

## SECOND DIVISION

[ G.R. No. 188794, September 02, 2015 ]

**HONESTO OGAYON Y DIAZ, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**BRION, J.:**

We resolve the petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated March 31, 2009, and the Resolution<sup>[3]</sup> dated July 10, 2009, of the Court of Appeals (CA) in CA-G.R. CR No. 31154. The appealed decision affirmed the joint judgment<sup>[4]</sup> dated September 5, 2007, of the Regional Trial Court (RTC), Branch 12, Ligao City, Albay, which convicted petitioner Honesto Ogayon of violating Sections 11 and 12, Article II of Republic Act No. 9165.<sup>[5]</sup>

#### **The Antecedent Facts**

On December 1, 2003, two Informations were filed against Ogayon for the crimes allegedly committed as follows:

**I. Criminal Case No. 4738:**

That at about 5:20 o'clock (sic) in the morning of October 2, 2003 at Barangay Iraya, Municipality of Guinobatan, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have in his possession, custody and control four (4) pcs. of small aluminum foil, four (4) pcs. of disposable lighter in different colors, one (1) blade trademark "Dorco," and one (1) roll aluminum foil, instruments used or intended to be used for smoking or consuming shabu, without authority of law, to the damage and prejudice of the public interest and welfare.<sup>[6]</sup>

**II. Criminal Case No. 4739:**

That at about 5:20 o'clock (sic) in the morning of October 2, 2003 at Barangay Iraya, Municipality of Guinobatan, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law, and without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) heat-sealed transparent plastic sachets containing 0.040 gram of methamphetamine hydrochloride (shabu), with full knowledge that

in his possession and control is a dangerous drug, to the damage and prejudice of the public interest and welfare.<sup>[7]</sup>

During his arraignment in Criminal Case Nos. 4738 and 4739 on January 21, 2004, and March 17, 2004, respectively, Ogayon denied both charges and pleaded "not guilty." The joint pre-trial held on May 5, 2004 yielded only one factual admission on the identity of the accused.<sup>[8]</sup> A joint trial on the merits ensued.

### ***The Prosecution Version***

On October 2, 2003, at around 5:20 a.m., Police Chief Inspector Elmer Ferrera, together with the other members of the Albay Provincial Police Office, proceeded to Ogayon's house in Barangay Iraya, Guinobatan, Albay, to enforce Search Warrant No. AEK 29-2003.<sup>[9]</sup> The warrant was for the seizure of shabu and drug paraphernalia allegedly kept and concealed in the premises of Ogayon's house. Barangay Tanod Jose Lagana (*Tanod Lagana*) and Kagawad Lauro Tampocao assisted the police team in conducting the search.<sup>[10]</sup>

Upon reaching Ogayon's house, the police team noticed several persons inside a *nipa* hut located nearby. Suspecting that a pot session was about to be held, the police team restrained two of the five persons and immediately proceeded to Ogayon's house. After introducing themselves as police officers, Senior Police Officer Herminigildo Caritos (*SPO4 Caritos*) informed Ogayon that they had a warrant to search his place. SPO4 Caritos handed a copy of the warrant to Ogayon, who allowed the police team to conduct the search.<sup>[11]</sup>

Led by SPO4 Caritos, some members of the police team went to the comfort room located about five meters away from Ogayon's house. When they searched the area, they found an object (wrapped in a piece of paper with blue prints) that fell from the wooden braces of the roof. Upon SPO4 Caritos' inspection, the paper contained two (2) small, heat-sealed transparent plastic sachets that the police team suspected to contain *shabu*. The search of the comfort room also uncovered four (4) disposable lighters, one (1) knife measuring six inches long, used aluminum foil, one (1) roll of aluminum foil, and a "Dorco" blade.<sup>[12]</sup> SPO4 Caritos then placed his initials on the two (2) plastic sachets before joining the rest of the police officers who were conducting a search in Ogayon's house. The police officers who searched Ogayon's house found live ammunition for an M-16 rifle.

After conducting the search, the police team prepared a Receipt of Property Seized.<sup>[13]</sup> The receipt was signed by the seizing officers, representatives from the Department of Justice and the media, and two (2) barangay officials who were present during the entire operation.<sup>[14]</sup>

The police team thereafter arrested Ogayon and the two (2) other persons who had earlier been restrained, and brought them to Camp Simeon Ola for booking. The seized items were likewise brought to the camp for laboratory examination. In his Chemistry Report,<sup>[15]</sup> Police Superintendent Lorlie Arroyo (forensic chemist of the Philippine National Police Regional Crime Laboratory) reported that the two (2) plastic sachets seized from Ogayon's place tested positive for the presence of

*methamphetamine hydrochloride or shabu.*<sup>[16]</sup>

### ***The Defense Version***

The defense presented a different version of the events.

Testifying for himself, Ogayon disavowed any knowledge of the prohibited drugs and claimed that he saw the seized items for the first time only when they were being inventoried. His statements were corroborated by the testimony of his wife, Zenaida Ogayon.

Ogayon asserted that prior to the search, he was asleep in his house. His wife Zenaida woke him up because several policemen and barangay officials came to his house. He claimed that the police team did not present any search warrant before conducting the search, and it was only during trial that he saw a copy of the warrant.

He recounted that the police officers, splitting into two groups, conducted a simultaneous search of his house and the comfort room located nearby. He noticed that SPO4 Caritos, who was part of the group that searched the comfort room, came out and went to the *Barangay* Hall. Shortly after, SPO4 Caritos returned, accompanied by *Tanod* Lagana. SPO4 Caritos again went inside the comfort room, leaving *Tanod* Lagana waiting outside. SPO4 Caritos thereafter came out from the comfort room and ran towards Ogayon's house while shouting "positive, positive."

<sup>[17]</sup>

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

On September 5, 2007, the RTC rendered a joint judgment convicting Ogayon of the two criminal charges against him. Relying on the presumption of regularity, the RTC rejected Ogayon's frame-up defense. The dispositive portion of the joint judgment reads:

WHEREFORE, under the above considerations, judgment is hereby rendered as follows:

- a. In Criminal Case No. 4738, accused, Honesto Ogayon y Diaz is found GUILTY beyond reasonable doubt of Violation of Section 12, Art. II, Republic Act No. 9165, known as the "Comprehensive Dangerous Drugs Act of 2002," for his unlawful possession of drug paraphernalia, namely: four (4) pcs. small aluminum foil, one (1) roll aluminum foil, four (4) pcs. disposable lighters, and one (1) pc. blade; thereby sentencing him to suffer the indeterminate penalty of imprisonment of six (6) months and one (1) day to two (2) years and to pay a FINE often thousand pesos (P10,000.00);
- b. In Criminal Case No. 4739, accused, Honesto Ogayon y Diaz is found GUILTY beyond reasonable doubt of

Violation of Section 11, Art. II, Republic Act No. 9165, known as the "Comprehensive Dangerous Drugs Act of 2002," for his unlawful possession of two (2) pcs. small heat-sealed plastic sachets containing methamphetamine hydrochloride or "shabu," with total net weight of 0.0400 gram; thereby, sentencing him to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and to pay a FINE of three hundred thousand pesos (P300,000.00).

[18]

Ogayon appealed to the CA. This time, he questioned the validity of the search warrant, claiming it was improperly issued. He argued that the search warrant was defective for lack of transcript showing that the issuing judge conducted an examination of the applicant for search warrant and his witnesses.

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

In accordance with Section 5, Rule 126 of the Rules of Court, a judge must examine under oath and in writing an applicant for search warrant and his witnesses. Although the CA found no evidence in the records showing compliance with this requirement, it nevertheless ***upheld the search warrant's validity due to Ogayon's failure to make a timely objection against the warrant during the trial.***

That Ogayon objected to the prosecution's formal offer of exhibits, which included the search warrant, was not sufficient for the CA. Ogayon merely claimed that the chemistry report was not executed under oath, the items were not illegal *per se*, and that he did not sign the Receipt of Property Seized since he was not present when the seized items were confiscated. The CA noted that the objections were not based on constitutional grounds, and for this reason, **concluded that Ogayon is deemed to have waived the right to question the legality of the search warrant.**[19]

Based on the search warrant's validity, the CA affirmed Ogayon's conviction for possession of drugs and drug paraphernalia. Although the comfort room was located outside Ogayon's house, the CA declared that he exercised exclusive control over it and should rightly be held responsible for the prohibited drugs and paraphernalia found there.

As with the RTC, the CA relied on the presumption of regularity of the police team's operation and found Ogayon's claim of frame-up to be unsupported. The CA thus ruled that the prosecution proved beyond reasonable doubt that Ogayon was liable for the crimes charged.

### **The Issues**

In the present petition, Ogayon raises the following assignment of errors:

I.

**The CA erred in finding that Ogayon had waived his right to question the legality of the search warrant.**

II.

**Even granting without admitting that Ogayon had already waived his right to question the legality of the search warrant, the search conducted was still highly irregular, thereby rendering the seized articles as inadmissible in evidence.**

Ogayon primarily argues that there was a **violation of his constitutional right** to be secure in his person, house, papers, and effects against unreasonable searches and seizures. He denies waiving the right through his supposed failure to assail the search warrant's validity during the trial. On the contrary, he claims to have objected to the prosecution's formal offer of the search warrant.

Even assuming that he questioned the search warrant's validity only during appeal, Ogayon contends that this should not be interpreted as a waiver of his right. Since an appeal in a criminal case throws the whole case open for review, any objection made on appeal, though not raised before the trial court, should still be considered.

Ogayon next argues that the search conducted by the police team on his premises, pursuant to an already defective search warrant, was highly irregular. He and his spouse were in their house when SPO4 Caritos allegedly discovered the *shabu* in the comfort room located outside their house, so they were not able to witness the search. Moreover, he claimed that there were other persons near the premises of his house (and the comfort room) when the search was conducted. Hence, it could not indubitably be concluded that the seized items were under his actual and effective control and possession.

**The Court's Ruling**

The right against unreasonable searches and seizures is one of the fundamental constitutional rights. Section 2, Article III of the Constitution, reads:

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, [emphasis ours]

This right has been included in our Constitution since 1899 through the Malolos Constitution<sup>[20]</sup> and has been incorporated in the various organic laws governing the