



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 200598

Present:

BRION,* J.,
 Acting Chairperson,
 DEL CASTILLO,
 PEREZ,
 MENDOZA,** and
 PERLAS-BERNABE, JJ.

- versus -

Promulgated:

DENNIS E. TANCINCO,
 Accused-Appellant.

JUN 18 2014

X-----X

DECISION

PEREZ, J.:

Before us is an appeal *via* a Notice of Appeal of the Court of Appeals Decision¹ in CA-G.R. CEB-CR-HC No. 00807 affirming the Decision² of the Regional Trial Court (RTC), Branch 58, Cebu City which, in turn, convicted accused-appellant Dennis Tancinco (Tancinco) of violation of Section 11 of Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

Tancinco was charged in an Information for illegal possession of *shabu*, a dangerous drug:

* Per Special Order No. 1699 dated 13 June 2014.

** Per Special Order No. 1696 dated 13 June 2014.

¹ Penned by Associate Justice Socorro B. Inting with Associate Justices Portia A. Hormachuelos and Edwin D. Sorongon, concurring. *Rollo*, pp. 2-12.

² Penned by Presiding Judge Gabriel T. Ingles. *CA rollo*, pp. 49-58.

That on or about the 5th day of March 2006, at about 4:35 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with deliberate intent, did then and there have in his possession, use and control three (3) heat sealed transparent plastic packet of white crystalline substance with a total weight of 5.36 grams locally known as "Shabu" containing methylamphetamine hydrochloride, a dangerous drug.³

Upon arraignment, Tancinco pleaded not guilty to the charge.

The prosecution presented in evidence the testimonies of: (1) Jude Daniel Mendoza (Mendoza), a Medical Technologist who conducted a qualitative examination on the specimens found in the possession of Tancinco during his arrest on 5 March 2006; (2) and the team of police officers who arrested Tancinco consisting of PO2 Melbert Dio (PO2 Dio); (3) SPO1 Filomeno Mendaros (SPO1 Mendaros) and PO2 Edward Abatayo (PO2 Abatayo).

The prosecution's story narrates that in the afternoon of 5 March 2006, a team of police officers, led by SPO1 Mendaros and composed of PO2 Dio, PO2 Abatayo, a certain PO Cunan and PO Banson, was on roving patrol along M.J. Cuenco Avenue, Cebu City, when SPO1 Mendaros received a call from a member of the *Barangay* Intelligence Network (BIN) who gave information of an on-going pot session in *Sitio* Sampaguita, Villagonzalo I, *Barangay* Tejero, Cebu City by an unidentified alleged armed man and his companions.

To investigate further, the police officers met with the BIN informant at a designated place and thereafter proceeded to the location of where the armed person and his companions were supposedly holding their pot session. Thereat, they did not find the alleged armed man. Instead, the police officers caught two (2) other persons for violation of Republic Act No. 9165.

A few minutes later, the BIN informant approached SPO1 Mendaros and told him that the alleged armed man had been spotted playing a *bingo* machine at a nearby house.

The BIN informant guided the team of police officers to an area which looked like an extension of a house. The door of this house extension was

³ Id. at 13.

open allowing SPO1 Mendaros to view the inside thereof which had five (5) *bingo* machines in use by people. One of these persons playing the *bingo* machines was the alleged armed man, who turned out to be herein accused-appellant, Tancinco.

With the preliminary information that Tancinco was carrying a firearm, the policemen cautiously approached Tancinco who attempted to dispose of the firearm from his person and conceal its possession thereof by placing it at the side of the *bingo* machine. Before Tancinco actually relieved himself of the firearm, PO2 Abatayo apprehended him and asked for his license to carry such. Since Tancinco was unable to produce a license to carry the firearm, PO2 Abatayo confiscated the firearm and arrested Tancinco without a warrant.

Incident to the warrantless arrest, SPO1 Mendaros instructed PO2 Dio to make a body search of Tancinco. PO2 Dios' body search of Tancinco produced three (3) medium plastic sachets, all of which contained a white substance suspected to be *shabu*, placed in the right front pocket of Tancinco's short pants. These three (3) sachets of white substance suspected to be *shabu* were likewise confiscated by the police. At which point of Tancinco's arrest and the body search conducted on him, the police apprised him of his constitutional rights.

Immediately thereafter, Tancinco, together with the confiscated items, the firearm and the three (3) sachets of white substance suspected to be *shabu*, were brought by the police officers to Camp Sotero Cabahug Police Station in Gorordo Avenue, Cebu City for further investigation. The details of Tancinco's arrest were entered in the police blotter; PO2 Dio prepared the request for the laboratory examination of the confiscated specimens.

These same specimens of the three sachets of white substance suspected to be *shabu* were forwarded and turned over to the Philippine National Police Regional Crime Laboratory Office 7 in Camp Sotero Cabahug, Gorordo Avenue, Cebu City, where Forensic Chemical Officer/Medical Technologist II, Mendoza, conducted a qualitative examination thereon. Mendoza issued Chemistry Report No. D-428-2006 dated 5 March 2006 finding the specimens to be positive for *methamphetamine hydrochloride*, a dangerous drug.

Subsequently, separate Informations for violation of Republic Act No. 9165, specifically illegal possession of dangerous drugs, and for illegal

possession of firearm were filed by the arresting police officers against Tancinco. The Information for violation of Republic Act No. 9165 was raffled to the court *a quo*, RTC, Branch 58, Cebu City and docketed as Criminal Case No. CBU-76305, while that charging illegal possession of firearm was raffled to the RTC, Branch 10 thereof.

Not surprisingly, Tancinco counters the charges and account of the prosecution, completely denying the story and decrying frame-up.

On the fateful day of 5 March 2006 at around 8:30 p.m., Tancinco was at a friend's house in Villagonzalo I playing a *bingo* machine when three (3) police officers wearing CIIB shirts barged into the premises. One of the police officers grabbed his shirt, dragged him outside while simultaneously demanding for a gun which was supposedly in his possession but which he did not actually have. Another policeman conducted a search within the premises for this firearm. The policemen then stepped out of the premises now carrying a 45-caliber gun which they now claimed was his. A little later, Tancinco was brought to the CIIB in Camp Sotero Cabahug for illegal possession of firearms and two days thereafter, he was transferred to BBRC purportedly for illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165. At which point he finally learned of the actual charges against him.

Tancinco bewails that he had been set-up with fake charges of illegal possession of firearm and illegal possession of *shabu* because he had previously refused to turn state witness against a certain Joel Nodalo *alias* Tungol (Nodalo), who was then accused by some policemen of robbery. Tancinco's story is that he had been previously charged for two counts of robbery and in connection therewith was detained in a police station in Gorordo Avenue for a period of one year and eleven months. Eventually, he was acquitted of those charges. Presumably, Tancinco came in contact with Nodalo, hence the policemen's pursuit for Tancinco to turn state witness against Nodalo.

The trial court found Tancinco guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165, specifically illegal possession of a dangerous drug:

Accordingly, this court finds the accused GUILTY as charged and hereby sentences him to suffer the penalty of imprisonment of from twenty (20) years and one (1) day, as minimum, to twenty-three (23) years, as maximum, and to pay a fine of ₱400,000.00.

The full period of preventive detention shall be credited in the service of this sentence.

Finally, the 3 packs of *shabu*, Exhibit 'B' are confiscated in favor of the state for proper disposition.⁴

On appeal, the appellate court rejected Tancinco's claim of frame-up as against the straightforward, direct and positive testimony of the police officers who arrested Tancinco in the regular performance of their official duties.

In this appeal before us, Tancinco maintains his innocence; he was merely framed-up. He then points to inconsistencies in the police officers' accounting of his arrest that supposedly make up reasonable doubt for his acquittal. Obviously, Tancinco relies on the presumption of innocence and contends that the prosecution did not establish his guilt beyond reasonable doubt.

As the lower courts were, we are not convinced. We find no cause to disturb their factual findings that Tancinco was lawfully arrested without a warrant after information of his being armed and engaging in a pot session with other persons was given to the police officers who then investigated and pursued the lead of the BIN informant. Incident to the lawful warrantless arrest of Tancinco is a search on his person made by the police officers which then yielded his illegal possession of *shabu*.

On more than one occasion, we have ruled that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are accorded great weight. This is because the trial judge has the distinct advantage of closely observing the demeanor of the witnesses, as well as the manner in which they testify, and is in a better position to determine whether or not they are telling the truth.⁵ On that score alone, Tancinco's appeal ought to have been dismissed outright.

We affirm the lower courts' uniform rulings that Tancinco was searched as an incident to a lawful warrantless arrest.

Section 5, Rule 113 of the Rules of Court provides:

⁴ Id. at 58.

⁵ *People v. Diwa*, G.R. No. 194253, 27 February 2013, 692 SCRA 260, 268-269.

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;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

Tancinco claims that he was not lawfully arrested and consequent thereto, the search on him which produced the three (3) sachets of *shabu* was likewise illegal. He insinuates that the firearm allegedly seized from him was planted by the policemen who had an ax to grind against him for refusing to be a state witness against Nodaló *alias* Tungol in a robbery case.

In contrast to the presentation of evidence of the prosecution, Tancinco's roughly drawn scene is that of a frame-up, and that he was eventually charged with illegal possession of *shabu* because he did not turn state witness against Nodaló. Tancinco cites the testimony of PO2 Dio as flawed for declaring that he did not clearly see Tancinco holding the firearm. He further avers that if he did own the firearm seized, as alleged by the prosecution, he would not have tried to conceal it beside a *bingo* machine which can easily be spotted by people as their location at that time was a public place. To do so was contrary to human nature.

To begin with, the testimony of the police officers, including PO2 Dio, as to what went down when they arrested Tancinco was direct, straightforward and positive. PO2 Dio's statement that he did not clearly see Tancinco holding the firearm does not detract from the prosecutions' evidence and story that Tancinco was arrested while attempting to conceal a firearm and could not produce a license to carry thereof when asked by the police officers. Immediately thereafter, as an incident to a lawful

warrantless arrest, Tancinco was searched and found to have three (3) sachets of *shabu* in his possession.

SPO1 Mendaros:

Q: After that incident, what happened next?

A: Five minutes after we arrived at the place, my informant told me that he spotted the armed person playing [at the] bingo machine[s].

Q: What did you do then after that?

A: My informant guided us to the place where this armed person was.

Q: Then?

A: Considering that he was reportedly armed, we cautiously approached him and one after the other we surrounded [him].

Q: Considering that you were five and you said that you were very cautious [in] approaching the accused, how did you go to the said place then?

A: We went to the place one after the other.

Q: Could you describe the place where the said suspect was playing bingo machine?

A: The place had five bingo machines.

Q: Was it inside the house?

A: It was at the extension of the house.

Q: Was it covered?

A: There was a door but it was opened (*sic*).

Q: How many were playing at that time?

A: I cannot recall the exact number of persons playing, but [there] were people playing.

Q: As you cautiously went to the place where the accused was at that time, what happened next?

A: **As I observed him, he looked surprised. We saw him carrying a handgun and attempted to conceal it at the side of the bingo machine.**

Q: Then?

A: PO2 Abatayo quickly confiscated the gun from him.

Q: Then?

A: For failure to present a document allowing him to carry a firearm, we placed him under arrest.

Q: Then?

- A: He was brought outside already handcuffed and as a matter of procedure, I instructed PO2 Dio to frisk him for any illegal item.
- Q: What happened next?
- A: Incidental to his lawful arrest, PO2 Dio was able to recover three (3) medium plastic pack of suspected *shabu* from his right front pocket of his maong short pants.
- Q: After that, what happened?
- A: He was arrested for possession of *shabu*.
- Q: You have said that you ordered Dio to conduct the frisking, how far were you then?
- A: An arm[‘s] length distance from him.
- Q: How about your other companions then?
- A: My other companions were also near.
- Q: What happened next?
- A: As a matter of procedure, we apprised him of his constitutional rights.
- Q: After that, what happened.
- A: We brought him to our office for proper disposition.⁶ (Emphasis supplied).

PO2 Abatayo:

- Q: What did you do then after receiving the information?
- A: **We immediately proceeded to the place then I saw the accused drew (sic) his firearm from his waistline.**
- Q: How far were you from the accused?
- A: Closed (sic) distance.
- Q: You mean to say he did not notice your presence?
- A: **He noticed us that is why he immediately drew his firearm and tried to conceal [it] at the side of the bingo machine.**
- Q: What did you do then?
- A: I placed him under arrest because of his violation. PO2 Cunan conducted body search and he recovered 3 big packs of white crystalline substance.
- Q: Where did he recover the same?
- A: From the possession of the accused.⁷ (Emphasis supplied).

⁶ TSN, 15 August 2006, pp. 4-6.

⁷ TSN, 13 February 2007, p. 4.

PO2 Dio

Q: After the informant pinpointed the said person, what happened next?

A: We approached him.

Q: And then?

A: **We saw him placed his handgun beside the bingo machine and attempt to conceal it.**

Q: How far were you when you saw this act of that person?

A: 2 meters.

Q: Were you in uniform at that time?

A: No, sir. We were in civilian attire.

Q: After that what did you do next?

A: We arrested the person.

Q: And then?

A: We handcuffed him and conducted the body search.

Q: Who conducted the body search?

A: I.

Q: What did you recover?

A: 3 plastic medium packs suspected to be *shabu*.

Q: Where did you recover the same?

A: Right front pocket of his shortpants.

Q: After that, what happened next?

A: We arrested him.

Q: For what?

A: For violation of RA 9165.

Q: You have said you recovered 3 plastic packs from his right pocket. What did you do with [these] then?

A: We used it as evidence against him.

Q: In that precise moment, what did you do with the said specimen?

A: After we reached the office, we entered it into the police blotter and after that we brought the specimen to the PNP Crime Laboratory.⁸ (Emphasis supplied).

⁸ TSN, 26 June 2006, pp. 4-6.

Moreover, Tancinco's very argument ensnares him. It reveals his actual shrewdness in attempting to dispose of the firearm from his person, **his immediate possession thereof**, surreptitiously placing it behind the *bingo* machine which he was playing at the time. It is precisely because the firearm was found in Tancinco's possession without license to carry such that he was then lawfully arrested. Immediately thereafter, he was searched and found to be in possession of three (3) sachets of *shabu*, a dangerous drug.

For good measure, Tancinco argues that the police operatives did not perform their duties regularly.

The presumption that official duty has been regularly performed, and the corresponding testimony of the arresting officers on the buy-bust transaction, can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive. In the face of the straightforward and direct testimony of the police officers, and absent any improper motive on their part to frame up Tancinco, stacked against the bare and thin self-serving testimony of Tancinco, we find no reason to overturn the lower courts' findings.⁹

We agree with the lower courts' respective disquisitions on the evidence presented by Tancinco:

The testimony of [Tancinco] confirms that he was playing a bingo machine in a friend's house and that there were many people playing thereat indicating that the place was open to anybody interested to play.

He also confirmed that he was bodily searched.

However, [Tancinco] denied that a gun and 3 packs of *shabu* were recovered from him. He wants this court to believe that he was framed by the police because he refused to testify against Joel Noda[l]o after he was discharged to be a state witness.

But the problem with said evidence for the defense is that it is uncorroborated or unsupported. Moreover, [Tancinco] himself admitted that he was sent here by his grandparents, who reside in the U.S. and who adopted him after his parents died, "to become good but it did not work." In other words, even his character is questionable.

⁹ *Miclat, Jr. v. People*, G.R. No. 176077, 31 August 2011, 656 SCRA 539, 556; *People v. Pagkalinawan*, G.R. No. 184805, 3 March 2010, 614 SCRA 202, 219-220.

Further, [Tancinco] also said that he had undergone a drug rehabilitation here before.

Thus, between his testimony and those of the police officers, the latter would [carry more weight].¹⁰

x x x x

At any rate, we find the version of [Tancinco] that he was merely framed up by the apprehending officers too incredulous *vis-à-vis* the positive evidence for the [prosecution]. [Tancinco] merely offered the defenses of denial and frame [up] which were uncorroborated by any positive testimony of the people who were allegedly with him during the incident. We find it incredible that the policemen planted said evidence in full view of the people, who, like [Tancinco], were also playing the bingo machines. This is so because the policemen could be prosecuted for planting evidence under Section 19 of R.A. No. 7659. If he were truly aggrieved, it is quite surprising why [Tancinco] did not even attempt to file a criminal or an administrative complaint, *e.g.*, for planting drugs, against the arresting police officers. Such inaction runs counter to the normal human conduct and behavior of one who feels truly aggrieved by the act complained of.

Thus, between the positive assertions of the witnesses for the [prosecution] and the negative averments of [Tancinco], the former undisputedly deserves more credence and are entitled to greater evidentiary value. The defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act. Denial is a weak form of defense, particularly when it is not substantiated by clear and convincing evidence just like in the case before us.¹¹

As found by the lower courts, the prosecution proved beyond reasonable doubt the elements of illegal possession of dangerous drugs: (1) the accused is in possession of the object identified as a prohibited or regulatory drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

Tancinco does not even attempt to explain his possession of the three (3) sachets of *shabu*, only that such were not validly obtained and resulted from his unlawful arrest. Clearly, given the foregoing explication, Tancinco was in possession of three (3) sachets of *shabu* in the total quantity of 5.36 grams, which possession conscious knew these to be *shabu*, a dangerous drug.

¹⁰ CA rollo, p. 23.

¹¹ Rollo, p. 10.

Turning now to the imposable penalty on Tancinco, we modify the penalty imposed by the RTC, and affirmed by the Court of Appeals. Section 11 of Republic Act No. 9165 provides for the penalty for the illegal possession of dangerous drugs:

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:

x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

x x x x

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

x x x x

(2) **Imprisonment of twenty (20) years and one (1) day to life imprisonment** and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) (500) grams of marijuana; x x x. (Emphasis supplied).

For the illegal possession of *shabu* in the amount of 5.36 grams, as in this case, violation of Section 11 of Republic Act No. 9165 is penalized by imprisonment of twenty years (20) and one day (1) to life imprisonment.

Thus, the Indeterminate Sentence Law is inapplicable.¹² The correct imposable and imposed penalty is imprisonment of twenty years (20) and one day (1) to life imprisonment and a fine of Four Hundred Thousand Pesos (₱400,000.00).

WHEREFORE, the appeal is **DENIED**. The Decisions of the Court of Appeals in CA-G.R. CEB-CR-HC No. 00807 and the Regional Trial Court in Criminal Case No. CBU-76305 are **AFFIRMED** with **MODIFICATION**. Accused Dennis E. Tancinco is sentenced to suffer the penalty of imprisonment of twenty years (20) and one day (1) to life imprisonment and to pay a **FINE** of Four Hundred Thousand Pesos (₱400,000.00). No costs.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



ARTURO D. BRION
Associate Justice
Acting Chairperson

¹² Section 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment[.]



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest 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.



ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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