

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS DELA CRUZ, ACCUSED-APPELLANT.

G.R. No. 182348. November 20, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the November 29, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02286 entitled *People of the Philippines v. Carlos Dela Cruz* which affirmed the September 16, 2005 Decision of the Regional Trial Court (RTC), Branch 77 in San Mateo, Rizal in Criminal Case Nos. 6517 (Illegal Possession of Firearm and Ammunition) and 6518 (Possession of Dangerous Drug). The RTC found accused-appellant Carlos Dela Cruz guilty beyond reasonable doubt of violation of Section 11(2) of Republic Act No. (RA) 9165 or The Comprehensive Dangerous Drugs Act of 2002.

The Facts

On November 15, 2002, charges against accused-appellant were made before the RTC. The Informations read as follows:

Criminal Case No. 6517

That, on or about the 20[th] day of October 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a private citizen, without any lawful authority, did then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control One (1) Gauge Shotgun marked ARMSCOR with Serial No. 1108533 loaded with four (4) live ammunition, which are high powered firearm and ammunition respectively, without first securing the necessary license to possess or permit to carry said firearm and ammunition from the proper authorities.

Criminal Case No. 6518

That on or about the 20[th] day of October 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control one (1) heat-sealed transparent plastic bag weighing 49.84 grams of white crystalline substance, which gave positive results for Methamphetamine Hydrochloride, a dangerous drug.[1]

Accused-appellant entered a not guilty plea and trial ensued.

The facts, according to the prosecution, showed that in the morning of October 20, 2002, an informant tipped off the Drug Enforcement Unit of the Marikina Police Station that wanted drug pusher Wifredo Loilo alias "Boy Bicol" was at his nipa hut hideout in San Mateo, Rizal. A team was organized to arrest Boy Bicol. Once there, they saw Boy Bicol by a table talking with accused-appellant. They shouted "Boy Bicol sumuko ka na may warrant of arrest ka. (Surrender yourself Boy Bicol you have a warrant of arrest.)" Upon hearing this, Boy Bicol

engaged them in a shootout and was fatally shot. Accused-appellant was seen holding a shotgun through a window. He dropped his shotgun when a police officer pointed his firearm at him. The team entered the nipa hut and apprehended accused-appellant. They saw a plastic bag of suspected shabu, a digital weighing scale, drug paraphernalia, ammunition, and magazines lying on the table. PO1 Calanoga, Jr. put the markings "CVDC," the initials of accused-appellant, on the bag containing the seized drug.

Accused-appellant was subsequently arrested. The substance seized from the hideout was sent to the Philippine National Police crime laboratory for examination and tested positive for methamphetamine hydrochloride or shabu. He was thus separately indicted for violation of RA 9165 and for illegal possession of firearm.

According to the defense, accused-appellant was at Boy Bicol's house having been asked to do a welding job for Boy Bicol's motorcycle. While accused-appellant was there, persons who identified themselves as police officers approached the place, prompting accused-appellant to scamper away. He lied face down when gunshots rang. The buy-bust team then helped him get up. He saw the police officers searching the premises and finding shabu and firearms, which were on top of a table or drawer.[2] When he asked the reason for his apprehension, he was told that it was because he was a companion of Boy Bicol. He denied under oath that the gun and drugs seized were found in his possession and testified that he was only invited by Boy Bicol to get the motorcycle from his house.[3]

The RTC acquitted accused-appellant of illegal possession of firearm and ammunition but convicted him of possession of dangerous drugs. The dispositive portion of the RTC Decision reads:

WHEREFORE, the Court based on insufficiency of evidence hereby ACQUITS accused CARLOS DELA CRUZ Y VICTORINO in Criminal Case No. 6517 for violation of P.D. 1866 as amended by RA 8294.

In Criminal Case No. 6518 for Possession of Dangerous Drug under Section 11, 2[nd] paragraph of Republic Act 9165, the Court finds said accused CARLOS DELA CRUZ Y VICTORINO, GUILTY beyond reasonable doubt and is hereby sentenced to Life Imprisonment and to Pay a Fine of FOUR HUNDRED THOUSAND PESOS (P400,000.00).

SO ORDERED.[4]

On December 7, 2005, accused-appellant filed a Notice of Appeal of the RTC Decision.

In his appeal to the CA, accused-appellant claimed that: (1) the version of the prosecution should not have been given full credence; (2) the prosecution failed to prove beyond reasonable doubt that he was guilty of possession of an illegal drug; (3) his arrest was patently illegal; and (4) the prosecution failed to establish the chain of custody of the illegal drug allegedly in his possession.

The CA sustained accused-appellant's conviction.[5] It pointed out that accused-appellant was positively identified by prosecution witnesses, rendering his uncorroborated denial and allegation of frame-up weak. As to accused-appellant's alleged illegal arrest, the CA held that he is deemed to have waived his objection when he entered his plea, applied for bail, and actively participated in the trial without questioning such arrest.

On the supposedly broken chain of custody of the illegal drug, the appellate court held that accused-appellant's claim is unpersuasive absent any evidence showing that the plastic sachet of shabu had been tampered or meddled with.

On December 20, 2007, accused-appellant filed his Notice of Appeal of the CA Decision.

On June 25, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties later signified their willingness to submit the case on the basis of the records already with the Court.

Accused-appellant presents the following issues before us:

I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL CREDENCE TO THE VERSION OF THE PROSECUTION

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 11, ARTICLE II, RA 9165 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE COMMISSION OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE PATENT ILLEGALITY OF HIS ARREST

IV

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 11, ARTICLE II, RA 9165 DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE ILLEGAL DRUG ALLEGEDLY FOUND IN HIS POSSESSION

Accused-appellant claims that the presence of all the elements of the offense of possession of dangerous drug was not proved beyond reasonable doubt since both actual and constructive possessions were not proved. He asserts that the shabu was not found in his actual possession, for which reason the prosecution was required to establish that he had constructive possession over the shabu. He maintains that as he had no control and dominion over the drug or over the place where it was found, the prosecution likewise failed to prove constructive possession.

The Court's Ruling

The appeal has merit.

The elements in illegal possession of dangerous drug are: (1) the accused is in 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 and consciously possessed the said drug.[6] On the third element, we have held that the possession must be with knowledge of the accused or that animus possidendi existed with the possession or control of said articles.[7] Considering that as to this knowledge, a person's mental state of awareness of a fact is involved, we have ruled that:

Since courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. Animus possidendi, as a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.[8]

The prior or contemporaneous acts of accused-appellant show that: he was inside the nipa hut at the time the buy-bust operation was taking place; he was talking to Boy Bicol inside the nipa hut; he was seen holding a shotgun; when PO1 Calanoga, Jr. pointed his firearm at accused-appellant, the latter dropped his shotgun; and when apprehended, he was in a room which had the seized shabu, digital weighing scale, drug paraphernalia, ammunition, and magazines. Accused-appellant later admitted that he knew what the content of the seized plastic bag was.[9]

Given the circumstances, we find that the prosecution failed to establish possession of the shabu, whether in its actual or constructive sense, on the part of accused-appellant.

The two buy-bust team members corroborated each other's testimonies on how they saw Boy Bicol talking to accused-appellant by a table inside the nipa hut. That table, they testified, was the same table where they saw the shabu once inside the nipa hut. This fact was used by the prosecution to show that accused-appellant exercised dominion and control over the shabu on the table. We, however, find this too broad an application of the concept of constructive possession.

In *People v. Torres*,^[10] we held there was constructive possession of prohibited drugs even when the accused was not home when the prohibited drugs were found in the master's bedroom of his house.

In *People v. Tira*,^[11] we sustained the conviction of the accused husband and wife for illegal possession of dangerous drugs. Their residence was searched and their bed was found to be concealing illegal drugs underneath. We held that the wife cannot feign ignorance of the drugs' existence as she had full access to the room, including the space under the bed.

In *Abuan v. People*,^[12] we affirmed the finding that the accused was in constructive possession of prohibited drugs which had been found in the drawer located in her bedroom.

In all these cases, the accused was held to be in constructive possession of illegal drugs since they were shown to enjoy dominion and control over the premises where these drugs were found.

In the instant case, however, there is no question that accused-appellant was not the owner of the nipa hut that was subject of the buy-bust operation. He did not have dominion or control over the nipa hut. Neither was accused-appellant a tenant or occupant of the nipa hut, a fact not disputed by the prosecution. The target of the operation was Boy Bicol. Accused-appellant was merely a guest of Boy Bicol. But in spite of the lack of evidence pinning accused-appellant to illegal possession of drugs, the trial court declared the following:

It cannot be denied that when the accused was talking with Boy Bicol he knew that the shabu was on the table with other items that were confiscated by the police operatives. The court [surmises] that the accused and boy Bicol were members of a gang hiding in that nipa hut where they were caught red-handed with prohibited items and dangerous [drugs].^[13]

The trial court cannot assume, based on the prosecution's evidence, that accused-appellant was part of a gang dealing in illegal activities. Apart from his presence in Boy Bicol's nipa hut, the prosecution was not able to show his participation in any drug-dealing. He was not even in possession of drugs in his person. He was merely found inside a room with shabu, not as the room's owner or occupant but as a guest. While he allegedly pointed a firearm at the buy-bust team, the prosecution curiously failed to produce the firearm that accused-appellant supposedly used.

The prosecution in this case clearly failed to show all the elements of the crime absent a showing of either actual or constructive possession by the accused-appellant.

Since accused-appellant was not in possession of the illegal drugs in Boy Bicol's nipa hut, his subsequent arrest was also invalid. Rule 113 of the Rules on Criminal Procedure on warrantless arrest provides:

Sec. 5. Arrest without warrant; when lawful.--A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

- b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

The warrantless arrest of accused-appellant was effected under Sec. 5(a), arrest of a suspect in flagrante delicto. For this type of warrantless arrest to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[14]

Accused-appellant's act of pointing a firearm at the buy-bust team would have been sufficient basis for his arrest in flagrante delicto; however, the prosecution was not able to adequately prove that accused-appellant was committing an offense. Although accused-appellant merely denied possessing the firearm, the prosecution's charge was weak absent the presentation of the alleged firearm. He was eventually acquitted by the trial court because of this gaffe. His arrest, independent of the buy-bust operation targeting Boy Bicol, was therefore not lawful as he was not proved to be committing any offense.

In sum, we find that there is insufficient evidence to show accused-appellant's guilt beyond reasonable doubt. Having ruled on the lack of material or constructive possession by accused-appellant of the seized shabu and his succeeding illegal arrest, we deem it unnecessary to deal with the other issue raised.

WHEREFORE, the appeal is GRANTED. The CA Decision dated November 29, 2007 in CA-G.R. CR-H.C. No. 02286 is REVERSED and SET ASIDE. Accused-appellant Carlos Dela Cruz is ACQUITTED of violation of Sec. 11(2) of RA 9165 in Criminal Case No. 6518 of the RTC, Branch 77 in San Mateo, Rizal.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, p. 3.

[2] Id. at 5.

[3] CA rollo, p. 17.

[4] Id. at 26. Penned by Judge Francisco C. Rodriguez, Jr.

[5] Rollo, p. 18. The Decision was penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Mario L. Guariña III and Japar B. Dimaampao.

[6] People v. Naquita, G.R. No. 180511, July 28, 2008.

[7] People v. Lagata, G.R. No. 135323, June 25, 2003, 404 SCRA 671, 676; citing People v. Tee, G.R. Nos. 140546-47, January 20, 2003, 395 SCRA 419.

[8] Lagata, supra; citing People v. Burton, 335 Phil. 1003, 1024-1025 (2000).

[9] Rollo, p. 50.

[10] G.R. No. 170837, September 12, 2006, 501 SCRA 591, 610-611.

[11] G.R. No. 139615, May 28, 2004, 430 SCRA 134, 152-153.

[12] G.R. No. 168773, October 27, 2006, 505 SCRA 799, 818-819.

[13] CA rollo, p. 25.

[14] *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 422.

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