

SECOND DIVISION

[CA-G.R. CR No. 35812, November 21, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
APOLINARIO BELEN Y FLORES, ACCUSED-APPELLANT.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision^[1] dated April 1, 2013 of the Regional Trial Court, Fourth Judicial Region, Branch 36, Calamba City in Criminal Cases Nos. 15524-2008-C and 15525-2008-C, both entitled "People of the Philippines, Plaintiff, versus Apolinario Belen y Flores, Accused.", the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the accused APOLINARIO BELEN y Flores is hereby found GUILTY beyond reasonable doubt of illegal possession of 1.67 and .85 grams or a total of 2.52 grams of Marijuana leaves, a violation of the provisions of RA 9165, otherwise known as the Dangerous Drugs Law of 2002, specifically Art. II, sec. 11, par. (3) and is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum, to Seventeen (17) years and four (4) months and one (1) day and a fine of Three Hundred Thousand Pesos (PH300,000.00).

And a penalty of imprisonment of six (6) months and one (1) day to four (4) years, and a fine of Ten Thousand Pesos (PH10,000.00) for unauthorized possession of equipment, instrument, apparatus or paraphernalia fit or intended for smoking marijuana, a dangerous drug.

In accordance with law, the Branch Clerk of Court shall forward the seized paraphernalia and Marijuana leaves in this case to the Region-IV-A, Philippine Drug Enforcement Agency, Camp Vicente Lim, Canlubang, Calamba City, Laguna for destruction.

SO ORDERED."

The facts are:

Accused-appellant Apolinario Belen y Flores (Belen for brevity) stands charged for Violation of Sections 11 and 12, Article II of R.A. No. 9165 in two (2) separate Informations² the accusatory portions of which read:

Criminal Case No. 15524-2008-C

"That on or about 11:00 o'clock in the evening of January 20, 2008 at Laurel St., Brgy. Paciano Rizal, Calamba City, and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control equipments or paraphernalias (sic) used and intended for sniffing marijuana, a dangerous drug, in violation of the aforementioned provisions of law.

CONTRARY TO LAW."

Criminal Case No. 15525-2008-C

"That on or about 11:00 o'clock in the evening of January 20, 2008 at Laurel St., Brgy. Paciano Rizal, Calamba City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously possess two (2) sachet of dried marijuana leaves, a dangerous drug, having total weight of 2.52 grams, in violation of the aforementioned law.

CONTRARY TO LAW."

Upon arraignment, accused-appellant Belen pleaded not guilty to both crimes charged against him.^[3] The cases were consolidated and tried jointly since they arose from the same incident.^[4]

At the pre-trial conference^[5], the parties stipulated on the identity of the accused, the jurisdiction of the lower court and the fact of his arrest. Thereafter, trial on the merits ensued.

The prosecution presented Lalaine Ong Rodrigo, Chemist V, PNP Regional Crime Laboratory, Regional Office IV-A, Camp Vicente Lim, Canlubang, Calamba, Laguna and SPO2 Melvin Llanes, as witnesses.

During the March 12, 2009 hearing, parties through counsel entered and stipulated on the following matters relative to the testimony of Forensic Chemist Lalaine Ong Rodrigo, to wit: 1) the qualification of the witness as an expert in the field of forensic chemistry; 2) that pursuant to a request dated January 20, 2008 signed by Nestor Barba dela Cueva and delivered by PO1 Delos Santos to the crime laboratory, the witness examined the following: two (2) small heat-sealed transparent sachets containing suspected dried marijuana fruit and tops containing MPL-1 weighing 1.67 grams, MPL-2 weighing 0.85 grams, one (1) transparent bag containing one (1) piece of improvised burner marked as MPL, two (2) improvised tooter marked as MPL-1 and MPL-2, respectively, seven (7) pieces of crumpled aluminum foil marked as MPL-1 to MPL-7 and one (1) smoking pipe containing burned small strip of suspected marijuana marked as MPL for which the witness issued a Chemistry Report No. D-029-08 and the result of her examination is that these specimen were positive for prohibited drug; and 3) the authenticity and due execution of Chemistry Report No. D-029-08 with the qualification, however from the defense counsel, that the subject specimen were not taken from the accused-appellant.^[6]

On cross-examination Lalaine Ong Rodrigo stated that she received the specimen from their receiving duty officer, PO3 Muñoz and that she did not see PO1 Michael Santos.^[7]

SPO2 Melvin Llanes testified that: on January 20, 2008 at around 11:00 o'clock in the evening, he and his team were at Brgy. Paciano, Calamba, Laguna, conducting an operation against illegal drugs which led to the arrest of five (5) persons; the operation was done after they received a phone call from their confidential informant that a "pot session" was going on in the house of accused-appellant Belen in Brgy. Paciano; they immediately proceeded to the place and they caught the persons involved in illegal activities inside the house of accused-appellant Belen; he was able to see what was happening inside the house upon peeping from an opening in the door; he saw several shabu sniffing paraphernalia placed on top of the table; they then arrested the persons inside the house; he conducted a preventive search on the person of accused-appellant Belen and he was able to recover two (2) small transparent plastic sachets containing suspected marijuana leaves and several drug paraphernalia; in the presence of the barangay officials, he marked all the pieces of evidence with his initials "MPL" at the place of the incident; thereafter, he turned over the specimen to the crime laboratory in Camp Vicente Lim for examination; and, he identified accused-appellant Belen inside the courtroom.

On cross-examination, he stated that: their confidential informant was a barangay official of Brgy. Paciano; they did not conduct a surveillance on the illegal activities of accused-appellant Belen, however, he personally knows the latter because he is included in their watch list of persons involved in illegal activities; they did not apply for a warrant before conducting the operation because in operations such as this involving illegal drugs, they might not be able to apprehend the persons involved because the pot session lasts only for a few minutes; the door was open about two (2) feet wide and he saw several persons, including accused-appellant Belen, sitting around the table and in front of them, on top of the table, were several shabu sniffing paraphernalia; he was more or less two (2) to three (3) meters away from them; he did not see the actual sniffing of the shabu or marijuana by those persons, but he only saw several shabu sniffing paraphernalia on top of the table; they also took pictures and made an inventory of the seized items and accused-appellant Belen affixed his signature on the said inventory report; and thereafter, they brought the arrested persons, including, accused-appellant Belen, to their station.^[8]

Aside from the testimonies of its witnesses, the prosecution offered the following documents as evidence, to wit: 1) Exhibit "A" - Laboratory Examination Request dated January 20, 2008; 2) Exhibit "B" - Chemistry Report No. D-029-08 dated January 21, 2008; 3) Exhibit "C" - Plastic sachet containing two (2) small heat-sealed transparent plastic sachet containing dried marijuana; 4) Exhibit "D" - Improvised Burner; 5) Exhibit "E" to "E-2" plastic sachet containing two (2) improvised tooter; 6) Exhibit "G" - plastic sachet containing one (1) piece smoking pipe with burned stick of suspected marijuana; and 7) Exhibit "H" - one big plastic sachet containing several paraphernalia.^[9]

On the other hand, the defense presented its lone witness, accused-appellant Belen.

Accused-appellant Belen testified that: on the night of January 20, 2008, he was at

home watching television when policemen suddenly barged inside their house; he and his companions Lucky, Renato and Loloy were immediately handcuffed without informing them as to why they were handcuffed; thereafter, the policemen searched the entire house; the policemen did not present any warrant or any document before the search; he did not know whether the policemen found any illegal items from their house; after their house was searched, police officer Melvin Llanes arrived and asked him where he was getting shabu; then police officer Llanes told the policemen to call the barangay officials and a photographer; when the barangay officials and the photographer arrived, they again searched the house; at that time, he was seated at the sala; after the second search, a big plastic sachet was brought out and was shown to him by the policemen; he told them that he knew nothing about it; thereafter, a man who was handcuffed was brought inside their house and was directed to go inside the room; when the man was brought outside, pictures of the items on top of the table were taken; and, after that, they were brought to the police station.^[10]

On cross-examination he stated that: his son Lucky, was with him at the time of his arrest; Lucky was also charged with violation of Section 15 of R.A. No. 9165; he was aware that Lucky entered a plea of guilty for the offense charged against him; aside from Lucky, Renato and Loloy, his wife Ana, was also there at the time he was arrested; and, he did not know about the inventory but he admitted that there were pictures taken of him and the items recovered from his possession.^[11]

After accused-appellant Belen's testimony, the defense rested its case and the same was deemed submitted for decision.

On April 1, 2013, the lower court rendered the assailed decision. Hence, this appeal with the following assignment of errors, to wit:

"I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THAT THE CIRCUMSTANCES OF THE CASE JUSTIFIED HIS WARRANTLESS ARREST.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE A PRIOR JUSTIFIED INTRUSION INTO THE LATTER'S HOUSE.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM.

IV

ASSUMING THE ADMISSIBILITY OF THE EVIDENCE, THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE APPREHENDING TEAM'S NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165."

The appeal is devoid of merit.

Accused-appellant Belen assails his conviction contending that the prosecution failed to prove that there was a valid warrantless arrest, and that the evidence against him are inadmissible.

While accused-appellant Belen impugns the validity of his arrest, he failed to raise such objection before his arraignment. An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment.^[12] Thus, any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea, otherwise, the objection is deemed waived.^[13]

Accused-appellant Belen's warrantless arrest is lawful pursuant to Section 5(a), Rule 113 of the Revised Rules on Criminal Procedure which provides that:

"SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

x x x x x x"

For the exception in Section 5(a) to operate, it was held that the following elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.^[14]

Accused-appellant Belen was caught in *flagrante delicto* violating Sections 11 and 12 of R.A. No. 9165. The testimony of SPO2 Melvin Llanes is clear and categorical. He testified that he and his team went to the residence of accused-appellant Belen upon an information from their confidential informant that a pot session was taking place thereat. Upon arrival at the place, through a wide opening in the door, he saw several persons, including accused-appellant Belen, seated around the table and on top of it were shabu sniffing paraphernalia in plain view.^[15] From the presence of the shabu sniffing paraphernalia, it can be assumed that accused-appellant Belen and his companions were about to commit an offense contemplated under Section 5(a), Rule 113 of the Revised Rules on Criminal Procedure. In fact, the mere presence of the said paraphernalia is already an offense in violation of Section 12, Article II of R.A. No. 9165.^[16] Consequently, accused-appellant Belen's arrest and the subsequent incidental search on his body are lawful and justified.