

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OFEL CARINGAL Y ABANES, ACCUSED-APPELLANT,

Ponente: REYES, JR., A. J.

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REYES, JR., A. J.:

This is an appeal from the Decision[1] dated 12 October 2004 of the Regional Trial Court of Malolos, Bulacan, Branch 20, where the herein accused-appellant was convicted beyond reasonable doubt of Violation of Section 27, Article IV of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended. The dispositive portion of the appealed decision reads to wit:

“WHEREFORE, the Court finds accused CARLOS RAMIREZ y SECRETARIO, HECTOR ORDONEZ y MALAGAR, AMAYA VERA CRUZ y DE GUZMAN and OFEL CARINGAL y ABANES guilty beyond reasonable doubt of Violation of Section 27, Article IV of R.A. 6425, as amended. They are hereby sentenced to each suffer imprisonment of six (6) months, as minimum, to three (3) years, as maximum.

The drug paraphernalia submitted as evidence in this case are hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

In the meantime, let this case be archived with respect to accused VANESSA BONIFACIO y MATEO to be revived upon her arrest. Let an alias warrant of arrest be issued against accused Bonifacio.

SO ORDERED.”[2]

The antecedents:

On 06 March 2002, the 4th Assistant Provincial Prosecutor of Malolos, Bulacan charged the herein accused-appellant, Ofel Caringal [CARINGAL], together with several others before the Regional Trial Court of Malolos, Bulacan, with the following Information: “The undersigned Asst. Provincial Prosecutor accuses Celso Alvindo y Alcaraz alias Burog, Carlos Ramirez y Secretario, Hector Ordonez y Malagar, Amaya Vera Cruz y de Guzman, Ofel Caringal y Abanes and Vanessa Bonifacio y Mateo of the crime of Violation of Section 27, Article IV of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, committed as follows:

That on or about the 15th day of August, 2001, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously, without authority of law sniff methamphetamine hydrochloride (shabu), a regulated drug.

Contrary to law.”[3]

On 06 May 2002, all the accused, assisted by counsel, except for Vanessa Bonifacio y Mateo, who jumped bail, pleaded not guilty to the charges.[4] Trial ensued thereafter.

The prosecution presented two witnesses, PO3 Leonardo Masangkay, Jr. and PO2 Romeo Bagtas.

PO3 Leonardo Masangkay, Jr. [MASANGKAY] testified that he was assigned at the Drug Enforcement Unit of

the Malolos Police Station. At around 07:40 in the evening of 15 August 2001, they conducted a buy-bust operation against the accused, Celso Alvindo [ALVINDO] in San Pablo, Malolos, Bulacan after successfully carrying out surveillance therein the day before.[5]

The buy-bust team consisted of MASANGKAY, SPO2 Perlito Dimagiba, PO2 Romeo Bagtas and PO1 Alfredo Andres, Jr.

PO2 Romeo Bagtas prepared the hundred-peso marked money, while a police asset was designated as the poseur buyer.[6]

Upon arriving at the place, the illegal drug transaction was consummated between the police asset and ALVINDO. As the police asset and ALVINDO entered the latter's house, a pre-arranged signal was given. The buy-bust team then followed the police asset to ALVINDO's house.[7]

As soon as the buy-bust team entered the premises, they saw an ongoing pot session being held.[8] The police immediately introduced themselves and arrested all those engaged in the pot activity.

Confiscated from the scene of the crime aside from one (1) small plastic sachet containing the suspected shabu from the police asset, were drug paraphernalia such as, an improvised water pipe, an empty plastic sachet with residue, and lighters.[9]

MASANGKAY positively identified all the herein accused and accused-appellant as the ones the buy-bust team arrested on 15 August 2001.[10]

Chemistry Report No. D-656-2001 from the Philippine National Police [PNP] Crime Laboratory confirmed that the plastic sachet and the improvised water pipe seized from the buy-bust operation and submitted for examination contained methamphetamine hydrochloride.[11]

PO2 Romeo Bagtas [BAGTAS] corroborated the testimony of MASANGKAY.[12]

For the defense, the accused, Carlos Ramirez, Jr. [RAMIREZ] took the stand.

RAMIREZ claimed that on the date and time in question, he went with the accused, Amaya Vera-Cruz [VERA-CRUZ] to ALVINDO's house, which was then occupied by the accused, Hector Ordonez [ORDONEZ] to collect the latter's share in the rentals for a house he shared with RAMIREZ.[13] However, while RAMIREZ stood outside the house discussing the rentals, police officers suddenly approached and forcibly ushered them into the house.[14] RAMIREZ surmised that the police must have had a warrant for ALVINDO's arrest. Thereafter, the police told them to lie flat on the floor and handcuffed them.[15]

RAMIREZ denied that they were caught holding a pot session, and advanced the theory that the police filed a case against them because the authorities failed to get anything from their search of ALVINDO's house.[16]

After the trial, the court a quo convicted all the accused. Hence, the instant appeal by accused-appellant, CARINGAL.

The following errors were assigned:[17]

"I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT;

II.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.”

We find no merit in this appeal.

The accused-appellant claims that there was inconsistency in MASANGKAY’s and BAGTAS’ testimony as regards to whether their police asset actually went inside the house of ALVINDO. Thus, while MASANGKAY testified that the police asset proceeded with ALVINDO to his house after their transaction; BAGTAS averred that the police asset remained outside.

This argument is pointless.

Whether the police asset in this case actually entered ALVINDO’s house or not does not change the fact that the herein accused-appellant was caught in flagrante of being in a pot session. Hence, the inconsistency adverted to is trivial and immaterial. The rule in this jurisdiction is that as long as the testimony of the witnesses corroborates each other on material points, the minor inconsistencies therein cannot destroy their credibility.[18]

Accused-appellant also points out that during the surveillance, the policemen did not see ALVINDO actually sell drugs. According to the accused-appellant, it stands against reason for someone like ALVINDO to flaunt his illegal transactions outside his house and allow strangers to enter his abode even when a pot session was going on.

Any issue on the surveillance need not detain us long. Suffice it to say that even in the complete absence of a surveillance conducted on ALVINDO, the buy-bust operation subsequently carried out on him would stand on its own merits. Indeed, the Supreme Court has held that prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method.[19]

And on the issue of the probability of the drug sale, the High Court has noted many times, drug pushers have become increasingly daring in the operation of their illicit trade and have not hesitated to act openly, almost casually and even in scornful violation of the law, in selling prohibited drugs to any and all buyers. In real life, pushers, especially small quantity or retail pushers sell their prohibited wares to customers, be they strangers or not, who have the price of the drug.[20] Hence, there is nothing “amazing” (to borrow from the accused-appellant) for ALVINDO to have sold drugs outside his house or allowed strangers to enter his abode.

Neither is it of any moment that the prosecution failed to recover an aluminum foil or frying pan from the crime site. Again, the presence or absence of such items bears no relation to the fact that the accused-appellant was caught red-handed in a pot session with her companions. Moreover, it was already sufficiently established that a plastic sachet with residue and improvised water pipe, which both tested positive for the presence of methamphetamine hydrochloride were recovered from the group of the accused-appellant. Therefore, any foil or pan confiscated from the accused would only serve as corroborative evidence at best.

The accused-appellant’s bid to destroy the credibility of a prosecution witness simply because an aluminum foil he allegedly turned over later failed to appear on official documents, deserve scant consideration. The testimony made in this respect touches on a minor detail, which do not diminish the credibility of the witness or indubitably show that he perjured.

The accused-appellant further imputes that it was not positively and convincingly clear that what was submitted for laboratory examination and presented in court was actually recovered from her.

Nothing can be farther from the truth. Evidence on record clearly shows that the plastic sachet with residue, improvised water pipe and lighters were clearly marked and submitted by the police authorities for laboratory examination on the very same night and immediately after the entrapment operation was concluded.[21] The

following morning, results already came out, which indicated that save for the lighters, all the specimen submitted were positive for methamphetamine hydrochloride.[22] Also, a drug test for all the accused was requested on the same night,[23] and the results thereof was released the next morning as well.[24] The results found urine samples from each of the accused positive for methamphetamine hydrochloride.[25]

Accused-appellant's reliance in *People v. Kimura*[26] is misplaced. In that case, the Supreme Court noted the admission by the police operatives of their failure to place markings on the seized marijuana immediately after they had allegedly apprehended the therein appellants. In fine, no markings were made on the night the therein appellants were arrested. In fact, markings in the *Kimura* case were only made two days after the arrests, which created doubt in the mind of the Supreme Court on the actual existence of the marijuana therein, and whether the marijuana presented for examination and in court were the very same marijuana confiscated by the authorities when they arrested the therein appellants. This is hardly the situation obtaining in the case at bar.

Finally, the accused-appellant contends that BAGTAS only identified the accused-appellant when he referred to the pictures attached to the records of the case, contrary to the rule in the procedure of photographic identification.

It is important to note that in this case, the resort of BAGTAS to identify the accused-appellant from a picture attached to the records of the case was due to the fact that the accused-appellant was physically absent from court on that particular day.[27] Hence, BAGTAS was not identifying the accused-appellant for the first time, but was merely confirming her identity in court. The case of *People v. Pineda*[28] does not find application because the identification process adverted to in that case referred to out-of-court identification.

Some modification as to the penalty imposed is in order.

The Supreme Court has held that if the regulated drug illegally possessed weighed less than 66.67 grams, then the penalty is prision correccional.[29] The case at bar falls within that amount range considering that only traces of methamphetamine hydrochloride were found on the plastic sachet recovered from the accused-appellant and her companions.

There being no attendant modifying circumstance the maximum period of the imposable penalty, cannot exceed two (2) years, four (4) months and one (1) day to four (4) years and two (2) months, the medium period of prision correccional. Applying the Indeterminate Sentence Law further, the minimum period of the imposable penalty shall be within the penalty next lower in degree to prision correccional – that is *arresto mayor* with a range of one (1) month and one (1) day to six (6) months.

WHEREFORE, premises considered, the decision appealed from is hereby **AFFIRMED** with the **MODIFICATION** that the herein accused-appellant is hereby sentenced to an indeterminate penalty of two (2) months and one (1) day of *arresto mayor* as minimum to two (2) years and four (4) months of prision correccional as maximum.[30]

SO ORDERED.

Abdulwahid and Perlas-Bernabe, JJ., concur.

[1] Penned by Judge Oscar C. Herrera, Jr., Records, pp. 265-273.

[2] *Ibid*, pp. 272-273.

[3] Records, p. 02.

[4] Order dated 06 May 2002, *ibid*, p. 130.

- [5] TSN, 03 July 2002, pp. 03-05 and Affidavit of Arrest, Exh. "E".
- [6] TSN, 03 July 2002, p. 08.
- [7] Ibid, p. 09.
- [8] Ibid, p. 10.
- [9] Ibid, and Exh. "G".
- [10] Ibid, pp. 12-13.
- [11] Exh. "C".
- [12] TSN, 25 November 2002, pp. 01-12.
- [13] TSN, 27 April 2004, pp. 01-03 and 07.
- [14] Ibid, p. 04.
- [15] Ibid, p. 05.
- [16] Ibid, p. 06.
- [17] Brief for the Accused-Appellant, Rollo, p. 39.
- [18] People v. Daroy, G.R. No. 118942, 18 July 2000.
- [19] People v. Cadley, G.R. No. 150735, 15 March 2004.
- [20] People v. Paredes, G.R. No. 136105, 23 October 2001.
- [21] Exh. "A", the request for specimen examination was received by the Bulacan Provincial Crime Laboratory Office at 2020H, 15 August 2001.
- [22] Exh. "C", time and date completed: 1015H, 16 August 2001.
- [23] Exh. "D" received by the crime laboratory at 2030, 15 August 2001.
- [24] Exh. "L", time and date completed: 0900H, 16 August 2001.
- [25] Ibid.
- [26] G.R. No. 130805, 27 April 2004.
- [27] TSN, 25 November 2002, pp. 08-10.
- [28] G.R. No. 141644, 27 May 2004.
- [29] People v. Cupcupin, G.R. No. 132389, 19 November 2002.
- [30] Ibid.

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