

SECOND DIVISION

[G.R. No. 229380, June 06, 2018]

LENIZA REYES Y CAPISTRANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*^[1] filed by petitioner Leniza Reyes y Capistrano (Reyes) assailing the Decision^[2] dated May 20, 2016 and the Resolution^[3] dated January 11, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 36821, which affirmed the Decision^[4] dated June 16, 2014 of the Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) in Crim. Case No. 12-0627 finding Reyes guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,^[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information^[6] filed before the RTC charging Reyes with Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165, the accusatory portion of which states:

That on or about the 6th day of [November] 2012 in the Municipality of Cardona, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did, then and there willfully, unlawfully and knowingly possess and have in her custody and control 0.04 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which substance was found positive to the test for Methamphetamine Hydrochloride, which is a dangerous drug, in violation of the above cited law.

CONTRARY TO LAW.^[7]

The prosecution alleged that at around eight (8) o'clock in the evening of November 6, 2012, a group of police officers from Cardona, Rizal, including Police Officer 1 (PO1) Jefferson Monteras (PO1 Monteras), was patrolling the diversion road of Barangay Looc, Cardona, Rizal when two (2) teenagers approached and informed them that a woman with long hair and a dragon tattoo on her left arm had just

bought *shabu* in Barangay Mambog. After a few minutes, a woman, later identified to be Reyes, who matched the said description and smelled like liquor passed by the police officers. The latter asked if she bought *shabu* and ordered her to bring it out. Reyes answered, "*Di ba bawal kayong magkapkap ng babae?*" and at that point, turned her back, pulled something out from her breast area and held a small plastic sachet on her right hand.^[8] PO1 Monteras immediately confiscated the sachet and brought it to the police station where he marked it with "LRC-1." Thereat, he prepared the necessary documents, conducted the inventory and photography before Barangay Captain Manolito Angeles.^[9] Thereafter, PO1 Monteras proceeded to the Rizal Provincial Crime Laboratory and turned over the seized item for examination to Police Senior Inspector Beaune Villaraza (PSI Villaraza), who confirmed^[10] that the substance inside the sachet tested positive for 0.04 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.^[11]

For her part, Reyes denied the charges, claiming that the incident happened on November 5, 2012 and not November 6. On said date, she came from a drinking spree and was about to board a jeepney, when a man approached and asked if she knew a certain person. After answering in the negative, she rode the jeepney until it was blocked by two (2) civilian men in motorcycles whom she identified to be one PO1 Dimacali. The latter ordered her to alight and bring out the *shabu* in her possession which she denied having. She was then brought to the police station where the police officers extorted from her the amount of P35,000.00 in exchange for her freedom. But since she failed to give the money, the police officers took her to Taytay for inquest proceedings.^[12]

The RTC Ruling

In a Decision^[13] dated June 16, 2014, the RTC found Reyes guilty beyond reasonable doubt of illegal possession of 0.11 gram of *shabu* defined and penalized under Section 11, Article II of RA 9165. Accordingly, she was sentenced to suffer the penalty of imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine of P300,000.00, with an order for her immediate arrest.^[14]

The RTC ruled that the prosecution was able to prove that Reyes was validly arrested and thereupon, found to be in possession of *shabu*, which she voluntarily surrendered to the police officers upon her arrest. Likewise, it observed that the chain of custody of the seized item was sufficiently established through the testimony of PO1 Monteras, which was not ill-motivated.^[15]

Aggrieved, Reyes appealed^[16] to the CA.

The CA Ruling

In a Decision^[17] dated May 20, 2016, the CA affirmed Reyes's conviction for the crime charged.^[18] It held that the search made on Reyes's person yielding the sachet of *shabu* was valid as she was caught *in flagrante delicto* in its possession

and was legally arrested on account thereof.^[19] The CA likewise found substantial compliance with the chain of custody rule and that the integrity and evidentiary value of the confiscated item were properly preserved.^[20]

However, it corrected the quantity of *shabu* stated in the RTC's dispositive portion to 0.04 gram in order to conform with the findings of PSI Villaraza and accordingly, modified the penalty imposed to twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.^[21]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Reyes's conviction for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 should be upheld.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.^[22] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."^[23]

"Section 2,^[24] Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure [become] 'unreasonable' within the meaning of said constitutional provision.** To protect the people from unreasonable searches and seizures, Section 3 (2),^[25] Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree."^[26]

One of the recognized exceptions to the need [of] a warrant before a search may be [e]ffected is a search incidental to a lawful arrest.^[27] **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed.**^[28]

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure

should – as a general rule – be complied with:

Section 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.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

The aforementioned provision identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (a) an arrest of a suspect *in flagrante delicto*; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.

[29]

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (a) 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 (b) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.^[30]

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. [The scenario under] Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure [contemplates that] the officer himself witnesses the crime; while in Section 5 (b) of the same, [the officer] knows for a fact that a crime has just been committed."^[31]

Essentially, the validity of this warrantless arrest requires compliance with the overt act test, showing that "**the accused x x x exhibit an overt act within the view of the police officers suggesting that [she] was in possession of illegal**

drugs at the time [she] was apprehended."^[32] Absent any overt act showing the commission of a crime, the warrantless arrest is rendered invalid, as in a case where a person was apprehended for merely carrying a bag and traveling aboard a jeepney without acting suspiciously.^[33] Similarly, in *People v. Racho*,^[34] a search based solely on a tip describing one of the passengers of a bus was declared illegal, since at the time of apprehension, the said accused was not "committing a crime in the presence of the police officers," nor did he commit a crime or was about to commit one.^[35]

In this case, Reyes argues that no valid warrantless arrest took place as she did not do anything as to rouse suspicion in the minds of the arresting officers that she had just committed, was committing, or was about to commit a crime when she was just passing by.^[36] During cross-examination, PO1 Monteras revealed:

[Atty. Cynthia D. Iremedio]: Mister Witness these two youngsters, **the only information that they gave you is that there is a woman with a tattoo?**

[PO1 Monteras]: Yes ma'am.

Q: No further description regarding this woman was given to you?

A: Long haired and with tattoo on the left arm ma'am.

Q: And no description of the tattoo on her left hand?

A: None ma'am.

COURT: What is the tattoo on her left arm?

A: I think it was a Dragon sir.

Q: These two persons did not mention to you the name of the accused?

A: Yes ma'am.

Q: Aside from those description, you will agree with me that this long hair and a dragon tattoo can be possessed by any other person aside from the accused?

A: Yes ma'am.

x x x x

Q: Now Mister Witness you did not conduct further investigation on these two persons?

A: Not anymore ma'am.

x x x x