

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO COLLADO Y CUNANAN, MYRA COLLADO Y SENICA,
MARK CIPRIANO Y ROCERO, SAMUEL SHERWIN LATARIO Y
ENRIQUE, AND REYNALDO RAN...**

G.R. No. 185719. June 17, 2013

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Mere allegations and self-serving statements will not overcome the presumption of regularity in the performance of official duties accorded to police officers. There must be a showing of clear and convincing evidence to successfully rebut this presumption.

On appeal is the February 28, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02626 which affirmed with modification the December 7, 2005 Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 154 in Criminal Case Nos. 13781-D, 13783-D and 13784-D. The RTC convicted the appellants and several other accused for violations of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and imposed upon them the penalty of imprisonment and payment of fine in each of their respective cases.

Factual Antecedents

On October 14, 2004, appellants Marcelino Collado (Marcelino) and Myra Collado (Myra) were charged with the crimes of sale of dangerous drugs and maintenance of a den, dive or resort in violation of Sections 5 and 6 of Article II, RA 9165 docketed as Criminal Case Nos. 13781-D and 13782-D, respectively, viz:

CRIMINAL CASE NO. 13781-D

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Richard N. Noble, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[3]

CRIMINAL CASE NO. 13782-D

On or about or immediately prior to October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously maintain a den, dive or resort located at No. 32 R. Hernandez St., Brgy. San Joaquin, Pasig City, where x x x dangerous drugs are used or sold in any form, in violation of the said law.

Contrary to law.[4]

Marcelino was also charged with illegal possession of dangerous drugs under Section 11, Article II of the same law docketed as Criminal Case No. 13783-D, viz:

CRIMINAL CASE NO. 13783-D

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing six centigrams (0.06 gram) of white crystalline substance, which was found to be positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[5]

On the other hand, appellants Mark Cipriano (Cipriano), Samuel Sherwin Latario (Latario), Reynaldo Ranada (Ranada), together with co-accused Melody Apelo (Apelo), Marwin Abache (Abache), Michael Angelo Sumulong (Sumulong), and Jay Madarang (Madarang), were charged with possession of drug paraphernalia in violation of Section 14, Article II of RA 9165, docketed as Criminal Case No. 13784-D, viz:

CRIMINAL CASE NO. 13784-D

On or about October 9, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, each being in the proximate company of two (2) persons and in conspiracy with one another, without having been duly authorized by law, did then and there willfully, unlawfully and feloniously have in their possession and under their custody and control the following paraphernalias [sic], fit or intended for smoking, consuming, administering or introducing any dangerous drug into the body, to wit:

- a. one (1) strip aluminum foil containing traces of white crystalline substance marked as Exh-D;
- b. one (1) improvised glass tooter containing traces of white crystalline substance marked as Exh-D1;
- c. one (1) pack transparent plastic sachet marked as Exh-D2;
- d. two (2) plastic disposable lighters marked as Exhs. "G-H";
- e. one (1) tape-sealed transparent plastic sachet containing three (3) rolled aluminum foil marked as Exh. D5;
- f. five (5) unsealed transparent plastic sachets marked as Exh. D6;
- g. one (1) stainless scissor marked as Exh. D7;
- h. one (1) rectangular glass marked as Exh. D8; and
- i. one (1) roll of aluminum foil marked as Exh. D9.

[Specimens] marked as Exh-D and Exh-D1 were found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[6]

Upon arraignment on November 4, 2004, all the appellants and the other accused pleaded not guilty.[7] Pre-trial and joint trial on the merits subsequently ensued.

Version of the Prosecution

The prosecution presented as witnesses PO2 Richard Noble (PO2 Noble) and SPO2 Bernardo Cruz (SPO2 Cruz) who were involved in the buy-bust operation that led to the arrest of the appellants. Their testimonies are summarized as follows:

On October 9, 2004, PO2 Noble received information from a civilian asset that spouses Marcelino and Myra were engaged in selling shabu and that drug users, including out-of-school youth, were using their residence in 32 R.

Hernandez St., San Joaquin, Pasig City, for their drug sessions.[8] After recording the report in the police blotter, PO2 Noble relayed the information to his superior, P/Insp. Earl B. Castillo (P/Insp. Castillo), who in turn ordered the conduct of a surveillance operation.[9] PO2 Noble, SPO2 Cruz and PO1 Anthony Bitbit, conducted a surveillance on the couple's residence. After confirming the reported activities, SPO2 Cruz looked for an asset who could introduce them to Marcelino and Myra in the ensuing buy-bust operation.[10]

A buy-bust operation team was thereafter formed. After coordinating with the Philippine Drug Enforcement Agency as evidenced by a Pre-Operation Report,[11] the team proceeded to Marcelino's and Myra's residence on board two private vehicles. Upon reaching the target area, the asset introduced PO2 Noble to Marcelino as a regular buyer of shabu.[12] When asked how much shabu he needed, PO2 Noble replied, "dalawang piso," which means P200.00 worth of drugs. But when PO2 Noble was handing over the marked money to Marcelino, the latter motioned that the same be given to his wife, Myra, who accepted the money. Marcelino then took from his pocket a small metal container from which he brought out a small plastic sachet containing white crystalline substance and gave the same to PO2 Noble. While PO2 Noble was inspecting its contents, he noticed smoke coming from a table inside the house of the couple around which were seven persons.[13] When PO2 Noble gave the pre-arranged signal, the backup team rushed to the scene. Simultaneously, PO2 Noble introduced himself as a policeman and arrested Marcelino. He frisked him and was able to confiscate the metal container that contained another sachet of white crystalline substance. PO2 Noble wrote the markings "MCC-RNN October 9, 2004" on both the plastic sachets of white substance sold to him by Marcelino and the one found inside the metal container.

Meanwhile, SPO2 Cruz and another police officer went inside the house of Marcelino and Myra, where they found Apelo, Cipriano, Ranada, Abache, Sumulong, Madarang and Latario gathered around a table littered with various drug paraphernalia such as an improvised water pipe, strips of aluminum foil with traces of white substance, disposable lighters, and plastic sachets. A strip of aluminum foil used for smoking marijuana was recovered from Ranada. The buy-bust team arrested all these persons, advised them of their constitutional rights, and brought them to police headquarters for investigation and drug testing.

A chemistry report[14] on all the seized items yielded positive results for methylamphetamine hydrochloride. Another chemistry report[15] showed Marcelino, Apelo, Cipriano, and Ranada positive for drug use while Myra, Abache, Sumulong, Madarang, and Latario were found negative.

Version of the Defense

The defense presented the testimonies of Marcelino, Myra, and Ranada, who all essentially put up the defense of denial. The following is their version of the story.

Marcelino and Myra owned an electronics and appliance repair shop annexed to their house. In the evening of October 9, 2004, Marcelino was in the living room with his children and nieces fixing a VCD player. Apelo, their househelp, was in the kitchen preparing food while Ranada, their repairman, was outside the house fixing Sumulong's motorcycle. Cipriano and Madarang were also present at the shop, the former to redeem his car stereo and the latter to borrow a play station CD. Latario, a housemate of Marcelino and Myra, was also present at the time.

Marcelino suddenly heard someone say "Walang tatakbo!" Four armed men rushed inside the house and pointed their guns at him and said "Wag ka nang pumalag." He was thereafter dragged outside where he saw the other accused already in handcuffs. Marcelino was later informed that they were being arrested for selling shabu. Marcelino protested and disclaimed any knowledge about drugs. When the officers frisked all the accused, Marcelino claimed that nothing illegal nor incriminating was recovered from them.

When Myra arrived at the scene, she was shocked to see her husband being arrested. The police officers then brought all the accused to the police station for further questioning.

At the police station, PO2 Noble asked Marcelino for P50,000.00 as settlement of their case. Marcelino, Apelo, Cipriano, and Ranada were also made to drink water that according to Marcelino tasted bitter.[16] They were then brought to Camp Crame for medical examination and drug tests. Those who drank the bitter water tested positive for drugs use while the others, who did not drink, tested negative.

Marcelino surmised that their arrest was due to a misunderstanding he had with a former police officer named Rey who bought a VCD player from his shop. He specifically instructed Rey not to let anyone repair the VCD player should it malfunction. However, when the VCD player malfunctioned, Rey had it repaired by somebody else, hence Marcelino refused to accept the VCD player and return Rey's money. This earned the ire of Rey who threatened him with the words "Humanda ka pagbalik ko." [17]

Ruling of the Regional Trial Court

In its Decision[18] dated December 7, 2005, the RTC disposed of the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Crim. Case No. 13781-D, finding the accused MARCELINO COLLADO y Cunanan and MYRA COLLADO y Senica GUILTY beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 (sale of dangerous drug) and they are hereby sentenced to suffer the penalty of LIFE IMPRISONMENT.

Additionally, the two accused are ordered to pay a fine of ONE MILLION PESOS (P1,000,000.00) EACH.

In Crim. Case No. 13782-D, judgment is rendered finding the accused MARCELINO COLLADO y Cunanan and MYRA COLLADO y Senica NOT GUILTY of the crime of violation of Section 6.

In Crim. Case No. 13783-D, finding the accused MARCELINO COLLADO y Cunanan GUILTY of the offense of violation of Section 11 of R.A. 9165 and he is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS.

The accused Marcelino Collado is also ordered to pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00).

In Crim. Case No. 13784-D, judgment is hereby rendered finding the accused MELODY APELO y Roman, MARK CIPRIANO y Rocero, MARWIN ABACHE y Aquilino, MICHAEL ANGELO SUMULONG y Belarmino, JAY MADARANG y Gomez, SAMUEL SHERWIN LATARIO y Enrique and REYNALDO RANADA y Alas GUILTY of the offense of violation of Section 14 of R.A. 9165 and they are hereby sentenced to suffer the indeterminate penalty of TWO (2) YEARS, EIGHT (8) MONTHS and ONE (1) DAY to FOUR (4) YEARS imprisonment. Each of them is also ordered to pay a fine of TEN THOUSAND PESOS (P10,000.00).

Let the shabu and paraphernalia alleged to be the subject[s] of the Information be turned over and delivered immediately to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.[19]

Accused Apelo, Abache, Sumulong and Madarang applied for probation.[20] Hence, only Marcelino, Myra, Cipriano, Latario and Ranada appealed to the CA.[21]

Ruling of the Court of Appeals

The appellate court found the warrantless arrest of the appellants to be lawful considering that they were caught in

the act of committing a crime.[22] Thus, the CA affirmed the conviction of Marcelino and Myra for violation of Section 5 of RA 9165 (sale of dangerous drugs), as well as the conviction of Marcelino for violation of Section 11 of RA 9165 (illegal possession of dangerous drugs). Anent the violation of Section 14 of RA 9165 (possession of drug paraphernalia), the CA affirmed the conviction of Ranada as he was caught having custody and control of a drug paraphernalia intended for smoking and injecting illegal drugs into one's body.[23] As regards Cipriano and Latario, as well as the other accused Apelo, Abache, Sumulong and Madarang, the CA found them guilty not as principals but only as accessories.

Thus, the appellate court affirmed with modification the trial court's Decision through a Decision[24] dated February 28, 2008, the dispositive portion of which states:

WHEREFORE, the appealed Decision is AFFIRMED with respect to the conviction and imposition of the respective penalties against the following: (A) appellants Marcelino Collado and Myra Collado in Crim. Case No. 13781-D[25] for violation of Section 5, Article II, RA No. 9165; (B) appellant Marcelino Collado in Crim. Case No. 13783-D for violation of Section 11, Article II, RA No. 9165; (C) appellant Reynaldo Ranada in Crim. Case No. 13784-D for violation of Section 14, Article II, RA No. 9165.

In Crim. Case No. 13784-D, MODIFICATION is hereby ordered as to appellants Mark Cipriano and Samuel Sherwin Latario, including co-accused Melody Apelo, Marwin Abache, Michael Angelo Sumulong and Jay Madarang – insofar as they were found GUILTY, not as principals, but as ACCESSORIES in the offense of violation of Section 14, Article II of RA No. 9165, in relation to the aforecited provision of the Revised Penal Code. Each of them shall suffer the straight penalty of Four (4) Months of arresto mayor. The fine of Ten Thousand Pesos already imposed by the trial court upon each of them is MAINTAINED.

SO ORDERED.[26]

Not satisfied, the appellants are now before this Court arguing that irregularities attended their arrest and detention as well as the procedure in handling the specimen allegedly seized from them. Because of these, they assert that their guilt was not proven beyond reasonable doubt.

Our Ruling

The appealed Decision should be affirmed, with modification.

The presumption of regularity in the performance of official duties must be upheld in the absence of clear and convincing evidence to overturn the same.

Appellants question the validity of the buy-bust operation and point out the following irregularities which they claim attended its conduct: (1) lack of warrant of arrest; (2) non-compliance with the procedures laid down under Section 21 of RA 9165; and, (3) the alleged extortion of money from them by PO2 Noble in exchange for dropping the charges against them. Due to these irregularities, appellants argue that the presumption of regularity in the performance of official duties accorded to police officers does not apply in this case.

Lack of a warrant of arrest

Appellants argue that the arrest, search, and seizure conducted by the police were illegal since it was not supported by a valid warrant. They thus posit that their right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures was violated.[27]

Section 5, Rule 113 of the Rules of Court provides for lawful warrantless arrests, viz:

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 in fact 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 escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Section 5(a) is what is known as arrest 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.”[28] A common example of an arrest in flagrante delicto is one made after conducting a buy-bust operation.

This is precisely what happened in the present case. The arrest of the appellants was an arrest in flagrante delicto made in pursuance of Sec. 5(a), Rule 113 of the Rules of Court. The arrest was effected after Marcelino and Myra performed the overt act of selling to PO2 Noble the sachet of shabu and Ranada of having in his control and custody illegal drug paraphernalia. Thus, there is no other logical conclusion than that the arrest made by the police officers was a valid warrantless arrest since the same was made while the appellants were actually committing the said crimes.

Moreover, assuming that irregularities indeed attended the arrest of appellants, they can no longer question the validity thereof as there is no showing that they objected to the same before their arraignment. Neither did they take steps to quash the Informations on such ground.[29] They only raised this issue upon their appeal to the appellate court. By this omission, any objections on the legality of their arrest are deemed to have been waived by them.[30]

Anent their claim of unreasonable search and seizure, it is true that under the Constitution, “a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.”[31] This proscription, however, admits of exceptions, one of which is a warrantless search incidental to a lawful arrest.[32]

The arrest of the appellants was lawful. Under Section 13, Rule 126 of the Rules of Court, “[a] person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.” The factual milieu of this case clearly shows that the search was made after appellants were lawfully arrested. Pursuant to the above-mentioned rule, the subsequent search and seizure made by the police officers were likewise valid. Hence, appellants’ claim of unreasonable search and seizure must fail.

Extortion

Appellants aver that PO2 Noble tried to extort money from them in exchange for dropping the drug charges against them.

The defense of extortion and/or frame-up is often put up in drugs cases in order to cast doubt on the credibility of police officers. This is a serious imputation of a crime hence clear and convincing evidence must be presented to support the same. There must also be a showing that the police officers were inspired by improper motive. In this

case, we find such imputation unfounded.

In *People v. Capalad*,^[33] this Court held thus:

Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit.

Here, aside from Marcelino's self-serving testimony, appellants' claim of extortion is not substantiated by other convincing evidence. Neither was it established during trial that PO2 Noble or the other members of the buy-bust team were impelled by improper motive. Appellants' allegation that PO2 Noble and his team arrested them because of Marcelino's previous misunderstanding with a certain retired policeman named Rey deserves no credence. No evidence was presented to show any connection between Rey and the buy-bust team. It was not even shown by the defense who this person Rey really is. Also, it is highly unlikely that a team of police officers would pursue a surveillance, conduct a buy-bust operation, and arrest all the accused for a measly P1,000.00 VCD player. In view of these, appellants' allegation of extortion and improper motive deserves no credence.

Chain of Custody

Appellants argue that the procedure laid down in Section 21 of RA 9165 was not followed. They specifically harp on the fact that the confiscated drugs were not photographed and inventoried. Moreover, they contend that the police officers who handled the seized specimen were not presented in court to testify on the condition in which they received the said specimen. For the appellants, these defects constitute a clear break in the chain of custody and, consequently, the prosecution failed to establish *corpus delicti*.^[34]

The Court, however, finds this argument unmeritorious.

Section 21, paragraph 1, Article II of RA 9165 provides for the custody and disposition of the confiscated drugs, to wit:

(1) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

This rule is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165, viz:

a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/ team, whichever is practicable, in case of warrantless seizure; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied)

Pursuant to the above-cited provisions, this Court has consistently ruled that the failure of the police officers to inventory and photograph the confiscated items are not fatal to the prosecution's cause,[35] provided that the integrity and evidentiary value of the seized substance were preserved, as in this case. Here, PO2 Noble, after apprehending Marcelino and confiscating from him the sachets of shabu, immediately placed his markings on them. He testified thus:

PROSECUTOR PAZ:

Q: What did you do with that sachet containing white substance that was bought from Marcelino and the one that you were able to confiscate from him?

A: I put my markings.

Q: What were those markings?

A: MCC-RNN October 9, 2004.[36]

In the Request for Laboratory Examination[37] the seized items were listed and inventoried. After the conduct of the laboratory examination, Chemistry Report No. D-807-04[38] revealed that the contents of the said sachets tested positive for methylamphetamine hydrochloride or shabu.

Moreover, it is of no moment that Forensic Chemist Alejandro De Guzman who conducted the laboratory examination was not presented as a witness. The non-presentation as witnesses of other persons who had custody of the illegal drugs is not a crucial point against the prosecution.[39] There is no requirement for the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of the prohibited drugs from him.[40] To stress, the implementing rules are clear that non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.[41]

Criminal Case No. 13784-D

With regard to Criminal Case No. 13784-D for illegal possession of drug paraphernalia, we find it imperative to re-examine the findings of both the RTC and the CA.

The RTC's findings are as follows:

The evidence for the prosecution clearly shows that certain things or paraphernalia which are fit or intended [for] smoking shabu were found in the house of the accused Marcelino and Myra Collado on the same occasion that the said spouses were arrested by the police officers. This fact makes all the accused without exception liable for violation of Section 14. While it was only Reynaldo Ranada who was caught having in his possession an item used in smoking marijuana, i.e., a strip of aluminum foil x x x and nothing was found in the possession of the other accused, this fact nonetheless does not render Reynaldo Ranada the only person liable for violation of Section 14. [Take note] that the law speaks not only of possession but also of having under one's control the paraphernalia intended for smoking. In the instant case, the paraphernalia were found by the police on top of the table around which the accused were gathered. Hence, even if the x x x accused other than Ranada did not have in their possession any of the paraphernalia, it can, however, be said that the paraphernalia found on top of the table were under their control. x x x[42]

Thus, the RTC found Ranada, Cipriano, Latario, Apelo Abache, Sumulong and Madarang all equally guilty of illegal possession of drug paraphernalia.

On appeal, however, the CA found Ranada guilty as principal while Cipriano, Latario, Apelo, Abache, Sumulong and Madarang were adjudged as accessories only for the crime of illegal possession of drug paraphernalia. The

CA ratiocinated thus:

On the one hand, we sustain the conviction of Rañada in Crim. Case 13784-D. He was actually caught having custody and control of the confiscated drug paraphernalia intended for smoking, injecting, etc. into one's body. It was also indubitably shown that he failed to present authority to possess the prohibited articles, much less, an explanation of his possession thereof. However, as regards the other accused who were seen in the company of Rañada, the evidence of conspiracy against them was insufficient.

To hold an accused guilty as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.

It may be that appellants Mark Cipriano and Samuel Sherwin Latario and co-accused Melody Apelo, Marwin Abache, Michael Angelo Sumulong, Jay Madarang were in close proximity [to] Rañada at the time and place of the incident. But mere presence at the scene of the crime does not imply conspiracy. The prosecution failed to show specific overt acts that would link these accused to Rañada's possession of the said contrabands. As to why they were there [in] the vicinity of the crime scene was not explained. They could be mere innocent onlookers although they were aware of the illegality of the principal's acts.

In any event, appellants Cipriano and Latario and the rest of the accused cannot be totally exonerated. [However, we] downgrade their culpability corresponding to their criminal design and participation. Evidently, they are guilty as accessories who, according to paragraph 1, Article 19 of the Revised Penal Code, are criminally liable by 'profiting themselves or assisting the offender to profit by the effects of the crime'.[43]

We find that the CA erred in convicting Cipriano, Latario, Apelo, Abache, Sumulong and Madarang as accessories. As pointed out by Justice Arturo D. Brion:

"[I]llegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs during parties, social gatherings or meetings under Section 14 of R.A. No. 9165 is a crime of *malum prohibitum*, that is, the act is made wrong or evil because there is a law prohibiting it. x x x

Since violation of Section 14 of R.A. No. 9165 is a crime of *mala prohibita*, the degree of participation of the offenders is not considered. All who perpetrated the prohibited act are penalized to the same extent. There is no principal or accomplice or accessory to consider. In short, the degree of participation of the offenders does not affect their liability, and the penalty on all of them are the same whether they are principals or merely accomplices or accessories.[44]

In addition, Section 98 of RA 9165 specifically provides that "[n]otwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be reclusion perpetua to death." It is therefore clear that the provisions of the Revised Penal Code, particularly Article 19 on Accessories, cannot be applied in determining the degree of participation and criminal liability of Rañada's co-accused.

At any rate, this Court is convinced that only Rañada should be held liable for violation of Section 14 of RA 9165. It is clear that it was only Rañada who was caught having in his possession an aluminum foil intended for using dangerous drugs.[45] As to the other co-accused, namely Apelo, Abache, Cipriano, Latario, Madarang, and Sumulong, not one drug paraphernalia was found in their possession. The police officers were only able to find the other drug paraphernalia scattered on top of a table. It is already established that there was no conspiracy between Rañada and the other co-accused. As the CA correctly held, mere presence at the scene of the crime does not imply conspiracy.[46]

PO2 Noble, when placed on the witness stand, only testified as follows:

A-

While I was checking the item that I bought, I saw several persons inside their house.

Q-

What were these persons doing?

A-

Some were seated, some were standing and there was x x x smoke.

Q-

Where was this smoke coming from?

A-

I did not see where the smoke [was] coming from because some of the persons were blocking [my view].

Q-

About how many persons were inside who were seated and who were standing?

A-

Seven (7).

Q-

Will you tell us if they are male or female or both?

A-

Six (6) male persons and one (1) female.

Q-

What are these persons who were seated inside the house doing?

A-

They were allegedly engaged in drug session.

COURT:

Q-

What do you mean allegedly?

A-

Because there was smoke and I did not see what they were using.

PROSECUTOR PAZ:

Q-

What about those who were standing, what were they doing?

A-

The persons who were standing were looking at the persons who were sitting. I could not see them clearly because some of them were blocking my view.

Q-

How far were they, those who were seated and those who were standing?

A-

They were close to each other.

Q-

How long did you take a look at these persons inside the house?

A-

Only for a while, only for a glance, sir.[47]

On the other hand, SPO2 Bernardo Cruz testified that it was only Ranada who was caught holding the aluminum foil, viz:

Q-

How about the aluminum foil that you recovered from another?

A-

I saw him holding the strip of aluminum foil, sir.

Q-

So, nothing was confiscated in the person of all other accused except for Ranada?

A-

Yes, sir.[48]

Therefore, Apelo, Abache, Cipriano, Latario, Madarang, and Sumulong should be acquitted of the charge of violation of Section 14, RA 9165 on possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs.

All told, this Court upholds the presumption of regularity in the performance of official duties by the police officers involved in this case. The defense was not able to show by clear and convincing evidence why the presumption should be overturned. The prosecution, on the other hand, was able to establish that Marcelino, Myra and Ranada committed the crimes imputed against them, they having been caught in flagrante delicto. This Court, being convinced that the guilt of Marcelino, Myra, and Ranada have been proven beyond reasonable doubt, must uphold their conviction.

As to Apelo, Abache, Cipriano, Latario, Madarang, and Sumulong, the Court finds that they should be acquitted of the offense of violation of Section 14, Article II, RA 9165, since the prosecution was not able to clearly show specific overt acts that would prove that they were in possession of drug paraphernalia.

WHEREFORE, the appeal is PARTLY GRANTED. The February 28, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02626 is AFFIRMED with MODIFICATION that appellants Mark Cipriano and Samuel

Sherwin Latario, including co-accused Melody Apelo, Marwin Abache, Michael Angelo Sumulong, and Jay Madarang are hereby ACQUITTED of the crime of violation of Section 14, Article II of Republic Act No. 9165. They are ordered released unless they are being lawfully held for some other cause.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[*] Also referred to as Samuel Sherwin Latorio y Enriquez in some parts of the records.

[**] Also referred to as Reynaldo Rañada y Alas in some parts of the records.

[1] CA rollo, pp. 181-207; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario.

[2] Records, pp 201-213; penned by Judge Abraham B. Borreta.

[3] Id. at 1.

[4] Id. at 21.

[5] Id. at 23.

[6] Id. at 26-27.

[7] Id. at 31-41.

[8] TSN, January 6, 2005, p. 5.

[9] Id. at 5-6.

[10] Records, p. 202.

[11] Id. at 150.

[12] TSN, January 6, 2005, p. 10.

[13] Id. at 12.

[14] Chemistry Report No. D-807-04, records, p. 147.

[15] Chemistry Report Nos. DT-692-04 to DT-700-04, id. at 151.

[16] TSN, August 10, 2005, pp. 19-20.

[17] TSN, July 13, 2005, pp. 14-15; TSN, August 10, 2005, p. 16.

[18] Records, pp. 201-213.

[19] Records, pp. 212-213.

[20] Id. at 217-218.

[21] Id. at 216.

[22] Id. at 193-194.

[23] Id. at 204.

[24] CA rollo, pp. 181-207.

[25] See Resolution dated June 11, 2008, id. at 216-217.

[26] Id. at 26.

[27] Id. at 95-98.

[28] *People v. Judge Laguio, Jr.*, 547 Phil. 296, 329 (2007).

[29] *Esquillo v. People*, G.R. No. 182010, August 25, 2010, 629 SCRA 370, 382.

[30] Id.

[31] *People v. Racho*, G.R. No. 186529, August 3, 2010, 626 SCRA 633, 641.

[32] Id.

[33] G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727 citing *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741, 753 and *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 454.

[34] Rollo, p. 44.

[35] *People v. Campos*, G.R. No. 186526, August 25, 2010, 629 SCRA 462, 467.

[36] TSN, January 6, 2005, p. 15.

[37] Records, p. 17-18.

[38] Id. at 19.

[39] *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 235.

[40] *People v. Habana*, G.R. No. 188900, March 5, 2010, 614 SCRA 433, 438.

[41] Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165.

[42] Records, pp. 211-212.

[43] CA rollo, p. 204. Citation omitted.

[44] Citing Boado, Notes and Cases on the Revised Penal Code, 2008 edition.

[45] Records, p. 211.

[46] CA rollo, p. 204, Citation omitted.

[47] TSN, January 6, 2005, pp. 12-13.

[48] TSN, June 22, 2005, pp. 4-5.

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