



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JAIME D. DELA CRUZ,

Petitioner,

G.R. No. 200748

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR. and
REYES, *JJ*.

Promulgated:

PEOPLE OF THE PHILIPPINES,

Respondent.

JUL 23 2014

X ----- X

DECISION

SERENO, *CJ*:

This is a Petition for Review on *Certiorari*, filed by petitioner Jaime D. dela Cruz, from the Decision¹ dated 22 June 2011 issued by the Twentieth Division of the Court of Appeals (CA) and Resolution² dated 2 February 2012 issued by the Former Twentieth Division of the CA in CA-G.R. C.R. No. 00670.

THE ANTECEDENT FACTS

Petitioner Jaime D. dela Cruz was charged with violation of Section 15, Article II of Republic Act No. (R.A.) 9165, or The Comprehensive Dangerous Drugs Act of 2002, by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman – Visayas, in an Information³ dated 14 February 2006, which reads:

¹ *Rollo*, pp. 20-30; Penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Edgardo L. delos Santos and Victoria Isabel A. Paredes.

² *Id.* at 32.

³ *Rollo*, p. 41.

That on or about the 31st day of January 2006, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **JAIME D. DE LA CRUZ, a public officer**, having been duly appointed and qualified to such public position as **Police Officer 2** of the **Philippine National Police (PNP)** assigned in the Security Service Group of the Cebu City Police Office, after having been arrested by agents of the National Bureau of Investigation (NBI) in an entrapment operation, was found positive for use of **METHAMPHETAMINE HYDROCHLORIDE** commonly known as “**Shabu**”, the dangerous drug after a confirmatory test conducted on said accused.

CONTRARY TO LAW.

When arraigned, petitioner, assisted by counsel *de parte*, pleaded not guilty to the charge. The records do not reveal whether De la Cruz was likewise charged for extortion.

VERSION OF THE PROSECUTION

The evidence of the prosecution reveals that at 8:00 a.m. of 31 January 2006, the agents and special investigators of the National Bureau of Investigation, Central Visayas Regional Office (NBI-CEVRO) or simply NBI, received a Complaint from Corazon Absin (Corazon) and Charito Escobido (Charito). The complainants claimed that at 1:00 a.m. of that same day, Ariel Escobido (Ariel), the live-in partner of Corazon and son of Charito, was picked up by several unknown male persons believed to be police officers for allegedly selling drugs. An errand boy gave a number to the complainants, and when the latter gave the number a ring, they were instructed to proceed to the Gorordo Police Office located along Gorordo Avenue, Cebu City. In the said police office, they met “James” who demanded from them ₱100,000, later lowered to ₱40,000, in exchange for the release of Ariel. After the meeting, the complainants proceeded to the NBI-CEVRO to file a complaint and narrate the circumstances of the meeting to the authorities. While at the NBI-CEVRO, Charito even received calls supposedly from “James” instructing her to bring the money as soon as possible.

The special investigators at the NBI-CEVRO verified the text messages received by the complainants. A team was immediately formed to implement an entrapment operation, which took place inside a Jollibee branch at the corner of Gen. Maxilom and Gorordo Avenues, Cebu City. The officers were able to nab Jaime dela Cruz by using a pre-marked ₱500 bill dusted with fluorescent powder, which was made part of the amount demanded by “James” and handed by Corazon. Petitioner was later brought to the forensic laboratory of the NBI-CEVRO where forensic examination was done by forensic chemist Rommel Paglinawan. Petitioner was required to submit his urine for drug testing. It later yielded a positive result for presence of dangerous drugs as indicated in the confirmatory test result labeled as Toxicology (Dangerous Drugs) Report No. 2006-TDD-2402 dated 16 February 2006.

VERSION OF THE DEFENSE

The defense presented petitioner as the lone witness. He denied the charges and testified that while eating at the said Jollibee branch, he was arrested allegedly for extortion by NBI agents. When he was at the NBI Office, he was required to extract urine for drug examination, but he refused saying he wanted it to be done by the Philippine National Police (PNP) Crime Laboratory and not by the NBI. His request was, however, denied. He also requested to be allowed to call his lawyer prior to the taking of his urine sample, to no avail.

THE RULING OF THE RTC

The Regional Trial Court (RTC) Branch 58 of Cebu City, in its Decision⁴ dated 6 June 2007, found the accused guilty beyond reasonable doubt of violating Section 15, Article II of R.A. 9165 and sentenced him to suffer the penalty of compulsory rehabilitation for a period of not less than six (6) months at the Cebu Center for the Ultimate Rehabilitation of Drug Dependents located at Salinas, Lahug, Cebu City.⁵

Petitioner filed an appeal assigning as error the RTC's validation of the result of the urine test despite its dubiousness having been admitted in spite of the lack of legal basis for its admission. First, he alleges that the forensic laboratory examination was conducted despite the fact that he was not assisted by counsel, in clear violation of his constitutional right. Secondly, he was allegedly held guilty beyond reasonable doubt notwithstanding the lack of sufficient basis to convict him.

THE RULING OF THE CA

The CA found the appeal devoid of merit and affirmed the ruling of the RTC.

Petitioner filed a timely Motion for Reconsideration. He argued that the CA overlooked prevailing jurisprudence, which states that drug testing conducted under circumstances similar to his would violate a person's right to privacy. The appellate court nevertheless denied the motion.

Petitioner thus filed the present Petition for Review on *certiorari*. He assigns as errors the use of hearsay evidence as basis for his conviction and the questionable circumstances surrounding his arrest and drug test.

Respondent, through the Office of the Solicitor General, filed its Comment,⁶ saying that "petitioner's arguments cannot be the subject of a petition for review on *certiorari* under Rule 45, as they involve questions of

⁴ *Rollo*, pp. 33-40; Penned by former RTC Judge (now CA Justice) Gabriel T. Ingles.

⁵ *Id.* at 40.

⁶ *Id.* at 69-86.

facts which may not be the subject thereof; after his arraignment, he can no longer contest the validity of his arrest, less so at this stage of the proceedings; his guilt has been adequately established by direct evidence; and the manner in which the laboratory examination was conducted was grounded on a valid and existing law.

THE ISSUE

We deem it proper to give due course to this Petition by confronting head-on the issue of whether or not the drug test conducted upon the petitioner is legal.

OUR RULING

We declare that the drug test conducted upon petitioner is not grounded upon any existing law or jurisprudence.

We gloss over petitioner's non-compliance with the Resolution⁷ ordering him to submit clearly legible duplicate originals or certified true copies of the assailed Decision and Resolution.

Petitioner was charged with use of dangerous drugs in violation of the law, the pertinent provision of which reads:

Section 15. *Use of Dangerous Drugs.* – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.⁸

The RTC subsequently convicted petitioner, ruling that the following elements of Section 15 were established: (1) the accused was arrested; (2) the accused was subjected to drug test; and (3) the confirmatory test shows that he used a dangerous drug.

Disregarding petitioner's objection regarding the admissibility of the evidence, the lower court also reasoned that "a suspect cannot invoke his right to counsel when he is required to extract urine because, while he is already in custody, he is not compelled to make a statement or testimony

⁷ Id. at 64.

⁸ R.A. 9165.

against himself. Extracting urine from one's body is merely a mechanical act, hence, falling outside the concept of a custodial investigation."

We find the ruling and reasoning of the trial court, as well as the subsequent affirmation by the CA, erroneous on three counts.

The drug test in Section 15 does not cover persons apprehended or arrested for any unlawful act, but only for unlawful acts listed under Article II of R.A. 9165.

First, "[a] person apprehended or arrested" cannot literally mean any person apprehended or arrested for any crime. The phrase must be read in context and understood in consonance with R.A. 9165. Section 15 comprehends persons **arrested or apprehended for unlawful acts listed under Article II** of the law.

Hence, a drug test can be made upon persons who are apprehended or arrested for, among others, the "importation,"⁹ "sale, trading, administration, dispensation, delivery, distribution and transportation",¹⁰ "manufacture"¹¹ and "possession"¹² of dangerous drugs and/or controlled precursors and essential chemicals; possession thereof "during parties, social gatherings or meetings"¹³; being "employees and visitors of a den, dive or resort";¹⁴ "maintenance of a den, dive or resort";¹⁵ "illegal chemical diversion of controlled precursors and essential chemicals"¹⁶; "manufacture or delivery"¹⁷ or "possession"¹⁸ of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs and/or controlled precursors and essential chemicals; possession of dangerous drugs "during parties, social gatherings or meetings"¹⁹; "unnecessary"²⁰ or "unlawful"²¹ prescription thereof; "cultivation or culture of plants classified as dangerous drugs or are sources thereof";²² and "maintenance and keeping of original records of transactions on dangerous drugs and/or controlled precursors and essential chemicals."²³ To make the provision applicable to all persons arrested or apprehended for any crime not listed under Article II is tantamount to unduly expanding its meaning. Note that accused appellant here was arrested in the alleged act of extortion.

⁹Section 4.

¹⁰Section 5.

¹¹Section 8.

¹²Section 11.

¹³Section 13.

¹⁴Section 7.

¹⁵Section 6.

¹⁶Section 9.

¹⁷Section 10.

¹⁸Section 12.

¹⁹Section 14.

²⁰Section 18.

²¹Section 19.

²²Section 16.

²³Section 17.

A charge for violation of Section 15 of R.A. 9165 is seen as expressive of the intent of the law to rehabilitate persons apprehended or arrested for the unlawful acts enumerated above instead of charging and convicting them of other crimes with heavier penalties. The essence of the provision is more clearly illustrated in *People v. Martinez*²⁴ as follows:

On a final note, this Court takes the opportunity to be instructive on Sec. 11 (Possession of Dangerous Drugs) and Sec. 15 (Use of Dangerous Drugs) of R.A. No. 9165, with regard to the charges that are filed by law enforcers. This Court notes the practice of law enforcers of filing charges under Sec. 11 in cases where the presence of dangerous drugs as basis for possession is only and solely in the form of residue, being subsumed under the last paragraph of Sec. 11. Although not incorrect, **it would be more in keeping with the intent of the law to file charges under Sec. 15 instead in order to rehabilitate first time offenders of drug use, provided that there is a positive confirmatory test result as required under Sec. 15.** The minimum penalty under the last paragraph of Sec. 11 for the possession of residue is imprisonment of twelve years and one day, while the penalty under Sec. 15 for first time offenders of drug use is a minimum of six months rehabilitation in a government center. To file charges under Sec. 11 on the basis of residue alone would frustrate the objective of the law to rehabilitate drug users and provide them with an opportunity to recover for a second chance at life.

In the case at bench, the presence of dangerous drugs was only in the form of residue on the drug paraphernalia, and the accused were found positive for use of dangerous drugs. Granting that the arrest was legal, the evidence obtained admissible, and the chain of custody intact, the law enforcers should have filed charges under Sec. 15, R.A. No. 9165 or for use of dangerous drugs and, if there was no residue at all, they should have been charged under Sec. 14 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings). Sec. 14 provides that the maximum penalty under Sec. 12 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs) shall be imposed on any person who shall possess any equipment, instrument, apparatus and other paraphernalia for dangerous drugs. Under Sec. 12, the maximum penalty is imprisonment of four years and a fine of ₱50,000.00. In fact, under the same section, the possession of such equipment, apparatus or other paraphernalia is *prima facie* evidence that the possessor has used a dangerous drug and shall be presumed to have violated Sec. 15.

In order to effectively fulfill the intent of the law to rehabilitate drug users, this Court thus calls on law enforcers and prosecutors in dangerous drugs cases to exercise proper discretion in filing charges when the presence of dangerous drugs is only and solely in the form of residue and the confirmatory test required under Sec. 15 is positive for use of dangerous drugs. In such cases, to afford the accused a chance to be rehabilitated, the filing of charges for or involving possession of dangerous drugs should only be done when another separate quantity of dangerous drugs, other than mere residue, is found in the possession of the accused as provided for in Sec. 15. (Emphasis supplied)

Furthermore, making the phrase “a person apprehended or arrested” in Section 15 applicable to all persons arrested or apprehended for unlawful

²⁴G.R. No. 191366, 13 December 2010, 637 SCRA 791.

acts, not only under R.A. 9165 but for all other crimes, is tantamount to a mandatory drug testing of all persons apprehended or arrested for any crime. To overextend the application of this provision would run counter to our pronouncement in *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*,²⁵ to wit:

x xx[M]andatory drug testing can never be random and suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy. **To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of RA 6195. Drug testing in this case would violate a person's right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves.** (Emphasis supplied)

The drug test is not covered by allowable non-testimonial compulsion.

We find that petitioner never raised the alleged irregularity of his arrest before his arraignment and raises the issue only now before this tribunal; hence, he is deemed to have waived his right to question the validity of his arrest curing whatever defect may have attended his arrest.²⁶ However, "a waiver of an illegal warrantless arrest does not mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest."²⁷

We are aware of the prohibition against testimonial compulsion and the allowable exceptions to such proscription. Cases where non-testimonial compulsion has been allowed reveal, however, that the pieces of evidence obtained were all **material to the principal cause of the arrest**.

The constitutional right of an accused against self-incrimination proscribes the use of physical or moral compulsion to extort communications from the accused and not the inclusion of his body in evidence **when it may be material**. Purely mechanical acts are not included in the prohibition as the accused does not thereby speak his guilt, hence the assistance and guiding hand of counsel is not required. (People vs. Olvis, 238 Phil. 513 [1987]) The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act. (People vs. Casinillo, 213 SCRA 777 [1992]; People vs. Tranca, 235 SCRA 455 [1994]; People vs. Rondero, 378 Phil. 123 [1999]) Hence, it has been held that a woman charged with adultery may be compelled to submit to physical examination to determine her pregnancy; (Villaflor vs. Summers, 41 Phil.

²⁵ 591 Phil. 393 (2008).

²⁶ *People v. Racho*, G.R. No. 186529, 3 August 2010, 626 SCRA 633.

²⁷ *People v. Lapitaje*, 445 Phil. 731 (2003).

62 [1920]) and an accused may be compelled to submit to physical examination and to have a substance taken from his body for medical determination as to whether he was suffering from gonorrhea which was contracted by his victim;(U.S. vs. Tan Teng, 23 Phil. 145 [1912]) to expel morphine from his mouth; (U.S. vs. Ong Siu Hong, 36 Phil. 735 [1917]) to have the outline of his foot traced to determine its identity with bloody footprints; (U.S. vs. Salas, 25 Phil. 337 [1913]; U.S. vs. Zara, 42 Phil. 308 [1921]) and to be photographed or measured, or his garments or shoes removed or replaced, or to move his body to enable the foregoing things to be done.(People vs. Otadora, 86 Phil. 244 [1950])²⁸ (Emphasis supplied)

In the instant case, we fail to see how a urine sample could be material to the charge of extortion. The RTC and the CA, therefore, both erred when they held that the extraction of petitioner's urine for purposes of drug testing was "merely a mechanical act, hence, falling outside the concept of a custodial investigation."

We note a case where a urine sample was considered as admissible. In *Gutang v. People*,²⁹ the petitioner therein and his companions were arrested in connection with the enforcement of a search warrant in his residence. A PNP-NARCOM team found and confiscated shabu materials and paraphernalias. The petitioner and his companions in that case were also asked to give urine samples, which yielded positive results. Later, the petitioner therein was found guilty of the crime of illegal possession and use of prohibited drugs. Gutang claimed that the latter's urine sample was inadmissible in evidence, since it was derived in effect from an uncounselled extrajudicial confession.

In the *Gutang et al.* case, the Court clarified that "what the Constitution prohibits is the use of physical or moral compulsion to extort communication from the accused, but not an inclusion of his body in evidence, when it may be material." The situation in *Gutang* was categorized as falling among the exemptions under the freedom from testimonial compulsion since what was sought to be examined came from the body of the accused. The Court said:

This was a mechanical act the accused was made to undergo which was not meant to unearth undisclosed facts but to ascertain physical attributes determinable by simple observation. In fact, the record shows that petitioner and his co-accused were not compelled to give samples of their urine but they in fact voluntarily gave the same when they were requested to undergo a drug test.

Assuming *arguendo* that the urine samples taken from the petitioner are inadmissible in evidence, we agree with the trial court that the record is replete with other pieces of credible evidence including the testimonial evidence of the prosecution which point to the culpability of the petitioner for the crimes charged.

²⁸ *People v. Gallarde*, 382 Phil. 718 (2000).

²⁹ 390 Phil. 805 (2000).

We emphasize that the circumstances in *Gutang* are clearly different from the circumstances of petitioner in the instant case. First, Gutang was arrested in relation to a drug case. Second, he volunteered to give his urine. Third, there were other pieces of evidence that point to his culpability for the crimes charged. In the present case, though, petitioner was arrested for extortion; he resisted having his urine sample taken; and finally, his urine sample was the only available evidence that was used as basis for his conviction for the use of illegal drugs.

The drug test was a violation of petitioner's right to privacy and right against self-incrimination.

It is incontrovertible that petitioner refused to have his urine extracted and tested for drugs. He also asked for a lawyer prior to his urine test. He was adamant in exercising his rights, but all of his efforts proved futile, because he was still compelled to submit his urine for drug testing under those circumstances.

The pertinent provisions in Article III of the Constitution are clear:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.


Section 17. No person shall be compelled to be a witness against himself.

In the face of these constitutional guarantees, we cannot condone drug testing of all arrested persons regardless of the crime or offense for which the arrest is being made.

While we express our commendation of law enforcement agents as they vigorously track down offenders in their laudable effort to curb the pervasive and deleterious effects of dangerous drugs on our society, they must, however, be constantly mindful of the reasonable limits of their authority, because it is not unlikely that in their clear intent to purge society of its lawless elements, they may be knowingly or unknowingly transgressing the protected rights of its citizens including even members of its own police force.

WHEREFORE, premises considered, the assailed Decision dated 22 June 2011 issued by the Twentieth Division, and the Resolution dated 2 February 2012 issued by the former Twentieth Division of the Court of Appeals, in CA-G.R. C.R. No. 00670 are **SET ASIDE**. Petitioner is hereby **ACQUITTED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice