

FIRST DIVISION

[G.R. No. 248395, January 29, 2020]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ROBERTO REY E. GABIOSA, RESPONDENT.

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*^[1] (Petition) filed by the People of the Philippines, through the Office of the Solicitor General (OSG), assailing the Decision^[2] dated February 13, 2019 and Resolution^[3] dated July 10, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 08536-MIN, both of which declared Search Warrant No. 149-2017 (search warrant) issued by Judge Arvin Sadiri B. Balagot (Judge Balagot) against Roberto Rey E. Gabiosa, Sr. (Gabiosa) null and void.

The Facts

The facts, as summarized by the CA, are as follows:

On January 20, 2017, Police Superintendent Leo Tayabas Ajero (P/Supt Ajero), the Officer-in-Charge of the Kidapawan City, Police Station, applied for the issuance of a search warrant against petitioner before the Executive Judge Arvin Sadiri B. Balagot (Judge Balagot).

In support of his application, P/Supt Ajero attached the Affidavit of his witness, Police Officer 1 Rodolfo M. Geverola (PO1 Geverola). The material averments of the said affidavit are as follows:

x x x x

2. That sometime on January 7, 2017, our intelligence Section received information from informant that Roberto Rey Gabiosa Alias Jojo, a resident of Apo Sandawa Homes Phase 1, Brgy. Poblacion, Kidapawan City is selling illegal drugs particularly Methamphetamine Hydrochloride otherwise known as shabu in his house located at the aforementioned place;

3. That after we conducted casing and monitoring, we noticed that there were male persons come and go (*sic*) to his house and some of them are really noted as drug users and so I and other Intel Operatives look(ed) for potential person to be used as Action Agent who can buy shabu from Roberto Rey Gabiosa Alias Jojo in order to help us in the conduct of test buy against him until such time that I (*was*) able to recruit one (1) Action Agent.

4. That on or about 7:20 in the evening of January 18, 2017, I together with our Action Agent on board with (*sic*) service vehicle wherein I was the driver and proceeded to the house of Roberto Rey Gabiosa Alias Jojo at Apo Sandawa Homes Phase I, Brgy. Poblacion, Kidapawan City in order to buy shabu from him.

5. That upon our arrival at the place, I parked my driven service vehicle from the gate of the house of Roberto Rey Gabiosa Alias Jojo and my Action Agent called the target person through cellphone and later one (1) male person more or less 55 years old went out from the house and came nearer to the gate bringing umbrella who was told by the action agent to me as Roberto Rey Gabiosa Alias Jojo and then I together with my Action Agent alighted from the service vehicle and then we have conversation with Roberto Rey Gabiosa Alias Jojo and we agreed that we will be buying shabu from him in the amount of One Thousand Pesos (Php 1,000.00) and at that instance, he gave to me one (1) piece small sachet containing a suspected shabu and then also I gave to him the payment of One Thousand Pesos and then, I confirmed that he really (*is*) selling illegal drugs.

6. That the house of Roberto Rey Gabiosa Alias Jojo is a two storey [house and] made of concrete. It is half concrete and half steel fence and with steel gate color(*ed*) red.

7. That I submitted the one (1) piece small sachet containing a suspected shabu being sold by Roberto Rey Gabiosa Alias Jojo to me to the Provincial Crime Laboratory Field Office, Osmena Drive, Kidapawan City for qualitative examination and it turned out positive for Methamphetamine Hydrochloride, a dangerous drug as per Chemistry Report Number PC-D-004-2017 dated January 18, 2017.

On the basis of the above-quoted Affidavit, Judge Balagot conducted a preliminary examination to PO1 Geverola, which was administered, in this manner —

Q: Now, you alleged here that in the evening of January 18, 2017, together with your informant you went to the house of Roberto Rey Gabiosa; is this true?

A: Yes, sir.

Q: Upon reaching to his house, what did you do?

A: We were driving a four-wheeled vehicle and went to that place at that time.

Q: And then?

A: I was with our informant, we stopped in the house of the target.

Q: After that, what happened else? (*sic*)

A: Our Alpha called up and he said that the target went outside the house.

Q: How did your informant or alpha called (*sic*) Gabiosa?

A: Through cellphone.

Q: And Gabiosa went out from his house?

A: And after that, what else happened?

Q: Yes, sir.

A: We went down and we were just nearby and we talked to him that we will (*sic*) buy an item.

Q: Now, were you the one who personally go (*sic*) to Roberto Gabiosa?

A: Yes, sir.

Q: He did not suspect that you are a police officer?

A: No, sir.

Q: What was the amount you purchased from Mr. Gabiosa?

A: I gave P1,000.00 and in return he gave me the shabu.

Q: Can you describe the house of Roberto Gabiosa?

A: The house of Roberto Gabiosa is a two-storey, concrete, and with gate colored red.

Q: There is a sketch attached to the application; is this the sketch reflecting the location of Mr. Gabiosa?

A: Yes, sir.

Q: What did you do with that thing that Gabiosa delivered to you after giving him the P1,000.00?

A: We made a request for crime laboratory examination.

Q: What is the result?

A: Positive, your Honor.

Q: Now, the test buy, two days ago: do you have reason to believe that Gabiosa has still in possession of the illegal drug?

A: Yes, sir.

Q: Why do you say so?

A: We have a man (and) who is observing him.

Q: What car did you use in going to his house?

A: Colored red, Suzuki four-wheeled vehicle.

x x x x

Judge Balagot, then, issued Search Warrant No. 149-2017 after finding a probable cause for such issuance. Thereafter, the aforementioned search warrant was served against petitioner.

Petitioner, however, questioned the validity of the search warrant issued against him. Thus, on March 13, 2017, petitioner filed a *Motion to Quash (Search Warrant dated 20 January 2017) and Suppression of Evidence* claiming that the issuance of the search warrant is grossly violative of his fundamental constitutional and human right.^[4]

Ruling of the Regional Trial Court

In a Resolution^[5] dated September 26, 2017, the Regional Trial Court (RTC) denied the *Motion to Quash (Search Warrant dated 20 January 2017) and Suppression of Evidence* (Motion to Quash) filed by Gabiosa. The RTC ruled against Gabiosa's contention that the search warrant was invalid as the judge did not examine the complainant but only his witness. The RTC explained that the judge was not mandatorily required to examine both the complainant and his witness.^[6] The RTC added that "[w]hat is important is the existence of probable cause and the witness has personal knowledge of the fact as basis for the court or judge in issuing the search warrant."^[7] In other words, the RTC opined that the judge need not examine the complainant if the probable cause was already established upon examination of one of the witnesses.

On Gabiosa's contention that the search warrant was invalid because the questions propounded by the judge were mere rehash of the averments in the affidavit supporting the application, the RTC ruled the same to be equally untenable. The RTC expounded:

Based on the requirements as enumerated above, the judge must examine the witness under oath or affirmation. The rule does not prescribe what particular form of questions the judge must ask from the witness. What is important is that the judge must satisfy himself personally that there is probable cause to warrant the issuance of a warrant of arrest. Thus, asking the witness the same questions which will illicit (*sic*) the same facts as stated in his affidavit will not matter for as long as the examination is under oath and the [witness'] answers were based on his personal knowledge or observations. The phrase used by law is "examination under oath or affirmation" simply means that the judge can even asked (*sic*) the witness under oath even if he or she has no affidavit submitted or if he or she has submitted one, to just asked (*sic*) him to affirm the same is enough if probable cause is established.^[8]

Gabiosa then sought reconsideration of the RTC's denial of the Motion to Quash. However, in its Resolution^[9] dated December 21, 2017, the RTC likewise denied Gabiosa's motion for reconsideration. Undeterred, Gabiosa filed a Petition for *Certiorari*^[10] with the CA, alleging that the RTC gravely abused its discretion in denying his motion to quash.

Ruling of the CA

In its Decision^[11] dated February 13, 2019, the CA granted Gabiosa's Petition for *Certiorari*. The dispositive portion of the said Decision reads:

ACCORDINGLY, the instant Petition for *Certiorari* is **GRANTED**. The Resolution dated September 26, 2017 of the Regional Trial Court of Kidapawan City in Criminal Case No. 4005-2017 is **SET ASIDE**.

The Search Warrant No. 149-2017 is, hereby, declared null and void, and the search conducted on its authority is also rendered void. Consequent thereto, any evidence gathered by virtue of the aforementioned search warrant are inadmissible for any purpose in any proceeding.

SO ORDERED.^[12]

In granting Gabiosa's Petition for *Certiorari*, the CA reasoned that the text of the Constitution used the word "and" instead of "or" or "and/or," which thus "shows its clear intent to really require both applicant and the witness to be personally examined by the issuing judge."^[13] The CA added that for a search warrant to be valid, the complainant and such witnesses as the latter may produce must be personally examined by the judge.^[14]

The CA likewise ruled that the search warrant was invalid because Judge Balagot, the judge who issued the warrant, supposedly failed to propound probing and searching questions to the witness. According to the CA, the questions propounded were superficial and perfunctory.^[15]

The People of the Philippines, through the OSG, filed a motion for reconsideration of the above Decision. However, in a Resolution dated July 10, 2019, the CA denied the said motion.

Hence, the instant Petition.

Issue

For resolution of the Court is the issue of whether the CA erred in granting the Petition for *Certiorari* filed by Gabiosa.

The Court's Ruling

The Petition is granted. The Court rules that the CA erred in granting the Petition for *Certiorari*, considering that the RTC did not gravely abuse its discretion in affirming the validity of the search warrant.

In ruling that the search warrant was invalid, and that consequently, the RTC committed grave abuse of discretion in upholding its validity, the CA relied heavily