

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL LANSON HASSIM AND ABDUL SAMAD LUMAWAN DIMAKUTA, ACCUSED, JOEL LANSON HASSIM, ACCUSED-APPELLANT.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

On appeal is the Decision dated September 27, 2012 of the Regional Trial Court (RTC) Branch 65 of Infanta, Quezon, in Crim. Case No. 1847-I which found Joel Lanson Hassim guilty of violating Section 11, subparagraph 5, Article II of Republic Act (R.A.) No. 9165 for illegal possession of dangerous drugs and which sentenced him to suffer imprisonment of fourteen (14) years, eight (8) months and one (1) day as minimum to life imprisonment as maximum, pay a fine of Php 500,000.00, plus all accessory penalties.

The Information dated January 15, 2004 charged Joel Lanson Hassim (Hassim) and Abdul Samad Lumawan Dimakuta (Dimakuta) of violating Section 5, Article II of R.A. No. 9165, in this wise:

“That on or about the 16[th] day of September 2003, at Barangay Tignoan, Municipality of Real, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of the law, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously sell, deliver and give away to a police asset, who posed as a poseur-buyer, one (1) mailing envelop containing one (1) heat-sealed transparent plastic bag of Methamphetamine Hydrochloride (shabu), weighing 97.49 grams, a dangerous drug.

Contrary to law.” (Records, p. 2).

Upon arraignment on December 13, 2005, Hassim pleaded “not guilty”. (Records, p. 238).

The prosecution, through witnesses SPO4 Orlando Isaga, SPO2 Nestor Ruzol, and SPO2 Elmer Ortiz averred that: On September 16, 2003 at around noon, they were at Llever Beach Resort in Sitio Mahaba, Brgy. Tignoan, Real, Quezon, to conduct an entrapment operation based on an information given by Atty. Romeo Llever that a sale of drugs will take place between him and two other persons. Llever acted as poseur-buyer, while the officers waited inside the resort. At around 12 noon, Hassim and Dimakuta arrived with a brown envelope. They were met by Llever and soon, the police approached them. The police ordered Dimakuta, who was in possession of the brown envelope to open the same. Inside was a plastic sachet, about 3 by 5 inches, containing what appeared to be shabu. The police officers informed Dimakuta and Hassim of their rights and brought them to the police headquarters in Kiloloron, Real, Quezon. The police averred that Dimakuta admitted, in the presence of barangay officials, that the brown envelope in their possession contained shabu. Hassim meanwhile admitted to the fact that he was the companion of Dimakuta. The police brought the crystalline substance to the crime laboratory which later tested positive for shabu. (Rollo, pp. 35-38).

Hassim for his part testified that around noon of September 16, 2003, he and his co-accused Dimakuta, a husband of his cousin, were in the resort of Atty. Llever to attend Llever's birthday party. He does not know of any reason why the police would arrest them. Hassim also claimed that they were brought to a police camp in Kiloloron and

were forced to sign a document, the contents of which, he did not understand. (Rollo, pp. 38-39).

On September 27, 2012, the RTC rendered its decision:

“WHEREFORE, in the light of the foregoing, judgment is hereby rendered against accused Joel Lanson Hassim, finding him guilty beyond reasonable doubt of the crime of violation of subpar. 5 of the 1st par. of Sec. 11, Art. II of R.A. 9165, and applying the Indeterminate Sentence Law (applying the case of *People v. Teodoro*, 590 SCRA 494), this court hereby imposes upon him the penalty of the minimum of reclusion temporal in its medium period which is Fourteen (14) Years, Eight (8) Months and One (1) Day as minimum to life imprisonment as maximum and to pay a fine of Php 500,000.00, to suffer all the accessory penalties and to pay the cost of suit.

The 97.49 grams of shabu which were found to be positive for shabu is ordered confiscated in favor of the State to be disposed of in accordance with the applicable provisions of Sec. 21 of R.A. 9165, and its implementing rules and regulations.

SO ORDERED.” (Rollo, p. 44).

The RTC held that although Hassim is not liable for the crime of illegal sale of dangerous drugs, he is liable for illegal possession thereof. Hassim and Dimakuta arrived at the resort on September 16, 2003, purposely to deliver 97.49 grams of shabu to Atty. Llever. The trial court did not give weight to Hassim's defense that he was just invited to accompany Dimakuta to attend Llever's birthday party in Real, Quezon and that he did not know that Dimakuta would sell or deliver shabu to the latter. From the inception of the entrapment operation, there were already two persons involved that would deliver the shabu, Dimakuta and Hassim. When the two were confronted about the contents of the envelope Dimakuta was carrying, Hassim never made any protest. During his testimony, Hassim also never showed any anger towards Dimakuta for involving him in an illegal transaction. The police did not have any motive to falsely accuse him. Finally, Hassim's alibi in his counter-affidavit was inconsistent with the one he made in open court, that is, he first stated that he went with Dimakuta to swim at the resort while he claimed during his testimony that he was invited to attend Llever's birthday party. (Rollo, p. 40-43).

As to the chain of custody, the trial court held that the prosecution was able to show the police officers' compliance to Sec. 21, Art. II of R.A. No. 9165. In any event, failure to strictly comply with the rules is not fatal as it is enough that the integrity and evidentiary value of the seized items were preserved. (Rollo, p. 43).

Hassim is now before the Court claiming that:

I

THE TRIAL COURT GRAVELY ERRED IN RULING THAT ILLEGAL POSSESSION OF PROHIBITED DRUG WAS PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THERE WAS CONSPIRACY AMONG THE VIOLATORS IN THE COMMISSION OF THE CRIME. (Rollo, p. 18).

Hassim avers that there is nothing from the evidence on record or from the testimony of the prosecution witnesses that would show that the confiscated prohibited substance was found in his possession. Even SPO4 Isaga testified that the brown envelope containing the illicit item was carried by Dimakuta and that Isaga arrested him (Hassim) because he was with Dimakuta. Absent any evidence to show that he participated in perpetrating the offense charged, conspiracy cannot be appreciated against him. Intentional participation is indispensable since a person's mere presence at the crime scene cannot be considered as proof of conspiracy. Isaga and the rest of the prosecution witnesses were not privy to the alleged transaction between Llever and Dimakuta. (Rollo, pp. 23-28).

Hassim further argues that even if conspiracy was established, still the prosecution failed to establish an unbroken chain of custody. It is not clear who was in custody of the seized item from the time it was confiscated from Dimakuta until its turn over to the investigator who took custody of the item when it was booked in the police blotter. The identity of the person from whom the laboratory chemist received the specimen was also not established. There could be no crime of illegal possession of a prohibited drug if doubt persists as to whether the item confiscated was the same specimen examined and found to be an illegal drug. (Rollo, pp. 29-30).

The Office of the Solicitor General on the other hand asserts that Hassim's acts before, during and after the commission of the crime proves that he is a conspirator to the offense. He purposely accompanied Dimakuta in the delivery of the drugs. His arrival with Dimakuta at the Llever Beach Resort was in accordance with the commitment of Dimakuta to the poseur-buyer as overheard by SPO2 Ruzol. Hassim did not protest his apprehension by the police officers, which is contrary to the normal behavior of an innocent man. He gave materially inconsistent explanations respecting his reason for the long travel to Real, Quezon where the delivery was made. Such behavior indicates knowing participation in the delivery of the illegal drugs. (Rollo, p. 54-57).

The OSG further asserts that there was an unbroken chain of custody respecting the seized illegal drugs from their confiscation to its presentation at the trial. (Rollo, p. 58).

The Court finds MERIT in the appeal.

The general rule is that the findings of fact and conclusions of trial courts as to the credibility of witnesses are accorded high respect and due weight. (People v. Balag-ey, 427 SCRA 384, 392 [2004]). Exceptions would be instances where there are glaring errors and gross misapprehension of facts, and the findings are speculative, arbitrary and unsupported by evidence. (People v. Santos, 555 SCRA 578, 592 [2008]).

In this case, the Court finds that a deviation from the general rule is in order.

Hassim was accused of conspiring with his co-accused Dimakuta in the illegal possession of a dangerous drug. For conviction of illegal possession of a prohibited drug to lie, the following elements must be established: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug. (People v. Batoon, 636 SCRA 210, 219 [2010]).

Evidence showed that it was Dimakuta who possessed the illegal drugs. The prosecution argues however that Hassim should be held equally liable on the ground of conspiracy.

We disagree.

Conspiracy is said to exist when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It must be proved as convincingly and indubitably as the crime itself, without need however of proving it by direct evidence. (People v. Desuyo, 625 SCRA 590, 603 [2010]). It is not necessary that the parties actually came together and agreed in express terms to enter into and pursue a common design. Proof of concerted action before, during and after the crime, that demonstrates their unity of design and objective, is sufficient. (People v. Santos, 555 SCRA 578, 602-603 [2008]).

While the trial court found sufficient the prosecution's evidence on conspiracy, We find otherwise.

Where the prosecution failed to show by convincing proof that the accused knew of the contents of the bag or envelope and that he conspired with his co-accused to possess the illegal item, there could be no conviction for illegal possession of drugs. (See People v. Nuevas, 516 SCRA 463, 484 [2007]).

The police officers who testified for the prosecution were one in saying that it was Dimakuta who carried the

shabu.

SPO2 Ortiz testified:

“A---

We frisked Dimakuta and we found the shabu inside his pocket.

Q---

What about the other accused, what have you frisked from him?

A---

None, Sir.” (TSN, October 14, 2003, p. 4).

SPO4 Orlando Isaga, meanwhile testified:

“Q

You arrested Joel Lanson Hassim although he is not selling shabu, why?

A

Because he was carrying shabu to be sold to Llever, sir.

Q

Did you not say that it was Dimakuta who was carrying shabu?

A

Dimakuta was the one carrying shabu, sir.

Q

Joel Lanson Hassim was not carrying shabu at that time?

A

No but the 2 of them were together, sir.

Q

You arrested Joel Lanson Hassim because he was with Abdul Dimakuta, is that correct?

A

Yes, sir.

Q

But it was only as you said Dimakuta who was in possession of a brown envelope allegedly containing shabu?

A

Yes, sir.” (TSN, March 8, 2005, pp. 20-21)

SPO2 Ruzol and SPO2 Ortiz likewise testified that it was Dimakuta who carried the envelope. (TSN, SPO2 Nestor Ruzol, April 7, 2005; TSN, SPO2 Elmer Ortiz, September 30, 2009, p. 6).

Isaga also testified that Hassim did not admit that he was carrying shabu. Hassim only admitted that he was a companion of Dimakuta. (TSN, March 8, 2005, pp. 20-21).

The rule is settled that absent any other evidence, mere presence at the scene of the crime is not by itself sufficient to establish conspiracy. (*People v. Balag-ey*, supra, p. 403). The mere fact that appellant arrived with the perpetrator does not necessarily establish conspiracy. (*People v. Mandao*, 393 SCRA 282, 302 [2002]).

In order to be held guilty by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity. Conspiracy is not a harmless innuendo to be taken lightly or accepted at every turn. It is a legal concept that imputes culpability under specific circumstances. Thus, it must be established as clearly as any element of the crime. Evidence to prove conspiracy must be positive and convincing, considering that it is a convenient and simplistic device by which an accused may be ensnared and kept within the penal fold. Criminal liability cannot be based simply on a general allegation of conspiracy and a judgment of conviction must always be founded on the strength of the prosecution's evidence. (*People v. Mandao*, supra, p. 298-299, 304).

As the prosecution failed to prove that Hassim performed an overt act in pursuance or furtherance of the complicity, or that there was concerted action before, during and after the crime that demonstrates unity of design and objective, Hassim must be acquitted of the crime.

Moral certainty and not mere possibility determines the guilt or innocence of the accused. Even when the evidence for the defense is weak, the accused must be acquitted when the prosecution failed to prove guilt with the requisite quantum of proof required in all criminal cases. (*People v. Mandao*, supra, p. 305).

WHEREFORE, the appeal is GRANTED. The Decision dated September 27, 2012 of the Regional Trial Court, Branch 65 of Infanta, Quezon in Crim. Case No. 1847-I is hereby REVERSED and SET ASIDE. The accused-appellant Joel Lanson Hassim is ACQUITTED based on reasonable doubt.

Accused-appellant Joel Lanson Hassim is ordered immediately released from confinement, unless there is any other legal or valid cause to detain him further. The director of the Bureau of Corrections shall report to this Court, within ten (10) days from notice of this judgment, on his action in obedience to this directive.

SO ORDERED.

Lopez and Inting, JJ., concur.

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