

Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

**JORGE DABON, a.k.a. GEORGE  
 DEBONE @ GEORGE,**

**G.R. No. 208775**

Petitioner,

Present:

SERENO, C.J.,  
*Chairperson,*  
 LEONARDO-DE CASTRO,  
 PERALTA,\*  
 DEL CASTILLO, and  
 TIJAM, JJ.

- versus -

**THE PEOPLE OF THE  
 PHILIPPINES,**

Promulgated:

Respondent.

**JAN 22 2018**

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**DECISION**

**TIJAM, J.:**

Before Us is a petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner Jorge Dabon (Dabon), questioning the Decision<sup>2</sup> dated July 27, 2012 and Resolution<sup>3</sup> dated July 8, 2013 of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 01414, affirming the Omnibus Decision<sup>4</sup> dated July 10, 2008 and Omnibus Order<sup>5</sup> dated February 1, 2010 rendered by the Regional Trial Court (RTC) of Bohol, Tagbilaran City, Branch 2, in Criminal Case Nos. 11930, 11931 and 11932.

\* Designated additional Member per Raffle dated May 8, 2017 *vice* Associate Justice Francis H. Jardeleza.

<sup>1</sup> *Rollo*, pp. 4-27.

<sup>2</sup> Penned by Associate Justice Ramon Paul L. Hernando, concurred in by Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles; *id.* at 31-45.

<sup>3</sup> *Id.* at 46-47.

<sup>4</sup> Penned by Presiding Judge Baudilio K. Dosdos; *id.* at 69-77.

<sup>5</sup> *Id.* at 94.

### The Facts

Law enforcement agents applied for a search warrant after the surveillance and test-buy operations conducted by the operatives of the Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG) in Bohol, which confirmed that Dabon was engaged in illegal drug activity.<sup>6</sup>

Search Warrant No. 15, which armed law enforcement agents to search Dabon's residence for violation of Sections 11 and 12, Article II of Republic Act (R.A.) No. 9165<sup>7</sup> or the Comprehensive Dangerous Drugs Act of 2002, was issued.<sup>8</sup>

On July 26, 2003, at about 5:30 a.m., Police Inspector Hermano Mallari (P/Insp. Mallari), Senior Police Officer 2 Arsenio Maglinte (SPO2 Maglinte), SPO1 Noel Triste (SPO1 Triste), Police Officer 3 John Gilbert Basalo (PO3 Basalo), PO3 David Enterina (PO3 Enterina), PO2 Gaudioso Datoy (PO2 Datoy) and PO2 Herold Bihag (PO2 Bihag) of the Bohol Criminal Investigation and Detection Team proceeded to an apartment unit at Boal District, Tagbilaran City where the residence of Dabon is situated.<sup>9</sup>

Upon reaching the two-storey apartment at about 7:30 am, the CIDG operatives requested Barangay Kagawad Ariel Angalot (Brgy. Kagawad Angalot), City Councilor Jose Angalot (Councilor Angalot), Sangguniang Kabataan Chairman Marianne Angalot (SK Chairman Angalot), media representative Charles Responde (Responde) and Department of Justice (DOJ) representative Zacarias Castro (Castro) to witness the search.<sup>10</sup>

The group entered the house and the CIDG, together with Brgy. Kagawad Angalot and SK Chairman Angalot went to the second floor where Dabon and his family resided. The second floor had two bedrooms, a kitchen and a living room. They found Eusubio Dumaluan (Dumaluan) in the living room while Dabon was inside one of the bedrooms.<sup>11</sup>

After P/Insp. Mallari handed the copy of the search warrant to Dabon, the CIDG operatives searched the kitchen where PO2 Datoy<sup>12</sup> and PO2 Enterina found, in the presence of Brgy. *Kagawad* Angalot, drug paraphernalia. The police officers then frisked Dumaluan and recovered

<sup>6</sup> Id. at 33.

<sup>7</sup> AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved June 7, 2002.

<sup>8</sup> *Rollo*, pp. 33 and 72.

<sup>9</sup> Id. at 72.

<sup>10</sup> Id. at 33-34.

<sup>11</sup> Id. at 34.

<sup>12</sup> PO2 Datoy at sometimes referred to as PO3 Datoy in the rollo.

from his pocket, a coin purse, a lighter, a metal clip, three empty decks of suspected *shabu*, two pieces of blade and crumpled tin foil.<sup>13</sup>

The police officers proceeded to search one of the bedrooms where PO2 Datoy and PO2 Enterina, in the presence of Brgy. *Kagawad* Angalot, found three plastic sachets containing suspected *shabu*, which were hidden in the folded of clothes inside a drawer. They also recovered the following drug paraphernalia: empty cellophane wrapper, rolled tinfoil containing suspected *shabu* residue, twisted tissues, plastic straw refiller, three pieces of bamboo clip, improvised metal clip, and blade.<sup>14</sup>

The three plastic sachets and the drug paraphernalia found in the bedroom of Dabon and the drug paraphernalia recovered from Dumaluan were turned over to SPO1 Triste who inventoried and placed them in evidence bags in the presence of Councilor Angalot, Brgy. *Kagawad* Angalot, SK Chairman Angalot, media representative Responde and DOJ representative Castro.<sup>15</sup>

On July 28, 2003, PO2 Diola of the Bohol Provincial Office of the PNP Crime Laboratory received from PO2 Imperina a letter signed by P/Insp. Mallari<sup>16</sup> requesting the conduct of chemical examination on the seized items. The letter and the seized items were turned over to P/Insp. David Tan (P/Insp. Tan), a Forensic Chemical Officer.<sup>17</sup>

The chemical examination and confirmatory test conducted by P/Insp. Tan on the seized items yielded positive results for the presence of methylamphetamine hydrochloride.<sup>18</sup>

Two Information were filed against Dabon for violation of Sections 11 and 12, Article II of R.A. No. 9165, to wit:

Criminal Case No. 11931:

That on or about the 26<sup>th</sup> day of July 2003, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly have in his possession, custody and control Three (3) packets of shabu powder totally weighing 0.80 gram and One (1) strip of aluminum foil containing traces of shabu powder, the accused knowing fully well that the above-mentioned substance which contains Methylamphetamine Hydrochloride is a dangerous drug and that he did

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> P/Insp. Mallari at sometimes referred to as P/Senior Insp. Mallari in the rollo.

<sup>17</sup> Id.

<sup>18</sup> Id.

not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.<sup>19</sup>

**Criminal Case No. 11932:**

That on or about the 26<sup>th</sup> day of July 2003 in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly have in his possession, custody and control One (1) piece small plastic container (red) containing several pieces of empty decks of shabu, One (1) piece small plastic container (transparent) containing several empty cellophane wrapper for shabu, Two (2) pieces improvised tooter (tin foils), Two (2) pieces hardly twisted tissue, Four (4) pieces cut-rolled unused tin foils, One (1) piece plastic straw refiller, Three (3) pieces improvised bamboo clips, One (1) piece improvised metal clip, One piece blade (half[-]size), One (1) piece cellophane pack containing several empty cellophane wrapper used for packing shabu, One (1) unit cellphone (Motorola) with charger, and Cash proceeds amounting to One Thousand Nine Hundred Pesos (PPh 1,900.00) (sic) in difference (sic) bill denomination - the accused knowing fully well that the above-mentioned items are the instruments, apparatus, or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing a dangerous drug into the body, and that he did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.<sup>20</sup>

An information for violation of Section 12, Article II of R.A. No. 9165 was filed against Dumaluan.<sup>21</sup>

For his defense, Dabon argued that he was surprised when he was awakened by alleged members of the CIDG, who entered his room, pointing guns at him and telling them that they will conduct a raid.<sup>22</sup>

Dabon and Dumaluan claimed that they were not allowed to witness the search conducted by the CIDG. Instead, they were ordered to stay and sit in the living room while other members of the household were locked inside the room of their house helper.<sup>23</sup>

### **Ruling of the RTC**

In an Omnibus Decision<sup>24</sup> dated July 10, 2008, the RTC ruled that the search implemented in Dabon's residence was valid and consequently found Dabon guilty beyond reasonable doubt of violation of Sections 11 and 12, Article II of R.A. No. 9165. The RTC upheld the presumption of regularity

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<sup>19</sup> Id. at 32.

<sup>20</sup> Id.

<sup>21</sup> Id. at 33.

<sup>22</sup> Id. at 102.

<sup>23</sup> Id.

<sup>24</sup> Id. at 69-77.

in the performance of the police officers' duties in the absence of ill motives on their part, thus:

WHEREFORE, in Criminal Case No. 11931, the Court find (sic) [Dabon], aka George Debone @ George, guilty beyond reasonable doubt of the offense of Violation of Section 11, Article II, of [R.A.] No. 9165, embraced in the afore-quoted information. There being no aggravating nor mitigating circumstance adduced and proven at the trial, [Dabon] is hereby sentenced to the indeterminate penalty of imprisonment of, from TWELVE (12) YEARS and ONE (1) DAY, as minimum to FOURTEEN (14) YEARS, as maximum, and to pay a fine of THREE HUNDRED THOUSAND (Php 300,000.00) PESOS, with the accessory penalties of the law, and to pay the costs.

In Criminal Cases Nos. 11930 and 11932, the Court finds [Dabon], aka George Debone @ George and [Dumaluan], guilty beyond reasonable doubt of Violation of Section 12, Article II of [R.A.] No. 9165, embraced in the afore-quoted informations. There being no aggravating nor mitigating circumstance adduced and proven at the trial, [Dabon and Dumaluan] are each hereby separately sentenced to the indeterminate penalty of, SIX (6) MONTHS and ONE (1) DAY, as minimum, to FOUR (4) YEARS, as maximum, and to pay a fine of TWENTY FIVE THOUSAND (Php 25,000.00) PESOS, with the accessory penalties of the law, and to pay the costs.

In compliance with Par. 7, Section 21, of R.A. [No.] 9165, the evidence in this case consisting of three (3) sachets of shabu weighing 0.80 gram, and aluminum foil, with traces of shabu, taken from [Dabon], and the specified drug paraphernalia recovered from both [Dabon and Dumaluan], are hereby ordered turned-over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition and or destruction. The cellphone and cash subject matter of these cases, were returned to the accused upon the latter's motion.

If preventively detained before putting up bail, the accused concerned, is hereby credited in full of the period of his preventive detention pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.<sup>25</sup>

Only Dabon filed a Motion for Reconsideration<sup>26</sup> before the RTC. In said motion, he essentially questioned the admissibility of the seized items as neither he nor any member of his family was present when the search was conducted. Such motion was denied in an Omnibus Order<sup>27</sup> dated February 1, 2010.

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<sup>25</sup> Id. at 76-77.

<sup>26</sup> Id. at 78-87.

<sup>27</sup> Id. at 94.

Undeterred, Dabon filed an appeal before the CA. Dabon insisted on the inadmissibility of the evidence obtained against him.

In a Decision dated July 27, 2012,<sup>28</sup> the CA affirmed the conviction of Dabon. The CA ratiocinated that the right of Dabon to question his arrest was deemed waived because he failed to question the same before arraignment. In any case, the CA ruled that the procedural flaw did not cast doubt on the fact that the illegal drugs and paraphernalia were seized at the residence of Dabon. The dispositive portion thereof reads:

**WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The July 10, 2008 Omnibus Decision and the February 1, 2010 Omnibus Order of the [RTC], Branch 2, of Tagbilaran City, Bohol is **AFFIRMED in toto**. Costs on [Dabon].

**SO ORDERED.**<sup>29</sup>

A motion for reconsideration<sup>30</sup> was filed by Dabon, which was denied in a Resolution<sup>31</sup> dated July 8, 2013.

### Issue

Is the evidence obtained against Dabon admissible?

### Ruling of the Court

No less than the 1987 Constitution provides for the protection of the people's rights against unreasonable searches and seizures, to wit:

**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.

Thus, the State and its agents cannot conduct searches and seizures without the requisite warrant. Otherwise, the constitutional right is violated.

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<sup>28</sup> Id. at 31-44.

<sup>29</sup> Id. at 44.

<sup>30</sup> Id. at 48-61.

<sup>31</sup> Id. at 46-47.

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“It must, however, be clarified that a search warrant issued in accordance with the provisions of the Revised Rules of Criminal Procedure does not give the authorities limitless discretion in implementing the same as the same Rules provide parameters in the proper conduct of a search.”<sup>32</sup> One of those parameters set by law is Section 8 of Rule 126, to wit:

**Section 8.** *Search of house, room, or premise to be made in presence of two witnesses.* — No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

The law is mandatory to ensure the regularity in the execution of the search warrant.<sup>33</sup> This requirement is intended to guarantee that the implementing officers will not act arbitrarily which may tantamount to desecration of the right enshrined in our Constitution.

In this case, it is undisputed that Dabon and his wife were actually present in their residence when the police officers conducted the search in the bedroom where the drugs and drug paraphernalia were found. It was also undisputed that, as the CA recognized, only Brgy. *Kagawad* Angalot was present to witness the same.<sup>34</sup>

As gleaned from the records, PO2 Datoy, one of the police officers who conducted the search in the bedroom, testified, thus:

Q: What part of the house did you personally search?

A: At the bedroom of [Dabon].

Q: Who was with you when you were searching the bedroom of [Dabon]?

A: PO2 Enterina and [Brgy. *Kagawad* Angalot].

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Q: When you were already inside the room, [Dabon] according to you was still there?

A: He was in the sala.

Q: He did not go with you?

A: No, he was sitting in the sala.<sup>35</sup>

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<sup>32</sup> *Bulauitan v. People*, G.R. No. 218891, September 19, 2016, 803 SCRA 367, 374-375.

<sup>33</sup> *People v. Gesmundo*, 292-A Phil. 20, 29 (1993).

<sup>34</sup> *Rollo*, p. 38.

<sup>35</sup> *Id.* at 108-109.

Brgy. *Kagawad* Angalot confirmed the statement of PO2 Datoy insofar as the absence of Dabon or any member of his family when the search was conducted, to wit:

Q: When the bedroom of the couple was subjected to a search, the couple Mr. and Mrs. Dabon were outside the room?

A: They were in the sala.

Q: [Dabon] was at the sala and the wife was at the comfort room accompanied by [SK Chairman Angalot]?

A: Yes, sir.<sup>36</sup>

We are not unguarded in ruling for the inadmissibility of evidence obtained in violation of this requirement. In *People v. Go*,<sup>37</sup> We rendered inadmissible the evidence obtained in violation of this rule and stressed that the Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted. Section 8, Rule 126 provides that the search should be witnessed by two witnesses of sufficient age and discretion residing in the same locality only in the absence of either the lawful occupant of the premises or any member of his family. In *People v. Del Castillo*,<sup>38</sup> We ruled that although the lawful occupants were present during the search, the fact that they were not allowed to witness the search of the premises violates the mandatory requirement. In *Bulautan v. People*,<sup>39</sup> We decided for the acquittal of the accused because of failure to comply with the aforementioned rule, which rendered the evidence against him inadmissible.

Here, the hierarchy among the witnesses as explicitly provided under the law was not complied with. For one, the lawful occupants of the premises were not absent when the police authorities implemented the search warrant. Even so, the two-witness rule was not complied with as only one witness, Brgy. *Kagawad* Angalot, was present when the search was conducted.

As told, based on the testimonies of PO2 Datoy and Brgy. *Kagawad* Angalot, it is clear that the mandatory rule under Section 8 was violated. Clearly, the contention of the Office of the Solicitor General (OSG) that SK Chairman Angalot was there was belied by the statement of PO2 Datoy and Brgy. *Kagawad* Angalot.

Failure to comply with the safeguards provided by law in implementing the search warrant makes the search unreasonable. Thus, the exclusionary rule applies, *i.e.*, any evidence obtained in violation of this

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<sup>36</sup> *Id.* at 38.

<sup>37</sup> 457 Phil. 885 (2003).

<sup>38</sup> 482 Phil. 828 (2004).

<sup>39</sup> G.R. No. 218891, September 19, 2016, 803 SCRA 367.



constitutional mandate is inadmissible in any proceeding for any purpose.<sup>40</sup> We emphasize that the exclusionary rule ensures that the fundamental rights to one's person, houses, papers, and effects are not lightly infringed upon and are upheld.<sup>41</sup>

Lastly, We find that the inadmissibility of the evidence obtained was not defeated by the fact that Dabon failed to timely object to such evidence's admissibility during trial.

Although Section 14 of Rule 126 states that a motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted, the purpose for which such provision was enacted must nevertheless be considered. In the case of *Ogayon v. People*,<sup>42</sup> We clarified that "the provision was intended to resolve what is perceived as conflicting decisions on where to file a motion to quash a search warrant or to suppress evidence seized by virtue thereof. It was certainly not intended to preclude belated objections against the search warrant's validity."<sup>43</sup>

In the *Ogayon*<sup>44</sup> case, We brushed aside such procedural defect and gave more prime to a fundamental constitutional right. We set aside adherence to procedural rules and recognized that procedural rules can neither diminish nor modify substantial rights.<sup>45</sup>

Like in *Ogayon*, We rule that Dabon's failure to file a motion to suppress the evidence obtained against him cannot be considered as a sufficient indication that he clearly, categorically, knowingly, and intelligently made a waiver. This is in consonance with Our ruling in *People v. Bodoso*<sup>46</sup> where We underlined that in criminal cases where life, liberty and property are all at stake, "[t]he standard of waiver requires that it not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences."<sup>47</sup> After all, he raised the objection in his Omnibus Motion for Reconsideration before the trial court.

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<sup>40</sup> Article II I of the 1987 Constitution provides that:

Section 3(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

<sup>41</sup> *People v. Cogaed*, 740 Phil. 212, 241 (2014).

<sup>42</sup> 768 Phil. 272 (2015).

<sup>43</sup> *Id.* at 289.

<sup>44</sup> *Supra.*

<sup>45</sup> *Id.* at 288.

<sup>46</sup> 446 Phil. 838 (2003).

<sup>47</sup> *Id.* at 850.

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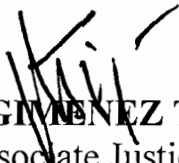
While We are at one with the government in its campaign against illegal drugs, We cannot disregard a constitutional right and run counter to what is explicitly prescribed by our Constitution and to its purpose, *i.e.*, “to protect the people against arbitrary and discriminatory use of political power.”<sup>48</sup>

**WHEREFORE**, premises considered, the Decision dated July 27, 2012 and Resolution dated July 8, 2013 of the Court of Appeals in CA-G.R. CEB-CR No. 01414 are **REVERSED and SET ASIDE**.


Accordingly, accused-appellant Jorge Dabon is **ACQUITTED** of the crime charged against him. His immediate release from confinement is hereby ordered unless he is lawfully held in custody for another cause. The Director of the Bureau of Corrections is ordered to forthwith implement this decision and to inform this Court, within ten (10) days from receipt hereof, of the date the accused-appellant was actually released from confinement.

The *shabu* and other *shabu* paraphernalias seized during the search are forfeited in favor of the State.

**SO ORDERED.**

  
**NOEL GIVENEZ TIJAM**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

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<sup>48</sup> *Allado v. Judge Diokno*, 302 Phil. 213, 238 (1994).

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*Mariano C. Del Castillo*  
**MARIANO C. DEL CASTILLO**  
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*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice