

## SECOND DIVISION

[ CA-G.R. CR No. 35879, November 13, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROMMEL VENTURA, ACCUSED-APPELLANT.**

### DECISION

**GARCIA, R.R., J.:**

Before Us is an appeal from the Decision<sup>[1]</sup> dated May 17, 2013 of the Regional Trial Court (RTC), Branch 13, Laoag City finding herein accused-appellant Rommel Ventura guilty beyond reasonable doubt of violation of Section 11 of Article II, R.A. No. 9165, otherwise known as "*The Comprehensive Dangerous Drugs Act of 2002*", the dispositive portion of which reads:

WHEREFORE, the Court hereby renders judgment finding accused Rommel Ventura GUILTY as charged of illegal possession of shabu weighing 0.0182 gram and is therefore sentenced to suffer the indeterminate penalty of imprisonment ranging from TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of P300,000.00.

The shabu subject hereof is confiscated, the same to be disposed as the law prescribes.

SO ORDERED.

### THE FACTS

In an Information<sup>[2]</sup> dated October 6, 2011 accused-appellant Rommel Ventura was charged with the crime of illegal possession of dangerous drug defined and penalized under Section 11 of Article II, RA No. 9165, committed as follows:

That on or about the 4<sup>th</sup> day of October 2011 in the City of Laoag City, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody one (1) small plastic sachet containing METHAMPHETAMINE HYDROCH[L]ORIDE locally known as "SHABU" weighing 0.0182 grams without any license or authority to possess the same, in violation of the aforesaid law.

## CONTRARY TO LAW.

On October 26, 2011, appellant, with the assistance of his counsel *de officio*, pleaded *not guilty*<sup>[3]</sup> to the charge.

During the pre-trial conference, both parties stipulated on the following: a) appellant did not have the authority or license to possess or deal with methamphetamine hydrochloride on or before October 4, 2011; b) the existence of the Acknowledgment Receipt<sup>[4]</sup> dated November 22, 2011 issued by the Branch Clerk of Court pertaining to her receipt from the forensic chemist of the following: Chemistry Report No. D-050-2011; the letter-request for laboratory examination; and the specimen stated therein.

Trial on the merits ensued thereafter.

The prosecution presented six (6) witnesses, namely: SPO2 Teodoro Flojo; Forensic Chemist Roanalaine Baligod; SPO4 Rovimmanuel Balolong; SPO4 Loreto Ancheta; PO1 Engelbert Ventura; and PO1 Jackson Sugayen. The testimony of PO1 Sugayen was dispensed with upon admission by the defense that he could identify appellant.

The version of the prosecution may be summarized as follows:

At around 11:30 p.m. of October 4, 2011, a team composed of SPO4 Balolong, PO3 Devis Cabias, PO2 Melecio Antonio, PO1 Sugayen, PO1 Ventura and PO2 Arnel Saclayan were on patrol on board their own type jeep in Laoag City when they received a radio message about a cable pilferage taking place in Barangay 43, Cavite. The police officers immediately proceeded to the target area. Upon arrival, they saw appellant on top of a cable post attempting to cut a cable wire with a saw. The police stopped their vehicle right in front of the post and at that instance, the man, later identified as herein appellant Rommel Ventura, slid and jumped off. The police alighted from their vehicle, drew their guns and declared their authority as police officers. Appellant surrendered and was ordered to lie down. Appellant was informed of his constitutional rights and that he was being arrested for attempting to steal a cable wire. PO1 Ventura also recovered the saw and bolo used by appellant near the place where he was arrested. In the course of the arrest, SPO4 Balolong frisked appellant and was able to recover from his right front pocket a blue coin purse which contained, among other things, one (1) plastic sachet of white crystalline substance suspected to be *shabu*. He was also able to find from appellant's waist one (1) caliber .22 revolver with five (5) live ammunition. SPO4 Balolong marked the confiscated sachet of suspected drug by piercing a small hole on it using a ballpen. Appellant was then informed that he was being arrested this time for illegal possession of firearm and ammunition and for illegal possession of drugs. Appellant was brought to the Laoag City Hospital for medico-legal examination. At 2:00 a.m. of October 5, 2011, appellant was brought to the Laoag City Police Station for the preparation of the charges against him. SPO4 Balolong kept possession of the suspected *shabu* up to the time that they arrived at the police station.

SPO4 Balolong submitted the confiscated items to the evidence custodian SPO4 Loreto Ancheta. Upon receipt thereof, SPO4 Ancheta marked the plastic sachet with

the initials "LCPS, RV" along with his signature. An inventory<sup>[5]</sup> and photograph<sup>[6]</sup> of the seized articles were likewise taken in the presence of appellant. SPO4 Ancheta personally delivered the sachet of suspected *shabu*, together with the request for laboratory examination, to the Ilocos Norte Provincial Crime Laboratory Office in Camp Captain Valentin S. Juan, Laoag City where it was received by SPO2 Teodoro Flojo as shown by the rubber stamped "delivery receipt"<sup>[7]</sup> on the letter. SPO2 Flojo also placed his initials "TCF" on the said sachet and handed the same to their Forensic Chemist PSI Roanalaine Baligod.

In Chemistry Report No. D-050-2011 dated October 5, 2011, Forensic Chemist PSI Baligod found the plastic sachet with the markings "LCPS, RV" and weighing zero point zero one eight two (0.0182) gram, positive for Methylamphetamine Hydrochloride or *shabu*. PSI Baligod then sealed and labeled the said sachet of *shabu* with her initials "RBB" and wrote "5 OCT 11", specimen "A" and "D-050-2011" on it. She then gave it to SPO2 Flojo who kept it inside the evidence locker. On November 5, 2011, PSI Baligod retrieved the said sachet of *shabu* from SPO2 Flojo and submitted the same together with Chemistry Report No. D-050-2011 to the court *a quo* as shown by the Acknowledgment Receipt<sup>[8]</sup> dated November 22, 2011 issued by the Branch Clerk of Court.

For the defense, appellant was presented as its lone witness.

Appellant simply raised the defenses of denial and frame-up. He alleged that in the evening of October 4, 2011, he and his girlfriend Cynthia Domingo, together with the latter's cousin Shiela Bautista and her boyfriend Edmar, went to the beach in Gabu, Laoag City where they had a drinking spree. When it was already 11:00 p.m., he told his companions that they should go home but his girlfriend wanted to stay overnight. Appellant decided to go home alone as he had to report for work the following day. When he was on a dark part of the road in Brgy. 43, Cavit, he met someone, who was later identified as SPO4 Balolong, who told him not to run or else he will shoot him. He thus asked the man why but the man ordered him not to say anything and to lie down on his stomach. As he was already on the ground, another man, whose name he came to know to be PO1 Ventura, came from nowhere, stepped on his back and handcuffed him. SPO4 Balolong then said that he had a gun. He was then dragged southward when another man took hold of his hand and placed something in his left pocket. As they were walking, PO1 Ventura was boxing him despite his pleas that it was painful. When the vehicle of the policemen arrived, they brought him to the police station. Upon arrival, SPO4 Balolong was asking for the *shabu* but PO1 Ventura said there was none. SPO4 Balolong then directed that they search appellant's pockets. As SPO4 Ancheta searched him, he brought out a small bag from appellant's left pocket including his cellphone, money amounting to P2.00 and two SIM cards. As to the small bag, SPO4 Ancheta opened and brought out its contents consisting of money and the thing that they called *shabu*. Appellant, however, insisted that it does not belong to him.

In the assailed Decision<sup>[9]</sup> dated May 17, 2013, the court *a quo* found appellant guilty beyond reasonable doubt of the crime of illegal possession of dangerous drug. The prosecution was able to prove that appellant was validly caught *in flagrante delicto* of committing a crime. The arrest being valid, it follows that the search conducted upon him and the eventual discovery of the plastic sachet of *shabu* in his possession was likewise valid. Appellant's claim that one of the policemen planted

the *shabu* in his left pocket was self-serving and cannot be considered to dispute the positive allegations of the policemen. Appellant also failed to present any authority or license for the possession of the said illegal drug nor give any satisfactorily explanation why he was in his possession of it. Further, the prosecution established a perfect chain of custody of the *shabu* submitted in evidence. The pertinent portions of the assailed Decision are quoted:

X X X

Here, contrary to his denial, the accused was in the commission of the crime of theft at that time. He was caught atop a cable post and was seen in the act of cutting a cable wire. He may not have been able to cut and remove any cable wire but that in itself does not exempt him from liability for such attempted act. Neither can it render the arrest of the accused later to be unlawful. To be sure, he was caught in the act of attempting to cut and steal a cable wire and that gave the policemen the right to arrest him pursuant to Section 5(a), Rule 113 of the Rules of Criminal Procedure.

X X X

The arrest of the accused being valid, it follows that the search conducted upon him was likewise valid. It is also one of the exceptions to the proscription against warrantless searches and seizures. x x x.

X X X

In the search incident to the arrest of the accused, it was likewise indubitable that a plastic sachet containing white crystalline substance which the forensic chemist indisputably determined in her examinations to be *shabu* weighing 0.0182 gram, was found in the possession of the accused. As in the lawful arrest of the accused, SPO4 Balolong was straightforward and consistent in his claim that when he frisked the accused, one of the things that he found from his possession is the plastic sachet of *shabu*. SPO4 Balolong appeared honest and candid and he never wavered in asserting this.

X X X

Neither can the Court accede to the claim of the accused that one of the policemen planted the small bag, the coin purse that the prosecution presented, in his left pocket while they were walking to meet the vehicle of the policemen. Again, it is self-serving. It cannot be considered sufficient to dispute the positive allegation of the policemen that the *shabu* was found in his possession. x x x.

X X X

In this case, it is indubitable that all the elements of illegal possession of shabu are present. The accused has been identified as the person who was found in possession of the plastic sachet of shabu. Despite the discovery of the coin purse that contained the contraband from his pocket therefore within his control, the accused failed to satisfactorily explain why the shabu [*is*] in his possession. He also failed to present any authority or license for such possession required under existing jurisprudence as an exception to the general rule that if a criminal charge is predicated on a negative allegation, or that a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. The bare claim of the accused, if not his suspicion that the shabu was planted in his pocket is simply not the required proof to controvert the presumption of the presence of knowledge or animus possidendi on his part.

X X X

In this case, the Court is more than satisfied that the requirements have been substantially complied with. There was inventory made at the police station as required in Section 21 of Republic Act No. 9165. There was also photography of the seized items as shown by the record. It is understandable that there were no representatives of the media and the DOJ or any elected official during the inventory but it was already late in the night and it should be understandable that such personalities cannot be immediately summoned for the purpose. In any case, the inventory was made in the presence of the accused who, according to SPO4 Ancheta, was furnished a copy of the certificate of inventory. It is of no moment that the accused was not allowed to acknowledge his receipt of the copy of the inventory. As SPO4 Ancheta said, it should have been a violation of the right of the accused because there was no lawyer who was assisting him.

More significantly, the prosecution established a perfect chain of custody of the shabu submitted in evidence. From SPO4 Balolong who took initial custody thereof upon confiscation, the shabu was turned over by the said confiscating officer to the evidence custodian, SPO4 Ancheta at the police station, from where, the following morning, he took the said shabu to the crime lab which, afterwards submitted it to [*the*] court. Significantly, when the plastic sachet of shabu was presented in evidence before the Court, SPO4 Balolong identified it by the marking that he placed, a very small puncture that he made on the plastic sachet with his ballpen. It must also be noted that all the markings that SPO4 Ancheta, SPO2 Flojo and forensic chemist Police Senior Inspector Baligod are present on the plastic sachet.<sup>[10]</sup>

Hence, this appeal in which appellant raised the following **assignment of**