

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JACK RACHO Y RAQUERO, APPELLANT.

G.R. No. 186529. August 03, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

On appeal is the Court of Appeals (CA) Decision[1] dated May 22, 2008 in CA-G.R. CR-H.C. No. 00425 affirming the Regional Trial Court[2] (RTC) Joint Decision[3] dated July 8, 2004 finding appellant Jack Racho y Raquero guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act (R.A.) No. 9165.

The case stemmed from the following facts:

On May 19, 2003, a confidential agent of the police transacted through cellular phone with appellant for the purchase of shabu. The agent later reported the transaction to the police authorities who immediately formed a team composed of member of the Philippine Drug Enforcement Agency (PDEA), the Intelligence group of the Philippine Army and the local police force to apprehend the appellant.[4] The agent gave the police appellant's name, together with his physical description. He also assured them that appellant would arrive in Baler, Aurora the following day.

On May 20, 2003, at 11:00 a.m., appellant called up the agent and informed him that he was on board a Genesis bus and would arrive in Baler, Aurora, anytime of the day wearing a red and white striped T-shirt. The team members then posted themselves along the national highway in Baler, Aurora. At around 3:00 p.m. of the same day, a Genesis bus arrived in Baler. When appellant alighted from the bus, the confidential agent pointed to him as the person he transacted with earlier. Having alighted from the bus, appellant stood near the highway and waited for a tricycle that would bring him to his final destination. As appellant was about to board a tricycle, the team approached him and invited him to the police station on suspicion of carrying shabu. Appellant immediately denied the accusation, but as he pulled out his hands from his pants' pocket, a white envelope slipped therefrom which, when opened, yielded a small sachet containing the suspected drug.[5]

The team then brought appellant to the police station for investigation. The confiscated specimen was turned over to Police Inspector Rogelio Sarenas De Vera who marked it with his initials and with appellant's name. The field test and laboratory examinations on the contents of the confiscated sachet yielded positive results for methamphetamine hydrochloride.[6]

Appellant was charged in two separate Informations, one for violation of Section 5 of R.A. 9165, for transporting or delivering; and the second, of Section 11 of the same law for possessing, dangerous drugs, the accusatory portions of which read:

"That at about 3:00 o'clock (sic) in the afternoon on May 20, 2003 in Baler, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, unlawfully, feloniously and willfully have in his possession five point zero one (5.01) [or 4.54] grams of Methamphetamine Hydrochloride commonly known as "Shabu", a regulated drug without any permit or license from the proper authorities to possess the same.

CONTRARY TO LAW."[7]

"That at about 3:00 o'clock (sic) in the afternoon on May 20, 2003 in Baler, Aurora, the said accused did then and there, unlawfully, feloniously and willfully transporting or delivering dangerous drug of 5.01 [or 4.54] grams of shabu without any permit or license from the proper authorities to transport the same.

CONTRARY TO LAW."[8]

During the arraignment, appellant pleaded "Not Guilty" to both charges.

At the trial, appellant denied liability and claimed that he went to Baler, Aurora to visit his brother to inform him about their ailing father. He maintained that the charges against him were false and that no shabu was taken from him. As to the circumstances of his arrest, he explained that the police officers, through their van, blocked the tricycle he was riding in; forced him to alight; brought him to Sea Breeze Lodge; stripped his clothes and underwear; then brought him to the police station for investigation.[9]

On July 8, 2004, the RTC rendered a Joint Judgment[10] convicting appellant of Violation of Section 5, Article II, R.A. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00; but acquitted him of the charge of Violation of Section 11, Article II, R.A. 9165. On appeal, the CA affirmed the RTC decision.[11]

Hence, the present appeal.

In his brief,[12] appellant attacks the credibility of the witnesses for the prosecution. He likewise avers that the prosecution failed to establish the identity of the confiscated drug because of the team's failure to mark the specimen immediately after seizure. In his supplemental brief, appellant assails, for the first time, the legality of his arrest and the validity of the subsequent warrantless search. He questions the admissibility of the confiscated sachet on the ground that it was the fruit of the poisonous tree.

The appeal is meritorious.

We have repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. We have reviewed such factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[13]

Appellant focuses his appeal on the validity of his arrest and the search and seizure of the sachet of shabu and, consequently, the admissibility of the sachet. It is noteworthy that although the circumstances of his arrest were briefly discussed by the RTC, the validity of the arrest and search and the admissibility of the evidence against appellant were not squarely raised by the latter and thus, were not ruled upon by the trial and appellate courts.

It is well-settled that an appeal in a criminal case opens the whole case for review. This Court is clothed with ample authority to review matters, even those not raised on appeal, if we find them necessary in arriving at a just disposition of the case. Every circumstance in favor of the accused shall be considered. This is in keeping with the constitutional mandate that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt.[14]

After a thorough review of the records of the case and for reasons that will be discussed below, we find that appellant can no longer question the validity of his arrest, but the sachet of shabu seized from him during the warrantless search is inadmissible in evidence against him.

The records show that appellant never objected to the irregularity of his arrest before his arraignment. In fact, this

is the first time that he raises the issue. Considering this lapse, coupled with his active participation in the trial of the case, we must abide with jurisprudence which dictates that appellant, having voluntarily submitted to the jurisdiction of the trial court, is deemed to have waived his right to question the validity of his arrest, thus curing whatever defect may have attended his arrest. The legality of the arrest affects only the jurisdiction of the court over his person. Appellant's warrantless arrest therefore cannot, in itself, be the basis of his acquittal. [15]

As to the admissibility of the seized drug in evidence, it is necessary for us to ascertain whether or not the search which yielded the alleged contraband was lawful.[16]

The 1987 Constitution states that 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.[17] Said proscription, however, admits of exceptions, namely:

1. Warrantless search incidental to a lawful arrest;
2. Search of evidence in "plain view;"
3. Search of a moving vehicle;
4. Consented warrantless search;
5. Customs search;
6. Stop and Frisk; and
7. Exigent and emergency circumstances.[18]

What constitutes a reasonable or unreasonable warrantless search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[19]

The RTC concluded that appellant was caught in flagrante delicto, declaring that he was caught in the act of actually committing a crime or attempting to commit a crime in the presence of the apprehending officers as he arrived in Baler, Aurora bringing with him a sachet of shabu.[20] Consequently, the warrantless search was considered valid as it was deemed an incident to the lawful arrest.

Recent jurisprudence holds that in searches incident to a lawful arrest, the arrest must precede the search; generally, the process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search.[21] Thus, given the factual milieu of the case, we have to determine whether the police officers had probable cause to arrest appellant. Although probable cause eludes exact and concrete definition, it ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.[22]

The determination of the existence or absence of probable cause necessitates a reexamination of the established facts. On May 19, 2003, a confidential agent of the police transacted through cellular phone with appellant for the purchase of shabu. The agent reported the transaction to the police authorities who immediately formed a team to apprehend the appellant. On May 20, 2003, at 11:00 a.m., appellant called up the agent with the information that he was on board a Genesis bus and would arrive in Baler, Aurora anytime of the day wearing a red and white striped T-shirt. The team members posted themselves along the national highway in Baler, Aurora, and at around 3:00 p.m. of the same day, a Genesis bus arrived in Baler. When appellant alighted from the bus, the confidential agent pointed to him as the person he transacted with, and when the latter was about to board a tricycle, the team approached him and invited him to the police station as he was suspected of carrying shabu. When he pulled out his hands from his pants' pocket, a white envelope slipped therefrom which, when opened, yielded a small sachet

containing the suspected drug.[23] The team then brought appellant to the police station for investigation and the confiscated specimen was marked in the presence of appellant. The field test and laboratory examinations on the contents of the confiscated sachet yielded positive results for methamphetamine hydrochloride.

Clearly, what prompted the police to apprehend appellant, even without a warrant, was the tip given by the informant that appellant would arrive in Baler, Aurora carrying shabu. This circumstance gives rise to another question: whether that information, by itself, is sufficient probable cause to effect a valid warrantless arrest.

The long standing rule in this jurisdiction is that "reliable information" alone is not sufficient to justify a warrantless arrest. The rule requires, in addition, that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense.[24] We find no cogent reason to depart from this well-established doctrine.

The instant case is similar to *People v. Aruta*,[25] *People v. Tudit*,[26] and *People v. Nuevas*. [27]

In *People v. Aruta*, a police officer was tipped off by his informant that a certain "Aling Rosa" would be arriving from Baguio City the following day with a large volume of marijuana. Acting on said tip, the police assembled a team and deployed themselves near the Philippine National Bank (PNB) in Olongapo City. While thus positioned, a Victory Liner Bus stopped in front of the PNB building where two females and a man got off. The informant then pointed to the team members the woman, "Aling Rosa," who was then carrying a traveling bag. Thereafter, the team approached her and introduced themselves. When asked about the contents of her bag, she handed it to the apprehending officers. Upon inspection, the bag was found to contain dried marijuana leaves.[28]

The facts in *People v. Tudit* show that in July and August, 1999, the Toril Police Station, Davao City, received a report from a civilian asset that the neighbors of a certain Noel Tudit (Tudit) were complaining that the latter was responsible for the proliferation of marijuana in the area. Reacting to the report, the Intelligence Section conducted surveillance. For five days, they gathered information and learned that Tudit was involved in illegal drugs. On August 1, 1999, the civilian asset informed the police that Tudit had headed to Cotabato and would be back later that day with a new stock of marijuana. At around 4:00 p.m. that same day, a team of police officers posted themselves to await Tudit's arrival. At 8:00 p.m., two men disembarked from a bus and helped each other carry a carton. The police officers approached the suspects and asked if they could see the contents of the box which yielded marijuana leaves.[29]

In *People v. Nuevas*, the police officers received information that a certain male person, more or less 5'4" in height, 25 to 30 years old, with a tattoo mark on the upper right hand, and usually wearing a sando and maong pants, would make a delivery of marijuana leaves. While conducting stationary surveillance and monitoring of illegal drug trafficking, they saw the accused who fit the description, carrying a plastic bag. The police accosted the accused and informed him that they were police officers. Upon inspection of the plastic bag carried by the accused, the bag contained marijuana dried leaves and bricks wrapped in a blue cloth. In his bid to escape charges, the accused disclosed where two other male persons would make a delivery of marijuana leaves. Upon seeing the two male persons, later identified as Reynaldo Din and Fernando Inocencio, the police approached them, introduced themselves as police officers, then inspected the bag they were carrying. Upon inspection, the contents of the bag turned out to be marijuana leaves.[30]

In all of these cases, we refused to validate the warrantless search precisely because there was no adequate probable cause. We required the showing of some overt act indicative of the criminal design.

As in the above cases, appellant herein was not committing a crime in the presence of the police officers. Neither did the arresting officers have personal knowledge of facts indicating that the person to be arrested had

committed, was committing, or about to commit an offense. At the time of the arrest, appellant had just alighted from the Gemini bus and was waiting for a tricycle. Appellant was not acting in any suspicious manner that would engender a reasonable ground for the police officers to suspect and conclude that he was committing or intending to commit a crime. Were it not for the information given by the informant, appellant would not have been apprehended and no search would have been made, and consequently, the sachet of shabu would not have been confiscated.

We are not unaware of another set of jurisprudence that deems "reliable information" sufficient to justify a search incident to a lawful warrantless arrest. As cited in *People v. Tudtud*, these include *People v.*

Maspil, Jr.,^[31] *People v. Bagista*,^[32] *People v. Balingan*,^[33] *People v. Lising*,^[34] *People v. Montilla*,^[35] *People v. Valdez*,^[36] and *People v. Gonzales*.^[37] In these cases, the Court sustained the validity of the warrantless searches notwithstanding the absence of overt acts or suspicious circumstances that would indicate that the accused had committed, was actually committing, or attempting to commit a crime. But as aptly observed by the Court, except in *Valdez* and *Gonzales*, they were covered by the other exceptions to the rule against warrantless searches.^[38]

Neither were the arresting officers impelled by any urgency that would allow them to do away with the requisite warrant. As testified to by Police Officer 1 Aurelio Iniwan, a member of the arresting team, their office received the "tipped information" on May 19, 2003. They likewise learned from the informant not only the appellant's physical description but also his name. Although it was not certain that appellant would arrive on the same day (May 19), there was an assurance that he would be there the following day (May 20). Clearly, the police had ample opportunity to apply for a warrant.^[39]

Obviously, this is an instance of seizure of the "fruit of the poisonous tree," hence, the confiscated item is inadmissible in evidence consonant with Article III, Section 3(2) of the 1987 Constitution, "any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

Without the confiscated shabu, appellant's conviction cannot be sustained based on the remaining evidence. Thus, an acquittal is warranted, despite the waiver of appellant of his right to question the illegality of his arrest by entering a plea and his active participation in the trial of the case. As earlier mentioned, the legality of an arrest affects only the jurisdiction of the court over the person of the accused. A waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.^[40]

One final note. As clearly stated in *People v. Nuevas*,^[41]

x x x In the final analysis, we in the administration of justice would have no right to expect ordinary people to be law-abiding if we do not insist on the full protection of their rights. Some lawmen, prosecutors and judges may still tend to gloss over an illegal search and seizure as long as the law enforcers show the alleged evidence of the crime regardless of the methods by which they were obtained. This kind of attitude condones law-breaking in the name of law enforcement. Ironically, it only fosters the more rapid breakdown of our system of justice, and the eventual denigration of society. While this Court appreciates and encourages the efforts of law enforcers to uphold the law and to preserve the peace and security of society, we nevertheless admonish them to act with deliberate care and within the parameters set by the Constitution and the law. Truly, the end never justifies the means.^[42]

WHEREFORE, premises considered, the Court of Appeals Decision dated May 22, 2008 in CA-G.R. CR-H.C. No. 00425 is REVERSED and SET ASIDE. Appellant Jack Raquero Racho is ACQUITTED for insufficiency of evidence.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter

is being lawfully held for another cause; and to inform the Court of the date of his release, or the reasons for his confinement, within ten (10) days from notice.

No costs.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid, concurring; rollo, pp. 2-17.

[2] Branch 96, Baler, Aurora.

[3] Penned by Judge Corazon D. Soluren; records, pp. 152-157.

[4] Transcript of Stenographic Notes, July 31, 2003, pp. 4-6.

[5] Rollo, pp. 4-5.

[6] Id. at 5-6.

[7] Records (Criminal Case No. 3054), p. 1

[8] Records (Criminal Case No. 3038), p. 1.

[9] Rollo, p. 6.

[10] Supra note 3.

[11] Supra note 1.

[12] CA rollo, pp. 56-69.

[13] Valdez v. People, G.R. No. 170180, November 23, 2007, 538 SCRA 611; People v. Chua, G.R. Nos. 136066-67, February 4, 2003, 396 SCRA 657, 664.

[14] People v. Chua, supra.

[15] Valdez v. People, supra at 622.

[16] Id.

[17] Section 2 and 3 (2), Article III of the 1987 Constitution.

[18] People v. Nuevas, G.R. No. 170233, February 22, 2007, 516 SCRA 463, 475-476 citing People v. Tudtud, 458 Phil. 752, 771 (2003).

[19] People v. Nuevas, id. at 476.

[20] Records, p. 156.

[21] People v. Nuevas, supra at 477; People v. Tudtud, 458 Phil. 752 (2003).

[22] People v. Aruta, 351 Phil. 868, 880 (1998).

[23] Rollo, pp. 4-5.

- [24] People v. Nuevas, supra; People v. Tudtud, supra.
- [25] Supra note 22.
- [26] Supra.
- [27] Supra.
- [28] People v. Aruta, supra at 875.
- [29] People v. Tudtud, supra at 765-766.
- [30] People v. Nuevas, supra at 468-469.
- [31] G.R. No. 85177, August 20, 1990, 188 SCRA 751.
- [32] G.R. No. 86218, September 12, 1992, 214 SCRA 63.
- [33] 311 Phil. 290 (1995).
- [34] 341 Phil. 801 (1997).
- [35] 349 Phil. 640 (1998).
- [36] 363 Phil. 481 (1999).
- [37] 417 Phil. 342 (2001).
- [38] People v. Tudtud, supra at 776.
- [39] People v. Tudtud, supra at 782; People v. Aruta, supra at 894.
- [40] People v. Nuevas, supra at 483-484; People v. Lapitaje, 445 Phil. 729, 748 (2003).
- [41] Supra.
- [42] People v. Nuevas, supra at 484-485.

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