

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TERESITA ARANDA Y DORIA, ACCUSED-APPELLANT.

G.R. No. 100985. September 17, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the judgment of the Regional Trial Court, Branch 124, Kalookan City, finding Teresita Aranda y Doria guilty beyond reasonable doubt of violating Section 15, Article III of the Dangerous Drugs Act (R.A. No. 6425 as amended).

The information docketed as Criminal Case No. C-35532 charged appellant as follows:

"That on or about the 17th day of August 1990, in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to BENITO VILLANUEVA, two (2) small white transparent plastic bags containing METHAMPHETAMINE HYDROCHLORIDE (SHABU), a regulated drug, knowing the same to be such" (Rollo, p. 2).

Benito Villanueva was likewise charged in Criminal Case No. C-35533 with violating Section 16, Article III of the Dangerous Drugs Act.

On motion of the public prosecutor, Criminal Case No. C-35532 and Criminal Case No. C-35533 were tried jointly (Rollo, p. 23).

On September 3, 1990, appellant pleaded "not guilty" to the information (Rollo, p. 7). On the other hand, Benito Villanueva changed his plea of "not guilty" to that of "guilty." Hence, he was sentenced to suffer imprisonment of six years and one day and to pay a fine of P6,000.00 and the costs of the suit (Exhibit "L").

The facts favorable to the prosecution, as found by the trial court, are as follows:

"At about 5:00 p.m. on August 17, 1990, Pfc. Alexander Corpuz of the Anti-Narcotics Unit of the Kalookan City Police Station received a phone call at his office. The Informant told Pfc. Corpuz that a driver of a tricycle with Plate No. NM-4831 was about to go to the corner of Gen. Tinio and Reparó Streets, Bagong Barrio, Kalookan City, to buy "shabu" from one Teresita Aranda. (TSN - Oct. 10, 1990, pp. 7-21). Upon being informed of the call, Lt. Eliseo de Leon formed a team to verify the report. Pfc. Corpuz was chosen as the team leader, while Pfc. Elmario Adelante and Pat. Romeo Sengson (sic) were chosen as members. These policemen went to the indicated area by riding in an owner-typed jeep owned by Pfc. Corpuz (TSN- - Oct. 10, 1990, pp. 24-25). They arrived at the designated place shortly after 5:00 p.m. and Pfc. Corpuz parked the jeep along Reparó and Gen. Tinio Streets. (TSN - Oct. 10, 1990, p. 25). The policemen alighted from the jeep and waited for the arrival of a tricycle with Plate No. NM-4831. (TSN-Oct. 10, 1990, pp. 8-9; 27). A few minutes later, the policemen noticed a tricycle with Plate No. NM-4831 coming from Gen. Tinio street. (TSN- - Oct. 10, 1990, p. 30). The tricycle first stopped at the corner of Suntan street. It then moved on the corner of Gen. Concepcion and Reparó streets beside a store. The policemen who were deployed in the area watched the movements of the

tricycle. (TSN - Oct. 10, 1990, p. 35). After a couple of minutes, Teresita Aranda came out of the compound at Suntan Street and went to the direction of the parked tricycle at Gen. Concepcion and Reparo streets, Kalookan City. Teresita Aranda was alone when she approached the tricycle and was seen carrying a shoulder bag. (TSN-Oct. 15, 1990, p. 5). Just before Teresita Aranda boarded the tricycle, she handed over what appeared to be small plastic bags to the tricycle driver, who was subsequently identified as Benito Villanueva. Benito Villanueva was then seated on the driver's seat of the tricycle. (TSN-Oct. 15, 1990, p. 6). At this point, Pfc. Alexander Corpuz signalled by hand Pfc. Adelante and Pat. Sengco, who were then about five meters from the tricycle, to approach the suspect Teresita Aranda and the tricycle driver (TSN-Oct. 15, 1990, p. 11). Pfc. Adelante immediately approached the two suspects. When he saw Benito Villanueva about to throw away the two plastic bags handed to him by Teresita Aranda, Pfc. Adelante grabbed the hand of Benito Villanueva and recovered two plastic transparent bags containing suspected Methamphetamine Hydrochloride. Pfc. Adelante then shouted: 'Sila'y positive. Positive yan.' (TSN-Oct. 15, 1990, p. 12). Pat. Sengco, on the other hand, asked Teresita Aranda to open her closed right hand. Teresita Aranda complied and Pat. Sengco found one small transparent plastic bag also containing suspected Methamphetamine Hydrochloride (TSN - October 15, 1990, p. 19). After witnessing the foregoing, Pfc. Alexander Corpuz immediately went to his jeep which was parked about 10 meters away from the corner of Gen. Tinio and Reparo streets, and boarded (sic) two suspects inside the jeep. (TSN - Oct. 15, 1990, p. 20). The suspects were thereafter brought to the Kalookan City Police Station for investigation" (Rollo, pp. 13-14; Decision, pp. 1-2).

On the other hand, appellant's version of what transpired, as stated in her brief, is as follows:

"The accused-appellant was a resident and has been a resident of No. 70 San Juan, Pasay City since 1972. She has been renting the house which is owned by Pio Dahil. At about 5:00 P.M. on August 17, 1990 she went to the house of a friend Melissa at Bagong Barrio, Kalookan City. The said friend, Melissa had just given birth. She was not able, however, to see her friend Melissa as the latter was out of the house so the accused-appellant took a tricycle along Reparo St., Bagong Barrio, Kalookan City on her way back to her residence at Pasay City. As the tricycle was moving along Reparo St., policemen suddenly appeared and arrested the tricycle driver whom the accused-appellant later came to know as Benito Villanueva; she was then forced to alight from the said tricycle and likewise arrested. It is also established that at the time the accused-appellant was arrested there was no warrant for her arrest. In fact when she was made to alight from the tricycle and brought to the police headquarters she was not informed why they were bringing her to the police headquarters.

At the time of her arrest and previous thereto she was working at a Capiz Factory. She augmented her income by selling dresses and other manufactured goods owned by Sahlee Dahil Uy, a daughter of her landlord at Pasay City. While she was at the police headquarters she was separated from Benito Villanueva and the police officer specifically Corpuz was asking money from her but she was not able to come up with any amount as she did not have any money then (TSN, pp. 2-13, January 14, 1991)" (Brief for accused-appellant, pp. 4-5).

On June 13, 1991, the trial court rendered its judgment, finding appellant guilty beyond reasonable doubt of delivering methamphetamine hydrochloride or "shabu." The dispositive portion of the judgment reads as follows:

"WHEREFORE, in view of the foregoing, this Court finds the accused TERESITA ARANDA y DORIA GUILTY beyond reasonable doubt of delivering two small white plastic bags containing Methamphetamine Hydrochloride, a regulated drug, to Benito Villanueva, as charged in the Information for violation of Section 15 of Republic Act No. 6425, as amended, and hereby sentenced her to suffer LIFE IMPRISONMENT; to pay a fine of P20,000.00; and to pay the costs.

The two small plastic transparent bags containing Methamphetamine Hydrochloride (Exhibits "F" and "G") are forfeited in favor of the Government, and the Sheriff of this Court is hereby directed to turn over these articles to the Dangerous Drugs Board for their disposition.

The accused shall be credited with the full period she undergone (sic) preventive imprisonment pursuant to

Art. 29 of the Revised Penal Code, as amended, provided the conditions enumerated therein have been complied with" (Rollo, p. 19; Decision, p. 7).

In her appeal, appellant assigns the following errors:

I

"THE COURT A QUO GRAVELY ERRED ON (SIC) GIVING WEIGHT TO THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION NOTABLY THE ALLEGED APPREHENDING OFFICERS DESPITE ITS OWN FINDING THAT THEIR TESTIMONIES WERE SHOT WITH DISCREPANCIES."

II

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR PUSHING DESPITE TOTAL LACK OF ANY EVIDENCE THAT THERE WAS ANY SALE OF PROHIBITED DRUG."

III

"THE COURT A QUO GRAVELY ERRED IN REFUSING TO GIVE CREDENCE TO THE TESTIMONY OF THE WITNESSES CALLED AND PRESENTED BY THE PROSECUTION ITSELF" (Appellant's Brief, pp. 1--2).

After a careful perusal of the records of the case, as well as the transcript of stenographic notes and the evidence submitted by both the prosecution and defense, we find that there are notable inconsistencies in the testimonies of the three apprehending officers, namely Pfc. Alexander Corpuz, Pfc. Elmario Adelante and Pat. Romeo Sengco.

As to who investigated the appellant after the arrest, Pfc. Corpuz and Pat. Sengco pointed to a certain Pat. Romeo Baldonado (TSN, p. 24, November 6, 1990; p. 18, December 3, 1990). Patrolman Adelante, however, said that it was Pfc. Florante Santos who investigated the case (TSN, pp. 6-7, January 7, 1991). Patrolman Baldonado disclaimed that he was the investigator (TSN, p. 9, December 10, 1990). It is questionable why the three policemen failed to identify the investigator whom they claimed investigated the case and prepared the joint-affidavit signed by them. To this inconsistency, no explanation was given.

Pfc. Corpuz testified that he was the one who relayed to P/Lt. Eliseo de Leon the information on the sale of "shabu" to a tricycle driver (TSN, p. 19, October 10, 1990). However, Pfc. Adelante and Pat. Sengco testified that it was P/Lt. Eliseo de Leon, who received the information from the informant (TSN, p. 28, November 6, 1990; p. 3, December 3, 1990).

As to the presence of markings and masking tape on the transparent plastic bags, which were allegedly delivered by appellant to Benito Villanueva, Pfc. Adelante gave the following conflicting testimony, to wit:

Cross Examination:

Atty. Nudo:

Q: And was there already a masking tape when these things were confiscated from the accused Benito Villanueva?

A: Yes, sir.

Q: And when you indorsed or submitted these to the investigating officer, the masking tape and the marking are (sic) not yet there?

A: Yes, sir.

Q: Except that you witnessed that it was marked by Police Officer Santos (sic) when the accused was being investigated?

A: Yes, sir. (TSN, p. 8, January 7, 1991).

Pfc. Corpuz testified that after giving a hand signal for Pfc. Adelante and Pat. Sengco to approach the suspects, he went to get his jeep, which was about ten meters away from him. His testimony in pertinent part is as follows:

Cross Examination:

Atty. Pacis:

Q: And when the respondent (sic), what did they do, in particular?

A: As I noticed, Pfc. Adelante immediately grabbed the hand of the suspect Benito Villanueva, because he was about to throw the two transparent plastic bags, sir.

Q: And how about Pat. Romeo Sengco, what did he do?

A: He grabbed the girl, sir, and he was able to get (sic) from her one more transparent plastic bag.

Q: On your part, what did you do when Pfc. Adelante grabbed the hand of Benito Villanueva?

A: Pfc. Adelante shouted: "Sila'y positive. Positive yan," and I exposed (sic) my hand and pointed to the two of them, sir.

Q: So, you were inside the jeep during that time?

A: No, sir.

Q: Where is your (sic) jeep when Teresita Aranda was arrested?

A: I noticed he was just receiving the transparent bag, sir.

Q: I am asking about the jeep now.

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A: When Pfc. Adelante shouted to me, "Sila'y positive," I approached my jeep and brought it towards the location of the suspects, sir. (TSN, p. 12-13, October 15, 1990; underscoring supplied).

Yet, on further questioning by defense counsel, Pfc. Corpuz testified that he was with Pat. Sengco at the time the latter arrested appellant. His testimony in pertinent part is as follows:

Cross Examination:

Atty. Pacis:

Q: Where did Pat. Sengco get that one plastic bag, from her shoulder bag or from here (sic) hand?

A: From her hand, sir.

Q: You are (sic) very sure because you saw it?

A: I was beside them, sir.

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Q: And how did Pat. Sengco get that back (sic) containing methamphetamine hydrochloride from the hand of Teresita Aranda?

A: She was then holding the plastic bag, sir.

Q: So the one bag containing methamphetamine hydrochloride was inside the shoulder bag of the accused Teresita Aranda?

A: Yes, sir.

Q: And Pat. Sengco forcefully opened the palm of Teresita Aranda, is that what you mean?

A: No, sir. I asked her to open her palm (TSN, pp. 18-19, October 19, 1990; Underscoring supplied).

The trial court, itself, noted that:

"There are a few discrepancies, however, in the testimonies of these three policemen. Pfc. Corpuz and Pat. Sengco did not mention any (sic) about any rag (Exhibit "J") inside a packet of (sic) which Teresita Aranda placed two plastic bags containing suspected Methamphetamine Hydrochloride and passed over said rag and its contents to Benito Villanueva. It was only Pfc. Adelante who mentioned the rag. He even brought it (Exhibit "J") to the Courtroom. Pfc. Adelante explained that he forgot to deliver said rag (Exhibit "J") to the investigator. He thus kept it in his possession until he brought it to the Courtroom on January 7, 1991 (TSN, January 7, 1991, pp. 5-6). He showed the Court the small packet (sic) in the rag where he found the two plastic bags containing suspected Methamphetamine Hydrochloride (Exhibits "E" and "G"; TSN, January 7, 1991, p. 6)."

These inconsistencies served to shake the foundation of the prosecution's case inasmuch as they engendered serious doubts as to the credibility of the prosecution witnesses (People v. Hilario, 196 SCRA 716 [1991]).

The telling blow that devastated the case of the People of the Philippines was the presentation of Benito Villanueva as prosecution witness. Villanueva, the accused in Criminal Case No. 35533 and the driver of the tricycle which appellant was riding when arrested, was presented to elicit from him the identity of the person who delivered the drugs to him. However, said witness when asked to identify the person who delivered to him the said drugs, did not name appellant.

There was no showing that Villanueva was declared by the trial court as a hostile witness as required in Section 12 of Rule 132 of the Rules of Evidence.

Section 12, Rule 132 of the Rules on Evidence, provides as follows:

"SEC. 12. Party may not impeach his own witness. -- Except with respect to witnesses referred to in paragraphs (d) and (e) of Section 10, the party producing a witness is not allowed to impeach his credibility.

A witness may be considered as unwilling or hostile only if so declared by the court upon adequate showing of his adverse interest, unjustified reluctance to testify, or his having misled the party into calling him to the witness stand. (Underscoring supplied)

The unwilling or hostile witness so declared, or, the witness who is an adverse party, may be impeached by the party presenting him in all respects as if he had been called by the adverse party, except by evidence of his bad character. He may also be impeached and cross-examined by the adverse party, but such cross-examination must only be on the subject matter of his examination-in-chief.

The prosecution also failed to show that Villanueva had an adverse interest in the case, or was unjustifiably reluctant to testify, or had misled the prosecution into calling him to the witness stand. Hence, Villanueva cannot be considered as a hostile witness and the prosecution is bound by his testimony that nothing was delivered to him

by appellant.

Benito Villanueva's testimony in pertinent part is as follows:

Direct Examination:

Fiscal Silverio:

Q: From whom did you get that methamphetamine hydrochloride or "shabu"?

A: It was just given to me by a tricycle passenger. It was just placed by a tricycle passenger inside the rag (trapo) and when he put (sic) the rag, I saw it, sir.

Q: When you said "a tricycle passenger," to whom are you referring that (sic)?

A: I do not know him, sir. (TSN, pp. 5-6, November 6, 1990).

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Q: And you came to know, of course, during that investigation by the Fiscal that Teresita Aranda was charged of delivering shabu or methamphetamine hydrochloride to you on August 17, 1990. Is that not correct?

A: Nothing was delivered to me, sir. ("Wala naman siyang idiniliber sa akin") (TSN, p. 16, November 16, 1990).

A more accurate translation of Villanueva's answer is "She (referring to appellant) did not deliver anything to me," which is more categorical than the translation made by the court interpreter.

It will be noted that the information charged that appellant "did then and there wilfully, unlawfully and feloniously sell and deliver to" Villanueva two small white transparent plastic bags containing, "knowing the same to be such" (Rollo, p. 2).

It is basic that in a criminal case, the prosecution must prove the guilt of the accused by establishing the existence of all the elements of the crime charged.

The elements of the offense charged against appellant are:

- (1) The accused sold and delivered a dangerous drug to another; and
- (2) That she knew that what she sold and delivered was a dangerous drug (People v. Libag, 184 SCRA 707 [1990]).

The prosecution has failed to prove that appellant "sold and delivered" the dangerous drug to Villanueva. It has also failed to prove that appellant "knew" that what she delivered was a dangerous drug. Scienter can not be presumed in this case because of the failure of the prosecution to prove that the proscribed drug was "sold and delivered" to Villanueva by appellant. If the prosecution was able to prove that appellant "sold and delivered" the drug to Villanueva, it can then be presumed that appellant "knew" that the same drug was dangerous.

The evidence against appellant is not enough to engender moral certainty of her guilt. This moral certainty is that which convinces and satisfies the conscience of those who are to act upon it (People v. Salguero, 198 SCRA 357 [1991]).

WHEREFORE, appellant is hereby ACQUITTED of the crime charged.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

Griño-Aquino, J., on leave.

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