

## **SIXTEENTH DIVISION**

**[ CA-G.R. CR NO. 28327, August 15, 2006 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERDINAND CURA, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**LAMPAS PERALTA, J.:**

This is an appeal from the Decision dated January 19, 2004 in Criminal Case No. 12834 of Branch 64, Regional Trial Court, Tarlac City convicting accused-appellant Ferdinand Cura for violation of Section 11, Article II, Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

#### ***The Antecedents***

Due to reports of rampant illegal drug activities, a surveillance was conducted by SPO1 Romeo Milla, PO1 Hector Niegos, Barangay Captain Jeremias Ermitanio, and some bantay bayan members at Barangay Amacalan, Gerona, Tarlac. They were able to arrest a certain Joey Austria for illegal possession of "shabu." When they reached accused-appellant's house, SPO1 Milla saw accused-appellant, who was playing cards on a table outside his house, hide something under the linoleum cover of the table. They proceeded to the table and when Barangay Captain Ermitanio lifted the cover of the table, two (2) plastic sachets of white crystalline substance fell therefrom. Thus, accused-appellant was arrested. One of the two sachets subjected to chemical examination yielded positive for "shabu."

The factual details are summarized in the People's brief as follows:

Around 1:00 in the afternoon of June 6, 2003, while SPO1 Romeo Milla, Barangay Captain Jeremias Ermitanio and Kagawad Pascua were discussing the rampant illegal drug activities at Purok 2, Barangay Amacalan in Gerona, Tarlac (TSN, September 25, 2003, p. 3), they were interrupted by Arnold Vicente, a member of the Barangay Bantay Bayan. Vicente informed them that a certain man was acting suspiciously (ibid., p. 4). With the information, SPO1 Milla called and asked his companion, SPO1 Hector Niegos to assist Vicente (id). After a while, SPO1 Niegos and Vicente returned with a man named Joey Austria, whom the two had arrested for illegal possession of methamphetamine hydrochloride (id, Ibid., p. 6).

SPO1 Milla together with other police officers, members of Barangay Bantay Bayan and Barangay officials continued to conduct surveillance in the area (Ibid., p. 7). When they reached appellant's house, SPO1 Milla noticed four persons playing cards on a table outside appellant's house (id; TSN, December 2, 2003, p. 2). SPO1 Milla, who saw appellant place something under the linoleum cover of the table (Ibid., p. 8),

immediately told Barangay Chairman Ermitanio what he had witnessed (id). Hence, they proceeded to the table (id).

Barangay Chairman Ermitanio confiscated the cards and the bet money, and lifted the cover of the table. Two (2) heat-sealed plastic sachets containing crystalline substance fell therefrom (id; TSN, November 18, 2003, p. 7). When the police officers ascertained that the sachets contained prohibited drugs, they arrested appellant (id).

The items confiscated from appellant were turned over to the Chief Investigator of the Gerona Police Station. Subsequently, the items were submitted to Camp Olivas, in San Fernando, Pampanga for examination (Ibid., p. 9, TSN, October 14, 2003, p. 2).

The qualitative examination conducted by Engr. Marcene G. Agala, a forensic chemist at Camp Olivas, confirmed that the content of the second plastic sachet is methamphetamine hydrochloride, commonly known as shabu, a regulated drug (Exhibit B-4, Ibid., p. 6). The other plastic sachet was found to contain "tawas" (Exhibit "B-3", id)."<sup>[1]</sup>

Thus, an information was filed against accused-appellant charging him with violation of Section 11, Article II, RA No. 9165 as follows:

The undersigned 1ST Assistant Provincial Prosecutor, upon preliminary investigation conducted accuses FERDINAND CURA y ENAN, of the crime of Violation of Section 11, Article 2, R.A. 9165, as amended, committed as follows:

That on or about 1:10 o'clock in the afternoon of June 6, 2003 at Brgy. Amacalan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously possess methamphetamine hydrochloride, commonly known as shabu, weighing 0.055 gram without the corresponding license or prescription and authority to law.

CONTRARY TO LAW.<sup>[2]</sup>

When arraigned, accused-appellant pleaded "not guilty."<sup>[3]</sup> During the pre-trial, the parties stipulated only on the identity of accused-appellant.<sup>[4]</sup> Thus, trial ensued wherein the prosecution and the defense presented their respective evidence.

On January 19, 2004, the trial court rendered a Decision convicting accused-appellant, to wit:

WHEREFORE, the prosecution having established the guilt of the accused beyond the penumbra of doubt, this Court sentences Ferdinand Cura to suffer an indeterminate prison term of twelve 12 years and one 1 day of reclusion temporal as minimum to twenty 20 years as maximum and a fine of Ph300,000.00 as defined and penalized by Republic Act 9165 particularly Section II, paragraph three 3 number 3 of said law.

SO ORDERED.<sup>[5]</sup>

Hence accused-appellant filed this appeal which is anchored on the following assignment of errors:

I

THE LOWER COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[6]</sup>

***The Issues***

1. Whether the warrantless arrest of accused-appellant was lawful; and,
2. Whether the trial court erred in giving weight and credence to the testimonies of the prosecution witnesses.

**The Court's Ruling**

Accused-appellant was charged with violation of Section 11, Article II, Republic Act No. 9165, pertinent provisions of which read:

SECTION 11. *Possession of Dangerous Drugs.* – The penalty of life imprisonment to death and a fine ranging from Five Hundred thousand pesos (P500,000.00) to Ten Million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx    xxx    xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx    xxx    xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00)., if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methylamphetamine hydrochloride or "shabu", or other dangerous drugs xxx.

There is no question that out of the two (2) heat-sealed sachets recovered from accused-appellant, one yielded positive for methylamphetamine hydrochloride or "shabu" weighing 0.055 gram, as per Chemistry Report No. D-125-2003.<sup>[7]</sup>

Accused-appellant, however, contends that the "shabu" seized by the police officers was not admissible in evidence against him because at the time of its seizure and his arrest, the police were not armed with a valid search or arrest warrant and accused-appellant was merely playing cards while the "shabu" was recovered from the table and not from his possession.

The contention lacks merit.

Under Section 5(a), Rule 113, Revised Rules of Criminal Procedure, a person may be lawfully arrested even without an arrest warrant when, among others, he has just committed, is actually committing, or is attempting to commit an offense. On the other hand, search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in "plain view"; (5) when the accused himself waives his right against unreasonable searches and seizures.<sup>[8]</sup>

The seizure of the "shabu" and accused-appellant's arrest in this case fall under the instances of valid warrantless search and arrest, as accused-appellant was actually committing a crime when he was seen by SPO1 Milla placing the "shabu" under the cover of the table. This prompted the police to approach him and search for the sachet of "shabu" which fell from the table cover. Clearly, the "plain view" doctrine finds application. As held in *People vs. Macalaba*, 395 SCRA 461 (2003):

Under the "plain view" doctrine, unlawful objects within the *plain view* of an officer who has the right to be in the position to have that view are subject to seizure and may be presented in evidence. Nonetheless, the seizure of evidence in *plain view* must comply with the following requirements: (a) a prior valid intrusion in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent; and (d) the plain view justified mere seizure of evidence without further search.

We are convinced beyond any shadow of doubt under the circumstances above discussed that all the elements of seizure in *plain view* exist in the case at bar. Thus, the warrantless search and seizure conducted on ABDUL, as well as his warrantless arrest, did not transgress his constitutional rights.

Notably, prosecution witness SPO1 Milla positively testified on the circumstances leading to the confiscation of the "shabu" and the eventual arrest of accused-appellant. Thus:

PROS. OVEJERA:

Q Will you tell this Court what was he doing when you saw Ferdinand Cura?