

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR NO. 01469, February 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFIE
LAPAYAO, ACCUSED-APPELLANT,**

D E C I S I O N

LAGURA-YAP, J.:

Alfie Lapayao (accused-appellant) appeals the Decision^[1] dated November 10, 2009 rendered by the Regional Trial Court, Branch 17, Cebu City in Criminal Case No. CBU-80808. The accused-appellant is convicted of Violation of Section 11, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act.

The dispositive portion^[2] of the decision, reads:

WHEREFORE, premises considered, the Court hereby finds accused ALFIE LAPAYAO guilty of the offense charged beyond reasonable doubt. Accordingly, accused ALFIE LAPAYAO is hereby sentenced to suffer imprisonment ranging from 12 years and 1 day, as minimum, to 14 years, as maximum, and to pay a fine of P300,000.00.

Let the article, subject matter hereof, be disposed in accordance with law.

The Information^[3] filed on August 2, 2007, against accused Alfie Lapayao alleges:

That on the 27th day of July 2007, at about 9:00 o'clock in the morning, in Sitio Lacaron, Barangay Pitalo, Municipality of San Fernando, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control: One (1) heat-sealed transparent plastic sachet marked as "ANL" containing 0.05 gram of white crystalline substance, which when subjected for laboratory examination gave positive result for the presence of Methamphetamine Hydrochloride, a dangerous drug.

The accused entered a plea of "NOT GUILTY" during the arraignment^[4] on August 28, 2007.

The evidence for the prosecution is summarized as follows:

On the 27th day of July 2007, at around 9:00 o'clock in the morning, the barangay tanods set up a checkpoint somewhere at Sitio Lacaron, Pitalo, San Fernando, Cebu to facilitate the flow of traffic for the coming of the governor. They checked motor vehicles of their licenses and registrations. They halted a motorcycle coming out from Sitio Lacaron. Miguel Olita, who claims to be a deputized agent of the Land

Transportation Office, asked for their drivers license and registration receipt. The chief tanod, Cresente Generale who was positioned at the right side of the motorcycle facing Naga, Cebu saw the back-rider dropped something from his right hand. Cresente picked up the fallen object and discovered it to be a miniature plastic pack containing white crystalline substance believed to be shabu. In view of that, the back-rider was further subjected to a body search. An aluminum tin foil was allegedly recovered from the right pocket of the suspect's short pants. Thus, the suspect, who was later known to be Alfie Lapayao, was charged of violation of Section 11, Article II, RA 9165 based upon the positive result of the specimen submitted for laboratory examination as contained in Chemistry Report No. D-798-2007.

Evidence for the defense is summarized hereunder:

On June 27, 2007, the accused was riding a motorcycle driven by Jinggoy Mancio when they were stopped by the barangay tanods. The driver was asked for his license and registration, when all of a sudden a tanod from a distance shouted that the accused threw something. The accused alleged that he only threw away a cigarette. He denied the allegation that the tanods recovered an aluminum tin foil from the right side pocket of his short pants. In fact his short pants did not have a right pocket. Despite their pleadings, they were apprehended and brought to the San Fernando Police Station. The accused said that he was never shown a plastic packet when he was arrested at the checkpoint. It was only at the police station that he was shown a plastic packet. The accused never knew where it came from.

After the trial, the RTC promulgated^[5] its judgment of conviction against the accused. Aggrieved, he filed a Notice of Appeal^[6] dated March 2, 2010. The accused-appellant filed a Motion to Post New Bail Pending Appeal also on March 2, 2010.^[7] The Motion to Post New Bail Pending Appeal was approved in the Order^[8] dated March 16, 2010.

ASSIGNMENT OF ERRORS

I

THE ACCUSED-APPELLANT'S CONVICTION IS NULL AND VOID FOR HAVING BEEN RENDERED CONTRARY TO THE PROVISION OF LAW AND JURISPRUDENCE.

II

THE COURT A QUO ERRED IN FINDING THAT THE PROSECUTION SUCCEEDED IN PROVING BEYOND REASONABLE DOUBT THAT THE ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED TAKING INTO CONSIDERATION THAT THE COURT A QUO GRANTED THE BAIL APPLIED BY THE ACCUSED-APPELLANT.

III

THE COURT A QUO ERRED IN GIVING DUE WEIGHT TO THE

PRESUMPTION OF REGULARITY OF PERFORMANCE OF DUTIES VIS-A-VIS
PRESUMPTION OF INNOCENCE BASED ON FLAWED CHAIN OF CUSTODY.

The accused-appellant argues that he was subjected to citizen's arrest because the arresting officers were not deputized agents of the Land Transportation Office. Therefore, there must be an affidavit of arrest wherein it would be stated that the arresting individual saw the accused committing the crime in flagrante delicto. Due to such fact the arresting individual effected a citizen's arrest and accorded the accused of his constitutional rights. However, perusal of the records reveals that there was no affidavit presented and the accused-appellant was not informed of his constitutional rights. Jurisprudence dictates that the absence of the requirements for a valid arrest renders the arrest illegal and violates his constitutional rights. The items confiscated from the accused-appellant are therefore inadmissible in evidence.

The accused-appellant is of the view that the prosecution failed to establish the corpus delicti of the case. The evidence would show that the prosecution witnesses namely Miguel Olita and Cresente Generale have no personal knowledge of what happened to the shabu right after they turned it over, together with the accused-appellant to the police station. The marking of the plastic sachet of shabu was also done in the police station. It was made by a duty investigator who was not presented in court. Instead they presented the Chief of Police of San Fernando Police Station, who cannot recall the family name of the duty investigator. It is very important to account for every link of the chain starting from turn-over by the barangay tanods to the investigator, to the chemist, until the specimen was presented in court. Therefore, the prosecution failed to prove that the dangerous drugs submitted for laboratory examination is the same one allegedly taken from the accused-appellant.

The accused-appellant ratiocinates that the presiding judge of the court a quo granted the bail for two instances, December 23, 2009 and March 16, 2010. In both instances, the grant of bail is left at the discretion of the court a quo which manifests that the evidence against the accused-appellant is not strong.

The accused-appellant also posits the view that reliance on the presumption of regularity in the performance of duty is not enough for conviction. Once challenged by evidence of flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence.

Lastly, while the defense of denial is inherently weak, the conviction of the accused must rely on the strength of the prosecution's evidence and not the weakness of his defense.

The Solicitor General in his Appellee's Brief counter argues that the Barangay Tanods were well within their rights to take custody of appellant and bring him to the police station for further investigation. They were posted at the boundary of Naga and San Fernando, Cebu precisely to regulate the flow of traffic as the governor was scheduled to visit the nearby area. There was enough justification for them to be there and perform their peace and order duties because they were barangay tanods. The accused-appellant's allegation that he was not afforded his Miranda rights is nothing more than self serving remarks. Accused-appellant's conviction was not brought about by any of his admission during the custodial investigation. Accused-appellant's conviction is based mainly on the testimonies of the prosecution