

## **ROLANDO DACANAY Y LACASTE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

*G.R. No. 199018. September 27, 2017*

Ponente: LEONARDO-DE CASTRO, J.

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### **LEONARDO-DE CASTRO, J.:**

In this Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, petitioner Rolando Dacanay y Lacaste assails the Decision[1] dated May 26, 2011 of the Court of Appeals in CA-G.R. CR. No. 30826, which affirmed the Decision[2] dated July 16, 2006 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 209, in Criminal Case No. MC02-6030-D, finding petitioner guilty beyond reasonable doubt of illegal possession of dangerous drugs, in violation of Article II, Section 11 of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

In an Information dated October 24, 2002 filed before the RTC, petitioner was charged with illegal possession of dangerous drugs, allegedly committed as follows:

That on or about the 23[rd] day of October 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously and knowingly have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydro chloride, commonly known as "shabu", a dangerous drug without the corresponding license and prescription, in violation of the above-cited law.[3]

During his arraignment on December 11, 2002, petitioner pleaded not guilty to the crime charged against him. Thereafter, trial ensued.

### **Version of the Prosecution**

The prosecution presented as witnesses Police Senior Inspector (P/Sr. Insp.) Annalee R. Forro (Forro), Forensic Chemist, Philippine National Police (PNP); Raylan G. Genguyon (Genguyon), a member of Task Force Anti-Vice (TFAV) Unit, Mandaluyong City Police Station; and Police Officer (PO) 3 Noli S. Cortes[4] (Cortes), the officer on case, Eastern Police District (EPD) Crime Laboratory Office.

The taking of PO3 Cortes's testimony was dispensed with after the defense admitted the following: that PO3 Cortes was a member of the PNP who conducted an investigation of the case; that PO3 Cortes could identify petitioner in court; that the specimen subject matter of the case was turned over to PO3 Cortes during the investigation; and that PO3 Cortes caused the preparation of the Request for Laboratory Examination, Genguyon's Sworn Statement, the Arrest Report, and the Endorsement of the EPD to the Office of the City Prosecutor for inquest proceedings; and that the Inquest Prosecutor, after conducting an investigation, proposed the direct filing of the case.[5]

As gathered from the collective testimonies of the prosecution witnesses, at around 8:30 in the morning of October 23, 2002, a TFAV Unit consisting of Senior Police Officer (SPO) 2 Cirilo Maniego (Maniego), as team leader, and Carlos Gojo, Noel Bueva, and Genguyon, as members, were on board an unmarked multi-cab, patrolling the streets of Fernandez and Samat, Barangay Highway Hills, Mandaluyong City, when they noticed a male person, whom Genguyon later identified as petitioner, holding a plastic sachet in his right hand and a baseball cap in his left hand. The TFAV Unit already knew petitioner for the latter had been previously arrested several times by authorities for illegal drug possession. As the TFAV Unit neared petitioner, the latter scurried away. Petitioner tried to throw away the plastic sachet as he was boarding a tricycle but the members of the TFAV Unit caught up with him. Genguyon arrested petitioner and recovered the plastic sachet, containing white crystalline substance, from the latter's possession. Genguyon placed his initials "RG" on the plastic sachet. After informing petitioner of his constitutional rights, Genguyon gave the plastic sachet to their team leader, SPO2 Maniego. Thereafter, the TFAV Unit brought petitioner to the Mandaluyong City Medical Center and to the Criminal Investigation Unit for medical examination and investigation, respectively.

The plastic sachet, marked as "RG," was turned over to PO3 Cortes, assigned to investigate petitioner's case. PO3 Cortes made a written request for the laboratory examination of the contents of said plastic sachet.

P/Sr. Insp. Forro performed the laboratory examination of the contents of the plastic sachet, and per Chemistry Report No. D-2096-02E,[6] she confirmed the presence of Methamphetamine Hydrochloride or shabu, a dangerous drug.

In the meantime, Genguyon executed a Sworn Statement and an Arrest Report both dated October 23, 2002 relative to the apprehension of petitioner.

Together with Genguyon's Sworn Statement[7] and Arrest Report[8] dated October 23, 2002, PO3 Cortes's written request for laboratory analysis and P/Sr. Insp. Forro's Chemistry Report No. D-2096-02E, Police Chief Inspector (PC/Insp.) Plaridel V. Justo, Chief, Station Investigation Unit, forwarded petitioner's case to the Mandaluyong City Prosecutor for inquest proceeding.

On trial, Genguyon identified in court the plastic sachet that he marked as "RG." Likewise, P/Sr. Insp. Forro testified that she prepared the Chemistry Report No. D-2096-02E and identified her signature appearing thereon, as well as the signatures of PC/Insp. Leslie Chambers Maala (Maala), Chief of the Chemistry Section, and Police Superintendent (P/Supt.) Ma. Cristina B. Freyra (Freyra), Chief of the EPD Crime Laboratory. P/Sr. Insp. Forro stated that she was present when PC/Insp. Maala and P/Supt. Freyra signed the Chemistry Report.[9]

#### Version of the Defense

Petitioner was the sole witness for the defense.

According to petitioner, he worked as a tricycle driver. At around 8:30 in the morning of October 23, 2002, he was transporting a passenger from Crossing I to Fernandez Street. Upon arriving on Fernandez Street and while waiting for the passenger's tricycle fare, a member of the TFAV Unit passed by, telling petitioner that there was an on-going sale of shabu on Fernandez Street. After receiving the tricycle fare, petitioner proceeded to Samat Street where he was flagged down by the TFAV Unit. Petitioner alighted from his tricycle and five members of the TFAV Unit conducted a search of petitioner's person and his tricycle. A sixth member of the TFAV Unit, the driver, was standing near the TFAV vehicle. Petitioner then saw said sixth member of the TFAV Unit picking up a small plastic sachet about a meter away from where petitioner was. The sixth TFAV Unit member approached petitioner while holding the plastic sachet and said that the TFAV Unit recovered the plastic sachet from petitioner's tricycle. Petitioner denied that the plastic sachet was his but he was handcuffed. Petitioner offered to

bring the TFAV Unit members to the passenger he dropped off on Fernandez Street but the TFAV Unit members said nothing and simply brought petitioner to Mandaluyong City Hall. At the Criminal Investigation Division, a person, who was not part of the TFAV Unit who arrested petitioner, asked him if he owned the plastic sachet. Petitioner denied ownership of the plastic sachet. Notwithstanding petitioner's denial, he was detained. Petitioner posted bail afterwards.

On July 16, 2006, the RTC promulgated its Decision finding petitioner guilty of the crime charged, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding [petitioner], ROLANDO DACANAY y LACASTE, guilty beyond reasonable doubt for violation of Section 11 of Article II of Republic Act 9165 and hereby sentencing him to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum and to pay a fine of three hundred thousand (P300,000.00) [pesos]. [Petitioner] shall be credited in full of the period of his preventive imprisonment.

The specimen consisting of 0.03 gram of methamphetamine hydrochloride is hereby confiscated in favor of the government. The evidence custodian is ordered to turn over the same to the Dangerous Drugs Board within 10 days from receipt for proper disposition.

Pursuant to section 6, paragraph 4, Rule 120 of the Revised Rules on Criminal Procedure, the Clerk of this Court in charge of the records of criminal cases is ordered to record this judgment in criminal docket and to serve a copy thereof at the last known address of Rolando Dacanay y Lacaste or through his counsel.[10]

Petitioner's appeal before the Court of Appeals was docketed as CA-G.R. CR. No. 30826. The appellate court affirmed petitioner's conviction in its Decision dated May 26, 2011.

Hence, petitioner filed the instant Petition for Review, raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR INSOFAR AS IT FAILED TO RULE THAT PETITIONER WAS ILLEGALLY ARRESTED AND ILLEGALLY SEARCHED BY THE MEMBERS OF THE TASK FORCE ANTI-VICE UNIT.

II

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT FOUND PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME BEING IMPUTED AGAINST HIM.[11]

Petitioner refutes the findings of the Court of Appeals, maintaining that he was illegally arrested and searched without a warrant by the TFAV Unit. According to petitioner, he was arrested on mere suspicion of the TFAV Unit members who allegedly saw him holding a plastic sachet. Petitioner's alleged possession of a plastic sachet, previous criminal record, or act of running away from apprehending officers were not crimes, nor were they sufficient to raise suspicion or provide probable cause for warrantless arrest. Considering that petitioner's arrest did not fall under any of the instances identified under Rule 113, Section 5[12] of the Revised Rules of Court - as petitioner was not actually committing or attempting to commit an offense in the presence of the arresting officer, and no offense had just been committed that gave rise to a probable cause that he committed an offense - petitioner's arrest was illegal.

Petitioner also contends that the warrantless search of petitioner's person, which was neither incidental to a valid arrest nor based on probable cause that he had committed, was committing, or was attempting to commit a crime, violated his Constitutional right[13] against unreasonable search and seizures. As a consequence, any evidence,

such as the plastic sachet, obtained as a result of the unlawful search by the TFAV Unit, should be inadmissible in evidence for any purpose in any proceeding for being the "fruit of the poisonous tree."

Petitioner lastly points out that the version of the prosecution of his arrest was based solely on Genguyon's self-serving testimony. Petitioner argues that the prosecution should have presented additional witnesses, such as the other TFAV Unit members, to corroborate Genguyon's testimony, as well as rebuttal evidence to disprove petitioner's defense of frame up. The reliance by the RTC and the Court of Appeals on the presumption of regularity in the performance of official duties was misplaced as such presumption could not override the presumption of innocence in petitioner's favor. Therefore, the quantum of proof required to convict petitioner, i.e., proof beyond reasonable doubt, had not been satisfied.

We find no merit in the present Petition.

Questions of fact are not the proper subject of a petition for review under Rule 45; findings of fact of the RTC, affirmed by the Court of Appeals, are binding on the Court

We highlight, at the outset, that this Petition was filed under Rule 45 of the Revised Rules of Court, which should be limited to questions of law. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[14]

The resolution of both issues raised in the Petition at bar requires us to sift through the records, and examine and inquire into the probative value of the evidence presented by the parties before the RTC. This is exactly the situation which Rule 45, Section 1 of the Revised Rules of Court prohibits by requiring that the petition raise only questions of law. A re-examination of factual findings cannot be done through a petition for review on certiorari under Rule 45 of the Revised Rules of Court because this Court is not a trier of facts. This Court is not duty-bound to analyze and weigh again the evidence considered in the RTC. Further, this case does not fall under any of the exceptions[15] recognized in jurisprudence.

Moreover, it is settled that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect, if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the findings of the trial court have been affirmed by the appellate court, said findings are generally binding upon this Court.[16] The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.[17]

In the instant case, the RTC, after receiving and evaluating the respective evidence of the prosecution and the defense, adjudged:

This court finds the prosecution adequate or sufficient to warrant conviction of the accused.

In a prosecution for illegal possession of dangerous drugs, the following facts must be proven with moral certainty.

(1) That the accused is in possession of the object identified as prohibited or regulated drug; (2) That such possession is not authorized by law and, (3) That the accused freely and consciously possessed the said drug. To warrant conviction of the accused or that animus possidendi existed together with the possession or control of said articles xxx.

In the instant case, the arresting officer, Raylan G. Genguyon who executed a Sworn Statement and confirmed in open court that on October 23, [2002] at 8:30 in the morning, while he and members of his team were patrolling along Fernandez Street, he saw a male person whom he knew for having been previously arrested by authorities for illegal possession of drugs, came out from an interior alley, stood at the corner of Samat and

Fernandez Streets, a place notoriously known for buying and selling dangerous drugs, holding a small transparent plastic sachet containing suspected shabu which he immediately hide (sic) in his cap. When they stopped their patrol vehicle and approached [petitioner], the latter tried to run away and in the process, [petitioner] attempted to throw the plastic sachet. However, considering that witness was closed (sic) to the [petitioner], only three (3) meters distance, he was able to catch the [petitioner], got hold of his hand and recovered the small plastic sachet containing crystalline substance which yielded positive result to the test of methamphetamine hydrochloride called shabu. [Petitioner] was aware of his possession of said plastic sachet which he attempted to throw but was timely recovered by witness Genguyon. He was the only one who handcuffed and conducted the arrest of [petitioner]. As against these (sic) positive identification by the witness of [petitioner] from whom possession of the plastic sachet containing shabu was recovered as well as the positive results of the laboratory examination by the Forensic Chemist of the substance contained in the subject plastic sachet, [petitioner] put up the defense of denial amounting to frame up and illegal arrest.

Our Supreme Court in various cases has ruled that Denial and allegation of frame up are couple and standard defenses in the prosecution of violations of dangerous drug xxx.

The defense of frame up or denial, like alibi, has invariably been viewed by the court with disfavor for it can just be easily concocted and is a common defense play in most prosecution for violation of Dangerous Drug Act xxx.

Witness are to be weighed, not by numbered (sic), it is not uncommon to read a conclusion of guilt on the basis of the testimony of a single witness xxx.

Furthermore, it could be mentioned in passing that number (sic) of Task Force Anti-Vice are public officers who enjoy the privilege of the presumption of regularly (sic) in the performance of their duties in the absence of ill motive and bias.[18]

On appeal, the Court of Appeals affirmed the findings of the RTC and held that:

The central issue raised by [petitioner] in his appeal is the legality of his search and arrest, [Petitioner] contends that his arrest was illegal for not falling under the exceptions mentioned in Section 5, Rule 113 for a warrantless arrest. He was allegedly not committing or attempting to commit a crime, and the apprehending officer had no personal knowledge that a crime was just committed and that the accused had committed it. Anything that turns up in the course of the subsequent search should be inadmissible as the fruit of an unlawful arrest.

The defense makes capital of the admission of the arresting officer Genguyon that upon seeing [petitioner], he was prompted to think that [petitioner] was committing a crime. But Genguyon himself qualifies his admission with the statement that, at that juncture, he did not try to arrest [petitioner]. The continuing narrative of Genguyon reveals that [petitioner] was intercepted by his team only because they noticed him to be in possession of a plastic sachet and that he quickly fled to a tricycle. Unfortunately for him, the lawmen got hold of him before he could escape.

In the prosecution for illegal possession of dangerous drugs, it must be shown that [petitioner] was in possession of an object or item that is identified to be a prohibited drug and that his possession was not authorized by law. These elements have been satisfactorily established. Genguyon who apprehended [petitioner] testified that from three meters or thereabouts (sic), he sighted (sic) [petitioner] holding a plastic sachet on his right hand. When they approached him, he ran away to ride a tricycle and was about to throw the plastic sachet. But they caught up with him. Genguyon took the sachet from [petitioner] and told him that they were arresting him for violation of illegal possession of prohibited drugs. In *People vs. Suzuki*, 414 SCRA 43, the Supreme Court held that mere possession of a prohibited substance is a crime per se placing the burden of the evidence on the accused to prove that his possession was lawful. [Petitioner] denied that he was in possession of the shabu recovered by the Task Force Anti-Vice [Unit] and even went on to say that the men

who arrested him merely picked up the plastic sachet from a distance of a meter from him. This is, for sure, a pat and convenient excuse. But without proof of any motive on the part of the arresting officers to falsely impute a criminal charge against him, the presumption of regularity in the performance of official duty prevails. xxx.

[Petitioner] was caught in flagrante delicto in possession of illegal drugs. The arresting officer had reasonable ground to believe based on his own personal observation that the [petitioner] was holding on to a plastic sachet that he believed contained shabu, judging from the past record of [petitioner], and that his suspicions were heightened when [petitioner] ran away after seeing him. The warrantless arrest is lawful under the provisions of Section 5 (a) Rule 113 of the Rules of Court which provides that - a police officer may without a warrant arrest a person when in his presence the person to be arrested has committed, is actually committing or attempting to commit a crime. In the course of a lawful warrantless arrest, the person of the accused may be searched for dangerous or illegal objects. It follows that the prohibited object or item taken from him on the occasion is admissible in evidence. xxx.

In a word, we find no substantial reason to disturb the findings of the courts a quo.[19]

The consistent findings of the RTC and the Court of Appeals on petitioner's guilt deserve utmost respect and should no longer be disturbed. However, if only to put finis to this case and ensure that no material fact was missed or misappreciated by the trial and appellate courts, we will still proceed to address the issues raised by petitioner.[20]

The prosecution was able to establish by proof beyond reasonable doubt all the elements of the offense of illegal possession of dangerous drugs

Article II, Section 11 of Republic Act No. 9165 penalizes possession of dangerous drugs as follows:

SECTION 11. Possession of Dangerous Drugs. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1)

10 grams or more of opium;

(2)

10 grams or more of morphine;

(3)

10 grams or more of heroin;

(4)

10 grams or more of cocaine or cocaine hydrochloride;

(5)

50 grams or more of methamphetamine hydrochloride or "shabu";

(6)

10 grams or more of marijuana resin or marijuana resin oil;

(7)

500 grams or more of marijuana; and

(8)

10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

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

(1)

Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2)

Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3)

Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (Emphasis ours.)

In prosecuting cases for illegal possession of dangerous drugs, the prosecution must establish the following elements: (1) the accused was in possession of an item or object, which was identified to be a prohibited or regulated drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the drug.[21]

Additionally, in the prosecution of criminal cases involving drugs, it is settled in our jurisprudence that the narcotic substance itself constitutes the corpus delicti, the body or substance of the crime, and the fact of its existence is a condition sine qua non to sustain a judgment of conviction. It is essential that the prosecution must prove with certitude that the narcotic substance confiscated from the suspect is the same drug offered in evidence before the court. As such, the presentation in court of the corpus delicti establishes the fact that a crime has actually been committed.[22]

Evidence for the prosecution consists of the testimonies of its witnesses, chiefly that of Genguyon; documentary

evidence, particularly, Genguyon's Sworn Statement and P/Sr. Insp. Forro's Chemistry Report No. D-2096-02E; and the corpus delicti, the plastic sachet of shabu confiscated from petitioner.

In his Sworn Statement,[23] which was offered in evidence and formed part of his testimony, Genguyon immediately recalled:

We saw a male person whom we know for having been arrested by authorities for many times for illegal drug possession came out from an alley thereat and stood at the corner of Samat and Fernandez Sts., this city holding a small transparent plastic sachet containing suspected shabu which he immediately hide (sic) in his cap.

xxx Since I was already closed (sic) to him at that time, I was able to catch him and got hold of his hand and recovered the small transparent plastic sachet containing suspected shabu. xxx. (Emphases ours.)

During trial, Genguyon further testified as follows:

Q:

And while you were patrolling said area, could you please tell us if there was any unusual incident that happened in that area?

A:

Yes, Ma'am.

Q:

What is that?

A:

While we were patrolling the said area of Samat corner Fernandez St., we noticed a male person who is inside the interior street, ma'am.

Q:

And what is so unusual in that particular person, Mr. Witness?

A:

While we were looking at him while we were approaching him, we saw that he was holding a plastic sachet, ma'am.

Q:

How did you know that he was holding a plastic sachet?

A:

He was quite near us, about three meters, ma'am.

Q:

What is your position in relation to his position?

A:

He was facing us, ma'am.

Q:

How did he hold the plastic sachet?

A:

He was holding it in his right hand and on his left hand, he was holding a baseball cap, ma'am.

Q:

And what did you then (sic) when you saw him [with] a plastic sachet?

A:

When we approached him, he tried to run away, ma'am.

Q:

And what did you do then when he tried to run away?

A:

We ran after him and we were able to catch him trying to ride a tricycle and he was trying to throw the plastic sachet, ma'am.

Q:

Was he able to ride the tricycle?

A:

No, ma'am almost.

Q:

What was his reaction when you accosted him?

A:

He was surprised, ma'am, because I was already holding him.

Q:

What happened when you arrested him?

A:

He did not resist when we told him that we are from the Task Force Anti-Vice, ma'am.

Q:

What about the plastic sachet that you saw. what happened to that?

A:

I got it from his possession and then I told him that we are arresting him for violation of section 11, ma' am.

Q:

After apprising him of his constitutional rights, what else happened, if any?

A:

After apprising him of his rights, I immediately gave the evidence to our team leader, SPO2 Cirilo Maniego, ma'am.

Q:

You said that you were able to recover from him one plastic sachet with white crystalline substance?

A:

Yes, ma'am.

Q:

Could you please describe the size of that sachet?

A:

It was a very, small plastic sachet. I cannot estimate the size, ma'am.

Q:

If that will be shown to you will you be able to identify it?

A:

Yes, ma'am.

Q:

Why will you be able to identify it?

A:

I put my markings, ma'am, my initials "RG."

Q:

Showing to you this plastic sachet with markings "RG" and already marked as Exhibit "F-1" could you please tell us if that is the same plastic sachet recovered from the possession of the [petitioner]?

A:

Yes, Ma'am this is the one.

Q:

By the way, what does "RG" stands (sic) for?

A:

"RG" stands for Raylan Genguyon, ma'am.[24] (Emphasis ours.)

The prosecution then submitted in evidence the Chemistry Report No. D-2096-02E, which confirmed that the white crystalline substance inside the plastic sachet recovered from petitioner was methamphetamine hydrochloride or shabu, a prohibited drug.

The totality of the evidence satisfactorily establishes all the necessary elements for the conviction of petitioner for illegal possession of prohibited drug.

Notably, petitioner did not offer any evidence to prove that he had authority to possess the said drug, and it is

well-entrenched that mere possession of a prohibited drug constitutes prima facie evidence of knowledge or animus possidendi of the prohibited drug, sufficient to convict an accused in the absence of satisfactory explanation.[25]

Petitioner failed to present clear and convincing evidence of frame-up

Petitioner's defense of frame-up does not inspire belief. Frame-up, like denial, has always been viewed with disfavor by the courts as it can be easily fabricated. As we declared in *People v. De Guzman*[26]:

The defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner. xxx.

Petitioner miserably failed to present clear and convincing evidence to overcome the presumption that the TFAV Unit members who arrested him, including Genguyon, performed their duties in a regular and proper manner, and that said TFAV Unit members were instead impelled by a sinister motive in charging petitioner with the serious offense of illegal possession of dangerous drugs. As between the positive declaration of the prosecution witness Genguyon that petitioner was caught in possession of a prohibited drug and petitioner's self-serving and unsubstantiated claim of frame-up by the TFAV Unit, the former deserves more weight and credence, just as the trial and appellate courts found.

Petitioner waived any objection to his warrantless arrest; in any case, petitioner was legally arrested without a warrant

Petitioner also assails his conviction on the ground that his arrest without a warrant did not fall among any of the exceptional circumstances enumerated in Rule 113, Section 5 of the Revised Rules of Court, so that the evidence obtained by the TFAV Unit during his unlawful arrest was inadmissible in evidence.

We disagree. Applicable herein are our pronouncements in *People v. Alunday*[27] that:

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court. We have also held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused.

In this case, petitioner failed to raise any objection as to his warrantless arrest before he entered his plea of "not guilty." Petitioner likewise did not move to quash the information against him prior to his arraignment. Petitioner then actively participated in the trial of his case before the RTC. Therefore, petitioner is deemed to have voluntarily submitted himself to the jurisdiction of the RTC and waived any objection to the jurisdiction of the RTC based on a defect in his arrest, and he is estopped from raising such an objection to have the judgment of conviction rendered by the RTC reversed and set aside.

Yet, even if we consider petitioner's objection to the legality of his arrest, we find the same unpersuasive.

Rule 113, Section 5 of the Revised Rules of Court enumerates the exceptional circumstances when a warrantless arrest may be legally made:

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[.]

In in flagrante delicto arrests, the concurrence of two elements is necessary, to wit: (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] Petitioner's overt act of holding/possessing the plastic sachet with white crystalline substance in the presence and within the view of Genguyon, a TFAV Unit member and prosecution witness, satisfied both elements. By having a plastic sachet of shabu in his possession, petitioner was definitely committing an offense punishable under Republic Act No. 9165, which justified his warrantless arrest. This should negate any insinuation that petitioner was arrested simply because of his past criminal record or because he fled upon seeing the TFAV Unit.

The instant case is closely similar to the factual milieu in *Palo v. People*[29] where a police officer testified that he arrested therein petitioner Roberto Palo (Palo) who was holding a plastic sachet, which the police officer believed to be containing shabu:

PO3 Capangyarihan, a member of the Valenzuela City Police, testified that at around 6:30 in the evening of July 24, 2002, he was walking along a dark alley at Mercado Street, Gen. T. De Leon in Valenzuela City. With him at that time was a boy who was a victim of a stabbing incident and right behind them, was PO1 Santos. While they were walking toward the petitioner's direction, at a distance of about five to seven meters, PO3 Capangyarihan saw [Palo] and Daguman talking to each other. PO3 Capangyarihan also noticed [Palo] holding a plastic sachet in his hand who was then showing it to Daguman. Believing that the plastic sachet contained shabu, from the manner by which [Palo] was holding the sachet, PO3 Capangyarihan immediately approached [Palo], held and recovered from his hand the said plastic sachet. Right there and then, [Palo] was arrested by PO3 Capangyarihan. Daguman was also arrested by PO1 Santos.

PO3 Capangyarihan further testified that [Palo] and Daguman were informed of their constitutional rights and that the two accused, together with the item seized, were brought to the police station where the confiscated item was marked by PO3 Capangyarihan with [Palo's] initials "RPD." During his cross-examination, PO3 Capangyarihan disclosed that there is a rampant selling of shabu at the place where the two accused were apprehended and that his suspicion was aroused by [Palo's] delicate way of handling the plastic sachet.

In the *Palo* case, the Court affirmed the judgments of the trial and appellate courts finding Palo's warrantless arrest lawful as he was caught in flagrante delicto and convicting Palo for possession of dangerous drugs, and ratiocinated as follows:

To secure a conviction for illegal possession of a dangerous drug, the concurrence of the following elements must be established by the prosecution: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

The Court finds that these elements were proven by the prosecution in the present case. PO3 Capangyarihan testified in a clear and straightforward manner that when he chanced upon [Palo], the latter was caught red-handed in the illegal possession of shabu and was arrested in flagrante delicto. On direct examination, the police officer positively identified [Palo] as the person holding, scrutinizing and from whom the plastic sachet was confiscated. After conducting a chemical analysis, the forensic chemical officer certified that the plastic sachet recovered from [Palo] was found to contain 0.03 gram of shabu. Nowhere in the records was it shown

that [Palo] is lawfully authorized to possess the dangerous drug. Furthermore, Daguman admitted that [Palo] intentionally sought and succeeded in getting hold of shabu. Clearly, [Palo] knowingly possessed the dangerous drug, without any legal authority to do so, in violation of Section 11, Article II of R.A. No. 9165.

The Court concurs with the trial court in attributing full faith and credence to the testimony of PO3 Capangyarihan. His detailed narration in court remained consistent with the documentary and object evidence submitted by the prosecution. As there is nothing in the record to indicate that PO3 Capangyarihan was impelled by improper motive when he testified against [Palo], the Court upholds the presumption of regularity in the apprehending officer's performance of official duty.[30]

The case of *Esquillo v. People*[31] is likewise analogous to the instant case. In *Esquillo*, the Court upheld the following actions of the police officer, despite the absence of a warrant: (a) approaching therein petitioner Susan Esquillo (*Esquillo*) after observing from three meters away that *Esquillo* placed a plastic sachet with white substance inside a cigarette case; (b) inquiring from *Esquillo* about said plastic sachet; (c) restraining *Esquillo* who attempted to flee; (d) requesting *Esquillo* to take out the plastic sachet from the cigarette case; (e) confiscating the plastic sachet from *Esquillo*; and (f) arresting *Esquillo*. The Court held in the *Esquillo* case:

On the basis of an informant's tip, PO1 Cruzin, together with PO2 Angel Aguas (PO2 Aguas), proceeded at around 4:00 p.m. on December 10, 2002 to Bayanihan St., Malibay, Pasay City to conduct surveillance on the activities of an alleged notorious snatcher operating in the area known only as "Ryan."

As PO1 Cruzin alighted from the private vehicle that brought him and PO2 Aguas to the target area, he glanced in the direction of [*Esquillo*] who was standing three meters away and seen placing inside a yellow cigarette case what appeared to be a small heat-sealed transparent plastic sachet containing white substance. While PO1 [*Cruzin*] was not sure what the plastic sachet contained, he became suspicious when [*Esquillo*] started acting strangely as he began to approach her. He then introduced himself as a police officer to [*Esquillo*] and inquired about the plastic sachet she was placing inside her cigarette case. Instead of replying, however, [*Esquillo*] attempted to flee to her house nearby but was timely restrained by PO1 Cruzin who then requested her to take out the transparent plastic sachet from the cigarette case.

After apprising [*Esquillo*] of her constitutional rights, PO1 Cruzin confiscated the plastic sachet on which he marked her initials "SRE." With the seized item, [*Esquillo*] was brought for investigation to a Pasay City Police Station where P/Insp. Aquilino E. Almanza, Chief of the Drug Enforcement Unit, prepared a memorandum dated December 10, 2002 addressed to the Chief Forensic Chemist of the NBI in Manila requesting for: 1) a laboratory examination of the substance contained in the plastic sachet to determine the presence of shabu, and 2) the conduct of a drug test on the person of [*Esquillo*]. PO1 Cruzin and PO2 Aguas soon executed a Joint Affidavit of Apprehension recounting the details of their intended surveillance and the circumstances leading to [*Esquillo's*] arrest.

x x x x

[*Esquillo's*] conviction stands.

[*Esquillo*] did not question early on her warrantless arrest - before her arraignment. Neither did she take steps to quash the Information on such ground. Verily, she raised the issue of warrantless arrest - as well as the inadmissibility of evidence acquired on the occasion thereof - for the first time only on appeal before the appellate court. By such omissions, she is deemed to have waived any objections on the legality of her arrest.

Be that as it may, the circumstances under which [*Esquillo*] was arrested indeed engender the belief that a search on her was warranted. Recall that the police officers were on a surveillance operation as part of their law enforcement efforts. When PO1 Cruzin saw [*Esquillo*] placing a plastic sachet containing white crystalline substance into her cigarette case, it was in his plain view. Given his training as a law enforcement officer, it was instinctive on his part to be drawn to curiosity and to approach her. That [*Esquillo*] reacted by attempting

to flee after he introduced himself as a police officer and inquired about the contents of the plastic sachet all the more pricked his curiosity.

That a search may be conducted by law enforcers only on the strength of a valid search warrant is settled. The same, however, admits of exceptions, viz.:

(1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "stop and frisk" operations. xxx.

In the instances where a warrant is not necessary to effect a valid search or seizure, the determination of what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, taking into account, among other things, 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.[32](Emphases supplied.)

Ultimately, the Court adjudged that the Esquillo case involved a valid stop-and-frisk operation as the police officer had to require the accused to take out the plastic sachet from the cigarette case. In contrast, there was no need to stop-and-frisk petitioner in this case because the plastic sachet with suspected shabu remained in Genguyon's plain view from the time Genguyon saw petitioner holding it, to the time petitioner tried to dispose of it, and up to the time he seized it from petitioner. Nevertheless, just as in Esquillo, Genguyon herein had a genuine reason to believe that petitioner was committing a crime as he saw petitioner holding the plastic sachet with suspected shabu from a distance of three meters. And, as pronounced in Esquillo, the unique circumstances of each case must be taken into account in determining whether or not a warrantless search or seizure is reasonable. Here, we see no reason to doubt the testimony of the prosecution witness that petitioner was seen holding a plastic sachet containing white crystalline substance or suspected shabu. Petitioner ran away, was about to board a tricycle, and throw away the sachet. The urgency of the situation called for Genguyon and the rest of the TFAV Unit to act immediately. Thus, even without a warrant, the TFAV Unit was authorized to arrest petitioner who was at that time violating Article II, Section 11 of Republic Act No. 9165.

Penalty modified in accordance with Republic Act No. 9165

Finally, the RTC, affirmed by the Court of Appeals, imposed on petitioner the penalty of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum. We modify the penalty imposed upon petitioner to conform to Article II, Section 11(3) of Republic Act No. 9165. Petitioner, found guilty beyond reasonable doubt of illegally possessing 0.03 gram of methamphetamine hydrochloride or shabu (less than five [5] grams), is sentenced to suffer imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.[33]

We sustain the fine imposed on petitioner by the trial and appellate courts in the amount of Three Hundred Thousand Pesos (P300,000.00).

WHEREFORE, premises considered, the instant Petition for Review is DENIED. The Decision dated May 26, 2011 of the Court of Appeals in CA-G.R. CR. No. 30826, affirming the Decision dated July 16, 2006 of the Regional Trial Court of Mandaluyong City, Branch 209, in Criminal Case No. MC02-6030-D, is AFFIRMED with the MODIFICATION that petitioner Rolando Dacanay y Lacaste is sentenced to an indeterminate sentence of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.

**SO ORDERED.**

Sereno, C. J., (Chairperson), Peralta,[\*] Del Castillo, and Tijam, JJ., concur.

[\*] Per raffle dated September 18, 2017.

[1] Rollo, pp. 39-45; penned by Associate Justice Mario L. Guariña III with Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios concurring.

[2] Records, pp. 189-195; penned by Presiding Judge Adelaida R. Crisostomo-Reyes.

[3] Id. at 1.

[4] Also referred in the record as Noli S. Cortez.

[5] Records, pp. 102-103.

[6] Id. at 137, Exh. "B."

[7] Id., Exh. "C."

[8] Id., Exh. "D."

[9] TSN, April 23, 2003, pp. 2-6.

[10] Records, pp. 194-195.

[11] Rollo, p. 17.

[12] 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.

[13]Article III. Bill of Rights.

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (The 1987 Constitution.)

[14] Oebanda. v. People, G.R. No. 208137, June 8, 2016, 792 SCRA 623, 630.

[15]Generally, questions of fact are beyond the ambit of a petition for review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein the Court expands the coverage of a petition for review to include a resolution of questions of fact, to wit: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on mis appreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its

findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Verdadero v. People*, G.R. No. 216021, March 2, 2016, 785 SCRA 490, 499-500.)

[16] *People v. Santiago*, 564 Phil. 181, 198 (2007).

[17] *People v. Iroy*, 628 Phil. 145, 152 (2010).

[18] Records, pp. 193-194.

[19] Rollo, pp. 42-44.

[20] *Oebanda v. People*, supra note 14 at 631.

[21] *People v. De Jesus*, 703 Phil. 169, 189 (2013).

[22] *People v. Mirondo*, G.R. No. 210841, October 14, 2015, 772 SCRA 593, 603.

[23] Records, p. 4.

[24] TSN, March 24, 2004, pp. 4-8.

[25] *People v. De Jesus*, supra note 21 at 189-190.

[26] 564 Phil. 282, 293 (2007).

[27] 586 Phil. 120, 133 (2008).

[28] *People v. Elamparo*, 385 Phil. 1052, 1064 (2000).

[29] G.R. No. 192075, February 10, 2016, 783 SCRA 557, 560-561.

[30] *Id.* at 567-568.

[31] 643 Phil. 577 (2010).

[32] *Id.* at 589-593.

[33] *People v. Darisan*, 597 Phil. 479, 486 (2009); *People v. Dilao*, 555 Phil. 394, 410 (2007).

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