

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR NO. 01704, July 17, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLLY BARIK RACAL A.K.A "TATA", ACCUSED-APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal^[1] from the January 7, 2011 Judgment^[2] of the Regional Trial Court (RTC), Branch 57, Cebu City in Criminal Case No. CBU-80274 finding accused-appellant Rolly Barik Racal a.k.a. "Tata" guilty beyond reasonable doubt of illegal possession of dangerous drugs in violation of Section 11, Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002).

The Antecedents

Accused-appellant was charged under an Information^[3] which reads:

The undersigned Prosecutor II of Cebu City, accuses ROLLY RACAL a.k.a. "Tata" for Violation of Sec. 11 Art. II of RA 9165, committed as follows:

That on or about the 7th day of June, 2007, at about 3:30 p.m., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without being authorized by law, did then and there have in his/her possession and under his control the following:

one (1) heat-sealed transparent plastic packet of 0.01 gram of white crystalline substance

locally known as "shabu" which after laboratory examination conducted gave positive result for the presence of Methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Upon arraignment on August 9, 2007, accused-appellant, duly assisted by counsel, pleaded not guilty to the crime charged.^[4]

During the pre-trial conference, no proposals for admission were proffered by the parties but submitted the following issues for resolution: 1) whether or not the accused is guilty of the crime charged; and 2) the legality of arrest and seizure.^[5]

Thereafter, trial on the merits ensued.

The prosecution presented as its witnesses, PO1 Allan Abatayo^[6] and PO1 Ramon Chinel,^[7] and formally offered in evidence Exhibits "A" to "E," namely: the Letter Request for Laboratory Examination dated June 7, 2007;^[8] one (1) heat sealed plastic pack containing white crystalline substance marked "RBR";^[9] Chemistry Report No. D-606-2007;^[10] police blotter;^[11] certified true copy of information for violation of RA 8294;^[12] and offered during rebuttal, acknowledgment receipt.^[13]

For its part, the defense presented accused-appellant^[14] as its lone witness and formally offered in evidence Exhibit "1" - Order dated January 8, 2008 in Criminal Case No. 138494-R for Violation of RA 8294.^[15]

The Prosecution's Version

Culled from the records^[16] is the version of the prosecution, which is substantially as follows:

In a nutshell, prosecution's evidence shows that PO1 Nilo Aventurado, PO1 Nap Kelly Segarra, SPO1 Allan Abatayo, PO1 Ramon Chinel and other CIIB personnel, were at Gaisano Street, Brgy. Tejero, Cebu City to conduct a check point.

In the course of the operation, a PUJ was flagged down and the male passengers were directed to disembark. Recovered from the accused, who was one of the passengers, a .38 cal. revolver firearm at his left waistline during a body search. Officer Chinel confiscated a plastic packet of shabu (Exh. "B") from accused's secret pocket. Said officer brought the shabu to the police station, where he placed the markings "RBR" on the packet of shabu and together with the letter-request (Exh. "A"), delivered it to the PNP Crime Laboratory. Examination conducted on the illegal drug by Jude Daniel Mendoza, an expert in the examination of dangerous drug, found that submitted specimen to contain methamphetamine hydrochloride, a dangerous drug, per Chemistry Report No. D-606-2007 (Exh. "C").

When presented in court, the arresting police officers testified in this manner:

PO1 Allan Abatayo recalled that on June 7, 2007, he was at David Gaisano St., Barangay Tejero, Cebu City, with other members of the CIIB conducting a checkpoint on public utility jeepneys (PUJ) that passed thereon. With him, among others, were PO1 Chinel, PO1 Aventurado and PO1 Segarra.^[17]

At around 3:30 in the afternoon, after they flagged down a jeepney and ordered the male passengers to lift their shirts, they saw Rolly Racal in possession of a .38 caliber. Thereafter, they arrested the accused for illegal possession of firearms. Then, PO1 Chinel conducted a body search upon the accused who was found in possession of a small plastic sachet of shabu. The said sachet of shabu was found in the secret pocket of the accused's pants. Thereafter, they brought the accused to their officer for proper disposition of the case. It was PO1 Chinel who held the sachet of shabu from the crime scene to their office. At the police station, PO1

Chinel marked the seized plastic pack with the initials RBR and submitted the same to the PNP Crime Laboratory for examination. As per Chemistry Report No. D-606-2007, the specimen submitted to the PNP crime laboratory gave a positive result for shabu. The incident on June 7, 2007 was recorded in the police blotter. He identified the accused who was inside the courtroom.^[18]

To refute and belie the allegation of accused that he planted evidence for Violation of R.A. 8294, he presented to the court the Acknowledgment Receipt signed by the Clerk of Court of Municipal Trial Court in Cities, Branch 7. However, he admitted that the said case was dismissed and never re-filed.^[19]

PO1 Ramon Chinel testified that on June 7, 2007, he was with the group of CIIB Gorordo, Cebu City, conducting a check point on public utility jeepney (PUJ) at David Gaisano Street, Tejero, Cebu City. He recalled that they flagged down the PUJ with the number 10H from SM Cebu City to Bulacao. Thereafter, they informed the passengers that they were conducting a check point and it was this time that accused was rattled; then he noticed that an item was protruding from the waistline of the accused. At that time, the accused was just sitting inside the PUJ. Thus, they instructed the accused to disembark from the PUJ. PO1 Abatayo who conducted the search upon the accused recovered a handgun. When asked for the document for possessing a gun, the accused replied that he had no document to show. They then arrested the accused for possessing the firearm without the necessary document. When he searched the accused for other deadly weapon, he found a small plastic pack of white crystalline substance from the right pocket of the former's pants. Thereafter, they brought the accused to the police station. He was in possession of the seized plastic pack from the crime scene to the police station. At the police station, he marked the small plastic pack with "RBR", which stands for Rolly Baric Racal. The incident was reflected in the police blotter. He then submitted the small plastic pack together with the letter request to the PNP Crime Laboratory for examination. The result of the examination was reflected in Chemistry Report No. D-606-2007. He remembered that an Information for Violation of R.A. 8294 was filed against the accused. Aside from the accused, a certain Ramil Aniscal Abellar was also arrested during the checkpoint.^[20]

He revealed that they were not able to prepare an inventory of the items confiscated on June 7, 2007; neither a photograph was taken of the seized items.^[21]

On cross examination, he admitted that they approached the accused who was then frisked by PO1 Abatayo because the accused "had a suspicious look at the time and he stayed beside." He was certain that he did not personally request the accused to raise his shirt; the accused also did not raise his shirt. However, they arrested the accused because they suspected that the item protruding on his left side was a weapon.^[22]

The Appellant's Version

Accused-appellant denied the charge against him. His narration of what purportedly transpired during the aforesaid time and date, is as follows:[23]

On the other hand, accused's evidence disclosed that on the date in question. At about 1:00 P.M., he was with Ramil Abellar at SM to hang around. At about past 10:00, they boarded a PUJ. At Barangay Tejero, there was a check point and all the male passengers were told to disembark. A firearm was recovered from Abellar but he was also brought together with Abellar for just being a companion of the latter. He together with Abellar, each [of them] was charged for Violation of RA 8294 and RA 9165. Abellar pleaded guilty to RA 8294 and was convicted of RA 9165.

The Ruling of the RTC

In its January 7, 2011 Judgment[24] the RTC convicted accused-appellant for illegal possession of drugs. The dispositive portion[25] of the assailed Decision reads:

"WHEREFORE, in view of the foregoing, accused Rolly Barik Racal is hereby sentenced him to suffer an imprisonment ranging from twelve (12) years and one (1) day to fifteen (15) years and a fine of P300,000.00.

He is credited for the period during his preventive imprisonment.

The plastic packet of shabu is forfeited in favor of the government.

SO ORDERED."

The RTC found the prosecution's allegations to be truthful. In concluding that the testimonies of the prosecution witnesses appear to be more credible, the RTC relied on the positive corroborated statements of the police officers and the presumption of regularity in the performance of official duty.

Insisting on his innocence, accused-appellant is now before Us with the following assigned errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BECAUSE THE PROSECUTION FAILED TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED PLASTIC PACK OF SHABU.

II.

THE TRIAL COURT ALSO ERRED IN FINDING THE APPELLANT GUILTY OF THE CRIME CHARGED BY RELYING ON THE WEAKNESS OF THE DEFENSE RATHER THAN ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE.

[26]

This Court's Ruling

The appeal lacks merit.

The foregoing issues being interrelated, they shall be discussed jointly hereunder.

Accused-appellant pointed out several errors that supposedly attended his conviction. Firstly, that he was arrested without a warrant under circumstances that do not justify a warrantless arrest and thus, rendered void all proceedings including those that led to his conviction. Secondly, that the small plastic pack containing the substance later found to be *shabu* was inadmissible in evidence as the same was a product of an unlawful search. Lastly, that the integrity of the seized illegal drugs which was the *corpus delicti* of the offense was questionable since the requirements provided under Section 21 of RA 9165 regarding the custody and disposition of seized drugs have not been complied with. Harping on these alleged procedural lapses, accused-appellant insisted that his guilt was not proven beyond reasonable doubt.

We do not agree with accused-appellant.

Proof of Guilt Beyond Reasonable Doubt Adequately Established by the Prosecution

After a careful examination of the records of this case, We are satisfied that the prosecution's evidence established the guilt of accused-appellant beyond reasonable doubt.

In deciding this appeal, this Court is guided by the legal aphorism that factual findings of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error.
[27]

Here, accused-appellant failed to show any palpable error, arbitrariness, or oversight on the findings of fact of the trial court as to warrant a reversal of such findings.

Accused-appellant was charged and convicted of the crime of illegal possession of dangerous drugs.

Under Section 11, Article II of R.A No. 9165, the elements necessary for the prosecution of illegal possession of dangerous drugs are: (1) the accused is in 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 and consciously possessed the said drug.[28]

All these elements were duly established by the prosecution. First, the small plastic pack seized subsequent to accused-appellant's arrest was found in his possession, particularly in the right pocket of his pants. The contents of the small plastic pack recovered from accused-appellant proved to be *shabu* as established by the results of the laboratory examination. Second, accused-appellant did not adduce evidence showing his legal authority to possess the *shabu*. Third, the attendant circumstances clearly showed that accused-appellant freely and consciously possessed the illegal drugs. Here, after being arrested for illegal possession of firearm, accused-appellant was bodily searched for any concealed weapons or illegal items which resulted to