PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OLIVE RUBIO MAMARIL, ACCUSED-APPELLANT.

G.R. No. 171980. October 06, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

For review through this appeal[1] is the Decision[2] dated 31 August 2005 of the Court of Appeals in CA-G.R. CR. No. 28482 which affirmed the conviction of herein accused-appellant OLIVE RUBIO MAMARIL of possession of dangerous drugs in violation of Section 11, Article II[3] of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the assailed decision reads:

> WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit. The challenged judgment of the court a quo is hereby AFFIRMED.[4]

The affirmed disposition reads:

> WHEREFORE, upon proof of guilt beyond reasonable doubt, this court sentences accused Olive Rubio Mamaril to suffer an indeterminate prison term of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and a fine of P300,000 for violation of Section 11, Article II, of R.A. 9165[5].

The facts as presented by the prosecution before the appellate court follow:

On 25 March 2003, at 9:30 o'clock in the evening, SPO4 Alexis Gotidoc, along with the members of Intel Operatives of Tarlac City Police Station and Philippine Drug Enforcement Agency (PDEA), implemented Search Warrant No. 144C dated 18 March 2003 issued by Judge Alipio Yumul of Branch 66, Regional Trial Court, Capas, Tarlac against the appellant in her residence at Zone 1, Barangay Maliwalo, Tarlac City, Province of Tarlac.[6]

Prior to the search, the police team invited Barangay Kagawad Oscar Tabamo of Barangay Maliwalo to witness the conduct of the search and seizure operation in the appellant's house. With Barangay Kagawad Tabamo, the police team presented the search warrant to appellant and informed her of the purpose of the search and her constitutional rights.[7]

Afterwards, SPO4 Gotidoc, the designated searcher, started searching the appellant's house, in the presence of the appellant and Kagawad Tabamo. During his search, he found on the top cover of the refrigerator one (1) plastic sachet containing white crystalline substance. Thereafter he prepared a Certificate of Good Search and Confiscation Receipt which the appellant refused to sign.[8]

The plastic sachet was brought to the Tarlac Provincial Crime Laboratory located at Tarlac Provincial Hospital for qualitative examination. The examination conducted by Engr. Marcene G. Agala, the Forensic Chemist who tested the white crystalline substance, yielded positive results for 0.055 gram of Methamphetamine Hydrochloride, commonly known as shabu, a dangerous drug.[9]

The factual version presented by the defense is:

On 25 March 2003, at 9:30 o' clock in the evening the police officers arrived at appellant's house and showed her a search warrant. Thereafter, the policemen searched her house but found nothing. Then a certain Police Officer Pangilinan asked her where she was sleeping. When she replied that she was inside the hut, the police officers proceeded to and searched the place and found the plastic sachet containing the shabu.[10]

Thereafter, she was brought to the sub-station at Maliwalo and was told, particularly by SPO4 Gotidoc and a certain Ma'am Dulay that in exchange of P20,000.00, no case would be filed against her. When she told them that she did not have money, she was detained.[11] However, on cross-examination, the appellant admitted that the alleged extortion of P20,000.00 was not reported to the higher ranking police officers.[12]

Appellant claims that the police officers framed her up and planted the shabu inside her house because of her refusal to give them money.[13]

Eventually, an Information was filed against the appellant which reads:

> That on March 25, 2003 at around 9:30 o'clock in the evening at Tarlac City and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally have in her possession and control Methamphetamine Hydrochloride known as Shabu, a dangerous drug, weighing more or less 0.055 gram, without being authorized by law.
>
> CONTRARY TO LAW[14]

Upon arraignment, the appellant, assisted by the de-officio counsel, entered a plea of not guilty.

On 21 April 2004, the trial court found the accused-appellant guilty of violation of Section 11, Article II, of R.A. 9165.[15]

On appeal, the Court of Appeals ruled that the evidence for the prosecution fully proved beyond reasonable doubt the elements necessary to successfully prosecute a case for illegal possession of a regulated drug, namely, (a) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug, (b) such possession is not authorized by law and (c) the accused freely and consciously possessed said drug.[16]

Centered on the conduct of the search of appellant's house that yielded the prohibited substance, the Court of Appeals upheld the trial court on the finding that "after a careful evaluation and analysis of the arguments presented by the prosecution and the defense, we hold that the search conducted by the INTEL Operatives of Tarlac City Police Station, in coordination with the PDEA, on the residence of the accused-appellant on 25 March 2003 at Zone 1, Barangay Maliwalo, Tarlac City and the seizure therein of one (1) plastic pack of white crystalline substance of methamphetamine hydrochloride or "shabu" weighing 0.055 gram are legal. As a consequence of the legal search, the said methamphetamine hydrochloride or "shabu" seized on the occasion thereof, is admissible in evidence against the accused-appellant."[17]

In this appeal, accused-appellant, through her new counsel from the Public Attorney's Office, goes further back, presenting new arguments, that (1) the search warrant was not based on probable cause, hence, the evidence allegedly obtained through it may not be admitted to support the accused-appellant's conviction;[18] and (2) the presumption of regularity in the performance of official functions by public officers cannot prevail over the presumption of innocence.[19]

We first deal with the original position of the accused which, in this petition, begins with the contention of non-compliance with all the requisites of illegal possession of dangerous drugs. We agree with the rulings of the trial court and the Court of Appeals that there was indeed full satisfaction of the requisites for the conviction of

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the accused.

The trial court found that the evidence presented by the prosecution was not adequately defeated. Re-stating that in illegal possession of prohibited drugs, there are only three (3) elements to secure conviction: (1) accused is in possession of the prohibited drugs; (2) such possession is not authorized by law; and (3) accused consciously and freely possessed the prohibited drugs,[20] the trial court held that all these were established beyond doubt. It determined that appellant failed to proffer evidence enough to discredit the prosecution and render doubtful his guilt.[21]

The Court of Appeals found no reason to overturn the finding of the trial court. It held that:

> After a careful evaluation and analysis of the arguments presented by the prosecution and the defense, we hold that the search by the INTEL Operatives of Tarlac City Police Station, in coordination with the PDEA, on the residence of the accused-appellant on March 25, 2003 at Zone 1, Barangay Maliwalo, Tarlac City and the seizure therein of one (1) plastic pack of white crystalline substance of methamphetamine hydrochloride or "shabu" weighing 0.055 gram are legal. As a consequence of the legal search, the said methamphetamine hydrochloride or "shabu" seized on the occasion thereof, is admissible in evidence against the accused-appellant.[22]

We will not reverse this holding. The repeated contentions of frame-up of the accused-appellant[23] and that the dangerous drug of methamphetamine hydrochloride was planted by the police officers do not deserve further considerations by this Court. While We are aware that in some cases, law enforcers resort to the practice of planting evidence in order that to, inter alia, harass, nevertheless the defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the police officers performed their duties regularly and that they acted within the bounds of their authority.[24]

Frame-up, like alibi, is generally viewed with caution by the Court because it is easy to contrive and difficult to disprove. It is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.[25] And so is the likewise repeated referral to the primacy of the constitutional presumption of innocence over the presumption of regularity in the performance of public functions,[26] the contention being that the frame-up argument is supported by the constitutional presumption of innocence.

The argument is without merit.

Indeed it is a constitutional mandate[27] that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved and that on the other hand, it is in the Rules of Court[28] that. -

> "The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> "xxx
>
> "m. That official duty has been regularly performed; (Emphasis supplied)
>
> xxx"

In the case at hand, the so-called frame-up was virtually pure allegation bereft of credible proof. The narration[29] of the police officer who implemented the search warrant, was found after trial and appellate review as the true story. It is on firmer ground than the self-serving statement of the accused-appellant of frame-up.[30] The defense cannot solely rely upon the constitutional presumption of innocence for, while it is constitutional, the presumption is not conclusive. Notably, the accused-appellant herself stated in her brief that[31] "no proof was proffered by the accused-appellant of the police officers' alleged ill motive."

Stated otherwise, the narration of the incident by law enforcers, buttressed by the presumption that they have regularly performed their duties in the absence of convincing proof to the contrary, must be given weight.[32]

We now deal with the late submission about the validity of the search warrant.

A party cannot change his theory on appeal nor raise in the appellate court any question of law or of fact that was not raised in the court below or which was not within the issue raised by the parties in their pleadings.[33]

In a long line of cases, this Court held that points of law, theories, issues and arguments not adequately brought to the attention of the trial court ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice and due process.[34]

We opt to get out of the ordinary in this case. After all, technicalities must serve, not burden the cause of justice. It is a prudent course of action to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice. [35]

We thus allow the new arguments for the final disposition of this case.

The contention of the accused-appellant, as asserted through the Public Attorney's Office, is that the issued search warrant was not based on probable cause.[36] The accused-appellant relied heavily on its argument that SPO4 Gotidoc, as the applicant of the search warrant, did not testify on facts personally known to him but simply relied on stories that the accused- appellant was peddling illegal drugs.[37]

The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[38]

On the other hand, probable cause means such facts and circumstances which would lead a reasonable discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[39]

Based on the records, the Court is convinced that the questioned search warrant was based on a probable cause. A portion of the direct testimony of SPO4 Gotidoc is hereby quoted:

> Q:
>
> What is your basis for applying for search warrant against the accused?
>
> A:
>
> Because there were many persons who were going to her place and we've been hearing news that she is selling prohibited drugs and some of them were even identified, sir.
>
> Q:
>
> But you did not conduct any surveillance before you applied for search warrant?
>
> A:
>
> Prior to the application for search warrant, we conducted surveillance already.
>
> Q:

> Because personally you heard that the accused was dealing prohibited drugs and that was the basis for you to apply for search warrant with Branch 66?
>
> A:
>
> Yes, sir. [40](Emphasis supplied)
>
> x x x

Section 6, Rule 126 of the Rules on Criminal Procedure provides that:

> If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules. (Emphasis supplied)

There is no general formula or fixed rule for the determination of probable cause since the same must be decided in light of the conditions obtaining in given situations and its existence depends to a large degree upon the findings or opinion of the judge conducting the examination.[41]

It is presumed that a judicial function has been regularly performed, absent a showing to the contrary. A magistrate's determination of a probable cause for the issuance of a search warrant is paid with great deference by a reviewing court, as long as there was substantial basis for that determination.[42]

The defense's reliance of the quoted testimony of the police officer alone, without any other evidence to show that there was indeed lack of personal knowledge, is insufficient to overturn the finding of the trial court. The accused-appellant, having failed to present substantial rebuttal evidence to defeat the presumption of regularity of duty of the issuing judge, will not be sustained by this Court.

WHEREFORE, the instant appeal is DENIED. Accordingly, the decision of the Court of Appeals in CA-G.R. CR. No. 28482 is hereby AFFIRMED. Costs against the appellant.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Bersamin,[*]JJ., concur.

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[*] Additional member per Raffle dated 1 March 2010.

[1] Via a notice of appeal, pursuant to Section 2 (c) of Rule 122 of the Rules of Court.

[2] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Roberto A. Barrios and Vicente S.E. Veloso concurring. CA rollo, pp. 54-62.

[3] 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

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

xxx

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(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, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[4] CA rollo, p. 61.

[5] Records, p. 53.

[6] CA rollo, p. 55, TSN, 29 August 2003, p. 3.

[7] Id. at 56; id.

[8] Id.; id at 3-4.

[9] Id.; TSN, 14 October 2003, pp. 6-7.

[10] TSN, 5 February 2004, p. 3.

[11] Id. at 56-57, TSN, 5 February 2004, p. 6.

[12] Id. at 57; id. at 10-11.

[13] Id. at 56; id. at 6.

[14] Records, p. 1.

[15] Id. at 53.

[16] CA rollo, p. 59.

[17] Id. at 60-61.

[18] Supplemental Brief. Rollo, p. 280.

[19] Id. at 283.

[20] People v. Chen Tiz Chang, G.R. No. 131872-73, 382 Phil. 669, 684 (2000).

[21] Records, p. 52.

[22] Id. at 60-61.

[23] TSN, 5 February 2004, p. 6.

[24] Chan v. Secretary of Justice, G.R. 147065, 14 March 2008, 548 SCRA 337, 353; Dacles v. People, G.R. No. 171487, 14 March 2008, 548 SCRA 643, 658.

[25] People v. Del Monte, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 639; People v. Concepcion, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 443.

[26] Rollo, p. 283.

[27] Art. III, Section 14 (2), 1987 Constitution.

[28] Sec. 3, Rule 131, Rules on Criminal Procedure.

[29] TSN, 29 August 2003, p. 3-4.

[30] TSN, 5 February 2004, p. 6-7.

[31] Rollo, p. 283.

[32] Remedial Law, Revised Rules on Evidence, Oscar M. Herrera, 1999 Edition, p. 82; People v. Lopez, G.R. No. 71875, Jan 25, 1988; People v. Mauyao, G.R. No. 84525, 6 April 1992, 207 SCRA 732, 738.

[33] Sari Sari Group of Companies, Inc. v. Piglas Kamao (Sari Sari Chapter), G.R. No. 164624, 11 August 2008, 561 SCRA 569, 589.

[34] Philippine Commercial and International Bank v. Custodio, G.R. No. 173207, 14 February 2008, 545 SCRA 367, 380; Heirs of Cesar Marasigan v. Marasigan, G.R. No. 156078, 14 March 2008, 548 SCRA 409, 431-432; Eastern Assurance and Surety Corporation v. Con-Field Construction and Development Corporation, G.R. No. 159731, 22 April 2008, 552 SCRA 271, 279-280.

[35] Peñoso v. Dona, G.R. No. 154018, 3 April 2007, 520 SCRA 232, 239-240.

[36] Rollo, p. 280.

[37] Id. at 282.

[38] Abuan v. People, G.R. No. 168773, 27 October 2006, 505 SCRA 799, 822.

[39] Betoy, Sr. vs Coliflores, A.M. No. MTJ-05-1608, 28 February 2006, 483 SCRA 435, 444.

[40] TSN, 29 August 2003, p. 7.

[41] Lastrilla v. Granda, G.R. No. 160257, 31 January 2006, 481 SCRA 324, 347.

[42] People v. Choi, G.R. No. 152950, 3 August 2006, 497 SCRA 547, 556.

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