

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAUL NUÑEZ Y REVILLEZA, APPELLANT.*G.R. No. 177148. June 30, 2009*

Ponente: QUISUMBING, J.

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This petition for certiorari seeks the reversal of the Decision[1] dated January 19, 2007 of the Court of Appeals in CA G.R. CR. H.C. No. 02420. The appellate court affirmed the Decision[2] dated February 11, 2002 of the Regional Trial Court (RTC) of Calamba, Laguna, Branch 36, which convicted appellant in Criminal Case No. 8614-01-C for violation of Section 16, Article III of Republic Act No. 6425, also known as the Dangerous Drugs Act of 1972, as amended by Rep. Act No. 7659.[3]

On June 25, 2001, Raul R. Nuñez was formally charged with violation of Section 16, Article III of Rep. Act No. 6425, as amended. The Information reads:

That at around 6:00 o'clock in the morning of the 24[th] day of April 2001[4] at Brgy. San Antonio, Municipality of Los Baños, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused, without any authority of law, and in a search conducted at his residence as stated above, did then and there willfully, unlawfully and feloniously have in his possession, control and custody thirty[-]one (31) heat sealed transparent plastic sachets containing methamp[h]etamine hydrochloride otherwise known as "shabu", a regulated drug, with a total weight of 233.93 grams in violation of the aforementioned provision of law.

CONTRARY TO LAW.[5]

The facts are as follows:

At 6:00 a.m. on April 26, 2001, operatives of the Sta. Cruz, Laguna Police Detectives in coordination with the Los Baños Police Station (LBPS) and IID Mobile Force conducted a search in the house of Raul R. Nuñez based on reports of drug possession. The group, led by Commanding Officer Arwin Pagkalinawan, included SPO1 Odelon Ilagan, SPO3 Eduardo Paz, PO1 Ronnie Orfano, PO2 Gerry Crisostomo, PO2 Alexander Camantigue, PO2 Joseph Ortega and Senior Inspector Uriquia.

Before proceeding to appellant's residence in Barangay San Antonio, the group summoned Barangay Captain Mario Munda and Chief Tanod Alfredo Joaquin to assist them in serving the search warrant. Upon arriving at appellant's house, Munda called on appellant to come out. Thereafter, Commanding Officer Pagkalinawan showed Nuñez the warrant. SPO1 Ilagan and PO2 Crisostomo then surveyed appellant's room in his presence while his family, PO2 Ortega and the two barangay officials remained in the living room. SPO1 Ilagan found thirty-one (31) packets of shabu, lighters, improvised burners, tooters, and aluminum foil with shabu residue and a lady's wallet containing P4,610 inside appellant's dresser. The group also confiscated a component, camera, electric planer, grinder, drill, jigsaw, electric tester, and assorted carpentry tools on suspicion that they were acquired in exchange for shabu. Following the search, SPO1 Ilagan issued a Receipt for Property Seized[6] and a

Certification of Orderly Search[7] which appellant signed.

In a Decision dated February 11, 2002, the RTC convicted appellant and sentenced him as follows:

WHEREFORE, this court finds the accused guilty, beyond reasonable doubt for Violation of Republic Act 6425 as amended and is hereby sentenced to suffer the penalty of reclusion perpetua and all its accessory penalties under the law. Accused is ordered to pay the fine of two million pesos.

SO ORDERED.[8]

Appellant elevated the case to this Court on appeal, but the case was transferred to the Court of Appeals on May 2, 2006, pursuant to our ruling in *People v. Mateo*.^[9] On January 19, 2007, the Court of Appeals rendered its decision affirming appellant's conviction. The appellate court dismissed appellant's defense of frame-up and upheld the credibility of SPO1 Ilagan and PO2 Ortega. It observed that the inconsistencies in their testimony were minor at best, and did not relate to the elements of the crime.

The appellate court in its decision decreed as follows:

WHEREFORE, premises considered, the assailed Decision dated February 11, 2002 of the Regional Trial Court, Branch 36, Calamba, Laguna is hereby AFFIRMED.

SO ORDERED.[10]

From the appellate court's decision, appellant timely filed a notice of appeal. This Court required the parties to submit supplemental briefs if they so desire. However, both the Office of the Solicitor General (OSG) and the appellant manifested that they are adopting their briefs before the appellate court.

In his brief, appellant contends that

I.

THE TRIAL COURT ERRED IN ACCORDING GREATER WEIGHT TO THE EVIDENCE ADDUCED BY THE PROSECUTION AND DISREGARDING THE DEFENSE OF FRAME-UP INTERPOSED BY [THE] ACCUSED-APPELLANT.

II.

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE IMPUTED CRIME DESPITE THE INHERENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.[11]

Simply, the issue is whether appellant is guilty beyond reasonable doubt of Possession of Regulated Drugs under the Dangerous Drugs Act of 1972.

Appellant insists that the shabu found in his room was planted. He points out variances in the testimonies of the prosecution witnesses which cast doubt on his culpability: first, SPO1 Ilagan testified that they picked up the barangay officials before going to appellant's house but PO2 Ortega claimed that Chief Tanod Joaquin was already with them when they left the police station; second, while SPO1 Ilagan confirmed the presence of the accused during the search, PO2 Ortega related otherwise. More importantly, appellant assails the validity of the search warrant as it did not indicate his exact address but only the barangay and street of his residence. He maintains that none of the occupants witnessed the search as they were all kept in the living room. Finally, appellant questions why the prosecution did not call the barangay officials as witnesses to shed light on the details of the search.

Conversely, the OSG argues that appellant's guilt has been proven beyond reasonable doubt. It agrees with the trial court that appellant failed to overcome the presumption that the law enforcement agents regularly performed their duties. Further, the OSG brands the testimonies of appellant, his wife and their child as self-serving, absent ill-motives ascribed to the search team. It brushes aside appellant's protest, on the validity of the search warrant, for having been belatedly made.

After considering carefully the contentions of the parties and the records of this case, we are in agreement that appellant's petition lacks merit.

Appellant was indicted for possession of regulated drugs under Section 16 of Rep. Act No. 6425 as amended which provides:

SEC. 16. Possession or Use of Regulated Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

To be liable for the crime, the following elements must concur: (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.[12] All these were found present in the instant case.

While appellant interposes the defense of frame-up, we view such claim with disfavor as it can easily be fabricated and is commonly used as a facile refuge in drug cases.[13] In cases involving violations of the Dangerous Drugs Act, credence is given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[14]

In this case, SPO1 Ilagan found shabu in appellant's room; but appellant retorts that it was planted. The latter's daughter, Liezel Nuñez, testified on the alleged planting of evidence as follows:

x x x x

Q:

While you were walking towards the direction of your bath room at that time have you notice anything which catches your attention?

A:

I saw a man inside the room taking a plastic from his bag, sir.

Q:

Did you also notice, what did that man do with that plastic in the bag?

A:

He put under the bed fronting the door, sir.

x x x x

Q:

Can you describe to this Honorable Court what was that something that the man took out from his bag and placed the same underneath your parents' bed?

A:

It is a plastic containing like a tawas, sir.

Q:

Have you noticed Miss Witness about how many plastic bag (sic) did the man take from his bag?

A:

Only one, sir.[15] [Emphasis supplied.]

Assuming arguendo that an officer placed a sachet of shabu under appellant's bed, appellant had not advanced any reason to account for the thirty-one (31) packets of shabu and drug paraphernalia collected from the dresser in his room. Instead, he readily signed the Receipt for Property Seized and the Certification of Orderly Search. Neither did appellant's daughter identify the police officer who allegedly planted evidence. Absent any compelling proof why SPO1 Ilagan would falsely testify against appellant, the presumption of regularity in the performance of official duty stands and we agree that his testimony is worthy of full faith and credit.[16]

In a further effort to impeach the credibility of the policemen, appellant questions the non-presentation of the barangay officials who purportedly observed the search. The matter of presentation of witnesses, however, is neither for accused nor even for the trial court to decide. Discretion belongs to the prosecutor as to how the State should present its case. The prosecutor has the right to choose whom he would present as witness.[17] It bears stressing that by no means did the barangay officials become part of the prosecution when they were asked to witness the search. Hence, even the accused could have presented them to testify thereon.

Appellant alleges that SPO1 Ilagan verified his presence inside the room during the search in contrast to PO2 Ortega's account. The records, however, disclose otherwise. On direct examination, PO2 Ortega recounted:

FISCAL:

Q:

What did you do next?

WITNESS:

A:

Capt. Munding together with Raul and then the three of us went to the room of Raul Nuñez, sir.

x x x x

Q:

So, among the group that went to the room of Raul Nuñez who went inside?

A:

It was Raul Nuñez, Sgt. Ilagan, Crisostomo who are inside the room. I stayed near the door along with Brgy. Capt. Munding and Chief Tanod who were looking at what was going on, sir.[18] [Emphasis supplied.]

On cross-examination, PO2 Ortega did not falter:

x x x x

Q:

Who among you went inside the room of Raul Nuñez?

A:

Sgt. Ilagan, Crisostomo, Raul Nuñez, myself, Chief Tanod Alfredo and Capt. Mundin, sir.[19] [Emphasis supplied.]

Besides, any objection to the legality of the search warrant and the admissibility of the evidence obtained thereby was deemed waived when no objection was raised by appellant during trial. For sure, the right to be secure from unreasonable searches and seizures, like any other right, can be waived and the waiver may be made expressly or impliedly.[20]

As regards the contradiction in the testimonies of SPO1 Ilagan and PO2 Ortega as to whether they picked up Chief Tanod Joaquin at the barangay hall, the same is inconsequential. After all, the witnesses' testimonies need only corroborate one another on material details surrounding the actual commission of the crime.[21]

Here, we find the testimonies of SPO1 Ilagan and PO2 Ortega believable and consistent on material points: appellant was shown the search warrant; the search was conducted in the latter's presence; and SPO1 Ilagan found shabu in appellant's dresser. It has been ruled that an affirmative testimony coming from credible witnesses without motive to perjure is far stronger than a negative testimony. Records show that appellant and the police officers were strangers to each other. Hence, there is no reason to suggest that the police officers were ill-motivated in apprehending appellant.[22]

Turning to the objects which may be confiscated during the search, Section 3, Rule 126 of the Rules of Court is pertinent:

SEC. 3. Personal property to be seized. - A search warrant may be issued for the search and seizure of personal property:

- (a) Subject of the offense;
- (b) Stolen or embezzled and other proceeds, or fruits of the offense; or
- (c) Used or intended to be used as the means of committing an offense.

As a rule, only the personal properties described in the search warrant may be seized by the authorities.[23] In the case at bar, Search Warrant No. 42[24] specifically authorized the taking of methamphetamine hydrochloride (shabu) and paraphernalia(s) only. By the principle of ejusdem generis, where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the statement which would repel such inference.[25]

Thus, we are here constrained to point out an irregularity in the search conducted. Certainly, the lady's wallet, cash, grinder, camera, component, speakers, electric planer, jigsaw, electric tester, saws, hammer, drill, and bolo were not encompassed by the word paraphernalia as they bear no relation to the use or manufacture of drugs. In seizing the said items then, the police officers exercised their own discretion and determined for themselves which items in appellant's residence they believed were "proceeds of the crime" or "means of committing the offense." This is, in our view, absolutely impermissible.[26]

The purpose of the constitutional requirement that the articles to be seized be particularly described in the warrant is to limit the things to be taken to those, and only those particularly described in the search warrant -- to leave the officers of the law with no discretion regarding what articles they should seize. A search warrant is not a sweeping

authority empowering a raiding party to undertake a fishing expedition to confiscate any and all kinds of evidence or articles relating to a crime.[27] Accordingly, the objects taken which were not specified in the search warrant should be restored to appellant.

Lastly, we find the penalty imposed by the trial court as affirmed by the appellate court proper. Under Section 20(3)[28] of Rep. Act No. 6425 as amended by Rep. Act No. 7659, possession of 200 grams or more of shabu (methamphetamine hydrochloride) renders the accused liable to suffer the maximum penalty under Section 16 of Rep. Act No. 6425, which is reclusion perpetua to death and a fine ranging from P500,000 to P10,000,000.

In the case at bar, appellant was found in possession of 233.93 grams of shabu. Hence there being no modifying circumstance proven, the penalty of reclusion perpetua with its accessory penalties, and P2,000,000 fine which the Court of Appeals meted on appellant is in order.

WHEREFORE, the Decision dated January 19, 2007 of the Court of Appeals in CA G.R. CR. H.C. No. 02420 is AFFIRMED, with the MODIFICATION that the official custodian of the objects taken during the search which are not otherwise regulated drugs or drug paraphernalia, is ORDERED to return them to appellant.

SO ORDERED.

Ynares-Santiago,[*] Chico-Nazario,**] Leonardo-De Castro,[***] and Brion, JJ., concur.

[*] Designated member of the Second Division per Special Order No. 645.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635.

[1] Rollo, pp. 3-12. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Andres B. Reyes, Jr. and Noel G. Tijam concurring.

[2] CA rollo, pp. 18-23. Penned by Judge Norberto Y. Geraldez.

[3] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved on December 13, 1993.

[4] Records, p. 1. In the complaint, the date indicated for the commission of the offense was 26[th] of April 2001.

[5] Id. at 43.

[6] Id. at 5-6, 29-30.

[7] Id. at 7.

[8] CA rollo p. 23.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[10] Rollo, p. 12.

[11] CA rollo, p. 37.

[12] People v. Torres, G.R. No. 170837, September 12, 2006, 501 SCRA 591, 610.

[13] People v. Cabugatan, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 551.

- [14] *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513, 522.
- [15] TSN, November 15, 2001, pp. 4-5.
- [16] *Dimacuha v. People*, *supra* at 525.
- [17] *Id.* at 524.
- [18] TSN, September 11, 2001, p. 6.
- [19] *Id.* at 12.
- [20] *People v. Torres*, *supra* note 12, at 608.
- [21] *People v. Razul*, G.R. No. 146470, November 22, 2002, 392 SCRA 553, 570.
- [22] *People v. Dilao*, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 441.
- [23] *People v. Go*, G.R. No. 144639, September 12, 2003, 411 SCRA 81, 112-113.
- [24] Records, p. 4.
- [25] *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*, G.R. No. 150769, August 31, 2004, 437 SCRA 371, 381.
- [26] *People v. Go*, *supra* at 114.
- [27] *Id.* at 114-115.
- [28] SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instrument of the Crime. - The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:
- x x x x
3. 200 grams or more of shabu or methylamphetamine hydrochloride; [Emphasis supplied.]
- x x x x

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