

## TWENTIETH DIVISION

[ CA-G.R. CR NO. 01415, February 19, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERIC PRONDA Y PALOMERO, ACCUSED-APPELLANT,**

### D E C I S I O N

**LAGURA-YAP, J.:**

Eric Pronda Y Palomero (accused-appellant) appeals the Decision<sup>[1]</sup> dated February 24, 2010 rendered by the Regional Trial Court, Branch 47, Bacolod City in Criminal Case No. 04- 26357. The accused-appellant is convicted of Violation of Section 11, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act.

The dispositive portion<sup>[2]</sup> of the decision, reads:

WHEREFORE, finding accused Eric Pronda y Palomero **guilty** beyond reasonable doubt of Violation of Section 11 (3), Article II of R.A. 9165 (Possession of Dangerous Drugs), as charged. judgment is hereby rendered sentencing him to suffer and (sic) indeterminate prison term of Twelve (12) Years and One (1) day, as minimum, to Fifteen (15) Years, as maximum, and to pay a fine of Three Hundred Thousand (P300,000.00) Pesos. He is to further suffer the accessory penalty provided by law. Costs against accused.

The one (1) sachet of shabu (Exh. "B-5-A" - 0.03 gram) subject matter of this case being a dangerous drug, the same is hereby ordered confiscated and/or forfeited in favor of the government and to be forthwith delivered/turned over to the Philippine Drug Enforcement Agency (PDEA) provincial office for immediate destruction or disposition in accordance with law.

Accordingly, pursuant to Section 22, Rule 114 of the Revised Rules of Criminal Procedure, the bail bond for P120,000.00 put up by Plaridel Surety and Insurance Company under PSIC Bond No. 32680 for the provisional liberty of the accused is also hereby ordered canceled and rendered of no longer any force and effect.

Consequently, the immediate arrest of herein accused is likewise hereby further ordered for his commitment to the national penitentiary.

The Information<sup>[3]</sup> filed on May 19, 2004, against accused Eric Pronda y Palomero under Criminal Case No. 04- 26357, alleges:

That on or about the 16th day of May 2004, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drugs,

did, then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic packet containing methylamphetamine hydrochloride or shabu weighing 0.03 gram, in violation of the aforementioned law.

Acts contrary to law.

The accused entered a "NOT GUILTY" plea during the arraignment<sup>[4]</sup> on June 9, 2004.

The evidence for the prosecution is summarized as follows:

PO1 Jonas Leroy Redoblo, averred that there was a tip from an informant that there were many drug personalities roaming around Purok Sigay, Brgy. 2, Bacolod City. A group of PP-2 police officers headed by SPO2 Freddie Natividad, with members, PO1 Kenneth Ebron, PO1 Henry Gaburno, PO1 Jackson Genolos and PO1 Redoblo conducted a "stake out" operation in the area at around 3:45 P.M., on May 16, 2004. While at the foot-walk, PO1 Redoblo spied on a man standing in front of a sari-sari store holding a sachet of suspected shabu between his right thumb and index finger, with  $\frac{3}{4}$  of an inch protruding. The person was apparently unaware of the presence of the camouflaged police officer. PO1 Redoblo immediately drew near the person but the man tried to enter the store. The officer grabbed the man's hand to ascertain the sachet held by the person. PO1 Redoblo found out that the plastic sachet contained white crystalline substance of suspected shabu. PO1 Redoblo placed under arrest the person later identified as the accused Eric Pronda y Palomero. The latter was informed of the nature of his arrest and his right to remain silent and to counsel.

Evidence for the defense is summarized hereunder:

Accused Eric Pronda y Palomero is a resident of Patricia Home Subdivision and was tricycle driver. He testified that on May 16, 2004 at around 3:45 in the afternoon, he was at Purok Sigay to collect a debt due him from a certain Jerry Latoza, a co-laborer and merchandiser. Jerry was out of the house according to his wife. So the accused left a message and proceeded to Michelle's Eatery. He traversed the foot-walk heading to the main road where a commotion was ensuing. When the accused reached the main road, he was held by two persons who inserted their hands in his pocket. They also got his key and P50.00. The accused complained about the search but he was told to just go with them. He was forced to board an owner-type jeepney. There were three of them inside the vehicle. The accused was brought to a house in front of the Brgy. Hall and when he complained again, he was told to wait. After the policemen arrived, the three were brought to BAC-Up 2. The accused was ordered to keep his peace when he was placed inside the cell. He denied possessing the one plastic sachet of shabu. He did not file a complaint against the police officer for his arrest.

After the trial, the RTC promulgated<sup>[5]</sup> its judgment of conviction against the accused. Aggrieved, he filed a Notice of Appeal<sup>[6]</sup> dated February 26, 2010. The accused-appellant filed a Motion to Post Bail Pending Appeal on February 28, 2010.<sup>[7]</sup> The Motion to Post Bail Pending Appeal was approved in the Order<sup>[8]</sup> dated

March 12, 2010.

## **ASSIGNMENT OF ERRORS**

### **I**

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE COMMISSION OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.

### **II**

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY.

The accused-appellant argues that to constitute a valid in flagrante arrest two requisites must concur: 1. the person to be arrested must execute an overt act indicating that he had just committed, is actually committing, or is attempting commit a crime; 2. such overt act is done in the presence or within the view of the arresting officer. From the testimony of the arresting officer, there was nothing suspicious on the looks, or from the accused-appellant's outward appearance, neither was there anything unusual from the actuations of the accused-appellant which could arouse a police officer's attention. Mere holding of a plastic sachet in front of a sari-sari store would not in anyway be called an offense. Therefore, had it not due to the forcible taking of the sachet from the alleged possession of the accused-appellant, PO1 Redoblo would not know that it contained a white crystalline substance. Hence, the arrest of the accused-appellant is an infringement of his constitutional right.

The accused-appellant claims that the seizure of the plastic sachet of shabu does not fall within the purview of the "plain view" doctrine. An object is in "plain view" if the object is plainly exposed to sight. Where the object seized is inside a closed package, the object is not in plain view and therefore, cannot be seized without a warrant. At first glance, PO1 Redoblo had no idea of the contents of the sachet allegedly held by accused-appellant. He (Redoblo) was not certain what was inside the small pack clipped between the thumb and index finger of the accused-appellant. He grabbed the plastic sachet from the accused-appellant to take a good look at the plastic sachet. PO1 Redoblo disclosed in his testimony during the cross-examination that he needed first to grab the thing which the latter held to be able to know what was inside of it.

The accused-appellant ratiocinates that the presumption of regularity in the performance of official function does not apply in this case. PO1 Redoblo admitted that he was staying in a safe house located at Purok Sigay, Barangay 2 of Bacolod City for almost a month. Yet, PO1 Redoblo does not know the name of the owner of the sari-sari store where the team found the accused-appellant. Neither could he (Redoblo) recall the surrounding area and the people present during the arrest. He could not read the letters he affixed on the plastic sachet he seized from the accused-appellant.

The accused-appellant also posits the view that the prosecution failed to establish the chain of custody rule. From the testimony of the PO1 Redoblo, there was no showing of who was in possession of the plastic sachet from the sari-sari store to the Police Precinct 2. The identity of the station commander to whom the custody of the seized plastic sachet was turned over was not duly established. The specimen was kept the whole night of May 16, 2004 at the Police Precinct 2. No evidence was presented to show who had access to the evidence cabinet where the specimen was kept overnight. There was also no disclosure as to the identity of the person who had the custody and safekeeping of the seized specimen, after it was chemically analyzed pending its presentation in court.

Given the procedural lapses, serious uncertainty hangs over the identification of the seized shabu that the prosecution introduced as its evidence. In effect, the prosecution failed to prove the elements of the crime charged.

The Solicitor General in his Appellee's Brief counter argues that on the contrary the prosecution was able to establish the elements of illegal possession of drugs. PO1 Redoblo positively identified the person he saw holding a small transparent plastic sachet. He narrated how during the surveillance, he inadvertently saw accused-appellant holding a plastic sachet that he suspected to be containing prohibited drugs. The plastic sachet recovered from the accused-appellant tested positive for shabu.

According to the Solicitor General, courts generally view the defense of denial with disfavor due to the facility with which the accused can concoct it to suit his defense. Thus, the accused-appellant's denial must fail in the light of the positive identification and declarations made by the prosecution witness. PO1 Redoblo testified in a straightforward and categorical manner regarding the identity of the accused-appellant.

The Solicitor General avers that the records do not show any objection interposed by the accused-appellant as to the irregularity of his arrest. In *People v. Alunday*,<sup>[9]</sup> the Supreme Court ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before the arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived. In this case, the accused-appellant was duly arraigned, entered a plea of not guilty and actively participated during the trial. Thus, he is deemed to have waived any perceived defect in his arrest and actively submitted himself to the jurisdiction of the court trying his case.

Nevertheless, the warrantless arrest of the accused-appellant was effected under Section 5(a) of the Rules of Court. Redoblo and the other policemen were in the area because of reports that illegal drugs were being sold there. While doing so, Redoblo saw accused-appellant holding a piece of plastic sachet. On suspicion that the sachet contains shabu, Redoblo approached the accused-appellant but the latter immediately tried to enter the store. Redoblo grabbed the hands of the accused-appellant to ascertain the sachet held by the accused-appellant. Then and there, the accused-appellant was apprehended and brought to the police station. Under these circumstances there is no doubt that accused-appellant was arrested *in flagrante delicto* as he was then committing a crime within the view of the arresting team, in

violation of the Comprehensive Dangerous Drugs Act.

The Solicitor General says that there is no merit to the contention that the seizure of the plastic sachet does not fall within the purview of the plain view doctrine. All the requirements for a lawful search and seizure are present in this case. The police officers had prior justification to be at accused-appellant's location, as they were engaged in a stake-out operation. In the course of Redoblo's operation he inadvertently saw a small plastic sachet allegedly containing a prohibited drug in the hands of the accused-appellant.

Finally, the Solicitor General contends that the prosecution was able to establish the *corpus delicti* of the case. The station commander to whom the custody of the plastic sachet was turned over, was positively identified by PO1 Redoblo. The records would also show that Guinanao had the actual custody of the specimen after it was subjected to laboratory examination. Moreover, the integrity of the evidence is presumed to be preserved, unless there is showing of bad faith, ill will, or proof that the evidence has been tampered with. In this case, the accused-appellant bears the burden to show that the evidence has been tampered with. Failing to discharge such burden, there can be no doubt that the drugs seized from the accused-appellant were the same ones examined in the crime laboratory.

### **THE COURT'S RULING**

The Court shall resolve contemporaneously the assigned errors because they are interrelated to each other.

After a careful examination of the records and evidence on hand, the Court finds and that a reversal of the judgment under review is in order.

To determine the admissibility of the seized drugs in evidence, it is indispensable to ascertain whether or not the search which yielded the alleged contraband was lawful. In the instant case, We have scoured the records of the case and We find that the warrantless arrest conducted upon accused-appellant was not in accordance with law. Hence, the illegal drugs confiscated from accused-appellant cannot be admitted in evidence against accused-appellant because it was seized during a warrantless arrest which was not lawful.

Section 5, Rule 113 of the Revised Rules of Court is the basic repository of valid warrantless arrests.

"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;**

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In *in flagrante delicto* arrests, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Emphasis should be laid on the fact that the law