

## SECOND DIVISION

[ G.R. No. 191366, December 13, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARNOLD MARTINEZ Y ANGELES, EDGAR DIZON Y FERRER, REZIN  
MARTINEZ Y CAROLINO, AND RAFAEL GONZALES Y CUNANAN,  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the August 7, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA), in CA-G.R. HC-NO. 03269, which affirmed the February 13, 2008 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 41, Dagupan City (RTC), in Criminal Case No. 2006-0525-D, finding the accused guilty of violating Section 13, in relation to Section 11, Article II of Republic Act No. 9165 for Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings.

#### The Facts

The Information indicting the accused reads:

That on or about the 2<sup>nd</sup> day of September 2006, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ARNOLD MARTINEZ y ANGELES, EDGAR DIZON y FERRER, REZIN MARTINEZ y CAROLINO, ROLAND DORIA y DIAZ and RAFAEL GONZALES y CUNANAN, without authority of law, confederating together, acting jointly and helping one another, did then and there wilfully, unlawfully and criminally, sniff and possess dangerous drugs (shabu residues) contained in empty plastic sachets and rolled aluminum foil, during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) person[s].

Contrary to Section 13, Article II, R.A. 9165.<sup>[3]</sup>

#### Version of the Prosecution

As culled from the testimonies of prosecution witnesses, Police Officer 1 Bernard Azardon (*PO1 Azardon*), one of the apprehending officers, and Police Inspector Lady Ellen Maranion (*P/Insp. Maranion*), the forensic chemical officer, it appears that on September 2, 2006, at around 12:45 o'clock in the afternoon, PO1 Azardon was on duty at the Police Community Precinct II along Arellano Street, Dagupan City, when a concerned citizen entered the precinct and reported that a pot session was going on in the house of accused Rafael Gonzales (*Gonzales*) in Trinidad Subdivision,

Dagupan City. Upon receipt of the report, PO1 Azardon, PO1 Alejandro Dela Cruz (*PO1 Dela Cruz*), and members of the Special Weapons and Tactics (*SWAT*) team hied to Trinidad Subdivision, Dagupan City. Upon inquiry from people in the area, the house of Gonzales was located.

As the police officers entered the gate of the house, they saw accused Orlando Doria (*Doria*) coming out of the side door and immediately arrested him. Inside the house, they saw accused Gonzales, Arnold Martinez (*A. Martinez*), Edgar Dizon (*Dizon*), and Rezin Martinez (*R. Martinez*) in a room. The four were surprised by the presence of the police. In front of them were open plastic sachets (containing shabu residue), pieces of rolled used aluminum foil and pieces of used aluminum foil.

The accused were arrested and brought to the police precinct. The items found in the room were seized and turned over to the Pangasinan Provincial Police Crime Laboratory Officer, P/Insp. Maranion. The latter conducted a laboratory examination on the seized items and all 115 plastic sachets, 11 pieces of rolled used aluminum foil, and 27 of the 49 pieces of used aluminum foil tested positive for methamphetamine hydrochloride. The accused were subjected to a drug test and, except for Doria, they were found to be positive for methamphetamine hydrochloride.

### **Version of the Defense**

The defense, through its witnesses, accused A. Martinez, Dizon, and R. Martinez, claimed that in the morning of September 2, 2006, the three of them were along Arellano Street in Trinidad Subdivision, Dagupan City, to meet with a certain Apper who bumped the passenger jeep of R. Martinez and who was to give the materials for the painting of said jeep. As they were going around the subdivision looking for Apper, they saw Gonzales in front of his house and asked him if he noticed a person pass by. While they were talking, Doria arrived. It was then that five to seven policemen emerged and apprehended them. They were handcuffed and brought to the police station in Perez, Dagupan City, where they were incarcerated and charged with sniffing shabu.

### **The Ruling of the RTC**

The case against Doria was dismissed on a demurrer to evidence.

On February 13, 2008, the RTC rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused ARNOLD MARTINEZ y Angeles, EDGAR DIZON y Ferrer, REZIN MARTINEZ y Carolino, and RAFAEL GONZALES y Cunanan GUILTY beyond reasonable doubt of the crime of Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings defined and penalized under Section 13 in relation to Section 11, Article II of Republic Act 9165, and each of them is sentenced to suffer the penalty of life imprisonment and to pay the fine in the amount of P500,000.00, and to pay the cost of suit.

The subject items are hereby forfeited in favor of the government and to

be disposed of in accordance with the law.

SO ORDERED.<sup>[4]</sup>

The RTC was of the view that the positive testimony of prosecution witness PO1 Azardon, without any showing of ill-motive on his part, prevailed over the defenses of denial and alibi put up by the accused. The accused were held to have been in constructive possession of the subject items. A conspiracy was also found present as there was a common purpose to possess the dangerous drug.

### **The Ruling of the CA**

The CA ruled that there was sufficient evidence to support the findings of the RTC as to the constructive possession of the dangerous drugs by the accused. It further held that although the procedure regarding the custody and disposition of evidence prescribed by Section 21 of R.A. No. 9165 was not strictly complied with, the integrity and evidentiary value of the evidence were nonetheless safeguarded. The CA was of the view that the presumption of regularity in the performance of official duty was not sufficiently controverted by the accused.

Not in conformity, the accused now interposes this appeal before this Court praying for the reversal of the subject decision, presenting the following

### **Assignment of Errors**

*For accused Arnold Martinez, Edgar Dizon and Rezin Martinez*

- 1. The lower court erred in finding the accused-appellants to be having a pot session at the time of their arrest;**
- 2. The lower court erred in not seeing through the antics of the police to plant the shabu paraphernalia to justify the arrest of the accused-appellants without warrant;**
- 3. The lower court erred in not finding that the *corpus delicti* has not been sufficiently established;**
- 4. The lower court erred in not finding the uncorroborated testimony of PO1 Azardon insufficient to convict the accused-appellants of the crime charged;**
- 5. The lower court erred in not acquitting the accused-appellants.**

*For accused Rafael Gonzales*

**ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.**

**II**

**THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED DRUG.**

After an assiduous assessment of the evidentiary records, the Court finds that the prosecution failed to prove the guilt of the accused. The principal reasons are 1] that the evidence against the accused are inadmissible; and 2] that granting the same to be admissible, the chain of custody has not been duly established.

*Illegal Arrest, Search and Seizure*

Indeed, the accused is estopped from assailing the legality of his arrest if he fails to raise such issue before arraignment.<sup>[5]</sup> However, this waiver is limited only to the arrest. The legality of an arrest affects only the jurisdiction of the court over the person of the accused. A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest.<sup>[6]</sup>

Although the admissibility of the evidence was not raised as an issue by the accused, it has been held that this Court has the power to correct any error, even if unassigned, if such is necessary in arriving at a just decision,<sup>[7]</sup> especially when the transcendental matter of life and liberty is at stake.<sup>[8]</sup> While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, they nevertheless must not be met at the expense of substantial justice. Time and again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. Technicalities should never be used to defeat substantive rights.<sup>[9]</sup> Thus, despite the procedural lapses of the accused, this Court shall rule on the admissibility of the evidence in the case at bench. The clear infringement of the accused's right to be protected against unreasonable searches and seizures cannot be ignored.

The State cannot, in a manner contrary to its constitutional guarantee, intrude into the persons of its citizens as well as into their houses, papers and effects.<sup>[10]</sup> Sec. 2, Art. III, of the 1987 Constitution provides:

**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.

This constitutional guarantee, however, is not a blanket prohibition against all searches and seizures without warrant. Arrests and seizures in the following instances are allowed even in the absence of a warrant -- (i) warrantless search incidental to a lawful arrest;<sup>[11]</sup> (ii) search of evidence in "plain view;" (iii) search of a moving vehicle; (iv) consented warrantless search; (v) customs search; (vi) stop and frisk; and (vii) exigent and emergency circumstances.<sup>[12]</sup>

This case would appear to fall under either a warrantless search incidental to a lawful arrest or a plain view search, both of which require a lawful arrest in order to be considered valid exceptions to the constitutional guarantee. Rule 113 of the Revised Rules of Criminal Procedure provides for the circumstances under which a warrantless arrest is lawful. Thus:

*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.

A review of the facts reveal that the arrest of the accused was illegal and the subject items were confiscated as an incident thereof. According to the testimony of PO1 Azardon and his Joint Affidavit<sup>[13]</sup> with PO1 Dela Cruz, they proceeded to, and entered, the house of accused Gonzales based solely on the report of a concerned citizen that a pot session was going on in said house, to wit:

Q: I go back to the information referred to you by the informant, did he not tell you how many persons were actually conducting the pot session?