

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIET PANCHO, ACCUSED-APPELLANT.

G.R. No. 206910. October 14, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

The subject of this review is the Decision[1] of the Court of Appeals in CA-G.R. CR. HC No. 01135 dated 16 July 2012, which affirmed the Judgment[2] of the Regional Trial Court (RTC) of Cebu City, Branch 57, in Criminal Case No. CBU 74672, finding accused-appellant Juliet Pancho guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Information filed on 22 September 2005 alleged:

That on or about the 14[th] day of September, 2005, at about 2:40 [p.m.], more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in [her] possession and under [her] control three (3) heat[-]sealed transparent plastic bags each of white crystalline substance weighing 14.49 grams locally known as shabu, containing [m]ethamphetamine hydrochloride, a dangerous drug, without authority of law.[3]

On arraignment, accused-appellant entered a non-guilty plea. Trial ensued.

The prosecution witnesses narrated that on the basis of a search warrant, members of the Criminal Investigation and Intelligence Bureau of Cebu City conducted a search in the house of accused-appellant and her husband Samuel Pancho located in Sitio Plastikan, Barangay Duljo-Fatima, Cebu City. Police Superintendent Pablo Labra served the search warrant on accused-appellant. Police Officer 1 Roy Carlo Veloso (PO1 Veloso) was designated as the searcher, while PO2 Benigno Andrew Ilagan (PO2 Ilagan) was assigned as the recorder of the raiding team. The raiding team was accompanied by three barangay tanods. The search yielded three big plastic packets of suspected shabu weighing a total of 14.49 grams, which were recovered under a jewelry box placed on top of a cabinet divider. PO1 Veloso handed the packets of shabu to PO2 Ilagan who recorded them in the confiscation receipt and made markings on the plastic packets.

The raiding team brought accused-appellant to the police station. PO1 Veloso accompanied PO2 Ilagan in handing over the seized articles and the letter-request to the Philippine National Police (PNP) Crime Laboratory. The PNP Crime Laboratory later issued Chemistry Report No. D-1381-2005, confirming that the three heat-sealed transparent plastic bags, weighing a total of 14.49 grams, were tested positive for the presence of methamphetamine hydrochloride. The Chemistry Report states:

SPECIMEN SUBMITTED

A- Three (3) heat-sealed transparent plastic bags each white crystalline substance having a total net weight of 14.49 grams each with marking "SW-SP & JP-01 to 03" and further marked as A-1 thru A-3. x x x

PURPOSE OF LABORATORY EXAMINATION

To determine the presence of dangerous drugs.

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for the presence of Methamphetamine hydrochloride, a dangerous drug, x x x

CONCLUSION:

Specimens A-1 thru A-3 contain Methamphetamine hydrochloride, a dangerous drug.[4] x x x

Accused-appellant denied the charge against her and alleged that she was sewing a blanket in her bedroom on the second floor when two police officers barged into her room and ordered her to go down. When she went down, two other police officers came and one of them went up to the bedroom. After a few seconds, the said police officer went back down and called the barangay tanods. When the barangay tanods arrived, accused-appellant was handcuffed and brought to the police station. Accused-appellant later learned that she was being charged with illegal possession of shabu.

On 5 October 2009, the RTC rendered judgment finding accused-appellant guilty of illegal possession of shabu and sentencing her to life imprisonment and to pay a P1,000,000.00 fine.

Accused-appellant seasonably filed a Notice of Appeal[5] before the Court of Appeals. On 16 July 2012, the Court of Appeals affirmed the judgment of the RTC, with modification in the fine imposed which was reduced to P500,000.00.

Accused-appellant filed a Notice of Appeal.[6] On 8 July 2013, we issued a Resolution requiring the parties to file their supplemental briefs, if they so desire.[7] Both parties manifested that they would adopt the same arguments in their separate briefs filed before the Court of Appeals.[8]

Accused-appellant asserts that the testimonies of the prosecution witnesses were plagued with inconsistencies with respect to where the search of the house started and where the markings were made. Accused-appellant insists that the barangay tanods should have been made to testify to corroborate the testimonies of the police officers relative to the search. Accused-appellant avers that the requisites under Section 21, paragraph 1, Article 21 of R.A. No. 9165 were not complied with. Moreover, accused-appellant contends that the packs of shabu allegedly recovered from her house should first be submitted to the court which issued the search warrant in accordance with Section 12, Rule 126 of the Rules of Court.

The Office of the Solicitor General (OSG) dismisses the inconsistencies as trivial, and maintains that the elements of the crime of illegal possession of a prohibited drug were proven by the prosecution. The OSG agrees that the prosecution was able to establish the chain of custody of the corpus delicti; and despite the non-compliance with Section 21 of R.A. No. 9165, the prosecution has shown that the integrity and evidentiary value of the seized items had been duly preserved.

Whether accused-appellant's guilt has been proven beyond reasonable doubt is the crux of this controversy.

In *Valleno v. People*,[9] the Court ruled that -

In order for prosecution for illegal possession of a dangerous drug to prosper, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[10]

The prosecution has duly established all these elements. By virtue of a search warrant, POI Veloso found three packets of suspected shabu in one of the rooms of accused-appellant's house, thus:

Pros. Lapinid (to witness)

Q:

How long have you been a police officer?

A:

4 years.

Q:

In September of 2005 can you recall where were you then assigned?

A:

I was assigned at Criminal Investigation and Intelligence Bureau, Cebu City Police Office.

Q:

Specifically on September 14, 2005 at around 2:40 p.m., can you recall where you were?

A:

I was together with the elements of our office led by Police Supt. Pablo G. Labra because we [were] serving a Search Warrant against Juliet and Samuel Pancho at Sitio Plastikan, Brgy. Duljo-Fatima.

Q:

You mentioned that you were serving a search warrant. That search warrant is for what violation of the law Mr. Witness?

A:

Violation of Sec. 11 Article II of RA 9165.

Q:

Do you have a copy of that Search Warrant with you?

A:

Yes, ma'am.

Pros. Lapinid:

We pray your Honor that this certified true copy of the Search Warrant as certified by Atty. [D]ela Cerna Capacio of RTC Branch 13 be marked as our Exhibit "D."

COURT:

Mark it. Pros. Lapinid (to witness)

Q:

Who were with you at that time Mr. Witness?

A:

As I've said, our team created by our Head of Office, Police Supt. Pablo G. Labra II was serving a Search Warrant at Brgy. Duljo-Fatima. PO2 Ilagan and I were designated as searcher and recorder of the raiding team.

Q:

You said that you were designated as the searcher in the implementation of the Search Warrant. Upon reaching the place what happened?

A:

When we reached at (sic) their place we noticed that their door was slightly opened.

Q:

By the way, before that, could you describe to us what was this building that you were about to search at that time?

A:

It was a two-storey semi-concrete house ma'am.

Q:

You mentioned that upon arrival at the area[,] the door was slightly opened?

A:

Yes, ma'am.

Q:

And upon seeing that, what did you do?

A:

Inside we saw a woman particularly in the living room and we called her attention that we were serving a search warrant against the Sps. Juliet and Samuel Pancho.

Q:

So after you called the attention of that woman whom you saw inside the house at the living room what did she do?

A:

She walked towards us because we were outside of their house and this PO2 Ilagan who was in possession of the search warrant showed to her a copy of the search warrant for her to read.

Q:

And after the woman was shown a copy of that search warrant by Police Officer Ilagan what happened?

A:

When the woman whom we later knew to be Juliet allowed us to enter the house, we thereafter immediately started the search.

Q:

Aside from that woman whom you later knew to be Juliet Pancho, were there other persons inside that house at

that time?

A:

I cannot recall anymore ma'am the other persons who were there inside the house except I, the accused, PO2 Ilagan, and the three barangay tanods who acted as witnesses.

Q:

You mentioned earlier that this Search Warrant was against Juliet and Samuel Pancho. Do you know where this Samuel Pancho was at that time that you were conducting the search.

A:

He was not around when we began the search.

Q:

Did you ask Juliet Pancho where this Samuel Pancho was?

A:

Yes, ma'am.

Q:

And what was her reply?

A:

She replied that Samuel Pancho went out of the house.

Q:

You said that after Juliet Pancho was shown a copy of the search warrant she allowed you to enter the house and thereafter you immediately conducted the search. Where did you first start your search?

A:

We [began] searching in the living room.

Q:

And the living room is located where since you said that it was a two storey house?

A:

It is located in the first floor.

Q:

What was the result of your search of the living room?

A:

We did not find any contraband or anything that is illegal.

COURT (to witness)

Q:

You yourself conducted the search in the living room?

A:

The search was conducted by me, together with the recorder PO2 Ilagan, the three barangay tanods, and the accused.

[COURT]: Proceed prosecutor.

Pros. Lapinid

Q:

Considering that you said you did not find any contraband which was illegal after searching the living room, what did you do?

A:

We continued our search towards the kitchen.

Q:

Since you stated that thereafter you searched the kitchen, what was the result of your search?

A:

The result was negative.

Q:

And after the search of the kitchen yielded negative result, what did you do?

A:

We went upstairs and started searching in one of the three rooms located at the second floor.

Q:

You said that there were three rooms at the second floor and you conducted your search in one of the rooms. At that time do you know the occupant of this room that you searched first?

A:

At first I personally do not know who the occupant of the first room was. It was later that we knew that the room which we searched first was occupied by Juliet and Samuel Pancho.

Q:

You mentioned that you searched the first room among the three at the second floor. What was again the result of your search?

A:

When we went inside the room we saw a big divider and on the divider was a jewelry box which covered the three (3) big plastic packets of suspected shabu.

Q:

Where was Juliet Pancho when you recovered these three (3) big plastic packets of shabu?

A:

She was with the group who conducted the search.

Q:

So, you are saying that she (Juliet) was inside the room when you recovered the items?

A:

Yes, ma'am.

COURT:

Q:

What about the three barangay tanods, where were they?

A:

They were also inside the room.[11]

The three packets of suspected shabu were submitted to the PNP Crime Laboratory. An examination was conducted on the seized items, and the result yielded a positive finding for the presence of shabu.

The three packets of shabu were found not on accused-appellant's person but on top of a cabinet divider inside her room. Accused-appellant was deemed to have been in constructive possession of the packets of shabu because they were under her control and management.

"[Constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.]"[12] Accused-appellant is not authorized by law to possess the shabu. Mere possession of a regulated drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satisfactory explanation of such possession - the onus probandi is shifted to the accused, to explain the absence of knowledge or animus possidendi.[13] Accused-appellant's bare denials will not suffice to overcome the presumption of knowledge.

Accused-appellant emphasizes the inconsistencies in the testimonies of the two police officers. PO1 Veloso stated that the living room on the first floor of accused-appellant's house was searched first, while PO2 Ilagan narrated that the search started on the second floor of the house. Moreover, accused-appellant claimed that PO1 Veloso initially related that markings were done in the police station, only to backtrack and declare that markings were done in accused-appellant's house. The inconsistency on the order of the search is a trivial matter and does not detract from the fact that all elements for the crime were duly established. In relation to the marking of the seized shabu, PO1 Veloso repeatedly declared that the marking was done in accused-appellant's house, thus:

Q:

At the office, the three packs of shabu were marked subsequently, is that correct?

A:

Yes, sir.

Q:

So the three packs claimed to be shabu were not marked at the place or at the room where it was confiscated but in the office?

A:

After the search was done, it was already marked in the house of the accused.

Q:

Did you not say earlier that the packs were marked was in the office because after the confiscation you brought the accused to the office? Did you not say that earlier?

A:

We brought the accused to the office, sir.

Q:

I am asking you, did you not say earlier that the packs of shabu were marked in your office after you brought the accused to the office? Did you not say that?

A:

The shabu was marked, sir.

Q:

That indeed you made an answer [to] the statement that the three packs believed to be shabu were marked in your office after its confiscation. You told that, right? But later on, you changed your mind.

A:

Because in normal search and seizure after the alleged shabu is seized, after the search is through, you mentioned the marking [in] the house. I was mistaken when I said it was marked in the office.

COURT: (To Witness)

Q:

So who made the marking?

A:

It was PO2 Ilagan, Your Honor.

ATTY. GONZALE[S]:

May I take in from here, Your Honor.

Q:

You said normal, are you saying that all police officers participating in the implementation of search warrant do that?

A:

In our office, sir.

Q:

So the marking was done in your office?

COURT: (To Atty. Gonzale[s])

The procedure in their office is to have the shabu marked at the scene.

That is what he mean[t].

ATTY. GONZALES:

I was not able to get that way, Your Honor.

Q:

You know officer Mendaros, SPO4 Mendaros?

A:

Yes, sir.

Q:

He is with your office, correct?

A:

Yes, sir.[14]

It was actually accused-appellant's lawyer who asked if the markings were done at the office, and PO1 Veloso inadvertently answered in the affirmative, but he immediately corrected himself when the mistake was pointed out to him.

The non-presentation of the barangay tanods is not fatal to the case of the prosecution. The more relevant testimonies are those of the members of the raiding team who testified that they recovered packets of shabu from accused-appellant's house.

With respect to non-compliance with procedure laid down in the seizure and custody of prohibited drugs, the primordial consideration is the preservation of the identity and integrity of the corpus delicti.

Section 21 of R.A. No. 9165 provides the procedure to be followed in the seizure and custody of prohibited drugs, to wit:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending 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[.]

The provisions of Article II, Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provide:

SECTION 21. x x x.

(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 seizures; 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[.]

Accused-appellant cites as an irregularity the failure of the prosecution to present photographs of the seized items and that there were no representatives from the media and the Department of Justice (DOJ) during the conduct of the inventory of the seized items.

The Implementing Rules and Regulations of Section 21 (a) of R.A. No. 9165 offer some flexibility when a proviso added 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." [15]

In *People v. Salvador*, [16] this Court ruled that the failure to submit in evidence the required physical inventory of the seized drugs and the photograph, as well as the absence of a member of the media or the DOJ, pursuant to Section 21, Article II of R.A. No. 9165, is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.

"What is of utmost importance is the preservation of the integrity and [the] evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." [17]

In the instant case, the chain of custody of the seized illegal drugs was not broken. The prosecution established that PO1 Veloso seized three packets of shabu from the bedroom of accused-appellant. He handed them over to PO2 Ilagan, who made markings on the items and prepared a confiscation receipt of the same while in appellant's house. PO2 Ilagan brought the confiscated shabu to the police station where he prepared a letter-request addressed to the PNP Crime Laboratory. It was PO2 Ilagan, accompanied by PO1 Veloso, who went to the PNP Crime Laboratory to bring the specimen and the letter-request. PO2 Roma received the shabu and forwarded the same to the forensic chemist. The chain of custody was testified to by the police authorities. Clearly, the recovery and the handling of the seized illegal drugs were satisfactorily established in this case.

The failure of the members of the raiding team to deliver the seized items to the judge who issued the warrant becomes immaterial because records show that the chain of custody is intact.

Accused-appellant was caught in possession of 14.49 grams of shabu or methamphetamine hydrochloride. The illegal possession of dangerous drugs is punishable under Section 11, paragraph 2(1), Article II of R.A. No. 9165, 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[.]

We affirm the penalty imposed by the Court of Appeals. It was specified in the Information that the shabu found in the possession of the accused-appellant weighed 14.49 grams. This weight is as certified to in the Chemistry Report. Such weight is within the range stated for by law.

WHEREFORE, the Decision dated 16 July 2012 of the Court of Appeals CA-G.R. CR. HC No. 01135 affirming the conviction of accused-appellant Juliet Pancho by the Regional Trial Court of Cebu City, Branch 57, for violation of Section 11, Article II of Republic Act No. 9165, and sentencing her to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P500,000.00 is hereby AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 3-21; Penned by Associate Justice Gabriel T. Ingles with Associate Justices Pampio A. Abarintos and Melchor Q.C. Sadang concurring.

[2] Records, pp. 144-147; Presided by Judge Enriqueta Loquillano-Belarmino.

[3] Id. at 1.

[4] Id. at 6.

[5] Id. at 151.

[6] Rollo, p. 22.

[7] Id. at 28.

[8] Id. at 31-32 and (no proper pagination, should be pages 34-37).

[9] G.R. No. 192050, 9 January 2013, 688 SCRA 343.

[10] Id. at 351.

[11] TSN, 13 November 2006, pp. 3-9.

[12] *People v. Tim*, 474 Phil. 152, 173 (2004).

[13] *People v. Posing*, G.R. No. 196973, 31 July 2013, 703 SCRA 62, 81.

[14] TSN, 12 February 2007, pp. 18-20.

[15] *People v. Adriano*, G.R. No. 208169, 8 October 2014.

[16] G.R. No. 190621, 10 February 2014, 715 SCRA 617, 621.

[17] *People v. Yable*, G.R. No. 200358, 7 April 2014, 721 SCRA 91, 100.

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