

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT REYES Y NAVARRO, ACCUSED-APPELLANT.

*G.R. No. 103394. September 02, 1994*

Ponente: QUIASON, J.

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### QUIASON, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 156, Pasig, Metro Manila in Criminal Case No. 146B-D, finding appellant guilty beyond reasonable doubt of violating Section 15, Article III of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972.

### I

The information against appellant reads as follows:

"That on or about the 9th day of January, 1991 in the Municipality of Marikina, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to sell, deliver, and distribute any regulated drug, did then and there willfully, unlawfully and feloniously sell, deliver and distribute to Pat. Antonio Lumacang, INP, EPD/MPF, a poseur/buyer in a buy-bust operation, 0.02 gram of methamphetamine hydrochloride wrapped in a piece of aluminum foil and 0.05 grams of methamphetamine hydrochloride placed in a maroon colored container with three (3) pieces of aluminum foil which (sic) is a regulated drug" (Rollo, p. 3).

On February 8, 1991, appellant pleaded not guilty to the information (Records, p. 6).

On January 13, 1992, the trial court rendered its decision convicting the accused of the offense charged. The dispositive portion of the decision reads as follows:

"WHEREFORE, finding the accused ROBERT REYES y NAVARRO guilty beyond reasonable doubt of the offense charged, he is hereby sentenced to suffer the penalty of life imprisonment with all its accessory penalties, to pay a fine of Twenty Thousand Pesos (P20,000.00) and to pay the costs.

In the service of his sentence, the accused shall be credited in full with the period of his preventive imprisonment.

Pursuant to Section 20, Article IV of Republic Act No. 6425, as amended, let the 0.07 grams of methamphetamine hydrochloride subject matter of this case be confiscated and forfeited in favor of the Government and be turned over to the Dangerous Drugs Board Custodian, NBI, to be disposed of according to law" (Rollo, p. 15).

### II

We find the following findings of fact of the trial court supported by the evidence:

"The prosecution presented its case in the following manner: Based on the information given by a confidential

informant, accused was placed under surveillance for a week before a 'buy-bust' operation was decided to be undertaken by the authorities concerned. On January 9, 1991 at about 2 p.m., a team composed of Pat. Lumacang, acting as poseur-buyer, P/Cpl. De Guzman and Pfc. Pasana was (sic) deployed to Twinville Subdivision, Marikina to execute the entrapment of the accused. At about 3 p.m., accused was seen standing in front of his house at 104 Roses Street, Nangka, Marikina, Metro Manila prompting Pat. Lumacang to approach him and ask if he had bato,' the street term for 'shabu.' Accused answered the inquiry by asking Pat. Lumacang magkano ba ang kukunin mo?' to which the latter replied 'piso lang pare' simultaneously handing to the former a One Hundred Peso (P100.00) bill with Serial Number, HL 446389 (Exhibit "E") which had been earlier initialed by Pat. Lumacang. After receiving the money, accused gave Pat. Lumacang a piece of foil (Exhibit "C-6") the contents of which was suspected to be shabu.' Giving the pre-arranged signal brought out Pfc. Pasana and P/Cpl. De Guzman from their vantage points and they assisted Pat. Lumacang in arresting the accused. After informing the accused of his constitutional rights, the arresting officers searched the accused and found three (3) more foils (Exhibits "C-2" to "C-4") of suspected 'shabu' placed in a plastic maroon container (Exhibit "C-1"). After the accused was brought to the police headquarters, Pat. Lumacang conducted an investigation and the accused was informed of his right to counsel. Accused declined and told Pat. Lumacang ayusin na lang natin sir' but Pat. Lumacang paid no attention to the invitation. Pat. Lumacang prepared a statement (Exhibit "F") to explain the conduct of the operation.

Asserting his innocence, accused Reyes alleged that he was cleaning his house when three (3) men suddenly entered and apprehended him. Held by one (1) of the men, he could only watch as the two (2) other men searched the premises. No warrant was shown to him but he was, nonetheless, taken to the CID on the pretext that he was being invited thereat for investigation. At the CID office, accused was asked his name and address, after which, he was placed in a detention cell and subsequently charged. In consonance with accused's theory, witness Ruben Dacanay said that he was on his way to school when he noticed an owner-type jeep parked in front of the accused's house. Being a friend of the accused's brother, Dacanay looked through the window and saw accused Reyes being held by a man while two (2) men were searching the bedroom. Claiming that the men found nothing, Dacanay also alleged that he heard the men invite the accused to the Municipal Hall and as the group left the house, accused was handcuffed before boarding the jeep.

The recovered specimens, placed in a yellow envelope (Exhibit "C"), were sent to the PNP Crime Laboratory Service, Camp Crame, Quezon City along with a letter request (Exhibit "D"). P/Lt. Julita T. de Villa conducted the examination the result of which, as reflected in the Certification of Laboratory Result (Exhibit "A") and Chemistry Report Number D-013-91 (Exhibit "B"), concluded the presence of methamphetamine hydrochloride" (Rollo, pp. 44-46).

Appellant comes to this Court raising the following assignment of errors:

"THE COURT A QUO ERRED IN ADMITTING AS EVIDENCE THE INCONSISTENT TESTIMONY OF PROSECUTION WITNESSES.

THE COURT A QUO ERRED IN ADMITTING A SELF-SERVING PIECE OF EVIDENCE EXHIBIT 'E'.

THE COURT A QUO ERRED IN DELIBERATELY OVERLOOKING AND FAILING TO CONSIDER CERTAIN FACTS OF WEIGHT AND IMPORTANCE TO SHOW THAT EVIDENCE ARE STAGE-MANAGED BY THE PROSECUTION."

### III

Appellant claims that there exists a major discrepancy in the testimonies of the prosecution witnesses with regard to the place where appellant was arrested.

The testimony of Patrolman Antonio Lumacang who acted as poseur-buyer is as follows:

“DIRECT EXAM.:

Q Where did the operation takes (sic) place?

A Near their house, sir, at 104 Roces St., Nangka, Marikina, MM.

Q Were you able to buy shabu?

A Yes, sir.

Q And from whom?

A Robert Reyes, sir" (TSN, March 8, 1991, p. 3).

On the other hand, Patrolman Antonio Pasana, another member of the team, testified as follows:

"DIRECT EXAMINATION:

Q Where did you conduct this buy-bust operation?

A At Roces Street, Twinville Subd., Nangka, Marikina, Metro Manila, sir.

xxx xxx xxx

Q In what particular place did this transaction took (sic) place?

A In front of the house of Robert Reyes, sir.

Q Where is that?

A No. 105 Roces Street, Twinsville Subd., Nangka, Marikina, Metro Manila, sir" (TSN, April 2, 1991, p. 5).

The testimonies of the two prosecution witnesses regarding the place where the buy-bust transaction took place and where appellant was arrested were consistent with each other. Both witnesses mentioned that the transaction was made at Roces St., Barangay Nangka, Marikina, Metro Manila. While Patrolman Lamacang mentioned that the transaction was made "near" the house of appellant, Patrolman Pasana testified that the same took place "in front" of appellant's house. To be "in front" of the house is also to be "near" thereto.

Although there is an inconsistency in the testimonies with respect to the exact address of appellant, one witness saying that it was at No. 104 Roces while the other saying that it was at No. 105 Roces, such discrepancy is of minor importance and does not detract from the credibility of the prosecution witnesses.

We have held in the case of *People v. Doctolero*, 193 SCRA 632 (1991), that "inconsistencies and contradictions in the testimony of the prosecution witnesses which refer to minor details cannot destroy the credibility of the prosecution witnesses. And where the prosecution witnesses were able to positively identify the appellants as the authors of the crime and the testimonies were, on the whole, consistent on material points, the contradictions become insignificant."

The inconsistencies pointed out by appellant are too minor to affect the credibility of the prosecution witnesses, who are all lawmen presumed to have regularly performed their duties in the absence of convincing proof to the contrary (*Revised Rules of Court*, Rule 131, Sec. 5[m]; *People v. Mauyao*, 207 SCRA 732 [1992]; *People v. Mariano*, 191 SCRA 136 [1990]; *People v. Yap*, 185 SCRA 222 [1990]).

What is significant is that the prosecution witnesses were one in testifying that appellant was caught in flagrante delicto delivering shabu to Patrolman Lamacang.

Appellant further asserts that it was an error for the trial court to admit Exhibit "E", the marked P100.00 bill, in evidence because it came from and was in the possession of Patrolman Lumacang before it was passed on to appellant. The defense claims that the marked money was a "self-serving evidence" (Rollo, pp. 34-35).

The admissibility of the marked money in evidence is governed by Section 1, Rule 130 of the 1989 Rules on Evidence, which provides that when an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court. The marked money, being the consideration paid for the shabu, was relevant to the fact in issue - the sale of shabu.

The provision under which appellant was charged (R.A. No. 6425, Art. III, Sec. 15) does not only penalize the sale but also the delivery of prohibited drugs. Therefore, even if the marked money was not admitted as evidence and the prosecution failed to establish the sale of dangerous drugs, still appellant could be convicted for delivering prohibited drugs.

In *People v. de la Cruz*, 184 SCRA 416 (1990), we held:

"Suffice it to say that even if the money given to De la Cruz was not presented in court, the same would not militate against the People's case. In fact, there was no need to prove that the marked money was handed to the appellants in payment of goods. The crime could have been consummated by the mere delivery of the prohibited drugs. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering. In the latter case, the act of knowingly passing a dangerous drug to another personally or otherwise, and by means, with or without consideration, consummates the offense" (Underscoring Supplied).

Besides, "(a)s regards the marked money, it is likewise settled that its absence does not create a hiatus in the evidence of the prosecution so long as the prohibited or regulated drug given or delivered by the appellant was presented before the court" (*People v. Hoble*, 211 SCRA 675 [1992]).

Appellant's contention that the trial court failed to take into consideration certain vital facts to show that the buy-bust operation was fabricated by the prosecution, involves an appreciation of the evidence which we leave to the court a quo (*People v. Tejada*, 170 SCRA 497 [1989]).

#### IV

The trial court sentenced appellant to suffer "the penalty of life imprisonment with all its accessory penalties and to pay a fine of Twenty Thousand Pesos (P20,000.00) and to pay the costs" pursuant to Section 4, Article II of the Dangerous Drugs Act of 1972 as amended by B.P. Blg. 179. The said law, however, was further amended by R.A. No. 7659.

Under Section 17 of R.A. No. 7659, the penalty imposed for the selling, dispensing, delivering, transporting or distributing of shabu of less than 200 grams is prison correccional to reclusion perpetua.

Under Section 14 of R.A. No. 7659, in relation to Section 17 of the same law, the penalty of reclusion perpetua to death shall be imposed on persons who sell, administer, deliver, transport or distribute shabu when the quantity involved is 200 grams or more of shabu.

We noticed that the penalty of reclusion perpetua was imposed by R.A. No. 7659 as the maximum penalty when the quantity of shabu involved in the offense is less than 200 grams and at the same time as the minimum penalty when the quantity of shabu involved is 200 grams or more. To avoid an incongruity in the application of the law as written, Section 17 of R.A. No. 7659 should be read correctly to provide a penalty ranging from prison correccional to reclusion temporal only when the quantity involved is less than 20 grams. It is the duty of the Court to harmonize conflicting provisions to give effect to the whole law (*Rufino Lopez and Sons v. Court of*

Appeals, 100 Phil. 850 [1957]). Furthermore, this Court has the duty to give a statute its logical construction as to effectuate the intention of the legislature. The Court should harmonize conflicting provisions to give effect to the whole law. This is to avoid an absurd conclusion with regard to the meaning of the statute (*Lamb v. Phipps*, 22 Phil. 456 [1912]).

Under Article 22 of the Revised Penal Code, which has suppletory application to special laws, penal laws shall be given retroactive effect insofar as they favor the accused. Appellant is entitled to benefit from the reduction of the penalty introduced by R. A. No. 7659.

In order to determine the penalty to be imposed on appellant, we divide the amount of 199 grams into three to correspond to the three applicable penalties, namely, prision correccional, prision mayor and reclusion temporal.

If the shabu seized weighs from 134 to 199 grams, the penalty to be imposed is reclusion temporal. If the shabu seized weighs from 66 to 133 grams, the penalty to be imposed is prision mayor and if the weight of the shabu involved is below 66 grams, the penalty to be imposed is prision correccional.

Considering that the quantity of shabu confiscated from appellant was only .07 gram, the penalty that can be imposed on him is prision correccional.

Applying the Indeterminate Sentence Law to appellant, who is punished under a special law (*People v. Macatando*, 109 SCRA 35 [1981]), and as such law was interpreted in *People v. Simon*, G.R. No. 93028, July 29, 1994, the minimum penalty that can be imposed on him should be within the range of arresto mayor.

WHEREFORE, the Decision appealed from is **AFFIRMED** with the modification that appellant shall suffer an indeterminate penalty of **SIX (6) months of arresto mayor**, as minimum, to **TWO (2) years and FOUR (4) months of prision correccional**, as maximum.

**SO ORDERED.**

Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

Cruz, J., (Chairman), on official leave.

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