

FIRST DIVISION

[G.R. No. 125959, February 01, 1999]

JOSE MARIA M. ASUNCION, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

RESOLUTION

MARTINEZ, J.:

Petitioner seeks reconsideration of the resolution of the Honorable Court dated February 10, 1997, which denied his Petition for Review on *Certiorari* for his failure to sufficiently show that respondent Court of Appeals had committed a reversible error in rendering the questioned judgment.

The said petition seeks a review of the decision of the Court of Appeals in C.A. - GR CR. No. 16308, entitled "People of the Philippines v. Jose Maria M. Asuncion", which affirmed the judgment of the Regional Trial Court of Malabon, Branch 170, finding the petitioner Jose Maria M. Asuncion guilty beyond reasonable doubt for possession of regulated drugs punishable under Section 16, Article III of Republic Act No. 6425, otherwise known as the "Dangerous Drugs Act".

The facts of the case, as found by the trial court, and adopted by the appellate court, are as follows:

"Accused Jose Maria Asuncion y Marfori, also known as Binggoy and/or Vic Vargas, is charged with violation of Section 16, Article III of Republic Act 6425 in an Information which reads:

"That on or about the 6th day of December 1993, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and feloniously have in his possession, custody, and control one (1) small plastic packet marked #1 A.S.A. 12-6-93 (g. wt-0.1216 gram) containing Methamphetamine Hydrochloride and another small plastic packet marked #2 A.S.A. 12-6-93 (G. wt-0.0594 gram) containing Methamphetamine Hydrochloride which substances when subjected to chemistry examination gave positive results for Methamphetamine Hydrochloride otherwise known as 'Shabu'."

Upon arraignment, the accused pleaded not guilty.

Evidence for the prosecution shows that on December 6, 1993, in compliance with the order of the Malabon Municipal Mayor to intensify campaign against illegal drugs particularly at Barangay Tañong, the Chief

of the Malabon Police Anti-Narcotics Unit ordered his men to conduct patrol on the area with specific instruction to look for a certain vehicle with a certain plate number and watch out for a certain drug pusher named Vic Vargas. Pursuant thereto, SPO1 Advincula, PO3 Parcon, PO3 Pilapil and a police aide were dispatched at around 11:45 in the evening. The team proceeded to Barangay Tañong where they were joined by their confidential informant and the latter informed them that a gray Nissan car is always parked therein for the purpose of selling shabu. While patrolling along Leoño Street, the confidential informant pointed the gray Nissan car to the policemen and told them that the occupant thereof has shabu in his possession. The policemen immediately flagged down the said car along First Street and approached the driver, who turned out to be herein accused Jose Maria Asuncion y Marfori, a movie actor using the screen name Vic Vargas and who is also known as Binggoy. Advincula then asked the accused if they can inspect the vehicle. As the accused acceded thereto, Advincula conducted a search on the vehicle and he found a plastic packet containing white substance suspected to be methamphetamine hydrochloride (Exhibit D-1) beneath the driver's seat. The accused told the policemen that he just borrowed the said car and he is not the owner thereof. The accused was thereafter taken at the police headquarters for the purpose of taking his identification. However, when he was frisked by Advincula at the headquarters, the latter groped something protruding from his underwear, which when voluntarily taken out by the accused turned out to be a plastic packet containing white substance suspected to be methamphetamine hydrochloride (Exhibit D). A press conference was conducted the following day presided by Northern Police District Director Pureza during which the accused admitted that the methamphetamine hydrochloride were for his personal use in his shooting.

Advincula further testified that prior to this incident, they already had an encounter with the accused but the latter was able to evade them, and that they did not secure a search warrant for the reason that the accused uses different vehicles and they cannot get his exact identity and residence.

The suspected methamphetamine hydrochloride confiscated from the accused (Exhibits D and D-1) were transmitted to the NBI Forensic Chemistry Division (Exhibit A), and upon examination yielded positive results for methamphetamine hydrochloride, a regulated drug (Exhibits B and C).

On the other hand, the accused denied the charges against him. He testified that on December 6, 1993, between 8:00 and 9:00 o'clock in the evening, he was abducted at gun point in front of the house where his son lives by men who turned out to be members of the Malabon Police Anti-Narcotics Unit; that he was told to board at the back seat by the policemen who took over the wheels; that he acceded to be brought at the Pagamutang Bayan ng Malabon for drug test but only his blood pressure was checked in the said hospital; that he was thereafter brought at the Office of the Malabon Police Anti-Narcotics Unit; and that he is not

aware of what happened at 11:45 in the evening as he was then sleeping at the said office."^[1]

On June 14, 1994, a decision was rendered by the trial court finding the petitioner guilty beyond reasonable doubt of the offense charged. The dispositive portion of the said decision states:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Jose Maria Asuncion y Marfori guilty beyond reasonable doubt of Violation of Section 16, Article III, Republic Act 6425 and considering the quantity of the Methamphetamine Hydrochloride involved in this case, hereby sentences him to suffer an indeterminate penalty of one (1) year eight (8) months and twenty (20) days as minimum, to three (3) years six (6) months and twenty (20) days, as maximum, and to pay a fine of P3,000.00. Cost de officio.

"The Methamphetamine Hydrochloride, subject matter of this case, is forfeited in favor of the government, and the Branch Clerk of Court is directed to turn over the same to the Dangerous Drugs Board for proper disposition, upon the finality of this decision.

"SO ORDERED."^[2]

On June 29, 1994, a Notice of Appeal was filed and the records of the case were transmitted by the trial court to the Court of Appeals. On April 30, 1996 a decision was rendered by the appellate court, the dispositive portion of which states:

"WHEREFORE, premises considered, the appealed decision (Dated June 14, 1994) of the Regional Trial Court (Branch 170) in Malabon, Metro Manila in Criminal Case No. 14254-MN is hereby MODIFIES as to the penalty imposed but AFFIRMED in all other respects. Thus, the accused-appellant is hereby sentenced to suffer an indeterminate prison term of SIX (6) Months of *arresto mayor* in its maximum period as minimum to FOUR (4) Years and TWO (2) Months of *prision correccional* in its medium period as maximum (People v. Simon, 234 SCRA 555; People v. Nicolas, 241 SCRA 67; People v. Judrito Adava y Balasbas (G.R. No. 102522, [June 5, 1994]; People v. Sixto Morico (G.R. No. 92660, July 14, 1995)) and the fine of THREE THOUSAND PESOS (P3,000.00) imposed on the accused (appellant) is hereby deleted in accordance with the Supreme Court's ruling in People v. Judrito Adava y Balasbas, supra) and People v. Sixto Morico, (supra).

"No pronouncement as to costs.

"SO ORDERED."^[3]

On August 6, 1996, the Court of Appeals denied the motion for reconsideration filed by petitioner.^[4] Thus, a petition for review on *certiorari* was filed before this Court, with petitioner arguing that the Court of Appeals erred:^[5]

IN AFFIRMING THE TRIAL COURT'S RULING THAT THE TIME OF COMMISSION IS NOT MATERIAL IN PROVING THE OFFENSE CHARGED.

II.

IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT THE PROBABLE CAUSE REQUIRED TO EFFECT A WARRANTLESS ARREST AND SEARCH EXIST UNDER THE CIRCUMSTANCES AS NARRATED BY THE PROSECUTION'S WITNESSES.

III.

IN AFFIRMING THE RULING OF THE TRIAL COURT THAT THE DEFENSE EVIDENCE ARE MERE DENIALS WHICH CANNOT OVERRIDE THE POSITIVE ASSERTIONS OF THE PROSECUTION'S WITNESSES.

On February 10, 1997, the First Division of this Court issued a resolution denying the petition for review on *certiorari* "for failure of the petitioner to sufficiently show that the respondent court had committed any reversible error in rendering the questioned judgment."^[6]

A motion for reconsideration of this resolution was filed on March 17, 1997. In this pleading, petitioner sought the reconsideration of the said dismissal on "grave constitutional considerations", arguing that the warrantless search was illegal. The 'shabu' recovered, being illegally obtained, was inadmissible as evidence. Petitioner also argued that the raising of constitutional issues necessitated a re-examination of the issues presented.^[7]

Hence, this Court is called upon to resolve the constitutional issues raised by the petitioner in his motion for reconsideration.

After a careful examination, this Court finds no cogent reason to overturn the decision of the appellate court.

Well-entrenched in this country is the rule that no arrest, search and seizure can be made without a valid warrant issued by competent judicial authority. So sacred is this right that no less than the fundamental law of the land^[8] ordains it.

However, the rule that search and seizure must be supported by a valid warrant is not absolute. The search of a moving vehicle is one of the doctrinally accepted exceptions to the Constitutional mandate that no search or seizure shall be made except by virtue of a warrant issued by a judge after personally determining the existence of probable cause.^[9] The prevalent circumstances of the case undoubtedly bear out the fact that the search in question was made as regards a moving vehicle - petitioner's vehicle was "flagged down" by the apprehending officers upon identification. Therefore, the police authorities were justified in searching the petitioner's automobile without a warrant since the situation demanded immediate action.

This Court, in the case of ***People v. Lo Ho Wing***,^[10] elucidated on the rationale for