

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO DE GUZMAN Y PEREZ, ACCUSED-APPELLANT.

G.R. Nos. 117952-53. February 14, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the Decision[1] dated August 22, 1994 of the Regional Trial Court of Cavite City, Branch 17, finding accused-appellant, Danilo de Guzman, guilty of violation of Section 16, Article III, Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P50,000.00 without subsidiary imprisonment in case of insolvency. Furthermore, the trial court found him guilty of violation of Section 1, Presidential Decree 1866, otherwise known as the Unlawful Possession of Firearms and Ammunition, and sentenced him to suffer imprisonment of twelve (12) years and one (1) day of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum, and to pay the costs in both instances.

In Criminal Case No. 39-94, accused-appellant Danilo de Guzman and Edsel Martin, who is still at large, were charged with violation of Section 16, Article III of Republic Act 6425, in an information which reads as follows:

That on or about the 27th day of October 1992 at Villamar Beach Resort, Barangay San Rafael IV, Municipality of Noveleta, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, conspiring, confederating and mutually helping and aiding one another, did, then and there, wilfully, unlawfully and feloniously, have possession, control and custody of 299.5 grams of Methamphetamine Hydrochloride commonly known as "shabu", a regulated drug, which is prohibited by law, in violation of the provisions of R.A 6425, thereby causing damage and prejudice to the public interest.

CONTRARY TO LAW.[2]

In Criminal Case No. 40-94, accused-appellant Danilo de Guzman was charged with violation of Section 1, PD 1866, in an information which reads as follows:

That on or about the 27th day of October 1992 at Villamar Beach Resort, Barangay San Rafael IV, Municipality of Noveleta, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did, then and there, wilfully, unlawfully and feloniously, have possession, control and custody of one (1) Pistol Caliber 7.65 Walther PPK with serial number 527353 and four (4) rounds of live ammunition, without first securing the necessary license and/or permit from competent authority to possess the same, in violation of the provisions of PD 1866, thereby causing damage and prejudice to the public interest.

CONTRARY TO LAW.[3]

Accused-appellant was arraigned on February 22, 1993 with the assistance of his counsel de officio. He pleaded "not guilty" to both charges.

During the trial, the prosecution presented as its first witness, SPO1 Arnel Cuevas, a police officer stationed at the Noveleta Police Station. He testified that prior to the arrest of accused-appellant, Danilo de Guzman, the Police Chief Inspector of the Cavite Philippine National Police Command issued an Order of Battle listing the names of the suspected drug pushers in Cavite City.[4] Included therein was the name of accused-appellant. In response to the said directive, the Noveleta Police Station assigned SPO1 Arnel Cuevas to conduct surveillance at the Villamar Beach Resort.[5]

On October 18, 1992, SPO1 Arnel Cuevas spotted Danilo de Guzman at the Villamar Beach Resort, but the latter stayed for only thirty (30) minutes.[6] Subsequently, he learned that De Guzman was engaged in a drug sale that day and reported the same to headquarters.[7] Pursuant to his report, the Chief of Intelligence of their station, SPO2 Rowell Tendero, instructed him to continue his surveillance of said beach resort with the hope of catching Danilo de Guzman.[8]

On October 26, 1992, at around 9:00 p.m., Danilo de Guzman returned to Villamar Beach Resort with companion Edsel Martin. They rented one of the resort cottages. Fifteen (15) minutes later, SPO1 Cuevas climbed the ladder which he perched on the concrete wall of the cottage. He, then, peeped through the window of the cottage and saw Danilo and Edsel seated face to face while using shabu.[9] He also saw on top of the table three (3) plastic bags of shabu, a weighing scale and other drug related paraphernalia.

SPO1 Cuevas hurriedly descended the ladder and hailed a tricycle and instructed the driver to inform SPO2 Tendero to proceed to Villamar Beach Resort immediately.[10] Shortly, SPO2 Tendero, along with other police officers, arrived at the beach resort. However, instead of rushing to the cottage of De Guzman and Martin, the police officers decided to wait for them to come out of the cottage.[11] SPO1 Cuevas explained that they did this so as not to forewarn the two of their presence. Otherwise, the two might simply flush the shabu down the toilet bowl and destroy the evidence.[12] The police officers waited the whole night for De Guzman and Martin to come out of the cottage.

Finally, De Guzman came out at around 7:40 a.m. the next day. SPO2 Tendero nabbed him upon seeing that his waist was bulging with a gun. While Police Officer Vedar held De Guzman, SPO2 Tendero went up the cottage to check on Martin.[13] SPO2 Alfaro and SPO3 Benavise, accompanied by a chambermaid and a boy from the resort, also went up with him.[14] Inside the cottage, the same paraphernalia which the witness saw the night before were found, namely, three plastic bags of shabu, a plastic scoop, a burner, a lighter, several empty rolled aluminum foils, three (3) pieces of tooter, rubber band, several pieces of paper, a black clutch bag containing a disposable lighter, two (2) forceps, a pair of scissors, a knife and a key holder with a knife, filter, sandpaper, electric plug, pocket electronic weighing scale.[15]

The offenders were brought to the police station for questioning and detention.[16] The police officers were without warrants of arrest or search warrants at the time of the arrests and seizure of evidence.[17] As the operation was conducted largely during nighttime, the police officers were unable to secure the necessary warrants for fear of leaving the place of surveillance.[18]

Subsequent forensic examination by Felicisima Francisco of the National Bureau of Investigation showed that the substance seized was indeed methamphetamine hydrochloride or shabu weighing 299.5 grams.[19]

SPO1 Crisostilado Alfaro took the witness stand as the prosecution's second witness and testified that he was assigned at the police station of Noveleta, particularly in the Intelligence and Operation Division. On the evening of October 26, 1992, he went to the Villamar Beach Resort in San Rafael IV, Noveleta, Cavite along with Police Officer Tendero, SPO1 Vedar, SPO2 Encarnacion, SPO2 Lontoc and SPO3 Benavise upon the instructions of Police Officer Cuevas as relayed by a tricycle driver.[20]

Upon arrival at the resort, Police Officers Cuevas and Tendero conferred with each other. Then, Tendero spoke to the caretaker of the resort and instructed him not to panic and to act normally.[21] The police officers, then, carefully hid their vehicles so as not to alarm the offenders of their presence in the area.[22]

For a long time, the police officers watched the cottage. They were anticipating the arrival of drug buyers as Danilo de Guzman was a suspected drug-pusher.[23] Night passed but still nobody came.

In the morning of October 27, Police Officer Tendero knocked at the offenders' cottage and informed them that their car had a flat tire. De Guzman, however, did not open the door; instead he answered him not to mind the flat tire.[24] Hence, Police Tendero coaxed the resort's chambermaid to knock at the perpetrators' cottage and inquire whether they were checking out of the resort.[25]

A few seconds after the chambermaid went down from the cottage, accused-appellant De Guzman followed. Police Officer Tendero, then grabbed him at the waist and instructed police officer Vedar to get the gun from the waist.[26]

Police Officer Tendero, then, went up the cottage with the witness closely following him. Upon entering the room, the witness saw shabu and drug paraphernalia on top of the table. Tendero, on the other hand, struggled with Edsel Martin who tried to grab a gun.[27] Police Officer Tendero took pictures of the items found inside the cottage and brought the same to the police station.

The prosecution's last witness was SPO2 Joselito Vedar. He recounted that on October 26, 1992, word from Police Officer Arnel Cuevas reached their office that Danilo de Guzman and a companion arrived at Villamar Beach Resort in separate cars. The two checked in at the resort and occupied Veranda A.[28] Police Officer then organized a team which shall proceed to the said resort.

Upon reaching the resort, Tendero talked with Cuevas. Tendero, thereafter, instructed the witness and his companions to conceal their vehicles and to hide themselves in strategic locations.[29] The team of police officers waited during the whole night for would-be buyers of De Guzman. Finally, at 8:00 a.m. the next day, Tendero went up the cottage and knocked at the offenders' door. He informed them that their vehicle had a flat tire. The occupants of the cottage, however, told him not to mind it.[30]

Tendero instructed Sheila, the resort chambermaid, to inquire from the occupants of the cottage whether they were checking out that day or whether they were staying for the night. When Sheila came down, he told Tendero that De Guzman was checking out that day. In a while, De Guzman, likewise, came down.[31]

Immediately, Tendero grabbed him and told the witness to get the gun from De Guzman. The gun was a 7.65 millimeter with four (4) live bullets and one (1) magazine.[32] As soon as the witness held De Guzman, Tendero rushed upstairs.[33] Police officers Alfaro, Benavise and Cuevas, along with the resort chambermaid and another worker, likewise went up the cottage. When the witness joined his companions in the cottage, he saw shabu and other drug paraphernalia.[34]

The police officers verified the ownership of the seized gun with the Firearm and Explosive Division of Camp Crame. The said office certified on November 5, 1992 that Danilo de Guzman y Perez of 817 Romualdo St., Caridad, Cavite City was not a licensed or registered firearm holder of any kind and caliber and that the pistol caliber 7.65 Walther PPK with serial number 527353 was not registered with it.[35]

Accused-appellant Danilo de Guzman claimed that on October 26, 1992, he met his childhood friend Edsel Martin at the gasoline station so they decided to dine at the Rojona Restaurant.[36] Unfortunately, the car he was driving broke down[37]so Martin towed De Guzman's vehicle with his car. Martin led them to Villamar Beach Resort

where they spent the night for it was dangerous to stay in the streets.[38]

At around 8:00 or 9:00 a.m. the next day, a person knocked at the door informing him that his car had a flat tire[39] He then went down to check on the alleged flat tire and proceeded to look for a mechanic.[40] Suddenly, several armed men in civilian clothes poked their guns at him and frisked him.[41] These men took money from his wallet[42]and took pictures of Martin.[43] They also searched him and Martin's person as well as Martin's car where they found a small gun with a magazine.[44] They brought his car and Martin's car to the police station.

On August 22, 1994, the trial court rendered a decision the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court finds the accused Danilo de Guzman y Perez guilty beyond reasonable doubt of Violation of Sec. 16, Art. III, Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and he is hereby sentenced to undergo life imprisonment and to pay a fine of P50,000.00, without subsidiary imprisonment in case of insolvency and in Crim. Case No. 40-94 for Viol. of Sec. 1, PD 1866 (Unlawful Possession of Firearm and Ammunition), he is hereby sentenced to undergo imprisonment of Twelve (12) years and One (1) day of reclusion temporal, as minimum to twenty (20) years of reclusion temporal, as maximum and to pay the costs in both instances.

The 299.5 grams of Methamphetamine Hydrochloride commonly known as "shabu" is hereby ordered confiscated in favor of the government.

SO ORDERED.[45]

The trial court based its conviction of accused-appellant on the testimonies of the prosecution witnesses, particularly on their unequivocal statements that accused-appellant admitted to the ownership of the drug, the paraphernalia and the gun and ammunition.

The trial court refused to give credence to accused-appellant's defense. It considered accused-appellant's acts of proceeding to a resort to spend the night incredible as he could have had his car towed directly to his residence which is also within the city. Furthermore, the beach resort was still a kilometer away from the place where accused-appellant's car supposedly broke down.

Accused-appellant assails his conviction and raised the following errors:[46]

I.

THE HONORABLE REGIONAL TRIAL COURT OF CAVITE CITY, WITH ALL DUE RESPECTS (sic), COMMITTED A PATENT REVERSIBLE ERROR IN RENDERING A JUDGMENT FOR CONVICTION AGAINST HEREIN ACCUSED;

II.

THE HONORABLE REGIONAL TRIAL COURT OF CAVITE CITY, WITH ALL DUE RESPECTS (sic), COMMITTED A PATENT REVERSIBLE ERROR IN NOT FINDING THAT THE EVIDENCE SO FAR PRESENTED WAS OBTAINED IN AN ILLEGAL SEARCH;

III.

THE HONORABLE REGIONAL TRIAL COURT OF CAVITE CITY, WITH ALL DUE RESPECTS (sic), COMMITTED A PATENT REVERSIBLE ERROR IN REJECTING THE VERSION OF THE DEFENSE;

IV.

THE HONORABLE REGIONAL TRIAL COURT OF CAVITE CITY, WITH ALL DUE RESPECTS (sic), COMMITTED AN OBVIOUS JURISDICTIONAL ABERRATION AT ARRIVING AT THE IMPOSABLE

PENALTY.

Accused-appellant faults the prosecution for its failure to introduce the independent testimonies of the workers at the resort, which amounts to a willful suppression of evidence and gives rise to the presumption that the same is adverse to the prosecution if produced, pursuant to Rule 131, Section 3(e) of the Revised Rules of Court.

The contention is without merit.

The prosecution has the prerogative to present the witnesses it needs to meet the quantum of evidence necessary to merit the conviction of the accused.[47] Hence, the prosecution cannot be faulted for presenting only the three (3) police officers involved in the arrest of accused-appellant. As these officers enjoy a presumption of regularity in the performance of official duty,[48] it was likewise error for the defense to question their testimonies solely on the ground that they were the very officers who conducted the arrest. Besides, the trial court had sufficient opportunity to observe the demeanor of these witnesses and to determine the truth or falsity of their testimonies. We see no reason, therefore, to overturn the findings of facts of the lower court.

Accused-appellant would have this Court believe that his arrest and the search conducted incidental to his arrest were illegal as the surrounding circumstances of the arrest were not within the purview of the allowable warrantless arrests under Rule 113, Section 5 of the Revised Rules of Court.

A close scrutiny of the records reveals that the police officers' manner of conducting the accused-appellant's arrest was not tainted with any constitutional infirmity. Despite word from their fellow officer, SPO1 Cuevas, that he saw accused-appellant sniff "shabu", they resisted the first impulse to storm the rented cottage which could have caused them to seriously disregard constitutional safeguards. Instead, the police officers waited for the needed opening to validly arrest the accused. To their minds, it would be the arrival of drug buyers. As the situation would have it, the arrest was necessitated by the presence of accused-appellant with a gun obviously tucked in his pants. SPO1 Cuevas, on cross-examination, testified as follows:

Q:

You said you saw them sniffing shabu that night of October 26, 1992. Now, how come being a police officer that you did not take any action right there and then when as a matter of fact you have discovered that accused and his companion were actually committing the alleged crime?

A: The door was closed and we could not enter.

Q:

As a matter of fact, the day after when you and your police companions entered the Veranda A after allegedly having frisked Mr. de Guzman, is it not true that the door was also closed?

A:

The day when Danilo de Guzman went out of Veranda A and we saw that a gun was bulging on his waist, we readily grabbed him and my companion went upstairs and the door was open.[49] (Emphasis added)

That a gun was tucked in his waist is very obvious to the arresting officers as the accused-appellant was wearing tight-fitting clothes.

Q:

Mr. Witness, you were then wearing T-shirt which fit your body, is that correct?

A:

I could not remember because I usually wear fitted clothes.

Q:

I am showing to you picture which include you in T-shirt which is tuck-in, will you admit Mr. Witness that if a gun is in your waist because you were wearing a T-shirt fitting in your body, that said gun will be bulging?

A:

Yes, Ma'am.[50]

Rule 113, Section 5 (a) of the Rules of Court provides that:

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; x x x.

In this jurisdiction, the mere possession of a firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition is a criminal offense under PD No. 1866.

Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearm or Ammunition. - The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

In the case of *People v. Quijada*,[51] it was held that the gravamen of the offense of violation of P.D. 1866 is the possession of a firearm without the necessary permit and/or license. The crime is immediately consummated upon mere possession of firearm devoid of legal authority, since it is assumed that the same is possessed with *animus possidendi*. [52]

Similarly, in the case at bar, accused-appellant was caught by the police officers in *flagrante delicto* while carrying a firearm without the necessary permit or license. Clearly, it was in violation of P.D. No. 1866, Section 1, at the time of the arrest.

Necessarily, the search conducted immediately after the accused-appellant's arrest was valid. Rule 126, Section 12 of the Rules of Court provides:

Sec. 12. Search incident to lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.

The legal parameters of this rule limit its application to instances when the search is made contemporaneous to the arrest and within a permissible area of search.

In this case, it was impossible for the police officers to obtain a search warrant as they were merely on surveillance, and to do so might abort any possible illegal activity that was taking place. Any attempt at leaving the place may cause them to lose sight of the accused-appellant altogether. Second, their presence in the area was not planned as they acted purely on a tip given by a fellow officer. Further, there was not enough opportunity to obtain a warrant of arrest or a search warrant as the surveillance was conducted from 10:00 o'clock in the evening up to 7:00 o'clock in the morning.

The search conducted immediately after accused-appellant was apprehended was made more necessary by the

presence of his companion inside the cottage which was just a few steps away from where he stood. The presence of accused-appellant's companion posed a danger to the police officers' life and limb, hence, it became necessary for them to locate him. Upon entry at the rented cottage, the police officers saw the shabu and drug-related paraphernalia scattered on top of the table.

Jurisprudence allows the seizure of personalty despite absence of warrant under the "plain view doctrine," so long as the area of search is within the immediate control of the arrested person and that the object of the search was open to the eye, as in the instant case.

Furthermore, accused-appellant in this case is estopped from questioning the legality of his arrest upon his failure to move for quashal of the information against him prior to his arraignment and entry of plea.[53] Any irregularity was therefore cured upon their voluntary submission to the trial court's jurisdiction.[54]

As to the illegal possession of drugs, this Court in *People v. Khor*[55] ruled that the elements of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Considering that the circumstances herein satisfy the elements of illegal possession of drugs under Section 16, Article III of RA No. 6425, the trial court was correct in convicting accused appellant.

Finally, we resolve the issue on the propriety of the penalty imposed by the trial court. The trial court sentenced the accused-appellant to life imprisonment for violation of Section 16, Article III, RA No. 6425. The penalty prescribed for this violation committed in 1992 is as follows:

Sec. 16. Possession or Use of Regulated Drugs. - The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription.

Applying the Indeterminate Sentence Law in Criminal Case No. 39-94, accused-appellant should be sentenced to an indeterminate sentence, the maximum of which shall not exceed the maximum fixed by the law and the minimum shall not be less than the minimum term prescribed by the same, i.e., six years (6) and one (1) day to twelve (12) years.[56]

On the other hand, in Criminal Case No. 40-94, the penalty prescribed for illegal possession of firearm at the time of commission of the offense in this case was reclusion temporal in its maximum period to reclusion perpetua, the same to be imposed in its medium period in the absence of aggravating or mitigating circumstances. The penalty next lower in degree is prision mayor in its maximum period to reclusion temporal in its medium period. The trial court did not err in imposing on accused-appellant the indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum.

WHEREFORE, based on the foregoing, the decision of the Regional Trial Court, Cavite City, Branch 17, in Criminal Case No. 39-94, is **AFFIRMED** with the **MODIFICATION** that accused-appellant Danilo de Guzman y Perez is sentenced to suffer imprisonment for six (6) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of Twelve Thousand Pesos (P12,000.00).

In Criminal Case No. 40-94, the decision of the trial court finding accused-appellant guilty beyond reasonable doubt of the crime of illegal possession of firearm and ammunition, and sentencing him to suffer the indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum, is **AFFIRMED** in toto.

SO ORDERED.

Davide, Jr., C.J. Puno, Kapunan, and Pardo, JJ., concur.

[1] Criminal Cases Nos. 39-94 and 40-94; Rollo, pp. 21-30.

[2] Rollo, pp. 11-12.

[3] Rollo, pp. 13-14.

[4] TSN, March 15, 1994, p. 7.

[5] Ibid., pp. 8-9.

[6] Ibid., pp. 9-10.

[7] Ibid., p. 10.

[8] Ibid., pp. 10-11.

[9] Ibid., p. 17.

[10] Ibid., p. 19.

[11] Ibid., p. 20.

[12] Ibid.

[13] Ibid., p. 21.

[14] Ibid., p. 23.

[15] Ibid., pp. 25-28.

[16] Ibid., p. 28.

[17] Ibid., p. 29.

[18] Ibid., p. 30.

[19] TSN, March 22, 1994, pp. 2-4.; Records, p. 118.

[20] Ibid., pp. 15-16.

[21] Ibid., p. 16.

[22] Ibid., p. 17.

[23] Ibid., p. 18.

[24] Ibid., pp. 19-20.

[25] Ibid., p. 21.

[26] Ibid.

[27] Ibid., pp. 22-23.

[28] TSN, March 29, 1994, p. 6.

- [29] Ibid., p. 7.
- [30] Ibid., p. 9.
- [31] Ibid., pp. 9-10.
- [32] Ibid., p. 11.
- [33] Ibid., p. 10.
- [34] Ibid., pp. 16-17.
- [35] Ibid., pp. 18-19; Records, p. 25.
- [36] TSN, June 21, 1994, p. 6.
- [37] Ibid., p. 7.
- [38] Ibid., p. 10.
- [39] Ibid., p. 12.
- [40] Ibid., p. 13.
- [41] Ibid., p. 14.
- [42] Ibid., pp. 15-16.
- [43] Ibid., p. 18.
- [44] Ibid., p. 19.
- [45] Records, p. 30.
- [46] Records, p. 70.
- [47] *People v. Navaja*, 220 SCRA 632 (1993); *People v. Alcartado*, 261 SCRA 291 (1996).
- [48] *Iglesia ni Cristo (INC) v. CA*, 259 SCRA 529 (1996).
- [49] TSN, June 29, 1994, p. 9.
- [50] TSN, July 21, 1994, pp. 38-39.

[51] 259 SCRA 191 (1996).

- [52] *People v. Macagaling*, 237 SCRA 299 (1994).
- [53] *People v. Mahusay*, 282 SCRA 80, at 87 (1997).
- [54] Ibid.

[55] 307 SCRA 295 (1999).

- [56] R.A. 4103, Section 1.

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