

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO BAY Y ATIENZA @ OMENG, ACCUSED-APPELLANT.

G.R. No. 101310. May 28, 1993

Ponente: MELO, J.

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MELO, J.:

On the basis of a "buy-bust" operation led by Cpl. Tomas Abatayo as team leader and Pat. Ronnie Miranda and Pfc. Eduardo Cabria, as members, Romeo Bay y Atienza was arrested and charged with violation of the Dangerous Drugs Act in Criminal Case No. 91-0141 before the Regional Trial Court of the National Capital Judicial Region (Branch 113, Pasay City), under the following information:

That on or about the 23rd day of January, 1991, in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, ROMEO BAY y ATIENZA alias OMENG, without authority of law, did then and there willfully, unlawfully sell and deliver to another Methamphetamine Hydrochloride (shabu), a regulated drug. (p. 13, Rollo.)

After trial, following a plea of not guilty entered upon arraignment, the lower court, on July 23, 1991, adjudged the accused guilty beyond reasonable doubt of the crime as charged. Pertinently, the decision reads:

Before this Court is one of the many cases of selling and delivering of methamphetamine hydrochloride or shabu. The three police officers were so emphatic about the details of the incident when they were narrating them. The recognition of the accused as the seller of shabu was unflinchingly established by this three police officers whose credibility the defense failed to assail. Neither has the accused or his witness-wife convincingly shown any ill-motive on the part of the prosecution witnesses to falsely testify against him. The defense of the accused, which is alibi, deserves little, if at all, consideration. To be believed alibi must be supported by the most convincing evidence as it is an inherently weak though paradoxically volatile, if allowed to go unchecked, human argument can easily be fabricated to suit the ends of those who seek its recourse. Accordingly, this Court finds the accused's refuge in alibi as unavailing against the positive identification of the accused by the three police officers. Furthermore, when the accused's alibi is supported only by the testimony of his wife, the alibi, loses evidentiary weight. Accused presented another witness, his neighbor, but it did not say anything about the incident in question. It even affirmed the presence of the police officers performing their duties in said place.

From the record of this case it can be said that the three policemen showed no hostility but only an interest in bringing the accused before the Court of Justice to answer for his grave offense in selling drug. The accused testified that these police officers demanded money for his release but this is not substantiated to merit any consideration.

This Court is aware of the fact that the use of poseur-buyer by narcotic agents as a means of apprehending prohibited drug violators is susceptible to abuse (People vs. Juan de la Cruz, G.R. No. 83260, April 18, 1990; People vs. Fernando, 145 SCRA 151). However, in the case at bar, there is convincing proof that such abuse is not present. The testimony of Pat. Cabria -- the poseur-buyer is corroborated by two other police officers who took

part in the "buy-bust" operation that led to the entrapment of the accused.

WHEREFORE, the accused is found guilty beyond reasonable doubt of the charge in the information quoted above and is hereby sentenced to an imprisonment of RECLUSION PERPETUA and a fine of P20,000.00, without subsidiary imprisonment in case of insolvency. The shabu and other articles are forfeited in favor of the government. The branch clerk is hereby directed to surrender the same to the Dangerous Drug Board for proper disposition.

SO ORDERED. (pp. 18-19, Rollo.)

The Solicitor General, in his brief, gave a vivid picture of the antecedent facts, to wit:

On January 23, 1991, at about 9:00 o'clock in the evening, an informant by the name of Gina appeared at the Pasay City Police Station and gave the information that a certain Omeng, the appellant in this case, residing at No. 14-I Reyes Street, Pasay City, was selling prohibited drugs. A team was immediately formed to conduct a "buy-bust" operation. The team was composed of Cpl. Tomas Abatayo as team leader and Pat. Ronnie Miranda and Pfc. Eduardo Cabria as members. Pfc. Cabria was designated as "poseur-buyer" and was given a P100-bill to be used as "buy-bust" money.

The team, together with the informant, went to the place indicated by the informant. Pfc. Cabria and Gina proceeded to the house of appellant. After introducing Pfc. Cabria to appellant, Gina left. Pfc. Cabria told appellant that he needed a "panggamit." Appellant asked him how much he needed. Pfc. Cabria replied, "One Peso," meaning P100.00. Pfc. Cabria handed the P100-bill to appellant who, in turn, gave him one transparent plastic bag which appellant took from his house. At this juncture, Pfc. Cabria gave the pre-arranged signal. His companions came and introduced themselves as police officers. Appellant pushed Pfc. Cabria and was about to run to his room but Pat. Miranda was able to restrain him by his waistband. Pat. Miranda frisked appellant and recovered the "buy-bust" money inside the right pocket of appellant. While inside the house of appellant, the police officers saw several pieces of aluminum foil (Exhibit D-1), improvised burners and tooters (Exhibit D-3 and D-4) on the center table.

Appellant was brought to the police station for investigation (pp. 7-11, tsn, May 8, 1991; pp. 2-4, tsn, May 23, 1991). The plastic bag confiscated from appellant was submitted to the National Bureau of Investigation for examination. The contents thereof were verified to be methamphetamine hydrochloride (shabu) (p. 4, tsn, May 8, 1991). [pp. 79-81, Rollo.]

On the other hand, the accused narrated a different version of what allegedly transpired:

On the night of January 23, 1991, herein appellant Romeo Bay, then gainfully employed as a delivery man in the Marina Port Services, Inc., was at his modest home at #14 I. Reyes St., Pasay City. His home, consisting of one room at the ground floor and one room upstairs, which has no door and which serves as bedroom, was being rented from one Francisco Basco. It is a part of the house of Basco. It is a poor man's home as Romeo Bay, while employed, cannot be considered rich. At about 9:00 o'clock in the evening, Romeo Bay was at their upstairs bedroom reading komiks when he heard a commotion downstairs. He went down, but he was met at the narrow stairs by armed police officers who pushed him back to his bed. The police asked for his name and appellant was told that they, the police, were looking for a certain Gil. There were six policemen in all, four of whom went upstairs while two remained downstairs. When appellant asked for a search warrant, he was told that "our gun" is their warrant (t.s.n. June 19, 1991, p. 4). The policemen then proceeded to search the place. They were looking for the personal things of Gil. Not finding any of such things and not finding Gil either, the policemen dragged appellant out of the house and to the place where Gil kept his fighting cocks. The appellant is the caretaker of the

cocks and for his services, Gil paid appellant's electric bills. Gil was known in the neighborhood as pusher. The policemen kept asking appellant where Gil hid personal things and when appellant insisted that he knew nothing about those things, he was brought to the police precinct and was told that he would be charged for using drugs. Appellant was asked to call up Gil by telephone so that he can be released from jail. The policemen demanded that appellant produce Ten Thousand (P10,000.00) Pesos "or else they will pursue the charge against me" (T.S.N. June 19, 1991, p. 4). Appellant was unable to give the amount demanded. He was never released from detention since the time he was brought to the precinct. (pp. 40-41, Rollo.)

Maintaining his position that he is innocent of the crime imputed to him, the accused, in this appeal, assigns the following alleged errors:

I

THE VERDICT OF CONVICTION WAS THE RESULT OF PASSION AND PREJUDICE, ARRIVED AT WITHOUT SCRUTINY OF THE EVIDENCE FOR THE PROSECUTION.

II

THE PROSECUTION THEORY OF A BUY-BUST OPERATION IS WHOLLY AND INHERENTLY INCREDIBLE.

III

THE TESTIMONIES OF TWO VITAL PROSECUTION POLICE-WITNESSES ARE PALPABLY INCREDIBLE.

IV

THE TESTIMONIES OF THE PROSECUTION WITNESSES ON MATERIAL AND VITAL POINTS ARE REplete WITH IRRECONCILABLE INCONSISTENCIES.

V

THE TRIAL COURT COMPLETELY RELIED UPON THE PRESUMPTION OF REGULARITY OF PERFORMANCE OF OFFICIAL DUTIES DISREGARDING THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

VI

ASSUMING, WITHOUT CONCEDED, THAT THERE WAS A SALE OF "SHABU", THE TRANSACTION TOOK PLACE BECAUSE OF INSTIGATION, NOT BY REASON OF ENTRAPMENT. (pp. 39-40, Rollo.)

This Court had occasion to observe in *People vs. Ale* (145 SCRA 50 [1986]):

Judges trying narcotics cases are often placed in a non-enviable predicament. The threat posed by drugs against human dignity and the integrity of society is malevolent and incessant. Courts should not hamper, in any way, the dedicated although sometimes puny efforts to stem the giant menace. Courts should not unwittingly tie down the hands of narcotic agents whose work is already difficult and dangerous enough without legal and procedural obstacles to successful prosecutions.

At the same time, we cannot close our eyes to the many reports of evidence being planted on unwary persons

either for extorting money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the unusually severe penalties for drug offenses. (at pp. 58-59.)

Accordingly, it is in this light that we have endeavored to carefully examine the entire records of the case, scrutinized the testimony of both the prosecution and the defense witnesses, and analyzed the contentions of the accused.

The first five assigned errors are interrelated. They refer to the credibility of the prosecution witnesses, Cpl. Tomas Abatayo, Pat. Ronnie Miranda, and Pfc. Eduardo Cabria of the ISOG Drug Enforcement Section, Pasay City Police Station. To underscore their lack of credibility, accused-appellant points to the following inconsistencies and contradictions in their testimony:

Cabrea testified that the One Hundred Peso Bill with serial number QZ 056633 which was used as buy-bust money came from their "Intelligence Fund" (T.S.N. May 8, 1991, p. 8) and that he (Cabrea) officially received the same from Police Captain Antonio Evangelista (T.S.N. May 27, 1991, p. 3). Patrolman Miranda, the alleged retriever of the money from appellant, categorically stated, when asked who owns the bust money, that "IT CAME FROM CPL. ABATAYO, OUR TEAM LEADER" (t.s.n. May 23, 1991, p. 6). But, Abatayo virtually stated that he KNEW NOTHING ABOUT THE BUY-BUST MONEY. Thus:

"COURT : Alright. What money did you use in the buy-bust operation?

"WITNESS:

A : It was Pfc. Cabria who prepared all the things that will be used in the operation. (T.S.N. June 7, 1991, p. 3)."

Just as importantly, and on the matter of the alleged registration of the buy-bust money in the logbook, Pat. Miranda testified on direct examination that it was Pfc. Cabrea who made the registration thus:

"Q: Do you know who registered the buy bust money in the logbook?

A: Yes sir, Pfc. Cabrea (T.S.N. May 23, 1991, p. 5)."

But, when Cabrea was recalled to the witness stand precisely for the purpose of producing and identifying the logbook on which the registration was allegedly made (T.S.N. May 27, 1991), he categorically stated that it was Pfc. Palomar who made the entry in the logbook regarding the buy-bust money.

Still another point. The alleged poseur-buyer, Pfc. Cabrea repeatedly said in his testimony that the signal by which to show that the transaction is finished is by HIS SCRATCHING OF HIS HEAD. But the very TEAM LEADER of the operation, P. Cpl. Abatayo just repeatedly said that the signal was to be a WAVING OF THE HAND. (pp. 51-52, Rollo.)

The above inconsistencies are, in our view, not substantial enough to affect the weight of the prosecution evidence as to how the crime imputed to accused-appellant was committed. As we have repeatedly held, minor contradictions are to be expected but must be disregarded if they do not affect the basic credibility of the evidence as a whole. (People vs. Mariano, 191 SCRA 136 [1990]).

Moreover, in the prosecution of the offense of illegal sale of prohibited drugs, what is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the corpus delicti as evidence. Thus, in

People vs. Macuto (170 SCRA 762 [1989]), we stressed that the commission of illegal sale of marijuana requires merely the consummation of the transaction in regard to the sale. How the marked money was recovered is of no great significance in establishing the guilt of the accused. What is important is the fact that the poseur-buyer received the marijuana from the accused and the contents were presented as evidence in court.

In the case at bar, there is no doubt from the records that accused-appellant was caught in the very act of selling "shabu", a prohibited drug. Pfc. Cabria, the prosecution witness who acted as poseur-buyer categorically pinpointed accused-appellant as the person who sold to him one transparent plastic bag of "shabu". When asked to testify on what transpired in January 23, 1991, he declared:

Q: You mentioned that you are Pfc., where were you assigned on January 23, 1991?

A: I was assigned with the ISOG, Drug Enforcement Section.

Q: Where is this located?

A: At the Pasay City Police Station.

Q: As such member, what are your duties?

A: As investigator.

Q: What was your tour of duty on January 23, 1991?

A: Twenty four hours broken time.

Q: On January 23, 1991 was there any unusual incident that happened?

A: Yes, sir.

Q: What was that?

A: At about 9:00 p.m. of January 23, 1991 we conducted a buy-bust operation at No. 14 I. Reyes Street, Pasay City.

Q: What prompted you to place such buy-bust operation?

A: By the appearance of our informant a certain Gina.

Q: What do you mean by "the appearance of Gina"?

A: She gave us information of activities of one alias Omeng.

Q: On the same date?

A: What time was that?

A: 9:00 p.m. of January 23, 1991.

Q: What exactly did Gina inform you about a certain alias Omeng?

A: Gina informed us about the activities of drug selling of Omeng at No. 14 I. Reyes St., Pasay City.

Q: You mentioned "us", who were your companions?

A: I, Corporal Abatayo, Patrolman Amo, Patrolman Ronnie Miranda.

Q: What did you do?

A: Corporal Abatayo acted as team leader and he directed for me to act as poseur buyer.

Q: About poseur-buyer, what did you plan about?

A: The plan is for Gina to accompany me to No. 14 I. Reyes St.

Q: Did you use money in your operation?

A: Yes, sir, a One Hundred Pesos bill with serial number QZ056633.

Q: Where did you get this buy-bust money which you used?

A: In our intelligence fund.

Q: Did you record the same in your logbook?

A: In our police blotter, sir.

Q: Before or after the operation?

A: Before, sir.

Q: Will you be able to show that logbook or registration sheet in the proper time?

A: Yes, sir.

Q: May we reserve the right to present that, your Honor?

Q: Who went to I. Reyes St.?

A: Cpl. Abatayo, I, Pat. Miranda, Pat. Amo and our informant, Gina.

Q: And before you proceeded there, do you personally know the appearance of this certain Omeng?

ATTY. POLLO: Very leading, your Honor.

Q: What happened, did you arrive at the scene?

A: I and Gina proceeded to I. Reyes St. and we arrived at the door of the residence of Omeng.

Q: And once at the said door of the residence you mentioned, what happened?

A: Gina proceeded to the back door of the house and she knocked on the door.

Q: Was there any response?

A: Yes, sir, the door was opened by a certain male individual.

Q: After the door was opened was there any conversation that took place between Gina and the male individual?

A: Yes, sir. Gina introduced me to Omeng.

Q: How?

A: Sabi ni Gina, "Ito si Omeng, used to be my customer, siya si Cabria dating kakilala ko".

Q: After that, what happened next?

A: I said I asked to be accompanied by Gina because I needed a "panggamit."

Q: After that what else happened?

A: Nagpaalam si Gina kay Omeng that she will buy cigarettes outside.

Q: In other words, you were left with Omeng?

A: Yes, sir.

Q: Then what happened?

A: He asked me how much I am going to buy.

A: I told him in the amount of Piso.

Q: What could be equivalent to One "Piso"?

A: One Hundred Pesos, sir.

Q: What else happened?

A: I gave him the money, the One Hundred Peso bill and he in turn gave me the stuff.

Q: Where did he give the stuff?

A: He went inside of the room and when he came out he handed me one transparent plastic bag.

Q: If that will be shown to you will you be able to recognize it?

A: Yes, sir.

Q: Will you please go over this exhibit and tell us if this was the one given to you in exchange by Omeng?
What was in exchange given to you by Omeng?

Witness handed exhibit D-2.

Q: After this exhibit's contents were handed to you, what else happened?

A: My pre-arranged signal was made.

Q: What was that signal?

A: By scratching my head.

Q: What happened when the signal was made?

A: I introduced myself as a police officer to Omeng. Then Omeng saw Patrolman Miranda, then coming from my position, Omeng pushed me. Then he went inside the room.

Q: What happened after you were pushed?

A: Patrolman Miranda caught the back of his pant's waistline.

Q: Inside or outside?

A: Inside.

Q: What did you do at that time?

A: I helped Pat. Miranda to catch Omeng.

Q: Did you actually go inside the house?

A: Yes, sir.

Q: What happened next?

A: First Pat. Miranda check all items from Omeng's pocket.

Q: Did he find anything?

ATTY. POLLO: Leading.

COURT: Sustain.

Q: After that what happened?

A: Pat. Miranda recovered the One Hundred Pesos bill from the right pocket of Omeng.

Q: And after that, what happened?

A: When Omeng was handcuffed, we saw several pieces of aluminum foil and improvised burner at the center table.

Q: Inside the house of Omeng?

A: Yes, sir.

Q: If that will be shown to you again, will you be able to identify it?

A: Yes, sir. (Witness identifying the toother and several pieces of aluminum foil).

Q: Who found these on the table?

A: Patrolman Miranda.

Q: How far were you when he found these paraphernalia?

A: About one meter, sir.

Q: This Omeng, is he present in this courtroom?

A: Yes, sir.

Q: Will you please point to him?

Witness pointed to a male individual who identified himself as Romeo Bay.

(TSN, May 8, 1991, pp. 6-11, Original Records.)

That there was no prior surveillance to identify the drug pusher will not make the prosecution's theory of a "buy-bust" operation incredible. Prior surveillance is not necessary in this case because the team members were accompanied to the scene by their informant.

On the other hand, accused-appellant did not have a substantial defense other than his denial. It is well-settled that mere denials cannot prevail against the positive identification of the accused as the seller of the prohibited drug (*People vs. Castiller*, 188 SCRA 376 [1990]).

Curiously, accused-appellant never made any effort to locate "Gil", the person who according to accused-appellant was the real target of the team. Certainly, in a case where his own life and liberty are at stake, the victim of a wrongful accusation would earnestly, yes, even desperately, seek ways to vindicate himself by having the real culprit apprehended.

Finally, accused-appellant pleads instigation as a defense. He contends that assuming there was a sale of "shabu"

the transaction took place because of instigation not by reason of entrapment.

In *People vs. Gatong-o* (168 SCRA 716 [1988]), the Court explained the distinction between entrapment and instigation thus:

Entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Oftentimes, it is the only effective way of apprehending a criminal in the act of the commission of the offense. In entrapment, the idea to commit the crime originated from the accused. Nobody induces or prods him into committing the offense. A criminal is caught committing the act by ways and means devised by peace officers.

It must be distinguished from inducement or instigation wherein the criminal intent originates in the mind of the instigator and the accused is lured into the commission of the offense charged in order to prosecute him. The instigator practically induces the would-be accused into the Commission of the offense and himself becomes a co--principal. In entrapment ways and means are resorted to for the purpose of capturing the lawbreaker in *flagrante delicto*. In entrapment, the crime had already been committed while in instigation, it was not and could not have been committed were it not for the instigation by the peace officer.

The testimony of Pfc. Cabria, the poseur-buyer, was clear and straightforward and demonstrated that accused-appellant needed no instigation or prodding to commit a crime he would not otherwise have committed. The record shows that accused-appellant has a ready supply of "shabu" for sale and disposition to anyone willing to pay the price. The acts of the "buy-bust" team in this case, constituted entrapment, a process or operation not prohibited by the Revised Penal Code (*People vs. Borja*, 182 SCRA 581 [1990]).

All told, the Court is convinced that accused-appellant had indeed committed the offense as charged. The verdict of conviction must be upheld because "a drug pusher is a killer without mercy. He poisons the mind and deadens the body. He deserves no mercy." (*People vs. Abedes*, 146 SCRA 132 [1986]).

Section 4, Article II of Republic Act No. 6425, as amended, provides for the penalty of life imprisonment and a fine ranging from P20,000.00 to P30,000.00. The dispositive part of the trial court's decision is not entirely accurate since it imposed the penalty of reclusion perpetua. Such penalty, as understood in the Revised Penal Code, has its own legal connotation, effects, and accessory penalties which are not applicable to life imprisonment provided by the Dangerous Drugs Act of 1972 which is a special law (*People vs. del Pilar*, 188 SCRA 37 [1990]).

Thus, the penalty imposed on accused-appellant should have been indicated as, and it is hereby declared to be, life imprisonment.

WHEREFORE, except with the above modification, the judgment of the lower court is hereby AFFIRMED.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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