



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

GEORGE ANTIQUERA y CODES,
Petitioner,

G.R. No. 180661

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

December 11, 2013

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Allegre X

DECISION

ABAD, J.:

This case is about a supposed warrantless arrest and a subsequent search prompted by the police officers' chance sighting through an ajar door of the accused engaged in pot session.

The Facts and the Case

On January 13, 2004 the second Assistant City Prosecutor of Pasay City charged the accused George Codes Antiquera* and Corazon Olivenza Cruz with illegal possession of paraphernalia for dangerous drugs¹ before the Regional Trial Court (RTC) of Pasay City in Criminal Case 04-0100-CFM.² Since the accused Cruz jumped bail, the court tried her *in absentia*.³

* Also referred to as George Antiquira in some parts of the records.

¹ In violation of Section 12, Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

² Records, pp. 10-11.

³ *Rollo*, p. 233.

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The prosecution evidence shows that at around 4:45 a.m. of February 11, 2004, PO1 Gregorio Recio, PO1 Laurence Cabutihan, P/Insp. Eric Ibon, PO1 Rodelio Rania, and two civilian operatives on board a patrol car and a tricycle were conducting a police visibility patrol on David Street, Pasay City, when they saw two unidentified men rush out of house number 107-C and immediately boarded a jeep.

Suspecting that a crime had been committed, the police officers approached the house from where the men came and peeked through the partially opened door. PO1 Recio and PO1 Cabutihan saw accused Antiquera holding an improvised tooter and a pink lighter. Beside him was his live-in partner, Cruz, who was holding an aluminum foil and an improvised burner. They sat facing each other at the living room. This prompted the police officers to enter the house, introduce themselves, and arrest Antiquera and Cruz.⁴

While inspecting the immediate surroundings, PO1 Cabutihan saw a wooden jewelry box atop a table. It contained an improvised burner, wok, scissors, 10 small transparent plastic sachets with traces of white crystalline substance, improvised scoop, and seven unused strips of aluminum foil. The police officers confiscated all these and brought Antiquera and Cruz to the Drug Enforcement Unit of the Philippine National Police in Pasay City for further investigation and testing.⁵

A forensic chemical officer examined the confiscated drug paraphernalia and found them positive for traces of methamphetamine hydrochloride or “*shabu*.”⁶

Accused Antiquera gave a different story. He said that on the date and time in question, he and Cruz were asleep in their house when he was roused by knocking on the door. When he went to open it, three armed police officers forced themselves into the house. One of them shoved him and said, “*D’yan ka lang, pusher ka.*” He was handcuffed and someone instructed two of the officers to go to his room. The police later brought accused Antiquera and Cruz to the police station and there informed them of the charges against them. They were shown a box that the police said had been recovered from his house.⁷

On July 30, 2004 the RTC rendered a Decision⁸ that found accused Antiquera and Cruz guilty of the crime charged and sentenced them to a

⁴ Id. at 236.

⁵ Id. at 236-237.

⁶ Id.

⁷ TSN, May 31, 2004, pp. 3-4.

⁸ Records, pp. 147-155.

prison term ranging from six months and one day to two years and four months, and to pay a fine of ₱10,000.00 each and the costs of the suit.

The RTC said that the prosecution proved beyond reasonable doubt that the police caught accused Antiquera and Cruz in the act of using *shabu* and having drug paraphernalia in their possession. Since no ill motive could be attributed to PO1 Recio and PO1 Cabutihan, the court accorded full faith and credit to their testimony and rejected the self-serving claim of Antiquera.

The trial court gave no weight to accused Antiquera's claim of illegal arrest, given PO1 Recio and PO1 Cabutihan's credible testimony that, prior to their arrest, they saw Antiquera and Cruz in a pot session at their living room and in possession of drug paraphernalia. The police officers were thus justified in arresting the two without a warrant pursuant to Section 5, Rule 113 of the Rules of Criminal Procedure.⁹

On appeal, the Court of Appeals (CA) rendered a Decision¹⁰ on September 21, 2007 affirming in full the decision of the trial court. The accused moved for reconsideration but the CA denied it.¹¹ The accused is now before this Court seeking acquittal.

The Issue Presented

The issue in this case is whether or not the CA erred in finding accused Antiquera guilty beyond reasonable doubt of illegal possession of drug paraphernalia based on the evidence of the police officers that they saw him and Cruz in the act of possessing drug paraphernalia.

Ruling of the Court

The prosecution's theory, upheld by both the RTC and the CA, is that it was a case of valid warrantless arrest in that the police officers saw accused Antiquera and Cruz through the door of their house, in the act of having a pot session. That valid warrantless arrest gave the officers the right as well to search the living room for objects relating to the crime and thus seize the paraphernalia they found there.

The prosecution contends that, since the seized paraphernalia tested positive for *shabu*, they were no doubt used for smoking, consuming, administering, injecting, ingesting, or introducing dangerous drug into the

⁹ Id. at 154-155.

¹⁰ *Rollo*, pp. 56-70. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Japar B. Dimaampao and Myrna Dimaranan Vidal.

¹¹ Id. at 72.

body in violation of Section 12 of Republic Act 9165. That the accused tested negative for *shabu*, said the prosecution, had no bearing on the crime charged which was for illegal possession of drug paraphernalia, not for illegal use of dangerous drugs. The prosecution added that even assuming that the arrest of the accused was irregular, he is already considered to have waived his right to question the validity of his arrest when he voluntarily submitted himself to the court's jurisdiction by entering a plea of not guilty.¹²

Section 5(a), Rule 113 of the Rules of Criminal Procedure provides that a "peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense." This is an arrest *in flagrante delicto*.¹³ The overt act constituting the crime is done in the presence or within the view of the arresting officer.¹⁴

But the circumstances here do not make out a case of arrest made *in flagrante delicto*.

1. The police officers claim that they were alerted when they saw two unidentified men suddenly rush out of 107 David Street, Pasay City. Since they suspected that a crime had been committed, the natural thing for them to do was to give chase to the jeep that the two fleeing men boarded, given that the officers were in a patrol car and a tricycle. Running after the fleeing suspects was the more urgent task but the officers instead gave priority to the house even when they heard no cry for help from it.

2. Admittedly, the police officers did not notice anything amiss going on in the house from the street where they stood. Indeed, even as they peeked through its partially opened door, they saw no activity that warranted their entering it. Thus, PO1 Cabutihan testified:

THE COURT:

Q – By the way, Mr. Cabutihan, when you followed your companion towards the open door, how was the door open? Was it totally open, or was it partially open?

A – It was partially open Your Honor.

Q – By how much, 1/3, 1/2? Only by less than one (1) foot?

A – More or less 4 to 6 inches, Your Honor.

¹² Id. at 240-244.

¹³ *People v. Molina*, 404 Phil. 797, 809 (2001).

¹⁴ *Zalameda v. People*, G.R. No. 183656, September 4, 2009, 598 SCRA 537, 552.

Q – So how were you able to know, to see the interior of the house if the door was only open by 6 inches? Or did you have to push the door?

A – We pushed the door, Your Honor.

x x x x

Q – Were you allowed to just go towards the door of the house, push its door and peeped inside it, as a police officer?

A – Kasi po naghinala po kami baka may...

Q – Are you not allowed to – Are you not required to get a search warrant before you can search the interior of the house?

A – Yes, Your Honor.

Q – What do you mean by yes? Would you first obtain a search warrant before searching the interior of the house?

A – Yes, Your Honor.

Q – So why did you not a [sic] secure a search warrant first before you tried to investigate the house, considering your admission that you suspected that there was something wrong inside the house?

A – Because we saw them that they were engaged in pot session, Your Honor.

Q – But before you saw them, you just had to push the door wide open to peep through its opening because you did not know what was happening inside?

A – Yes, Your Honor.¹⁵ (Emphasis supplied)

Clearly, no crime was plainly exposed to the view of the arresting officers that authorized the arrest of accused Antiquera without warrant under the above-mentioned rule. Considering that his arrest was illegal, the search and seizure that resulted from it was likewise illegal.¹⁶ Consequently, the various drug paraphernalia that the police officers allegedly found in the house and seized are inadmissible, having proceeded from an invalid search and seizure. Since the confiscated drug paraphernalia is the very *corpus delicti* of the crime charged, the Court has no choice but to acquit the accused.¹⁷

One final note. The failure of the accused to object to the irregularity of his arrest by itself is not enough to sustain his conviction. A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest.¹⁸

WHEREFORE, the Court REVERSES and SETS ASIDE the Decision dated September 21, 2007 and Resolution dated November 16,

¹⁵ TSN, May 20, 2004, pp. 8-10.


¹⁶ See: *Luz v. People*, G.R. No. 197788, February 29, 2012, 667 SCRA 421, 434.

¹⁷ See: *People v. Villareal*, G.R. No. 201363, March 18, 2013, 693 SCRA 549, 561.


¹⁸ *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791, 801.

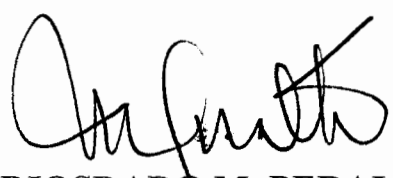
2007 of the Court of Appeals in CA-G.R. CR 28937 and **ACQUITS** the accused George Antiquera y Codes of the crime of which he is charged for lack of evidence sufficient to establish his guilt beyond reasonable doubt. The Court further **ORDERS** the cancellation and release of the bail bond he posted for his provisional liberty.

SO ORDERED.


ROBERTO A. ABAD
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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