

## TWENTIETH DIVISION

[ CA G.R. CEB-CR NO. 02227, January 14, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICO FELICILDA TINDUGAN, ACCUSED-APPELLANT.**

### DECISION

**QUIJANO-PADILLA, J.:**

This is an appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> of Branch 57 of the Regional Trial Court of Cebu City, dated April 4, 2013 in Criminal Case No. CBU-79575, adjudging the accused-appellant guilty beyond reasonable doubt for Violation of Section 11<sup>[3]</sup> of Article II of R.A. 9165, otherwise known as the "The Comprehensive Dangerous Drugs Act of 2002".

#### The Facts

Accused-appellant Rico Felicilda Tindugan was charged by the City Prosecutor of Cebu City in a Criminal Information<sup>[4]</sup> dated March 21, 2007 which read:

#### CBU-79575

"That on or about the 19<sup>th</sup> day of March 2007 at about 11:45 p.m., more or less, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control One (1) medium plastic pack containing eight (8) plastic sachets of shabu weighing all in all 0.42 gram, a dangerous drug, without authority of law.

CONTRARY TO LAW."<sup>[5]</sup>

Upon arraignment<sup>[6]</sup> on July 23, 2007, the accused-appellant, duly assisted by a counsel, pleaded not guilty to the crime charged.

Thereafter, trial on the merits ensued.

#### The Version of the Prosecution<sup>[7]</sup>

The facts as narrated by the plaintiff-appellee in its Brief<sup>[8]</sup> are as follows:

To substantiate the charge, State's evidence disclosed that acting on the reports or informations from a resident of the place that accused is engaged in the illegal drug activities, surveillance was conducted by the Police Station 7 of Cebu City. The test buy operation was positive and pursuant to the letter-request, the illegal drug (shabu) examined positive for the presence of metamphetamine hydrochloride, per

Finally, a team composed of P/Insp. Armando Canete (team leader), PO2 Miguel Enriquez, SPO4 Sanrico Jolejole, P/SInsp. Aureo Sanchez, PO2 Joel Lacson, PO1 Duane Aquino and PO3 Rene Barral implemented Search Warrant No. 1714-3-1207-15 against the herein accused at Upper Greenbelt, Quiot, Cebu City, they all proceeded to accused's residence, a one storey house.<sup>[10]</sup>

After the police officers were allowed entrance to the house, accused, who was at the sala, was informed that they are police officers of the Pardo Police Station to implement the search warrant. The master's bedroom and the kitchen, which were searched by officers Aquino and Enriquez, respectively, were negative of illegal drugs.<sup>[11]</sup>

Search proceeded at the sala by officer Enriquez, with the accused's wife and two females around. Accused, who was also present, was sitting on a sofa at the sala. When the foam was pressed, found inserted between the edge of the back rest and the seat portion of the sofa were eight (8) packets of shabu, all placed in another plastic pack. Accused, who was seated in another sofa near to a sofa where the packs of shabu were found did not react to its recovery. Officer Enriquez turned over the illegal drugs to officer Jolejole. The latter placed the markings "RTF-19-03-01" to "RTF-19-03-08" on the eight packets of shabu while still at the residence of the accused. A Receipt of Property Seized and Certification of good conduct search were prepared by officer Jolejole. The latter turned over the marked packets of shabu to officer Barral for delivery to the PNP Crime Laboratory.<sup>[12]</sup>

The packets of shabu were received by PO3 Sudario of said laboratory, per his signature appearing on the rubber stamp impression "RECEIVED" and the logbook. The same were turned over to P/C Insp. Mutchit Salinas, who after examination found the same to contain methamphetamine hydrochloride, a dangerous drug, as evidenced by Chemistry Report No. D-350-2007.<sup>[13]</sup>

### **The Version of the Accused-Appellant**

The defense presented three witnesses, Marzan Arabes, Noralyn Tindugan and the accused himself, Rico Tindugan. From the testimony of the accused and as summarized in his Brief<sup>[14]</sup>, the following incident transpired:

On March 19, 2007 at around 11: 45 in the evening, Rico Tindugan and his family were already sleeping when police officers Jolejole, Lacson, Enriquez and Aquino arrived to implement a search warrant. Accused-appellant declared that he has seen these police officers before during cockfights and he has seen their service vehicle parked outside the house of the Barangay Captain. These police officers especially police officer Jolejole would often go to the house of the Barangay Captain. When these police officers arrived at his house and he was shown a copy of the search warrant, he allowed them to conduct a search provided that they make a proper search. He accompanied police officer Aquino in searching the area outside his house. After that, Aquino entered the house and he was designated to search the room. Rico's wife accompanied Aquino in the room. Police officer Enriquez was at the sala while Lacson was in the kitchen and Jolejole was sitting on the dining table preparing inventory. The other police officers were outside the house. When nothing

was recovered inside the house, the police officers went in and out of the house. Then there was one person who smelled liquor and appeared to be drunk entered the house. The man pushed the chair where Marsan was sitting, moved the backrest and thereafter announced that it is positive. He was the man who picked up the item which is a small sachet and gave it to officer Enriquez and the latter in turn handed the same to officer Jolejole. The man was not one of the police officers who initially searched the house. The following morning, Rico came to know that the man was not a police officer but merely a police asset named Bary Delfin. He was surprised why there were eight sachets when there was only one sachet found by the man. When that Bary Delfin went inside the house and suddenly found something, he complained because what they did was foolishness.<sup>[15]</sup>

### **The Ruling of the Regional Trial Court**

In a Judgment<sup>[16]</sup> dated April 4, 2013, the Regional Trial Court found the accused-appellant guilty beyond reasonable doubt of the crime penalized under Section 11, Article II of R.A. 9165. In the assailed decision, the trial court found the evidence presented by the prosecution to be sufficient to establish the elements of the crime charged. The trial court likewise found the chain of custody of the seized illegal drugs to have remained unbroken. The decretal portion of the decision reads:

"WHEREFORE, in view of the foregoing, the Court finds accused, Rico Felicilda Tindungan, guilty beyond reasonable doubt of Violation of Section 11, Article II of RA 9165 and is sentenced to suffer the penalty of twelve (12) years and one (1) day to fifteen (15) years and a fine of P300,000.00.

The eight packets of shabu are forfeited in favor of the government.

SO ORDERED.

Cebu City, Philippines, April 4, 2013."<sup>[17]</sup>

Aggrieved with the decision, the accused-appellant timely filed this appeal<sup>[18]</sup> and raised the lone assignment of error, to wit:

#### **I**

THE COURT A QUO ERRED IN ADMITTING THE SEIZED DRUG CONSIDERING THAT THE IMPLEMENTATION OF THE SEARCH WARRANT WAS TAINTED WITH IRREGULARITIES.<sup>[19]</sup>

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE FAILURE OF THE PROSECUTION TO PROVE AN UNBROKEN CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED ILLEGAL DRUGS.<sup>[20]</sup>

### **This Court's Ruling**

The petition lacks merit.

The essential elements of the crime of illegal possession of regulated drugs are the

following: 1) the actual possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely or consciously possessed the said drug.<sup>[21]</sup>

[Illegal possession of regulated drugs] is mala prohibita, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (animus possidendi) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.<sup>[22]</sup>  
(Emphasis and underscoring supplied)

The finding of illicit drugs and paraphernalia in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof which, standing alone, is sufficient to convict.<sup>[23]</sup>

Herein accused-appellant failed to present any convincing evidence to rebut the presumption of knowledge and possession of the illegal substances found in his residence. As tenant of the house, he had full access to, full control of and dominion over the rooms.

Accused-appellant proffered no evidence as to his contention that the search conducted in his residence was tainted with irregularities for failure to comply with the provisions of Section 8, Rule 126 of the Rules of Court because he did not witness the simultaneous search conducted in his house as required by the Rules.

As provided in Section 8, Rule 126 of the Rules of Court,

SEC. 8. Search of house, room, or premises, to be made in presence of two witnesses– No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Records reveal that the police officers were accompanied by barangay tanod Severino Cabellon and Lolito Casul during the search in the house of the accused-appellant. Moreover, the accused-appellant himself and some of his family members, were inside his house, particularly in the living room where the illegal drugs were found during the conduct of the search. In fact, appellant's testimony is very telling:

xxx            xxx            xxx  
PROS.LORETE

Q: So, these police officers showed you the search warrant when they arrived?

A: Yes, ma'am.

Q: Now when you saw the search warrant, the subject there is your name and the residence was the place to be searched?

A: Yes, ma'am.

Q: And without objection, you let these officers implement the search warrant?

A: Yes, ma'am.

Q: Were there any other persons inside that house when the implementation of the search warrant was conducted, aside from you?

A: My family, ma'am.

Q: So, you are referring to your wife and how many children?

A: Three (3) children and my sister, ma'am.

Q: Is your house a two-storey house or just a bungalow type?

A: Bungalow type, ma'am.

Q: Have you noticed if there were any barangay tanods together with the arresting officers?

A: There were, ma'am. [24]

Also, PO3 Miguel Enriquez has these to affirm:

Q: Was Rico Tindugan alone in the sala where he was sitting when you entered the house?

A: There were other people inside, ma'am.

Q: How many people inside, aside from the lady, who let you come inside the gate?

A: Aside from his wife, ma'am, there were two other ladies, a houseboy then the kids.

Q: How many kids?

A: Two (2) kids, ma'am. [25]

Furthermore, PO3 Miguel Enriquez revealed that when he found the shabu in the living room, the accused-appellant himself was there in the same room, sitting in the sofa, viz:

Pros. Lorete

Q: When you focused your attention now in the sala, what did you do next?

A: I also conducted search in the sala then I found the subject of the search warrant, ma'am, the eight (8) plastic packs subject of the search warrant.