof are found in his possession.[16]

Zeng was found by the trial court to have possessed 78 kilograms of shabu without mitigating or aggravating circumstances; thus, the Court imposed the correct penalty of death and a fine of P1,000,000.00.

However, in view of the enactment on June 24, 2006 of R.A. No. 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines, the death penalty can no longer be imposed. Appellants must thus be sentenced to suffer the penalty of reclusion perpetua without eligibility for parole.

WHEREFORE, the Decision appealed from is AFFIRMED with MODIFICATION. Appellants Maribel Lagman and Zeng Wa Shui are sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and to pay a FINE of Two Million (P2,000,000.00) Pesos and One Million (P1,000,000.00) Pesos, respectively.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and Reyes, JJ., concur.

Leonardo-De Castro, J., on official leave.

Brion, J., on leave.

[*] Formerly G.R. Nos. 134680-82.

[1] CA rollo, p. 471. Penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso.

[2] Inventory of Chemicals Seized at Porac, Exhibits "N to N-2."

[3] Ibid.

[4] CA rollo, p. 36.

[5] Records, pp. 36-65.

[6] Vide note 1.

[7] CA rollo, p. 508. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Fernanda Lampas-Peralta and Vicente S.E. Veloso.

[8] *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134.

[9] Ibid.

[10] *People v. Torres*, G.R. No. 170837, September 12, 2006.

[11] Annex "G," Exhibits.

[12] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668.

[13] Exhibit "FF," photograph of back of Mitsubishi L-300 van with Plate No. CMT-352.

[14] *People v. Manalo*, G.R. No. 107623, February 23, 1994, 230 SCRA 309 (1994).

[15] Vide *People v. Tang Wai Lan*, G.R. Nos. 118736-37, July 23, 1997, 276 SCRA 24, and *People v. Rasul*, , G.R. No. 146470, November 22, 2002, 392 SCRA 553.

[16] Sec. 15, Art. III, and Sec. 20, Art. IV, Republic Act 6425, as amended by RA 7659.

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