

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICHARD ZERVOULAKOS, ACCUSED-APPELLANT.

G.R. No. 103975. February 23, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Richard Zervoulakos was charged with violation of Section 15, Article III of Republic Act No. 6425, as amended (the Dangerous Drugs Act of 1972).

The information filed by the Assistant Prosecutor of Makati alleges, viz:

That on or about the 6th day of November 1990, in the municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another Methamphetamine Hydrochloride (shabu), which is a regulated drug.

CONTRARY TO LAW. [1]

Upon arraignment, Richard Zervoulakos entered a plea of not guilty.

Thereafter, trial ensued.

The evidence on record shows that on November 5, 1990, the Police Station of Makati received a complaint from concerned citizens that a certain Richard Zervoulakos was engaged in the sale of methamphetamine hydrochloride, otherwise known as "shabu". After surveillance on the activities of the appellant was conducted, a buy-bust operation was planned. Pat. Martin was tasked to act as poseur-buyer and Pat. Lamberto Pantaleon as back-up. [2]

On November 7, 1990, at about 12:30 in the morning, Martin posted himself in front of Rixon Restaurant located at J. P. Rizal Avenue, Makati, Metro Manila. Appellant approached him and asked if he wanted to buy some shabu. Martin said yes and took out two (2) marked one hundred peso bills in exchange for a small plastic bag containing shabu. At the precise moment appellant was handing the plastic bag, Pat. Pantaleon and another policeman, Pat. Garcia, arrested the appellant and brought him to the police headquarters. [3] The substance in the small plastic bag was later on examined by Demelen Renten de la Cruz, a forensic chemist of the National Bureau of Investigation (NBI), who confirmed it to be positive for methamphetamine hydrochloride. [4]

Appellant had a different story to tell. He claimed that on November 7, 1990 at about 12:30 in the morning, he bought "pasalubong" for his mother at JBB Bakery along J.P. Rizal Street, Makati. On his way home, he was bumped by somebody who was being chased by two policemen. When the policemen failed to catch their quarry, they returned. One of them, Pat. Martin, addressed him "Eric". Appellant thought he was only mistaken for his twin brother so he told Pat. Martin that he was not Eric but Richard. [5] He was, nonetheless searched. Pat. Martin was able to get from him some P1,500.00 in cash. The policemen then hailed a taxicab and brought appellant to

the police precinct allegedly for verification purposes. On board the cab, Martin asked him how much he can afford for his release. Appellant said he could not give anything because he had no more money. [6]

Later, at the detention cell, another policeman by the name of Patrolman Bobby Yap told appellant in the vernacular, "Marami ng atraso ang kapatid mo. Tabla na lang tayo." [7] The appellant further contended that Pat. Martin wanted P3,000.00 for the settlement of his case.

On July 15, 1991, after weighing the evidence presented, the trial court rendered judgment, [8] the decretal portion of which reads:

"WHEREFORE, premises considered and finding the accused RICHARD ZERVOULAKOS y TRINANES of 4-B Pasig Line St., Makati, Metro Manila, guilty beyond reasonable doubt of the offense of VIOLATION OF SECTION 15, ARTICLE III, OF REPUBLIC ACT 6425, as amended, said accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of TWENTY THOUSAND PESOS (P20,000.00), with all the accessories of the law.

SO ORDERED. [9]

Accused-appellant now wants this Court to reverse the aforementioned judgment contending in his assignment of errors that the lower court erred in (1) giving credence to the inconsistent and unreliable testimonies of the prosecution witnesses, (2) not believing the credible testimony of the accused, and (3) convicting him despite failure of the prosecution to prove his guilt beyond reasonable doubt. [10]

Upon a careful examination of the facts on record, we are convinced that the guilt of the appellant has been sufficiently proven beyond peradventure of doubt.

In every prosecution for illegal sale of dangerous drugs, what is material and indispensable is the submission of proof that the sale of illicit drug took place between the poseur-buyer and the seller thereof, and the presentation further of the drug as evidence in court. [11] The identity of the shabu inside the small plastic bag which constitutes the corpus delicti must be firmly established before the court. In the case at bench, the prosecution has proven with certainty all the elements necessary for a charge of illegal sale of shabu which are: (1) identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. [12] Prosecution witnesses were unanimous in identifying the appellant as the seller of the prohibited drug. Their testimonies likewise established that the object, which is the 0.2105 gram of shabu contained in a small plastic bag, was handed over or delivered by appellant to Pat. Martin in exchange for a consideration, the two (2) P100.00 marked bills.

Appellant maintains that he could not have flaunted his trade as carelessly as what the prosecution tried to project, that is, by asking a total stranger if he wanted to buy shabu. [13]

The argument is without merit.

Appellant's bare denial cannot prevail against his positive identification as the peddler by the prosecution witnesses. His lame excuse therefor cannot be given any credit. The sale of prohibited drugs to complete strangers, openly and in public places, has become a common occurrence. Indeed, it is sad to note the effrontery and growing casualness of drug pushers in the pursuit of their illicit trade, as if it were a perfectly legitimate operation.

Appellant's contention that there were serious inconsistencies in the testimonies of the prosecution witnesses cannot save the day for him. The alleged inconsistencies refer only to insignificant matters, that is, (a) Pat. Martin testified that Pat. Yap frisked appellant, then changed it by saying that it was Pat. Pantaleon who did it, [14] and

(b) the same witness stated that Pat. Yap frisked the appellant at the scene of the crime, [15] then, subsequently stated that the frisking was done at the precinct. [16] These minor lapses in the testimony of the witness do not necessarily brand him a liar as long as his testimony is, on the whole, consistent and believable. [17] Neither do they detract from the credibility of the witness. [18] If at all, such inconsistencies may be considered as badges of veracity or manifestation of the truthfulness on material points in the testimony.

In any case, the alleged contradictory testimonies are so inconsequential that they do not affect the credibility of the witness nor detract from the established fact of illegal sale of shabu by appellant.

It is further argued that the trial court should not have lent credence to the supposed uncorroborated testimony of Pat. Martin, the poseur-buyer.

This argument is specious.

Other than Pat. Martin, only Pat. Garcia and Pat. Yap witnessed the transaction. Pat Yap died during the hearing of the case. On the other hand, Pat. Pantaleon's testimony will merely corroborate that of Pat. Martin. It is a settled rule that there is no need to present other witnesses especially if their testimonies would only be cumulative or corroborative. [19] The testimony of a single witness, if positive and credible, as in this case, is sufficient to support conviction. [20]

Again, we reiterate the time-honored principle that the trial court's findings of fact are entitled great weight and respect by this Court. [21] We find nothing in this case which would warrant a deviation from that general rule.

Moreover, police officers have in their favor the presumption that they have performed their duties in a regular manner. [22] Here, appellant failed to successfully overcome such presumption.

Finally, we turn to the determination of the penalty properly imposable upon appellant Richard Zervoulakos.

The provision on penalties under the Dangerous Drugs Act of 1972 (R.A. No. 6425) were amended by Section 20 and other related provisions of R.A. No. 7659, thus:

SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;
2. 40 grams or more of morphine;
3. 200 grams or more of shabu or methyldamphetamine hydrochloride;
4. 40 grams or more of heroin;
5. 750 grams or more of indian hemp or marijuana;
6. 50 grams or more of marijuana resin or marijuana resin oil;
7. 40 grams or more of cocaine or cocaine hydrochloride; or
8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultation/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua depending upon the quantity.

Every penalty imposed for the unlawful importation, sale, administration, delivery, transportation or manufacture of dangerous drugs, the cultivation of plants which are sources of dangerous drugs and the possession of any opium pipe and other paraphernalia for dangerous drugs shall carry with it the confiscation and forfeiture, in favor of the Government, of all the proceeds of the crime including but not limited to money and other assets obtained thereby and the instruments or tools with which it was committed, unless they are property of a third person not liable for the offense, but those which are not of lawful commerce shall be ordered destroyed without delay. Dangerous drugs and plant sources of such drugs as well as the proceeds or instruments of the crime so confiscated and forfeited in favor of the Government shall be turned over to the Board for proper disposal without delay.

Any apprehending or arresting officer who misappropriates or misapplies or fails to account for seized or confiscated dangerous drugs or plant-sources of dangerous drugs or proceeds or instruments of the crime as herein defined shall after conviction be punished by the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos.

The aforequoted provision of R.A. No. 7659 is applicable in the case at bench pursuant to the principle in criminal law, *favorabilia sunt amplianda adiosa restringenda*. Penal laws which are favorable to the accused are given retroactive effect. This principle is embodied under Article 22 of the Revised Penal Code which provides as follows:

Retroactive effect of penal laws. -- Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

Said provision is applicable even to special laws. [23]

Accordingly, under the foregoing provisions and as construed and applied in the recent case of *People v. Martin Simon*, [24] the penalty properly imposable upon appellant Zervoulakos is prision correccional considering that the "shabu" confiscated from the appellant consisted only of 0.2105 gram [25] and that no aggravating nor mitigating circumstance was found in the instant case. Applying the Indeterminate Sentence Law, the minimum penalty shall not be less than the minimum prescribed by Section 1 of R.A. No. 7659.

WHEREFORE, the decision of the Regional Trial Court dated July 15, 1991 is hereby AFFIRMED subject to the following modification. Accused-appellant Richard Zervoulakos is hereby sentenced to suffer imprisonment for an indeterminate period ranging from SIX (6) MONTHS and ONE (1) DAY of prision correccional as minimum to TWO (2) YEARS and FOUR (4) MONTHS of prision correccional as maximum.

It appearing that accused-appellant has been detained since November 7, 1990, already beyond the period of his maximum sentence, his immediate release from custody is ordered unless he is lawfully held for some other cause.

No pronouncement as to costs. SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Original Records, p. 1; Rollo , p. 7.

[2] TSN, April 15, 1991, pp. 3-4.

- [3] Id., at 3-9.
- [4] Exhibits "B" and "C", Original Records, pp. 59-60.
- [5] TSN, May 22, 1991, pp. 6-10.
- [6] Id., at 13-18.
- [7] Id., at 23-24.
- [8] Per Judge Oscar B. Pimentel
- [9] Original Records, p. 52; Rollo , p. 85.
- [10] Brief for Accused-Appellant, p. 1; Rollo , p. 62.
- [11] People v. Labarias, 217 SCRA 483 [1993]; People v. Pacleb, 217 SCRA 92 [1993]; People v. Sanchez, 192 SCRA 653 [1991]; People v. Macuto, 176 SCRA 762 [1989].
- [12] People v. Esguerra, 221 SCRA 261 [1991]; People v. Rumeral, 200 SCRA 194 [1991].
- [13] Appellant's Brief, p. 7.
- [14] TSN, April 16, 1991, p. 2.
- [15] Ibid.
- [16] Id., at 3.
- [17] People v. Abaya, 185 SCRA 383 [1990].
- [18] People v. Morre, 217 SCRA 219 [1993].
- [19] People v. de Jesus, 205 SCRA 383 [1992].
- [20] People v. De la Cruz, 148 SCRA 58 [1987].
- [21] People v. Escamillas, 208 SCRA 441 [1992]; People v. Mancao, 208 SCRA 573 [1992]; People v. Collantes, 208 SCRA 853 [1992]; Borillo v. Court of Appeals, 209 SCRA 130 [1992]; People v. Simon, 209 SCRA 148 [1992]; People v. Garcia, 209 SCRA 164 [1992]; People v. Baslot, 209 SCRA 537 [1992].
- [22] People v. Juma, 220 SCRA 432 [1993].
- [23] U.S. v. Soliman, 36 Phil. 5 [1917].
- [24] G.R. No. 93028, July 29, 1994.
- [25] Certification from the Forensic Chemistry Section of the National Bureau of Investigation, Exhibit "B", Original Records, p. 58.

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