

## SPECIAL SECOND DIVISION

[ G.R. No. 227868, January 20, 2021 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELY  
POLICARPIO Y NATIVIDAD ALIAS "DAGUL," ACCUSED-  
APPELLANT.**

### R E S O L U T I O N

**PERALTA, C.J.:**

This resolves the Motion for Reconsideration<sup>[1]</sup> of the April 5, 2017 Resolution<sup>[2]</sup> of the Court filed by accused-appellant Ely Policarpio y Natividad (*Policarpio*).

#### ***The Facts***

Policarpio was indicted for Violation of Section 261 (q) of Batas Pambansa Blg. 881 or the *Omnibus Election Code of the Philippines*, for possession of a .45 caliber pistol without authority from the Commission on Election during the election period (*COMELEC Gun Ban*). The case was docketed before the Regional Trial Court, Branch 35, Santiago City, Isabela (*RTC*) as Criminal Case No. 35-5585. Policarpio was also charged with Violation of Sections 11 and 12, Article II of Republic Act No. 9165 (*R.A. No. 9165*), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, for unlawful possession of 21.07 grams of *shabu* and illegal possession of drug paraphernalia, which cases were docketed before the RTC as Criminal Case Nos. 35-5586 and 35-5587, respectively.

When arraigned, Policarpio pleaded not guilty to all the three charges.<sup>[3]</sup> After pre-trial was terminated, a joint trial on the merits followed.

#### ***Version of the Prosecution***

To substantiate its charges against Policarpio, the prosecution presented Intelligence Officer 3 Dexter Asayco (*IO3 Asayco*) of the Philippine Drug Enforcement Agency (*PDEA*), PDEA Agent Seymoure Darius Sanchez (*Agent Sanchez*), Barangay Chairman Glesie L. Tangonan (*Barangay Chairman Tangonan*) and Forensic Chemical Officer Roda Agcaoili (*Forensic Chemist Agcaoili*) of the Philippine National Police Crime Laboratory, Tuguegarao City, as its witnesses.

IO3 Asayco testified that he was a member of the PDEA team that implemented Search Warrant No. 0085 at the house of Policarpio located at No. 29 Purok 4, *Barangay* Malvar, Santiago City on April 12, 2007 at about 12 o'clock noon. The PDEA agents knocked on the door of Policarpio's house, and when Policarpio came out, their team leader, Police Senior Inspector Jaime De Vera (*PSI De Vera*) read to him the contents of the search warrant and gave him a copy thereof. The search of the house was conducted by him and agent Sanchez in the presence of accused-appellant's mother, Perla Policarpio, *Barangay* Chairman Tangonan and *Barangay*

Kagawad Ohmar Zodiac Calimag. Policarpio was outside the house when the search was being conducted. In the process of implementing the search warrant, they confiscated nine (9) heat-sealed transparent plastic sachets containing white crystalline substance suspected to be methamphetamine hydrochloride or *shabu*, eleven (11) deposit slips and cash in the total amount of P17,700.00, which were all found inside a blue clutch bag; several pieces of drug paraphernalia, which were found in between the dura box and the wall of the room; and one (1) .45 caliber Colt pistol bearing Serial No. 452857 with magazine and live ammunitions, found beneath the bed cushion. The confiscated items were marked with IO3 Asayco's and agent Sanchez' initials before turning them over to their Chief Investigator Danilo Natividad (*CI Natividad*). The marking was done at the room of Policarpio in the presence of said accused, his mother, the *barangay* officials, the media and CI Natividad. He placed his initials "DBA" as his marking on the seized items. Policarpio signed the confiscation receipts at the place of search in the presence of his mother, the media and the operating team. The other witnesses also affixed their signatures on the confiscation receipts. Policarpio was immediately arrested and apprised of his constitutional rights.<sup>[4]</sup>

Agent Sanchez corroborated the testimony of IO3 Asayco in its material points and added that he placed his initials "SDS" on the seized items. He clarified that Jay-R Policarpio alias *Dagul*, indicated in the search warrant as the name of the subject thereof, and Ely Policarpio are one and the same person. He recounted that their team leader, PSI De Vera, already knew the exact address of Policarpio even before the implementation of the search warrant. Also, the *barangay* officials pointed to them the house of Policarpio. He recalled that Policarpio did not show any form of resistance during the implementation of the search warrant against him, and gave no reaction when they showed him the items seized. After marking the confiscated items, he turned over the same to their Chief Investigator, SPO1 Natividad, in the presence of Policarpio and the *barangay* officials.<sup>[5]</sup>

When *Barangay* Chairman Tangonan was called to the witness stand, the prosecution and the defense entered into a stipulation that she was present during the inventory of the confiscated items and that she signed the confiscation receipt. Afterwhich, the trial court dispensed with her testimony.<sup>[6]</sup>

The testimony of Forensic Chemist Agcaoili was, likewise, dispensed with after the parties stipulated that: (1) the nine (9) plastic sachets containing white crystalline substance, subject matter in Criminal Case No. 35-5586 for illegal possession of *shabu*, were submitted to her for examination on April 12, 2007; (2) the nine (9) plastic sachets with white crystalline substance tested positive for the presence of methamphetamine hydrochloride or *shabu*; and (3) her findings were reflected in Chemistry Report No. D-20-2007.<sup>[7]</sup>

Thereafter, the prosecution rested its case and formally offered its documentary evidence, among which is Search Warrant No. 0085.

It appears that on April 11, 2007, Executive Judge Efren M. Cacatian of the RTC, Branch 35, of Santiago City, Isabela issued Search Warrant No. 0085,<sup>[8]</sup> on the strength of the testimonies of PSI De Vera of the PDEA and of a certain Fred Manabat. The search warrant reads:

TO ANY OFFICER OF THE LAW:

Greetings:

It appearing to the satisfaction of the Court after examining under oath the witnesses Fred Manabat and PSI Jaime De Vera that there is a probable cause to believe that Jay-R Policarpio @ Dagul of Purok 4, Malvar, Santiago City committed and that there are good and sufficient reasons to believe that the respondent has in possession and control the following items:

a.) Undetermined quantity of Methamphetamine Hydrochloride known as shabu;

b.) Several drug paraphernalia used in repacking shabu.

NOW THEREFORE, you are hereby commanded to make an immediate search at any time in the day of the house of the respondent stated above and forthwith seize and take possession of the above-described grams of methamphetamine hydrochloride known as shabu and drug paraphernalia, bring them before me to be dealt with as the law directs.

SO ORDERED.

### ***Version of the Defense***

Policarpio vehemently denied the charges against him. He narrated that on April 12, 2007 at 6 o'clock in the morning, he was awakened by knocks on the door of his house located at No. 29 Purok 4, *Barangay* Malvar, Santiago City. He claimed that he is a resident of said address since birth. When he opened the door, two (2) police officers pointed their guns at him. The police officers then ordered him, his wife and children to go out of the house. And thereafter, the police officers asked him if he is Junior Policarpio, to which query he answered in the negative because his name is Ely Policarpio. They asked him to sign a search warrant and then they entered his house. The contents of the search warrant were not explained to him. When the police officers were done searching his house, they showed him something, but he had no idea what it was and where it came from. After a while, *Barangay* Chairman Tangonan arrived and signed a document. Thereafter, he was brought to the police station and later on, to the court. He denied having signed a confiscation receipt. He alleged that her mother, Perla Policarpio, was not a resident of his house at the time the search was conducted.<sup>[9]</sup>

### ***The RTC Ruling***

On October 15, 2013, the RTC rendered a Joint Decision<sup>[10]</sup> finding Policarpio guilty of all the three charges, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused GUILTY beyond reasonable doubt as follows:

1) In Criminal Case No. 35-5586, for possession of illegal drugs whereby he is sentenced to suffer the penalty of life imprisonment and a fine of

FOUR HUNDRED THOUSAND (Php400,000.00) PESOS;

2) In Criminal Case No. 35-5587, for possession of drug paraphernalia, whereby he is sentenced to suffer the penalty of imprisonment of SIX (6) MONTHS and ONE (1) DAY and a fine of TEN THOUSAND (Php10,000.00) PESOS; and

3) In Criminal Case No. 35-5585, for violation of the Comelec gun ban, whereby he is sentenced to suffer the penalty of imprisonment of ONE (1) YEAR.

SO ORDERED.<sup>[11]</sup>

The RTC ruled that the search of Policarpio's house was legal because the same was done by virtue of a valid search warrant and hence, the items seized are admissible in evidence against him. Anent the confiscated .45 caliber pistol, the RTC declared that Policarpio's possession thereof was in clear violation of the COMELEC Gun Ban. The RTC held that the prosecution adduced sufficient evidence to established beyond cavil of a doubt the guilt of Policarpio of the three crimes charged against him.

Not in conformity, Policarpio appealed the RTC verdict of conviction before the Court of Appeals (CA), which was docketed therein as CA-G.R. CR-H.C. No. 06648.

### ***The CA Ruling***

On August 18, 2016, the CA rendered its assailed Decision<sup>[12]</sup> affirming the conviction of Policarpio for Violation of Sections 11 and 12, Article II of R.A. No. 9165. It declared that all the elements of illegal possession of shabu and of illegal possession of drug paraphernalia were adequately proven by the prosecution. It rejected the appellant's argument that the prosecution failed to establish the factual details which constituted the essential elements of the crimes charged. The CA opined that the integrity and evidentiary value of the seized narcotics were not compromised because the chain of custody of the same remained unbroken. It upheld the validity of Search Warrant No. 0085 and, thus, the illegal drugs and pieces of drug paraphernalia confiscated by virtue thereof are admissible in evidence against Policarpio. It debunked the defense of denial interposed by Policarpio for being negative and self-serving evidence. The CA, however, acquitted Policarpio of Violation of Section 261(q) of the Omnibus Election Code of the Philippines. In the end, the CA decreed:

WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. The assailed Decision dated 15 October 2013 is hereby AFFIRMED with MODIFICATION that accused-appellant Ely Policarpio is ACQUITTED of violation of Section 261(q) of the Omnibus Election Code in Criminal Case No. 35-5585.

SO ORDERED.<sup>[13]</sup>

### **The Issues**

Unpe1turbed, Policarpio filed the present appeal and posited the same assignment of errors he previously raised before the CA, to wit:

## I

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE APPARENT VIOLATION IN THE IMPLEMENTATION OF THE SEARCH WARRANT.

## II

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATIONS OF SECTION 261 OF BATAS PAMBANSA BLG. 881; SECTION 11, ARTICLE II, OF R.A. NO. 9165; AND SECTION 12, ARTICLE II, OF R.A. NO. 9165.

## III

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE WITH CERTAINTY THE *CORPUS DELICTI* OF THE OFFENSE CHARGED.<sup>[14]</sup>

On April 5, 2017, the Court issued a Resolution<sup>[15]</sup> dismissing Policarpio's appeal for his failure to sufficiently show reversible error in the assailed decision of the CA. The *fallo* of which reads:

WHEREFORE, the Court ADOPTS the finding of fact and conclusion of law of the Court of Appeals in its August 18, 2016 Decision in CA-G.R. CR-HC No. 06648, finding accused-appellant, Ely Policarpio y Natividad a.k.a. "Dagul," GUILTY beyond reasonable doubt of violation of Sections 11 and 12, Article II, Republic Act No. 9165 with MODIFICATION in that accused-appellant is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) months and one (1) day, as minimum, to three (3) years, as maximum, in Criminal Case No. 35-5587.

SO ORDERED.<sup>[16]</sup>

Undaunted, Policarpio filed the present Motion for Reconsideration, insisting on his innocence of violation of Sections 11 and 12 of R.A. No. 9165. He contends anew that Search Warrant No. 0085 is invalid because it failed to specify the exact address of the place to be searched as well the items to be seized. Further, Policarpio maintains that the searching officers failed to comply with the procedure laid down in Section 21, Article II of R.A. No. 9165 because: (1) the allegedly seized items were not photographed immediately after confiscation and seizure, or even thereafter; and (2) the inventory of the allegedly seized items were not conducted in the presence of a representative of the media and DOJ officials. He assails the prosecution evidence for its failure to establish the proper chain of custody of the subject plastic sachets of shabu and drug paraphernalia. Policarpio concludes that he is entitled to acquittal of the foregoing charges leveled against him.

### ***The Court's Ruling***

After a second hard look on the evidence on record, the Court finds that the Motion for Reconsideration is partially meritorious. Policarpio's conviction for Violation of