

## TWELFTH DIVISION

[ CA-G.R. CR. No. 33817, March 11, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL  
ESGUERRA, ACCUSED-APPELLANT.**

### D E C I S I O N

**ELBINIAS, J.:**

At bench is an Appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> of the Regional Trial Court (“trial court” for brevity) of Malolos, Bulacan, Branch 78 in Criminal Case No. 519-M-2002, for violation of Section 16, Article III (“Possession or Use of Regulated Drug”) of Republic Act No. 6425, as amended, (“R.A. 6425” for brevity) otherwise known as the “Dangerous Drugs Act of 1972”.

The conviction of accused-appellant Raul Esguerra (“accused-appellant” for brevity) arose from an Information<sup>[3]</sup> dated January 28, 2002 that read as follows:

“That on or about the 26<sup>th</sup> day of June, 2001, in the Municipality of Plaridel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, without authority of law and legal justification, did then and there willfully, unlawfully, and feloniously have in his possession and control three (3) heat-sealed transparent plastic bags containing methamphetamine hydrochloride weighing 147.536 grams, which is [a] regulated drug.

Contrary to law”<sup>[4]</sup>

The prosecution presented three (3) witnesses, namely: SPO4 Felicito de Belen (“SPO4 de Belen” for brevity), PO2 Alexis Fajardo (“PO2 Fajardo” for brevity), and, Forensic Chemist Nellson Sta. Maria (“Sta. Maria” for brevity), in order to establish the following:

On June 12, 2001, at around 7:00 in the evening<sup>[5]</sup>, the Philippine National Police of Bulacan Police Provincial Office (“PNP Bulacan” for brevity) conducted a “test-buy”, in order to verify a report that accused-appellant was engaged in “large scale illegal drugs”<sup>[6]</sup>. The PNP Bulacan proceeded to the house of accused-appellant in Sta. Ines, Plaridel, Bulacan. PO2 Fajardo acted as the poseur buyer. He was able to buy a sachet suspected of containing shabu from accused-appellant inside the latter's house. The sachet suspected to be containing shabu was subjected to laboratory examination.<sup>[7]</sup> The test yielded a positive result for Methamphetamine Hydrochloride or “shabu”.

Because of this, an application for Search Warrant against accused-appellant was filed by SPO4 de Belen before the Regional Trial Court of Bulacan, Branch 20 (“RTC Branch 20” for brevity). The Search Warrant was issued.<sup>[8]</sup>

On June 26, 2000, at around 2:30 in the afternoon, members of PNP Bulacan went to the house of accused-appellant to serve the Search Warrant.<sup>[9]</sup> The policemen were accompanied by the Barangay Chairman Socorro Constantino ("Barangay Chairman Constantino" for brevity), and two barangay tanods of Sta. Ines, Plaridel, Bulacan.<sup>[10]</sup>

Upon arriving at the house of accused-appellant, the policemen asked the permission of accused-appellant's wife, Candida Esguerra ("Candida" for brevity), to enter and to conduct the search.<sup>[11]</sup> At that time, accused-appellant was not present.<sup>[12]</sup>

Before entering, the team leader, Col. Sevilla, conducted a bodily search of the members of the raiding team in order to avoid doubt as to the evidence that would be found. Nothing was recovered by Col. Sevilla from the members of the raiding team.<sup>[13]</sup> Afterwards, the policemen were allowed by Barangay Chairman Constantino and Candida to enter the house.<sup>[14]</sup>

Candida witnessed the search<sup>[15]</sup> by the members of the raiding team. When PO2 Fajardo opened a cabinet located inside a room, he saw three (3) plastic sachets which he suspected to contain shabu.<sup>[16]</sup> The plastic sachets were visible, because they were protruding from under the clothes inside the cabinet.<sup>[17]</sup>

SPO4 de Belen saw PO2 Fajardo recover the three (3) plastic sachets inside the cabinet.<sup>[18]</sup>

The policemen also recovered marijuana, live ammunition, valium tablets, and drug paraphernalia<sup>[19]</sup>. During the search, SPO4 Yabut took photos of the activities made and of the items seized.<sup>[20]</sup> The seized items were presented by the search team to Candida, Barangay Chairman Constantino, and to the two (2) barangay tanods.<sup>[21]</sup> A copy of a "RECEIPT FOR THE PROPERTY SEIZED"<sup>[22]</sup>, which was signed by the witnesses, Barangay Chairman Constantino and the two (2) barangay tanods, was also given to Candida.<sup>[23]</sup>

SPO4 de Belen testified that he was present when the investigating officer SPO4 Yabut made the markings on the items recovered.<sup>[24]</sup>

According to SPO4 de Belen, the recovered items were brought by the police officers to their office for appropriate action.<sup>[25]</sup> The items were then submitted by SPO4 de Belen to the PNP Crime Laboratory<sup>[26]</sup> by virtue of a request for weighing the specimen, which was signed by Police Superintendent Sevilla<sup>[27]</sup>.

On June 27, 2001, the recovered items were returned to the RTC Branch 20 that issued the Search Warrant.<sup>[28]</sup> RTC Branch 20 then requested for the chemical examination of the submitted items to the PNP crime laboratory.<sup>[29]</sup>

Among the pertinent results of the chemical examination conducted by Chemist Sta. Maria on the confiscated items were as follows:

"Chemistry Report Nr: D-829-2001

Qualitative examination conducted on the above-stated specimens gave the following results:

**A-1 through A-3 – POSITIVE result to the test for Methylamphetamine hydrochloride, a regulated drug.**

B-1 – POSITIVE result to the test for Marijuana, a prohibited drug.

E-1 through E-14 – POSITIVE result to the test for Diazepam, a regulated drug.

C-1 and C-2, D-1 through D-3, F – NEGATIVE result to the test for prohibited and/or regulated drug. xxx”<sup>[30]</sup> (*Emphasis supplied*)

The defense, on the other hand, presented accused-appellant, Candida, and Samuel Libu-on, in order to prove the following:

According to accused-appellant's wife, Candida, on June 26, 2001, she was inside their house in Sta. Ines, Plaridel, Bulacan. She was trying to put to sleep her 3-year old child, Jelsie.<sup>[31]</sup> Police authorities arrived and were looking for her husband, accused-appellant Esguerra.<sup>[32]</sup> The policemen showed her a letter, but she was unable to read it thoroughly. According to Candida, she was nervous, since the policemen wanted to enter their house without her husband being around.<sup>[33]</sup>

Barangay Chairman Constantino who was with the police authorities, advised Candida to allow the police authorities to enter their house.<sup>[34]</sup>

At first, Candida refused to have their house searched by the policemen, but Barangay Chairman Constantino told her that the policemen would not leave until the search was conducted.<sup>[35]</sup>

Candida said that she was only at the sala together with Barangay Chairman Constantino when the policemen were conducting the search inside their room.<sup>[36]</sup> Afterwards, the policemen announced that they found drugs in the cabinet of their clothes.<sup>[37]</sup> Candida attempted to enter the room, but failed to do so because there were many people inside the room.<sup>[38]</sup>

Accused-appellant, for his part, testified that on June 26, 2001, at around 2:15 in the afternoon, he left Sta. Ines, Plaridel, Bulacan. He was on his way to Manila to meet a client named Rick Paras.<sup>[39]</sup> However, before he could do so, his wife, Candida called to inform him that there was a raid in their house<sup>[40]</sup>, and that the policemen had alleged that they found drugs.<sup>[41]</sup>

Because accused-appellant became afraid, he went home only after one (1) week.<sup>[42]</sup>

By virtue of an Alias Warrant of Arrest<sup>[43]</sup> issued by the trial court on October 22, 2003, accused-appellant was subsequently arrested and detained at the Bureau of Jail Management and Penology in Plaridel, Bulacan.<sup>[44]</sup>

Accused-appellant pleaded “NOT GUILTY.”<sup>[45]</sup>

Accused-appellant Esguerra was eventually found guilty by the trial court in its Decision<sup>[46]</sup> of October 8, 2010 for violation of Section 16 (“Illegal Possession or Use of Regulated Drugs”) Article III of Republic Act No. 6425, as amended, otherwise known as “The Dangerous Drugs Act of 1972”. However, accused-appellant was acquitted of the other charge for violation of Section 8, (“Illegal Possession or Use of Prohibited Drugs”) Article II of R.A. 6425, as amended, otherwise known as “The Dangerous Drugs Act of 1972”. The dispositive portion of the Decision read:

“WHEREFORE, the foregoing considered, this Court hereby pronounced accused Raul Esguerra:

(1) In Criminal Case No. 518-M-2002, **NOT GUILTY** of violation of Section 8, Article II of Republic Act No. 6425, as amended.

(2) In Criminal Case No. 519-M-2002, **GUILTY** beyond reasonable doubt of violation of Section 16, Article III of Republic Act No. 6425, as amended, and is hereby **SENTENCED** to suffer an indeterminate penalty of **SIX (6) YEARS AND ONE (1) DAY OF PRISION MAYOR AS MINIMUM TO FOURTEEN (14) YEARS AND (8) EIGHT MONTHS OF RECLUSION TEMPORAL AS MAXIMUM.**

The drugs subject matter of this case is hereby forfeited in favor of the government. The Branch Clerk of Court is hereby directed to turn over the same to the Dangerous Drugs Board for proper disposal thereof.

**SO ORDERED.**<sup>[47]</sup> (*Emphasis and italics were made in the original*)

Accused-appellant, in filing the Appeal at bench, prayed that “the Decision dated October 08, 2010, rendered by the Regional Trial Court of Malolos, Bulacan, Branch 78, be reversed and set aside and a new one be rendered ACQUITTING the accused-appellant of [Illegal Possession of Regulated Drugs].”<sup>[48]</sup>

Accused-appellant raised this sole assignment of error:

“THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.”<sup>[49]</sup>

In the prosecution of Illegal Possession of Regulated Drugs, such as the one charged in Crim. Case No. 519-M-2002 against accused-appellant, the following elements must concur: (1) the accused is found in possession of an item or object which is identified to be a regulated drug; (2) such possession is not authorized by law or by duly constituted authorities, and; (3) the accused freely and consciously possesses the regulated drug.<sup>[50]</sup>

Here, prosecution witnesses SPO2 de Belen and PO2 Fajardo positively identified accused-appellant as the lawful owner of the house where the three (3) sachets of shabu were recovered during the Search pursuant to a Search Warrant.<sup>[51]</sup>

Thus, even if accused-appellant was not present in his house during the conduct of such Search, accused-appellant's *animus possidendi* or his intent to possess was presumed by the fact of the discovery of the sachets of shabu in his house. That

*animus possidendi* would suffice for conviction considering that accused-appellant was the lawful owner of the house where the plastic sachets of shabu were found, was as similarly declared by the Supreme Court in ***People of the Philippines vs. Dexter Torres y dela Cruz, G.R. No. 170837, September 12, 2006***, to wit:

**“The fact that appellant was not in his residence when it was searched nor caught in *flagrante delicto* possessing the illicit drugs and paraphernalia does not dent the case of the prosecution. As a matter of law, when prohibited and regulated drugs are found in a house or other building belonging to and occupied by a particular person, the presumption arises that such person is in possession of such drugs in violation of law, and the fact of finding the same is sufficient to convict.** Otherwise stated, the finding of the illicit drugs and paraphernalia in the house owned by the appellant raised the presumption of knowledge and, standing alone, was sufficient to convict.

This Court, in *People v. Tira*, ruminated on the juridical concept of 'possession' under Section 16, Article III of R.A. No. 6425, as amended, and the evidence necessary to prove the said crime. The same principle applies to prohibited drugs.

**x x x This crime 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.**

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. **Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs is in the house or place over which the accused has control or dominion, or within such premises in the**