

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IRENE SIMBULAN Y DOLOR AND ELVIRA SUGUI Y SUNGA, ACCUSED-APPELLANTS.

G.R. No. 100754. October 13, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

The criminal prosecution in this case was initiated by an information, dated September 17, 1988, charging herein accused-appellants Irene D. Simbulan, alias "Nene," and Elvira S. Sugui, alias "Elvie," as conspirators in the sale and delivery of .17 gram of methyl amphetamine hydrochloride, "shabu" in common parlance, which is a regulated drug,[1] in violation of Section 21 (b), Article IV, in relation to Section 15, Article III of Republic Act No. 6425.

At the arraignment, both appellants, duly assisted by their counsel de parte, pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued wherein the prosecution presented four (4) witnesses, viz.: S/Sgt. Rosalinda F. Directo, 1st Lt. Reuben Sindac, Sgt. Jaime Sapon and Capt. Lina Sarmiento.

A painstaking scrutiny of the transcripts of the testimonial evidence and documentary exhibits of the prosecution confirms the findings in the decision of the court a quo,[2] correctly summarized therein as follows:

"In the morning of September 14, 1988, at around 9:00 a.m., a male informant came to the office of the 13th Narcotics Regional Unit of the NARCOM and relayed to Lt. Reuben Sindac the information that @ NENE and @ ELVIE were engaged in the selling of shabu or methamphetamine hydrochloride at Masangkay St., Makati, Metro Manila. Finding this information to be viable (to use his own word), Lt. Sindac submitted to Lt. Col. Raval of the NARCOM a pre-operation report. Lt. Col. Raval approved the said pre-operation report and directed Lt. Sindac to constitute a team and conduct a buy-bust operation. For the purpose, he gave Lt. Sindac money for gasoline and P500.00 in five P100 bills as buy-money.

"The five P100 bills bear the serial numbers WF 210212 (Exh. D), UM 242970 (Exh. G), WP 787691 (Exh. E), SZ 832140 (Exh. C), and UXZ 65475 (Exh. F). Lt. Sindac marked each of them by shading the letter O in Bangko Sentral, and had them xeroxed.

"The team constituted by Lt. Sindac was made up of himself, as the team leader, Sgt. Rosalinda Directo, Sgt. Jaime Sapon, Sgt. Cesar Dalonos and CIC Carlos Olina. Lt. Sindac designated Sgt. Directo as the poseur-buyer and the rest as back-ups. Thus, he gave to Sgt. Directo the five P100 bills (Exhs. C to G).

"In the same morning the team of Lt. Sindac, together with the informant, left Camp Crame for Masangkay St., Makati, Metro Manila. They reached this target area at around 10:30 a.m. After a short briefing, Sgt. Directo and the informant proceeded to the house of @ NENE, which is one of two houses located inside a compound. At the same instance, Lt. Sindac and the other members of the team posted themselves at strategic points from where they could watch Sgt. Directo and the informant carry out their assigned task.

"Upon reaching the house of @ NENE the informant knocked on the door and when @ NENE opened the door

and came out, he introduced Sgt. Directo as a person wanting to buy shabu. Thereupon, @ NENE asked Sgt. Directo how much shabu she wanted to buy. When Sgt. Directo replied that she wanted to buy 1/2 gram of shabu, @ NENE said that the price would be P500.00, to which Sgt. Directo agreed. Forthwith, @ NENE went back inside the house. After a while she emerged from the same door, this time with another woman. @ NENE introduced this woman to Sgt. Directo as ELVIE. Having done this, @ NENE told Sgt. Directo to give the P500.00 to Elvie, which Sgt. Directo did. Almost simultaneously @ NENE handed to Sgt. Directo a transparent plastic bag containing what appeared to be shabu. Upon her receipt thereof, Sgt. Directo raised her right hand which was the pre-arranged signal to her co-team members that she had already concluded the purchase of shabu. Immediately, Lt. Sindac and Sgt. Dalonos approached the four, (@) NENE, ELVIE, Sgt. Directo and the informant, and introduced themselves as NARCOM agents. Sgt. Sapon also moved in but he stopped just outside the fence and acted as back-up to Lt. Sindac, Sgts. Directo and Dalonos. Sgt. Directo then retrieved the 5 P100 bills she had earlier given to ELVIE from the right front pocket of the latter's shorts where she saw ELVIE had placed the money.

"From the target area, Lt. Sindac and his team members brought @ NENE, who was later identified to be accused Irene Simbulan, and ELVIE, who turned out to be accused Elvira Sugui, to their headquarters in Camp Crame. They also brought there Erlinda Sugui, the sister of Elvira Sugui, whom they found in possession of shabu.

"Upon reaching their Headquarters, Sgt. Directo marked the transparent plastic bag earlier given to her by @ NENE, that contained what appeared to be shabu (Exh. K), with the letter 'A', prepared her 'Affidavit of Poseur-Buyer' (Exh. A), and thereafter turned over the same to Lt. Sindac. She also prepared the 'Receipt for Property Seized' (Exh. L). On the other hand, Lt. Sindac and his other team members executed their 'Joint Affidavit of Arrest' (Exh. B).

"By cover of a letter dated September 15, 1988 (Exh. J), the NARCOM sent the suspected shabu (Exh. K) that was given by @ NENE to Sgt. Directo to the PC Crime Laboratory Service for appropriate laboratory examinations. As requested in the said letter (Exh. J), Capt. Lina C. Sarmiento, a forensic chemist, examined the said specimen and found it positive for 'methamphetamine hydrochloride', a regulated drug. (Exhs. H and M)."

Expectedly, the defense presented a different version, which we have culled from the decision of the trial court.[3] Appellant Irene Simbulan testified that in the morning of September 14, 1988, while she was cooking in the house of appellant Sugui, a certain Angel, whom she had known for about two (2) years, came and told her "Kung maaari, ikuha mo ako ng shabu." Angel used to frequent her house but this was the first time that he asked for "shabu" from her. She allegedly replied, "Alam mo ng wala rito bakit dito ka pa pumunta sa amin." Angel, however, insisted on his request saying that he needed shabu as he was going to a birthday party, hence she relented and said "Mayroon dito pero hindi sa akin. Kung gusto mo bayaran mo na lang sa akin." Angel agreed, so she gave him the shabu and Angel gave her P500.00. After he had left, she went to the other house of appellant Sugui, in the same compound and gave the latter the P500.00 she received from Angel as her payment for a wrist watch. She then went back to her cooking.

Later, without asking for permission, four (4) or five (5) persons entered her house and said "Walang tatakbo." They asked her to bring out the marked money, and she replied that the money was with appellant Sugui. She and the aforesaid persons then went to appellant Sugui's house and the latter asked said appellant to bring out the marked money. Sugui replied, "Anong marked money, wala naman akong pera kundi ito lang nasa pitaka ko." Thereupon, the intruders took the wallet of Sugui and, upon seeing the money in it, said, "Ito ang pera." The aforesaid persons thereafter brought her and Sugui to Camp Crame where they were detained, investigated and made to sign a "Receipt for Property Seized"[4] which listed the 1/2 gram of "shabu" and the serial numbers of the five (5) P100.00 bills indicated as "marked money."

Elvira Sugui, for her part, testified that on September 14, 1988, at about 10:00 A.M., she was in her house talking to her friend whom she only knows as "Baby." Baby came to invite her to go with her to Syvel's and while they were talking, appellant Simbulan came in with the three (3) arresting officers. The latter were looking for the P500.00 which Simbulan had earlier given her as payment for a wrist watch. The arresting officers took her wallet and then told her to go with them to Camp Crame. Out of fear, she, together with her sister, Erlinda, and Simbulan, went along with them to Camp Crame. There, Lt. Sindac and Sgt. Dalonos told them that they could go home if they could each produce P10,000.00. As they were unable to do so, Lt. Sindac and Sgt. Dalonos continued to detain them.

Teresita Castillo, in corroboration of the testimony of appellant Sugui, testified that she was in the house of the latter at about 10:00 o'clock in the morning of September 14, 1988. She went there to deliver a Syvel's credit card to Sugui. While she was there, appellant Simbulan came in, gave some money to Sugui as payment for a wrist watch and then left. About fifteen minutes later, Simbulan came back with three (3) persons, one of them a female. They were looking for money and Simbulan pointed to Sugui. Sugui told them that the money that Simbulan had given her was in her wallet. The said persons got the wallet of Sugui and took out from it five (5) P100.00 bills, after which they brought her to their jeep.

After evaluating the contradicting versions, the trial court rendered judgment finding both appellants guilty of the crime charged, with the following disposition:

"WHEREFORE, premises considered, the Court finds the accused, Elvira Sugui y Sunga and Irene Simbulan y Dolor, guilty beyond reasonable doubt of the offense charged in the information, and hereby sentences them to suffer the penalty of life imprisonment or reclusion perpetua, and each of them to pay a fine of thirty thousand pesos (P30,000.00).[5]

Appellants are now before us seeking the reversal of the said judgment, ascribing the following errors to the court below: (1) That it erred in not acquitting both accused-appellants on reasonable doubt; and (2) That it committed an error amounting to grave abuse of discretion in finding accused-appellant Elvira Sugui, in conspiracy with accused-appellant Irene Simbulan, guilty beyond reasonable doubt of violating Section 15, Article III of Republic Art No. 6425, as amended, in relation to Section 21, Article IV.[6]

Evidently, the errors assigned turn on the issue of credibility. Accordingly, we have perforce to once again reiterate the entrenched rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false.[7] Appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimony of witnesses unless it be clearly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[8] In the case at bar, we find nothing which would warrant deviation from the general rule.

The narration of the incident by the prosecution witnesses are worthy of credit. They are police officers who are presumed to have performed their duties in a regular manner, there being no evidence to the contrary,[9] and more so since there is nothing in the record which would indicate that they were actuated by improper motives.[10]

Furthermore, the testimonies of the apprehending officers were straightforward and consistent. As expressly observed by the trial court in its decision ?

"x x x, in the course of their testimonies, the Court was intently observing the prosecution witnesses, particularly Sgt. Directo and Lt. Sindac, and the Court was impressed by their candidness and straightforward manner of testifying, which in the mind of the Court indicated that they had testified truthfully. As a matter of

fact, Lt. Sindac, who is only 27 years (old) had impressed the Court that he is a professional whose only concern is to do his job and to do it well. x x x."[11]

It is argued by appellants that the failure of the prosecution to present the civilian informer was a fatal omission. We do not agree. The poseur-buyer, S/Sgt. Directo, who dealt directly with appellants in the purchase of the regulated drug was presented in the trial. Hence, the testimony of the informer, if it were given, would at best be corroborative or cumulative. The rule is well settled that each party has the prerogative to determine which witnesses to present and to dispense with the testimony of persons who will only give corroboration.[12] The non-presentation of a mere corroborative witness does not amount to suppression of evidence.[13]

Moreover, if the defense believed that the testimony of the informer was important to their case, there was nothing to prevent them from compelling the latter's presence and availing of his testimony in court by compulsory process.[14] The informer was known to the defense. It would have been simple enough to have him produced by a subpoena for examination as a defense witness. This, appellants inexplicably failed or declined to do.

The allegation of appellants that the marked money used were not properly marked in accordance with accepted standard procedures, that is, by application of fluorescent powder, does not deserve even a passing consideration. How the buy-bust money should have been marked was of no significance in establishing the guilt of appellants. What is material is the proof that the drug transaction transpired, coupled with the presentation in court of the corpus delicti.[15] In fact, even the absence of the marked money or its non-presentation in court would not create a hiatus in the prosecution's evidence.[16]

Appellants further argue that even assuming that they were truly engaged in the illicit trade, they would not have sold drugs right on their doorstep and to a total stranger. The said argument cannot be upheld, just as it has been so often raised in other cases and just as often struck down by this Court.

Drug pushers have become increasingly casual about isolated transactions. They have come to consider the sale of drugs as ordinary transactions and the buyers as ordinary users.[17] Drug pushing when done on a small scale belongs to that class of crimes which may be committed at any time and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as such factors may even serve to camouflage the same. Hence, the court has sustained the conviction of drug pushers caught selling illegal drugs in a billiard hall, in front of a store, along a street, and in front of a house.[18] Even the fact that the buyer is a total stranger is of no moment. 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.[19]

The supposed irreconcilable inconsistency pointed out by appellants regarding the weight of the "shabu" purchased, as testified to and as submitted in evidence, is too minor to militate against the credibility of the prosecution witness. The "shabu" submitted in evidence was properly identified in court by the examining forensic chemist and by the poseur-buyer to be the same "shabu" seized from appellants and submitted to the former for examination in connection with this case. The discrepancy in weight is explained by the fact that what was expected and believed to have been purchased by the poseur-buyer was one-half (1/2) gram of "shabu." The fact that what was delivered is of lesser weight cannot be taken against her.

The poseur-buyer was not in a position to determine the actual weight of the drug delivered by appellants, as can be gleaned from her testimony:

"Q Now you mentioned also earlier Madam witness that you were shabu (sic) and placed in plastic transparent. Now also you stated you gave P500.00 to Elvie. Now why P500.00 Madam witness?

A Because that is the price that Aling Nene asked for 1/2 gram.

Q At that point do you know how much shabu you received from Aling Nene?

A I presumed it was half gram.

Q Though you are not sure whether you received also 1/2 grams (sic)?

A No, sir."[20]

Even appellant's allegation that the apprehending officers asked them for money, being an imputation which can be contrived with facility, is not entitled to credence. They utterly failed to substantiate the same. The Court has noted that this is the usual defense in the prosecution of drug cases. Yet, if indeed there was any attempted or consummated extortion, appellants could and should have come forward with the proper charges against the culprits.[21]

Appellants further maintain that the trial court's finding of conspiracy is without basis. We disagree.

Appellants Irene Simbulan and Elvira Sugui were obviously partners in the sale of "shabu." The prosecution was able to establish that both of them were present at the place and time when the buy-bust operation took place. It was Simbulan who handed the drug to the poseur-buyer while it was Sugui who accepted the payment. The aforementioned acts show concerted action and unity of purpose towards the attainment of a common criminal objective and which ineluctably signify and warrant a conclusion on the existence of a conspiracy.

Conspiracy may be inferred from the coordinated movements of the co-conspirators.[22] There need not be direct evidence of the existence and details of the conspiracy. Like the guilt of the individual offender, the existence of a conspiracy and a conspirator's participation may be established through circumstantial evidence.[23]

The fact of sale of the regulated drug in the morning of September 14, 1988 was admitted by appellant Simbulan, although she denied ownership of the same. As we have heretofore ruled, ownership and possession are not indispensable elements of this crime. The mere act of selling or even acting as broker in the sale of marijuana and other prohibited drugs consummates the crime.[24]

With regard to appellant Sugui, it was admitted that the marked money was found in her possession. However, she denied that she was present at the time of the sale and claimed that the marked money was given to her by Simbulan as payment for a wrist watch and that the same was delivered to her inside her house. We find her protestations of innocence unworthy of belief.

Firstly, in her testimony, Simbulan unwittingly admitted that Elvira (or Elvie) Sugui was in the house where she was staying at the time when the buy-bust operation took place, thus:

"Q: Do you remember where were you on Sept. 14, 1988 in the morning of that day?

A: Yes, sir.

Q: Where were you?

A: I was at home.

Q: What were you doing at that time?

A: I was cooking.

Q: Do you remember who were there in your house during that time?

A: Yes, sir.

Q: Who?

A: My nieces and my nephews. Erlinda Sugui, Elvie Sugui and Rico Flores." (Emphasis supplied.)[25]

Secondly, the version of the defense that the poseur-buyer left after the sale, and then later returned together with other NARCCOM agents to make an arrest, is illogical and absurd. In a buy-bust operation, drug dealers are apprehended in flagrante delicto, not in a disjointed manner or sequence as appellants would portray.

Thirdly, appellants did not impute, much less prove, any ill motive on the part of the NARCOM agents that would impel them to involve appellants in a serious criminal charge. There is nothing in the records of the case suggesting that the testimonies of the NARCOM agents were motivated by any reason other than their mission to curb drug abuse.[26] Hence, the prosecution's narration of facts and identification of the accused-appellants should be given weight.

On the foregoing disquisition and considerations, we find that the trial court acted correctly in finding both appellants guilty beyond reasonable doubt of the crime charged. However, the dispositive portion of its decision imposes the penalty of "life imprisonment or reclusion perpetua." Section 15, Article III of Republic Act No. 6425, as amended, provides for the penalty of life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00. We are, therefore, constrained to call attention once again to the fact that life imprisonment and reclusion perpetua are not the same. Reclusion perpetua, as understood in the Revised Penal Code, has its own legal connotation, effects and accessory penalties which are not applicable to life imprisonment provided for by the Dangerous Drugs Act of 1972 which is a special law.[27] For the imposition of the correct penalty, therefore, the reference to reclusion perpetua in said judgment of the trial court should be and is hereby deleted.

WHEREFORE, subject to the foregoing modification, the assailed decision is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos, Jr. JJ., concur.

[1] Criminal Case No. 515, Regional Trial Court of Makati, Metro Manila, Branch 136; Original Record, 1.

[2] Penned by Judge Manuel M. Cosico; Original Record, 267-269.

[3] Original Record, 270-271.

[4] Exhibit L; Original Record, 173.

[5] Original Record, 274-275.

[6] Brief for Accused-Appellants, 3.

[7] People vs. Turla, 167 SCRA 278 (1988).

[8] People vs. Bolasa, G.R. No. 80436, June 2, 1992.

[9] People vs. Napat-a, 179 SCRA 403 (1989); People vs. Sagwaben, 194 SCRA 239; Perez vs. Rumeral, 200 SCRA 194 (1991).

[10] People vs. Boholts, 152 SCRA 263 (1987).

[11] Original Record, 273.

- [12] People vs. Andiza, 164 SCRA 642 (1988); People vs. Vocente, et al, 188 SCRA 100 (1990); People vs. Gupo, et al., 190 SCRA 7 (1990);
- [13] People vs. Manimtim, 120 SCRA 324 (1983).
- [14] People vs. Bagawe, G.R. Nos. 88515-16, April 7, 1992.
- [15] People vs. Mariano, 191 SCRA 136 (1990).
- [16] People vs. De la Cruz, et al., 184 SCRA 416 (1990); People vs. Pilar, 188 SCRA 37 (1990).
- [17] People vs. Bernardino, 193 SCRA 448 (1991).
- [18] People vs. Toledo, 140 SCRA 259 (1985); People vs. Paco, 170 SCRA 681 (1989); People vs. Garcia, 198 SCRA 603 (1991).
- [19] People vs. Odicta, 197 SCRA 448 (1991).
- [20] TSN, June 26, 1989, 21.
- [21] People vs. Mauyao, et al., G.R. No. 84525, April 6, 1992; People vs. Castillo, G.R. No. 93408, April 10, 1992.
- [22] Venturina vs. Sandiganbayan, et al., 193 SCRA 40 (1991).
- [23] Veloso vs. Sandiganbayan, et al., 187 SCRA 504 (1990).
- [24] People vs. Marcos, 185 SCRA 154 (1990).
- [25] TSN, September 8, 1989, 3-4.
- [26] People vs. Labriago, 199 SCRA 530 (1991); People vs. William, et al., G.R. No. 93712, June 15, 1992.
- [27] People vs. Del Pilar, 188 SCRA 37 (1990); People vs. Dekingco, 189 SCRA 512 (1990); People vs. Ruedas, 194 SCRA 553 (1991).

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