

## THIRD DIVISION

[ G.R. No. 205695, September 27, 2017 ]

**JESUS APARENTE Y VOCALAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**LEONEN, J.:**

Where the amount of narcotics seized is miniscule, a stricter adherence to the requirements of Section 21 of Republic Act No. 9165 is required to preserve the evidentiary value of the seized drugs.

This is a Petition for Review on Certiorari,<sup>[1]</sup> assailing the June 1, 2012 Decision<sup>[2]</sup> and January 24, 2013 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. CR No. 32853, which dismissed the appeal of Jesus Aparente y Vocalan (Aparente).

An Information dated February 14, 2006 was filed with the Regional Trial Court of Binangonan, Rizal against Aparente, charging him with violating Republic Act No. 9165.<sup>[4]</sup> The case was docketed as Criminal Case No. 06-080.<sup>[5]</sup> It read:

That on or about the 13<sup>th</sup> day of February 2006, in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully[, ] feloniously and knowingly possess and have in his custody and control 0.01 gram of white crystalline substance contained in one (1) heat[-]sealed transparent plastic sachet, which was found positive to the test for Methylamphetamine (sic) hydrochloride, also known as shabu, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>[6]</sup>

Upon arraignment, Aparente pleaded not guilty. After the pre-trial conference, trial on the merits ensued.<sup>[7]</sup>

The prosecution's version of the events was as follows:

Prosecution witnesses PO1 Virgilio Dela Cruz (PO1 Dela Cruz) and PO1 Gem Pastor testified that on the evening of February 13, 2006, they were at Barangay Pantok, Binangonan., Rizal patrolling the area as part of surveillance operations in relation to illegal drugs and "Video Karera" activities. They saw two (2) men, one of whom was later identified as Aparente, in an alley around three (3) meters away. They watched as the other man handed Aparente a small plastic sachet. They saw Aparente inspect the sachet, flicking it against the light emitted from a street light and a lamp from a house nearby. When the police officers approached, the two (2) men fled.

Only Aparente was caught.<sup>[8]</sup> PO1 Dela Cruz told Aparente to open his hands. They found a small sachet with a white crystalline substance,<sup>[9]</sup> which the police officers confiscated. They brought Aparente to the Binangonan Police Station where a police investigator marked the confiscated sachet with Aparente's initials. PO1 Dela Cruz then submitted the sachet, together with its contents, to the Philippine National Police Crime Laboratory at Camp Crame. Prosecution witness Police Inspector and Forensic Chemical Officer Antonieta Abillonar issued a Laboratory Report that stated that the contents of the sachet tested positive for methamphetamine hydrochloride.<sup>[10]</sup>

The defense's version of the events was as follows:

Aparente testified that on the evening of February 13, 2006, he was watching television with his mother, brother, and niece when five (5) persons forcibly entered the house. They handcuffed him and searched the house. Afterwards, the intruders told him they found shabu, which he was coerced to admit possessing.<sup>[11]</sup>

The Regional Trial Court found the prosecution witnesses' testimonies credible and gave them full faith.<sup>[12]</sup> It found Aparente's denial unbelievable and noted that his demeanor during his testimony did not inspire credibility.<sup>[13]</sup> Thus, in its Decision<sup>[14]</sup> dated July 30, 2009, the trial court found Aparente guilty of violating Section 11 of Republic Act No. 9165. The dispositive portion of this Decision read:

In view of this, we find accused Jesus Aparente **GUILTY** beyond reasonable doubt of violating Section 11, Article II, R.A. No. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and illegally possessing a total of 0.01 grams of Methylamphetamine (sic) Hydrochloride or shabu and accordingly sentence him to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of P300,000.00.

Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.

SO ORDERED.<sup>[15]</sup> (Emphasis in the original)

Aparente appealed the foregoing Decision to the Court of Appeals, arguing that the evidence against him was obtained from an illegal warrantless arrest. He also contended that the prosecution failed to establish that the rules on chain of custody were followed and that his guilt was proven beyond reasonable doubt.<sup>[16]</sup>

In its Decision<sup>[17]</sup> dated June 1, 2012, the Court of Appeals affirmed the Regional Trial Court Decision. It found that since Aparente was in the middle of violating the law at the time he was searched, the warrantless arrest was lawfully conducted upon probable cause,<sup>[18]</sup> The Court of Appeals also held that the evidentiary value of the confiscated drugs was preserved, considering that the police officers went to the police station and immediately turned over the seized evidence, which was then marked and submitted to the Philippine National Police Crime Laboratory at Camp Crame.<sup>[19]</sup> Thus, the witnesses established an unbroken chain of custody from the

arresting officer, to the investigating officer, and to the forensic chemist.<sup>[20]</sup> Further, the Court of Appeals found that Aparente failed to submit convincing evidence to overcome the presumption of regularity of the police officers' performance of official duties.<sup>[21]</sup> The dispositive portion of this Decision read:

WHEREFORE, the foregoing considered, the instant appeal is hereby DISMISSED and the appealed Decision dated 30 July 2009 AFFIRMED in toto. No costs.

SO ORDERED.<sup>[22]</sup>

Aparente filed his Motion for Reconsideration of the Court of Appeals June 1, 2012 Decision, which was denied in a Resolution dated January 24, 2013.<sup>[23]</sup>

Thus, on March 26, 2013, Aparente filed this Petition for Review on Certiorari before this Court.<sup>[24]</sup> Thereafter, on September 24, 2013, the Office of the Solicitor General filed its Comment.<sup>[25]</sup> On February 26, 2014, petitioner filed his Reply.<sup>[26]</sup>

This Court resolves the following issues:

First, whether or not the circumstances of petitioner Jesus Aparente's warrantless arrest violated his constitutional rights; and

Second, whether or not the failure to explain the lack of inventory and photographing at the place of petitioner's arrest or at the nearest police station negates the evidentiary value of the allegedly seized narcotics.

This Court grants the petition.

## I

Article III, Section 2 of the Constitution provides that the right of the people against unreasonable searches and seizures is inviolable:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In *People v. Cogaed*,<sup>[27]</sup> this Court explained that while this rule generally requires a warrant to be issued in order for a search or seizure to be deemed reasonable, there are situations where a search is reasonable even without a warrant:

This provision requires that the court examine with care and diligence whether searches and seizures are "reasonable." As a general rule, searches conducted with a warrant that meets all the requirements of this provision are reasonable. This warrant requires the existence of probable cause that can only be determined by a judge. The existence of

probable cause must be established by the judge after asking searching questions and answers. Probable cause at this stage can only exist if there is an offense alleged to be committed. Also, the warrant frames the searches done by the law enforcers. There must be a particular description of the place and the things to be searched.

However, there are instances when searches are reasonable even when warrantless. In the Rules of Court, searches incidental to lawful arrests are allowed even without a separate warrant. This court has taken into account the "uniqueness of circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured." The known jurisprudential instances of reasonable warrantless searches and seizures are;

1. *Warrantless search incidental to a lawful arrest...*;
2. Seizure of evidence in "plain view,"...;
3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. *Consented* warrantless search;
5. Customs search;
6. Stop and frisk; and
7. *Exigent and emergency circumstances.*<sup>[28]</sup> (Emphasis in the original, citations omitted)

Despite the foregoing circumstances, petitioner insists that his search and arrest violated his constitutional rights. He cites *People v. Tudtud*<sup>[29]</sup> to argue that assuming the prosecution's version of events were true, his warrantless arrest preceded his warrantless search, and this is a violation of the right against unreasonable searches and seizures,<sup>[30]</sup> This argument cannot be sustained.

While it is true that in *Tudtud* this Court noted that, generally, a warrantless arrest must precede a warrantless search, this statement was qualified:

It is significant to note that the search in question preceded the arrest. Recent jurisprudence holds that the arrest must precede the search; the process cannot be reversed. **Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search.**<sup>[31]</sup> (Emphasis supplied, citations omitted)

Thus, this Court explained that where a warrantless search preceded a warrantless arrest but was substantially contemporaneous with it, what must be resolved is whether or not the police had probable cause for the arrest when the search was made:

The question, therefore, is whether the police in this case had probable cause to arrest appellants, Probable cause has been defined as:

an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith of the peace officers making the arrest.

The long-standing rule in this jurisdiction, applied with a great degree of consistency, is that "reliable information" alone is not sufficient to justify a warrantless arrest under Section 5 (a), Rule 113. The rule requires, in addition, that the accused perform some overt act that would indicate that he "has committed, is actually committing, or is attempting to commit an offense."<sup>[32]</sup> (Emphasis supplied, citation omitted)

Further, probable cause may be in the form of overt acts which show that a crime had been, was being, or was about to be committed. Thus, a warrantless arrest that precedes a warrantless search may be valid, as long as these two (2) acts were substantially contemporaneous, and there was probable cause.

Accordingly, this Court held that the arrest in *People v. Tudtud* was invalid, since the appellants in that case were not performing any such overt acts at the time:

Appellants in this case were neither performing any overt act or acting in a suspicious manner that would hint that a crime has been, was being, or was about to be, committed. If the arresting officers' testimonies are to be believed, appellants were merely helping each other carry a carton box. Although appellant Tudtud did appear "afraid and perspiring," "pale" and "trembling," this was only after, not before, he was asked to open the said box.<sup>[33]</sup> (Citations omitted)

In this case, the arrest and the search were substantially contemporaneous. Thus, what must be evaluated is whether or not the arresting officers had probable cause for petitioner's arrest when they made the search.

Here, the arresting officers saw a man hand petitioner a small plastic sachet, which petitioner then inspected by flicking it against the light of a lamp post in an alley. Upon the officers' approach, these two (2) men fled. These overt acts and circumstances were observed personally by the arresting officers and, taken together, constitute reasonable suspicion that these two (2) men were violating Republic Act No. 9165, Thus, that the search preceded the arrest does not render