

## SECOND DIVISION

[ G.R. No. 200598, June 18, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DENNIS E. TANCINCO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

Before us is an appeal *via* a Notice of Appeal of the Court of Appeals Decision<sup>[1]</sup> in CA-G.R. CEB-CR-HC No. 00807 affirming the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 58, Cebu City which, in turn, convicted accused-appellant Dennis Tancinco (Tancinco) of violation of Section 11 of Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

Tancinco was charged in an Information for illegal possession of *shabu*, a dangerous drug:

That on or about the 5<sup>th</sup> day of March 2006, at about 4:35 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with deliberate intent, did then and there have in his possession, use and control three (3) heat sealed transparent plastic packet of white crystalline substance with a total weight of 5.36 grams locally known as "Shabu" containing methylamphetamine hydrochloride, a dangerous drug.<sup>[3]</sup>

Upon arraignment, Tancinco pleaded not guilty to the charge.

The prosecution presented in evidence the testimonies of: (1) Jude Daniel Mendoza (Mendoza), a Medical Technologist who conducted a qualitative examination on the specimens found in the possession of Tancinco during his arrest on 5 March 2006; (2) and the team of police officers who arrested Tancinco consisting of PO2 Melbert Dio (PO2 Dio); (3) SPO1 Filomeno Mendaros (SPO1 Mendaros) and PO2 Edward Abatayo (PO2 Abatayo).

The prosecution's story narrates that in the afternoon of 5 March 2006, a team of police officers, led by SPO1 Mendaros and composed of PO2 Dio, PO2 Abatayo, a certain PO Cunan and PO Banson, was on roving patrol along M.J. Cuenco Avenue, Cebu City, when SPO1 Mendaros received a call from a member of the *Barangay Intelligence Network* (BIN) who gave information of an on-going pot session in *Sitio Sampaguita, Villagonzalo I, Barangay Tejero, Cebu City* by an unidentified alleged armed man and his companions.

To investigate further, the police officers met with the BIN informant at a designated place and thereafter proceeded to the location of where the armed person and his

companions were supposedly holding their pot session. Thereat, they did not find the alleged armed man. Instead, the police officers caught two (2) other persons for violation of Republic Act No. 9165.

A few minutes later, the BIN informant approached SPO1 Mendaros and told him that the alleged armed man had been spotted playing a *bingo* machine at a nearby house.

The BIN informant guided the team of police officers to an area which looked like an extension of a house. The door of this house extension was open allowing SPO1 Mendaros to view the inside thereof which had five (5) *bingo* machines in use by people. One of these persons playing the *bingo* machines was the alleged armed man, who turned out to be herein accused-appellant, Tancinco.

With the preliminary information that Tancinco was carrying a firearm, the policemen cautiously approached Tancinco who attempted to dispose of the firearm from his person and conceal its possession thereof by placing it at the side of the *bingo* machine. Before Tancinco actually relieved himself of the firearm, PO2 Abatayo apprehended him and asked for his license to carry such. Since Tancinco was unable to produce a license to carry the firearm, PO2 Abatayo confiscated the firearm and arrested Tancinco without a warrant.

Incident to the warrantless arrest, SPO1 Mendaros instructed PO2 Dio to make a body search of Tancinco. PO2 Dios' body search of Tancinco produced three (3) medium plastic sachets, all of which contained a white substance suspected to be *shabu*, placed in the right front pocket of Tancinco's short pants. These three (3) sachets of white substance suspected to be *shabu* were likewise confiscated by the police. At which point of Tancinco's arrest and the body search conducted on him, the police apprised him of his constitutional rights.

Immediately thereafter, Tancinco, together with the confiscated items, the firearm and the three (3) sachets of white substance suspected to be *shabu*, were brought by the police officers to Camp Sotero Cabahug Police Station in Gorordo Avenue, Cebu City for further investigation. The details of Tancinco's arrest were entered in the police blotter; PO2 Dio prepared the request for the laboratory examination of the confiscated specimens.

These same specimens of the three sachets of white substance suspected to be *shabu* were forwarded and turned over to the Philippine National Police Regional Crime Laboratory Office 7 in Camp Sotero Cabahug, Gorordo Avenue, Cebu City, where Forensic Chemical Officer/Medical Technologist II, Mendoza, conducted a qualitative examination thereon. Mendoza issued Chemistry Report No. D-428-2006 dated 5 March 2006 finding the specimens to be positive for *methamphetamine hydrochloride*, a dangerous drug.

Subsequently, separate Informations for violation of Republic Act No. 9165, specifically illegal possession of dangerous drugs, and for illegal possession of firearm were filed by the arresting police officers against Tancinco. The Information for violation of Republic Act No. 9165 was raffled to the court a quo, RTC, Branch 58, Cebu City and docketed as Criminal Case No. CBU-76305, while that charging illegal possession of firearm was raffled to the RTC, Branch 10 thereof.

Not surprisingly, Tancinco counters the charges and account of the prosecution, completely denying the story and decrying frame-up.

On the fateful day of 5 March 2006 at around 8:30 p.m., Tancinco was at a friend's house in Villagonzalo I playing a *bingo* machine when three (3) police officers wearing CIIB shirts barged into the premises. One of the police officers grabbed his shirt, dragged him outside while simultaneously demanding for a gun which was supposedly in his possession but which he did not actually have. Another policeman conducted a search within the premises for this firearm. The policemen then stepped out of the premises now carrying a 45-caliber gun which they now claimed was his. A little later, Tancinco was brought to the CIIB in Camp Sotero Cabahug for illegal possession of firearms and two days thereafter, he was transferred to BBRC purportedly for illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165. At which point he finally learned of the actual charges against him.

Tancinco bewails that he had been set-up with fake charges of illegal possession of firearm and illegal possession of *shabu* because he had previously refused to turn state witness against a certain Joel Nodalo *alias* Tungol (Nodalo), who was then accused by some policemen of robbery. Tancinco's story is that he had been previously charged for two counts of robbery and in connection therewith was detained in a police station in Gorordo Avenue for a period of one year and eleven months. Eventually, he was acquitted of those charges. Presumably, Tancinco came in contact with Nodalo, hence the policemen's pursuit for Tancinco to turn state witness against Nodalo.

The trial court found Tancinco guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165, specifically illegal possession of a dangerous drug:

Accordingly, this court finds the accused GUILTY as charged and hereby sentences him to suffer the penalty of imprisonment of from twenty (20) years and one (1) day, as minimum, to twenty-three (23) years, as maximum, and to pay a fine of P400,000.00.

The full period of preventive detention shall be credited in the service of this sentence.

Finally, the 3 packs of *shabu*, Exhibit 'B' are confiscated in favor of the state for proper disposition.<sup>[4]</sup>

On appeal, the appellate court rejected Tancinco's claim of frame-up as against the straightforward, direct and positive testimony of the police officers who arrested Tancinco in the regular performance of their official duties.

In this appeal before us, Tancinco maintains his innocence; he was merely framed-up. He then points to inconsistencies in the police officers' accounting of his arrest that supposedly make up reasonable doubt for his acquittal. Obviously, Tancinco relies on the presumption of innocence and contends that the prosecution did not establish his guilt beyond reasonable doubt.

As the lower courts were, we are not convinced. We find no cause to disturb their

factual findings that Tancinco was lawfully arrested without a warrant after information of his being armed and engaging in a pot session with other persons was given to the police officers who then investigated and pursued the lead of the BIN informant. Incident to the lawful warrantless arrest of Tancinco is a search on his person made by the police officers which then yielded his illegal possession of *shabu*.

On more than one occasion, we have ruled that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are accorded great weight. This is because the trial judge has the distinct advantage of closely observing the demeanor of the witnesses, as well as the manner in which they testify, and is in a better position to determine whether or not they are telling the truth.<sup>[5]</sup> On that score alone, Tancinco's appeal ought to have been dismissed outright.

We affirm the lower courts' uniform rulings that Tancinco was searched as an incident to a lawful warrantless arrest.

Section 5, Rule 113 of the Rules of Court provides:

**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;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

Tancinco claims that he was not lawfully arrested and consequent thereto, the search on him which produced the three (3) sachets of *shabu* was likewise illegal. He insinuates that the firearm allegedly seized from him was planted by the policemen who had an ax to grind against him for refusing to be a state witness against Nodalo *alias* Tungol in a robbery case.

In contrast to the presentation of evidence of the prosecution, Tancinco's roughly drawn scene is that of a frame-up, and that he was eventually charged with illegal possession of *shabu* because he did not turn state witness against Nodalo. Tancinco cites the testimony of PO2 Dio as flawed for declaring that he did not clearly see Tancinco holding the firearm. He further avers that if he did own the firearm seized, as alleged by the prosecution, he would not have tried to conceal it beside a *bingo* machine which can easily be spotted by people as their location at that time was a public place. To do so was contrary to human nature.

To begin with, the testimony of the police officers, including PO2 Dio, as to what went down when they arrested Tancinco was direct, straightforward and positive. PO2 Dio's statement that he did not clearly see Tancinco holding the firearm does not detract from the prosecutions' evidence and story that Tancinco was arrested while attempting to conceal a firearm and could not produce a license to carry thereof when asked by the police officers. Immediately thereafter, as an incident to a lawful warrantless arrest, Tancinco was searched and found to have three (3) sachets of *shabu* in his possession.

SPO1 Mendaros:

Q: After that incident, what happened next?

A: Five minutes after we arrived at the place, my informant told me that he spotted the armed person playing [at the] *bingo* machine[s].

Q: What did you do then after that?

A: My informant guided us to the place where this armed person was.

Q: Then?

A: Considering that he was reportedly armed, we cautiously approached him and one after the other we surrounded [him].

Q: Considering that you were five and you said that you were very cautious [in] approaching the accused, how did you go to the said place then?

A: We went to the place one after the other.

Q: Could you describe the place where the said suspect was playing *bingo* machine?

A: The place had five *bingo* machines.

Q: Was it inside the house?

A: It was at the extension of the house.

Q: Was it covered?

A: There was a door but it was opened (sic).

Q: How many were playing at that time?

A: I cannot recall the exact number of persons playing, but [there] were people playing.

Q: As you cautiously went to the place where the accused was at that time, what happened next?

A: **As I observed him, he looked surprised. We saw him carrying a handgun and attempted to conceal it at the side of the *bingo* machine.**

Q: Then?

A: PO2 Abatayo quickly confiscated the gun from him.

Q: Then?

A: For failure to present a document allowing him to carry a firearm, we placed him under arrest.

Q: Then?

A: He was brought outside already handcuffed and as a matter of procedure, I instructed PO2 Dio to frisk him for any illegal item.

Q: What happened next?

A: Incidental to his lawful arrest, PO2 Dio was able to recover three (3) medium plastic pack of suspected *shabu* from his right front pocket of his maong short pants.