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SECOND DIVISION

[G.R. No. 180693, September 04, 2009]

BONIFACIO DOLERA Y TEJADA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Bonifacio T. Dolera (petitioner) was charged before the Regional Trial Court of Quezon City with violation of Section 11, Article II of Republic Act No. 9165 (R.A. 9165) or the Comprehensive Dangerous Drugs Act of 2002 under an Information reading

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> That on or about the 14th day of August, 2003 in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did then and there, wilfully, unlawfully and knowingly have in [his] possession and control, Zero point twenty (0.20) grams of white crystalline substance containing Methylamphetamine [*sic*] hydrochloride a dangerous drug.[1]
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> CONTRARY TO LAW.

From the evidence for the prosecution, the following version is gathered.

On August 14, 2003, at 3:30 in the afternoon, PO2 Reynaldo Labon (PO2 Labon), PO1 Arnold Peñalosa (PO1 Peñalosa) and PO2 Victor Aquino, having received a report of drug trafficking in the vicinity of Bicol Street in Barangay Payatas, Quezon City, conducted a surveillance along the area.[2]

While at the target area, PO2 Labon saw petitioner, at a distance of seven meters, standing near an alley adjoining Bicol Street, scrutinizing a transparent plastic sachet containing white crystalline substance. PO2 Labon, who was in civilian clothes, thus alighted from the vehicle, followed by PO1 Penalosa, and approached petitioner.[3] After introducing himself as a policeman, PO2 Labon asked petitioner what he was holding, but the latter, who appeared "*natulala,*"[4] did not reply.

Suspecting that the white crystalline substance inside the plastic sachet was *shabu*, PO2 Labon confiscated the same[5] and handcuffed petitioner. PO1 Peñalosa then frisked petitioner and recovered a heat-sealed plastic sachet also containing white crystalline substance from the right front pocket of petitioner's pants. After informing him of his constitutional rights, petitioner was brought to the police

station for further investigation.[6]

At the police station, PO2 Labon and PO1 Peñalosa marked the plastic sachets with their respective initials "RL" and "AP"[7] before turning them over to the case investigator. Later in the day, the two plastic sachets including their contents were brought to the PNP Crime Laboratory for examination. The Chemistry Report[8] which recorded the result of the laboratory examination showed that each of the sachets contained 0.10 grams of *shabu*, a dangerous drug.

The parties[9] having stipulated that forensic analyst Leonard M. Jabonillo examined the substances and came up with his findings in his Report, his testimony was dispensed with.

Upon the other hand, petitioner, denying the charge, gave the following version:

He was standing infront of his house waiting for a ride to the public market when three men in civilian clothes alighted from a white "FX" and forced him to board the vehicle. The three brought him to the police station where he was asked to identify a drug pusher in their place. When he replied that he did not know of any, they told him that "*tutuluyan nila ako*." He was then detained and was subjected to inquest proceedings after four days. [10]

The trial court, by Decision[11] of July 20, 2005, convicted petitioner and sentenced him "to suffer a jail term of twelve years and one day as minimum and thirteen years as maximum and to pay a fine of P300,000." The trial court observed:

> The court finds it quite improbable that police officers in broad daylight would just stop and take away with them a person who is doing nothing but standing on the street in front of his house.
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> x x x x
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> The accused was brought to the police station for investigation and when asked if it is true that he has shabu, the answer of the accused: "Wala naman po" does not inspire the confidence that an innocent person, who is 35 years old and married with a baby, would have said.
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> Moreover, the defense of the accused becomes more unconvincing in view of the fact that not even his wife with a baby and his auntie who lives in the same house with him came to court despite the lapse of a long time, to vouch for the accused. His neighbors whom the accused said saw him being arrested likewise did not come forward to corroborate his claimed innocence. (Underscoring supplied)

The Court of Appeals, before which appellant appealed and questioned, among other things, his warrantless arrest, by Decision[12] of October 30, 2006, affirmed petitioner's conviction. In brushing aside appellant's questioning of his warrantless arrest, the appellate court held that he had waived the same when he submitted himself to the jurisdiction of the trial court.

On the merits, the appellate court held:

> The bare denial of accused-appellant that *shabu* was found in his possession by the police officers deserves scant consideration. Accused-appellant testified that his arrest was witnessed by several persons who know him and who are known to him, however, he did not present anyone of them to corroborate his claim that no *shabu* was recovered from him when he was arrested by the police officers. It has been ruled time and again that a mere denial, just like alibi, is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail. Moreover, accused-appellant admitted that he does not know the police officers who arrested him as it was the first time that he saw them. In fact, accused-appellant does not impute any improper motive against the police officers who arrested him. **The presumption that the police officers performed their duties in a regular manner, therefore, stands.** (Emphasis and underscoring supplied)

His motion for reconsideration having been denied by Resolution[13] of November 21, 2007, petitioner filed the present petition for review.

Petitioner initially takes issue on the appellate court's ruling that he waived any objection to his arrest when he entered a plea upon arraignment and actively participated in the trial. Underscoring that an appeal in a criminal case opens the whole case for review, petitioner reiterates his lament that he was arrested without a warrant, asserting that "there was nothing unusual in [his] behavior then which w[ould] engender a genuine reason to believe that he was committing something illegal which would compel the police officers to approach him."[14]

Respecting the Chemistry Report, petitioner contends that it is hearsay, as the forensic analyst who prepared the document was never presented to identify it and testify thereon.[15]

Moreover, petitioner contends that the prosecution failed to establish the chain of custody of the seized illegal drugs to thus cast serious doubt on whether the specimens presented in court were the ones allegedly confiscated from him.[16]

The Solicitor General, maintaining, on the other hand, that the arrest of petitioner needed no warrant as it was done while petitioner was committing illegal possession of *shabu,* posits: Since PO2 Labon and PO1 Peñalosa were conducting a surveillance based on a report of rampant drug trafficking in the area, the chance encounter with petitioner who was holding a plastic sachet with white crystalline contents gave the police officers reasonable suspicion to accost him and ask about the contents thereof. The police officers' suspicion was all the more heightened when petitioner was dumbfounded when asked about the plastic sachet.[17]

The Solicitor General further posits that the prosecution did not have to present the forensic analyst in view of petitioner's stipulation that the two plastic sachets seized from him were found to be positive for *shabu.*

Finally, the Solicitor General maintains that the seized plastic sachets were properly submitted to the police crime laboratory for testing, and, at all events, petitioner failed to rebut the presumption of regularity in the performance by the police officers of their official duties.

The petition is meritorious.

Prefatorily, the Court finds in order the appellate court's observation that it is too late for petitioner to question the legality of his arrest in view of his having already entered his plea upon arraignment and participated at the trial. Having failed to move to quash the information on that ground before the trial court,[18] and having submitted himself to the jurisdiction of the trial court, any supposed defect in his arrest was deemed waived. For the legality of an arrest affects only the jurisdiction of the court over his *person*.[19]

It is with respect to the failure of the prosecution to prove the chain of custody of the allegedly seized evidence that the Court departs from the findings of the appellate and lower courts to warrant a reversal of petitioner's conviction.

For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug. [20]

Thus *Mallillin v. People*[21] emphasized:

> Prosecutions for illegal possession of prohibited drugs necessitates [*sic*] that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. **More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed**. (Italics in the original; emphasis and underscoring supplied)

The standard operating procedure on the seizure and custody of dangerous drugs is

found in Section 21, Article II of R.A. No. 9165 which provides:

> 1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized**, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)

Section 21(a) of Article II of the *Implementing Rules and Regulations* of R.A. No. 9165 more specifically mandates that:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; **Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (Emphasis and underscoring supplied)

Thus, with respect to the marking of dangerous drug by the apprehending officer or team in case of warrantless seizures such as in this case, it must be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. This is in line with the "chain of custody" rule. *People v. Sanchez*[22] elucidates:

> . . . [I]n case of **warrantless seizures such as a buy- bust operation**, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.
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> What Section 21 of R.A. No. 9165 and its implementing rule do not