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FIRST DIVISION

[G.R. Nos. 136066-67, February 04, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BINAD SY CHUA, ACCUSED-APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

Accused-appellant Binad Sy Chua was charged with violation of Section 16, Article III of R.A. 6425, as amended by R.A. 7659, and for Illegal Possession of ammunitions in two separate Informations which read as follows:

Criminal Case No. 96-507[1]

> That on or about the 21st day of September 1996, in the City of Angeles, 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 and under his control two (2) plastic bags containing Methamphetamine Hydrochloride (SHABU) weighing more or less two (2) kilos and one (1) small plastic bag containing Methamphetamine Hydrocloride weighing more or less fifteen (15) grams, which is a regulated drug, without any authority whatsoever.

Criminal Case No. 96-513[2]

> That on or about the 21st day of September 1996, in the City of Angeles, 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 and under his control twenty (20) pieces of live .22 cal. ammunitions, without first having obtained a license or permit to possess or carry the same.

Accused-appellant pleaded "not guilty" on arraignment. The two cases were then jointly tried.

The prosecution presented three (3) witnesses, all members of the police force of Angeles City. Their testimonies can be synthesized as follows:

On September 21, 1996, at around 10:00 in the evening, SPO2 Mario Nulud and PO2 Emmeraldo Nunag received a report from their confidential informant that accused-appellant was about to deliver drugs that night at the Thunder Inn Hotel in Balibago, Angeles City. The informer further reported that accused-appellant distributes illegal drugs in different karaoke bars in Angeles City. On the basis of this lead, the PNP Chief of Angeles City, Col. Neopito Gutierrez, immediately formed a team of operatives composed of Major Bernardino, Insp. Tullao, Insp. Emmanuel Nunag, P02 Emmeraldo Nunag, SP01 Fernando Go, and some civilian assets, with

SPO2 Mario Nulud, as team investigator. The group of SPO2 Nulud, PO2 Nunag and the civilian informer positioned themselves across McArthur Highway near Bali Hai Restaurant, fronting Thunder Inn Hotel. The other group acted as their back up.

At around 11:45 in the evening, their informer pointed to a car driven by accused-appellant which just arrived and parked near the entrance of the Thunder Inn Hotel. After accused-appellant alighted from the car carrying a sealed Zest-O juice box, SPO2 Nulud and PO2 Nunag hurriedly accosted him and introduced themselves as police officers. As accused-appellant pulled out his wallet, a small transparent plastic bag with a crystalline substance protruded from his right back pocket. Forthwith, SPO2 Nulud subjected him to a body search which yielded twenty (20) pieces of live .22 caliber firearm bullets from his left back pocket. When SPO2 Nunag peeked into the contents of the Zest-O box, he saw that it contained a crystalline substance. SPO2 Nulud instantly confiscated the small transparent plastic bag, the Zest-O juice box, the twenty (20) pieces of .22 caliber firearm bullets and the car used by accused-appellant. Afterwards, SPO2 Nulud and the other police operatives who arrived at the scene brought the confiscated items to the office of Col. Guttierez at the PNP Headquarters in Camp Pepito, Angeles City.[3]

When Col. Gutierrez opened the sealed Zest-O juice box, he found 2 big plastic bags containing crystalline substances. The initial field test conducted by SPO2 Danilo Cruz at the PNP Headquarters revealed that the siezed items contained shabu.[4] Thereafter, SPO2 Nulud together with accused-appellant brought these items for further laboratory examination to the Crime Laboratory at Camp Olivas, San Fernando, Pampanga. After due testing, forensic chemist S/Insp. Daisy Babor concluded that the crystalline substances yielded positive results for shabu. The small plastic bag weighed 13.815 grams while the two big plastic bags weighed 1.942 kilograms of *shabu*.[5]

Accused-appellant vehemently denied the accusation against him and narrated a different version of the incident.

Accused-appellant alleged that on the night in question, he was driving the car of his wife to follow her and his son to Manila. He felt sleepy, so he decided to take the old route along McArthur Highway. He stopped in front of a small store near Thunder Inn Hotel in Balibago, Angeles City to buy cigarettes and candies. While at the store, he noticed a man approach and examine the inside of his car. When he called the attention of the onlooker, the man immediately pulled out a .45 caliber gun and made him face his car with raised hands. The man later on identified himself as a policeman. During the course of the arrest, the policeman took out his wallet and instructed him to open his car. He refused, so the policeman took his car keys and proceeded to search his car. At this time, the police officer’s companions arrived at the scene in two cars. PO2 Nulud, who just arrived at the scene, pulled him away from his car in a nearby bank, while the others searched his car.

Thereafter, he was brought to the Salakot Police Station and was held inside a bathroom for about fifteen minutes until Col. Guttierez arrived, who ordered his men to call the media. In the presence of reporters, Col. Guttierez opened the box and accused-appellant was made to hold the box while pictures were being taken.[6]

Wilfredo Lagman corroborated the story of the accused-appellant in its material

points. He testified that he witnessed the incident while he was conducting a routine security check around the premises of the Guess Building, near Thunder Inn Hotel. [7]

On September 15, 1998 the Regional Trial Court of Angeles City, Branch 59, rendered a decision,[8] the dispositive portion of which reads:

> WHEREFORE, the foregoing considered, judgement is hereby rendered as follows:
>
> 1. In Criminal Case No. 96-513 for Illegal Possession of Ammunitions, the accused is hereby acquitted of the crime charged for insufficiency of evidence.
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> 2. In Criminal Case No. 96-507 for Illegal Possession of 1,955.815 grams of shabu, accused Binad Sy Chua is found GUILTY beyond reasonable doubt of the crime charge and is hereby sentenced to suffer the penalty of reclusion perpetua and to pay a fine of One Million (P1,000,000.00) Pesos.
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> SO ORDERED.[9]

Hence, the instant appeal where accused-appellant raised the following errors:

> THE TRIAL COURT ERRED GRAVELY IN ITS FOLLOWING FINDINGS:
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> A. THE ARREST OF ACCUSED-APPELLANT BINAD SY CHUA WAS LAWFUL;
>
> B. THE SEARCH OF HIS PERSON AND THE SUBSEQUENT CONFISCATION OF SHABU ALLEGEDLY FOUND ON HIM WERE CONDUCTED IN A LAWFUL AND VALID MANNER;
>
> C. THE PROSECUTION EVIDENCE SUPPORTING THE CRIME CHARGED IS SUFICIENT TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REAONABLE DOUBT.[10]

Accused-appellant maintains that the warrantless arrest and search made by the police operatives was unlawful; that in the light of the testimony of SPO2 Nulud that prior to his arrest he has been under surveillance for two years, there was therefore no compelling reason for the haste within which the arresting officers sought to arrest and search him without a warrant; that the police officers had sufficient information about him and could have easily arrested him. Accused-appellant further argues that since his arrest was null an void, the drugs that were seized should likewise be inadmissible in evidence since they were obtained in violation of his constitutional rights against unreasonable search and seizures and arrest.

Accused-appellant’s argument is impressed with merit.

Although the trial court’s evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal, however, this rule is not a hard and fast one.

> It is a time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied to appellate judges, of observing the demeanor of the declarants in the course of their testimonies. The only exception is if there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[11]

In the case at bar, there appears on record some facts of weight and substance that have been overlooked, misapprehended, or misapplied by the trial court which casts doubt on the guilt of accused-appellant. An appeal in a criminal case opens the whole case for review and this includes the review of the penalty and indemnity imposed by the trial court.[12] We are clothed with ample authority to review matters, even those not raised on appeal, if we find that their consideration is necessary in arriving at a just disposition of the case. Every circumstance in favor of the accused shall be considered.[13] This is in keeping with the constitutional mandate that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt.

First, with respect to the warrantless arrest and consequent search and seizure made upon accused-appellant, the court *a quo* made the following findings:

> Accused was searched and arrested while in possession of regulated drugs (shabu). A crime was actually being committed by the accused and he was caught *in flagrante delicto*. Thus, the search made upon his personal effects x x x allow a warrantless search incident to a lawful arrest. x x x x
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> While it is true that the police officers were not armed with a search warrant when the search was made over the personal affects (sic) of the accused, however, under the circumstances of the case, there was sufficient probable cause for said officers to believe that accused was then and there committing a crime.
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> x x x x x x x x x
>
> In the present case, the police received information that the accused will distribute illegal drugs that evening at the Thunder Inn Hotel and its vicinities. The police officer had to act quickly and there was no more time to secure a search warrant. The search is valid being akin to a "stop and frisk".[14]

A thorough review of the evidence on record belies the findings and conclusion of the trial court. It confused the two different concepts of a search incidental to a lawful arrest (*in flagrante delicto*) and of a "stop-and-frisk."

In *Malacat v. Court of Appeals*,[15] we distinguished the concepts of a "stop-and-frisk" and of a search incidental to a lawful arrest, to wit:

> At the outset, we note that the trial court confused the concepts of a "stop-and-frisk" and of a search incidental to a lawful arrest. These two

types of warrantless searches differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope.

In a search incidental to a lawful arrest, as **the precedent arrest determines the validity of the incidental search,** the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, **the law requires that there first be arrest before a search can be made—the process cannot be reversed.** At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence.

x x x x x x x x x

We now proceed to the justification for and allowable scope of a "stop-and-frisk" as a "l**imited protective search of outer clothing for weapons,**" as laid down in Terry, thus:

> We merely hold today that **where a police officer observes unusual conduct** which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, **where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries**, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth amendment.

Other notable points of *Terry* are that while probable cause is not required to conduct a "stop-and-frisk," it nevertheless holds that **mere suspicion or a hunch will not validate a "stop-and-frisk". A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.** Finally, a "stop-and-frisk" serves a two-fold interest: (1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.[16] (Emphasis ours)