

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RHODORA SULIT Y MONASTERIAL, ACCUSED-APPELLANT.*G.R. No. 104284. June 14, 1994*

Ponente: DAVIDE, JR., J.

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Accused-appellant Rhodora Sulit y Monasterial appeals from the decision of Branch 5 of the Regional Trial Court of Manila in Criminal Case No. 91-91511, promulgated on 18 February 1992,[1] finding her guilty beyond reasonable doubt of selling, without having been authorized by law, 0.084 grams of methamphetamine hydrochloride or shabu in violation of Section 15, Article III of R.A. No. 6425 (Dangerous Drugs Act of 1972), as amended, and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P20,000.00. In the information[2] in the said case to which she pleaded not guilty at her arraignment on 27 February 1991 and for which she was tried on the merits, she was charged with the commission of the offense with one Roberto Lacanilao y Evangelista on the basis of conspiracy. The latter, however, was acquitted on the ground of reasonable doubt.

Criminal Case No. 91-91511 was consolidated and jointly tried with two other related cases: (a) Criminal Case No. 91--91512 against Rodolfo Loza for illegal possession of shabu and (b) Criminal Case No. 91-91513 against Ricardo Garcia for illegal possession of one stick of handrolled marijuana cigarette. These two accused were inside the shanty of the accused-appellant at the time the latter was arrested during an alleged buy-bust operation. The trial court later acquitted Loza for insufficiency of evidence and exonerated Garcia on the ground of reasonable doubt.[3]

At the pre-trial on 26 July 1991, the parties agreed that the four accused were arrested on 7 February 1991 without any search warrant or warrant of arrest and that the white crystalline substance wrapped in two-pieces of foil allegedly obtained by the peace officers from the accused at the time of their arrest were examined and found to be positive for methamphetamine hydrochloride.[4] In view of this admission, the testimony of the Forensic Chemist of the National Bureau of Investigation[5] who had examined the specimens was dispensed with.

The sole witness for the prosecution was Pat. Arturo Buenaobra,[6] the alleged poseur-buyer, who was then a member of the Narcotics Section of the Western Police District assigned at Police Station 1, North Bay, Balut, Tondo, Manila. The defense presented all the four accused.

All the witnesses testified before Judge Felix B. Mintu.

The version of the prosecution is summarized by the trial court as follows:

"Sometime in the evening of February 7, 1991 at about 11:30, Pat. Arturo Buenaobra, 36 years old, married, a policeman, WPD and presently residing at 969 N. Dagupan St., Tondo, Manila, acting as a poseur buyer together with three other policemen, namely: Cpl. Cueto, Lumboy and Blanco conducted a police buy bust operation somewhere along Prudencia St., Tondo, Manila. The buy bust operation was conceived because of several reports received by the Chief Narcotics Section of an alleged selling of drugs at Prudencia St., near

corner Coral (tsn, July 31, 1991, p. 4). He conducted a surveillance to verify the veracity of the information. He went to the area and asked a friend who was residing near the residence of the accused at Coral St., Tondo, Manila, about the information they received (tsn, *ibid*, p. 4). The result of his surveillance confirms the report that the accused Doray, real name Rhodora Sulit was found out to be positive selling prohibited drugs (tsn, *ibid*, 6). With the confirmation and veracity of the information, he reported back to his Chief, Lt. Jack Luna, Chief of the Narcotics Section, WPD, whereupon the latter organized a team led by Cpl. Cueto, Blanco, Lumboy and himself (tsn, *ibid*, p. 7) to conduct a buy bust operation. A briefing was conducted by Cueto regarding the buy bust operation (tsn, *ibid*, p. 7). At the briefing, Lt. Jack Luna handed down to Cueto a P100.00 bill to be used in buying shabu. Cueto marked the bill by putting up the initial 'NRC' (Exh. D). After Cueto marked the bill, he gave the bill to him and they proceeded to the target area (tsn, *ibid*, pp. 8-9). At about 11:20 in the evening of February 7, 1991, he and a civilian informant proceeded to the residence of the accused Doray while Cueto and his companions were hiding themselves from a place where they could actually see the buying of the shabu (tsn, *ibid*, p. 9). He and the civilian informant proceeded to the place at house no. 1529 Prudencia St., Tondo, Manila, where they saw accused Doray standing in front of her house (tsn, *ibid*, p. 9). Upon seeing Doray, they approached her and told her that he would like to buy P100.00 worth of shabu and gave Doray the P100.00 without further introduction (tsn, *ibid*, pp. 9--10). After he gave the P100.00 to Doray, the latter went inside her house and in a few seconds, Doray came back and gave him one deck of shabu (Exh. B-a marked "x"). Doray, sensing that the buyer was a policeman, immediately entered her house prompting the police poseur buyer Pat. Buenaobra to chase her and once inside the residence of the accused, two male persons in the names of Lacanilao and Ricardo Garcia were found (tsn, *ibid*, p. 10). Rodolfo Lacanilao was sitting and holding an aluminum foil while beside Ricardo Garcia who was also sitting, a black wallet was found by Cpl. Cueto (tsn, *ibid*, p. 11). Cpl. Cueto opened the wallet in front of Ricardo Garcia and found inside the wallet one stick of marijuana (Exh. B-a-2) and several pieces of papers and written on them the name Ricardo Garcia (tsn, *ibid*, p. 11). The aluminum foil (Exh. B-a-1) held by Rodolfo Lacanilao was taken by Cpl. Cueto. He was just in front of Cpl. Cueto when the same was taken (witness identifying all the accused inside the Courtroom). After Cpl. Cueto found the marijuana stick from Garcia, the aluminum foil from Rodolfo Lacanilao, Doray, Garcia and Lacanilao were brought to the police headquarters, Narcotics Section (tsn, *ibid*, p. 14).

Witness Buenaobra further testified that all the specimens found in the persons of the accused Sulit, Garcia and Lacanilao (Exhs. B-a, B-a-1 and B-a-2) thru Pat. Miranda, were examined by the NBI forensic chemist and found to be positive for marijuana and methamphetamine hydrochloride (tsn, *ibid*, p. 14).

On cross-examination, witness Buenaobra further testified to the effect that previous to the buy bust operation, he does not know the accused Rhodora Sulit @ Doray but knew her identification, her exact address and the place where she operates (tsn, *ibid*, p. 18). He was able to buy the prohibited drug from Doray because she is the only Doray who lives in the place and she fits the exact description given to him (tsn, *ibid*, p. 18).

On further questioning by the Court regarding the other accused Rodolfo Loza who was allegedly outside the house of Doray standing a few meters away while watching and acting suspiciously during the buy bust operation, when frisked by Blanco was found in his pant's pocket a deck of shabu (tsn, *ibid*, pp. 23-14)."[7]

In its decision, the trial court observed that the accused-appellant did not testify and, relying on the testimony of Pat. Buenaobra, ruled that "there is no doubt ... that Rhodora Sulit sold to Pat. Buenaobra a deck of shabu (Exh. B-a) on that particular evening of February 7, 1991." [8]

Regarding the accused-appellant's co-accused, Rodolfo Lacanilao, it held that there is "a serious doubt" as to his participation because although Pat. Buenaobra testified that Lacanilao was found "holding an aluminum foil" with shabu, the aluminum foil is nowhere to be found.[9] It therefore acquitted him. And, as earlier mentioned, it also acquitted accused Rodolfo Loza in Criminal Case No. 91-91512 and Ricardo Garcia in Criminal Case No. 91-91513.

The accused-appellant immediately filed her notice of appeal and in her Appellant's Brief[10] filed with us through her counsel de oficio, Atty. Yolanda M. Eleazar, alleges that the trial court erred:

“I

X X X IN FINDING THAT APPELLANT COMMITTED A VIOLATION OF R.A. 6425 BY SELLING A DECK OF SHABU TO PAT. BUENAOBRA.

II

X X X IN NOT HOLDING THAT THE SHABU ALLEGEDLY SEIZED FROM APPELLANT WAS INADMISSIBLE IN EVIDENCE, HAVING BEEN THE FRUIT OF AN ILLEGAL SEARCH.

III

X X X IN RENDERING JUDGMENT FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT WITHOUT STATING ITS BASIS THEREFOR IN THE DECISION ITSELF.”[11]

In support thereof, the accused-appellant maintains that the circumstances surrounding the alleged sale are contrary to human experience for it is unbelievable that she would sell shabu to Pat. Buenaobra, a total stranger, who allegedly handed to her a P100 bill without further introduction; that the filing of the information against her was the result of an unsuccessful attempt at extortion; that even assuming that shabu and marijuana were indeed found in the premises, these were inadmissible in evidence as being the fruits of an unlawful search, for the prosecution admitted at the pre-trial that the peace officers who allegedly seized the dangerous drugs had no search warrant or warrant of arrest; and that the decision in question contains neither findings of fact and law nor reasons and evidence to support such findings and is therefore a nullity and open to direct attack, citing *Air France vs. Carrascoso*. [12]

In its Appellee's Brief,[13] the State urges us to sustain the conviction of the accused-appellant but recommends the reduction of the penalty from life imprisonment to "prision correccional to reclusion perpetua in its medium period or a penalty of imprisonment ranging from six (6) years of prision correccional as minimum to twelve (12) years of prision mayor as maximum" in view of the latest amendments introduced by R.A. No. 7659, to Sections 15 and 20 of R.A. No. 6425, as amended.

It must be stressed at the outset that the trial court gravely erred in declaring that the accused-appellant "did not testify and present evidence in her behalf." [14] The fact is she did on 22 August 1991 before Judge Felix B. Mintu [15] and she was extensively cross-examined by Fiscal Armando Velasco. [16] According to her, at about 11:30 p.m. of 7 February 1991, she was in her residence together with Roberto Lacanilao, Ricardo Garcia, and one Remedios. While her companions were conversing and she was changing her clothes, somebody knocked at the door and after Ricardo opened it, four policemen suddenly barged into her house and searched them. One of them, Pat. Buenaobra, touched her breast and her waist. Nothing was taken from her or her companions. The policemen then brought them to the police headquarters where they were investigated. She further declared that it is not true that there was a buy-bust operation; Pat. Buenaobra did not buy anything from her nor give her P100.00. At the police headquarters and at the City Jail, he demanded money from her on the assurance that no case will be filed against her, but she told him that she has nothing to give.

The trial court forgot that the accused-appellant had testified. This could be due to the fact that the judge who rendered and promulgated the decision, Judge Ildefonso E. Gascon, was not the one who tried the case. Criminal Cases Nos. 91-91511, 91-91512, and 91-91513 were assigned to him, as Assisting Judge, after all the witnesses of the parties had testified. His assessment on the credibility of the witnesses must thus be received with caution

since he neither personally heard the testimonies of the witnesses nor observed their deportment and manner of testifying.[17] Just like this Court in this appeal, Judge Gascon had nothing before him except the documentary exhibits and the transcripts of the stenographic notes of the testimonies -- which were apparently not complete since he explicitly declared that the accused-appellant did not testify.

The accused-appellant's imputation of attempted extortion was not rebutted by Pat. Buenaobra or by any member of the alleged buy-bust team. The records also disclose that although the alleged buy-bust operation was conducted in the evening of 7 February 1991, the information, which was prepared after an "ex--parte investigation," presumably pursuant to Section 7, Rule 112 of the Rules of Court, was filed in court only on 12 February 1991.[18]

Even if the testimony of the accused-appellant were to be disregarded because it does not command faith and credit, we find, nevertheless, the story of Pat. Buenaobra to be no less unworthy of faith and credit. This is the inevitable conclusion to which we are drawn after a careful evaluation of his testimony. Accordingly, the presumption of innocence which the Constitution guarantees the accused-appellant has remained untarnished in this case for want of proof to the contrary. It is safely entrenched in our jurisprudence that unless the prosecution discharges its burden to prove the guilt of an accused beyond reasonable doubt, the latter need not even offer evidence in his behalf.[19] Acquittal then of the accused-appellant is in order.

Some of the critical aspects of Pat. Buenaobra's testimony cast serious doubts on the occurrence of a buy-bust operation. For one, conspicuously absent in his testimony is a narration of how he was able to recover possession of the alleged marked P100 bill. According to him, upon seeing the accused-appellant in front of her house, he told her that he "would like to buy P100 deck of shabu" and then he gave the P100 bill to her.[20] Thereafter, she went inside her house and when she returned, she gave him "a deck of shabu." [21] However, when "she realized that she was transacting the sale with a police officer, she left and entered the house." He "immediately followed her." [22] Clearly then from his testimony, Pat. Buenaobra was no longer in possession of the marked money when the shabu was allegedly delivered to him. He made no further testimony that at any time after he allegedly received the shabu from the accused-appellant he was able to recover from her the marked money. Yet, he was in possession of what he claimed to be the marked money when he testified in court; he produced it -- it was forthwith marked as Exhibit "D" -- when asked who gave it to him during the conference immediately preceding the so-called buy-bust operation.[23] At the pre-trial of the case, although the prosecution requested the marking of its other exhibits, it did not mention the marked money. We are inclined to believe that the alleged marked money had always been in the possession of Pat. Buenaobra.

Then too, whether it was shabu or marijuana which Pat. Buenaobra retrieved from the accused-appellant is unclear from his testimony. On direct examination, he mentioned shabu allegedly contained in a foil. Yet, on cross-examination, he explicitly clarified that what she handed to him was marijuana. Thus:

"Q When Doray[24] came back, what did Doray do?

A Doray gave me a deck of shabu.

Q After receiving this shabu, what did you do?

A After she/Doray handed to me the marijuana and she saw one of my companions, Doray went inside her house." [25]

In another portion of his cross-examination, Pat. Buenaobra further clarified that his informant had told him that Doray was selling marijuana or prohibited drugs. Thus:

"Q Now, the informant does [sic] not tell you anybody was selling marijuana except for Doray, is that correct?

A Yes, sir.

Q Why did you include and search Lacanilao when he was not included in the information that you received?

A According to telephone information it was only Doray who was selling prohibited drug.”[26]

Marijuana is a prohibited drug.[27] Methamphetamine hydrochloride or shabu is a regulated drug.[28]

Also, in the pre-trial, as disclosed in the Pre-Trial Order,[29] "the accused admits that Exhibit B-A-1 and Exh. B-A-2 the specimens for Crim. Case No. 91-91511, 91-91512 and 91-91513 respectively when examined were found to be positive of Methamphetamine Hydro Chloride." On direct examination, however, Pat. Buenaobra declared that the foil marked as Exhibit B-a was the one he allegedly recovered from the accused-appellant. Thus:

"Q How about the shabu which you said was given to you by accused Doray?

A This aluminum foil marked x was the one I brought from Doray.

INTERPRETER:

Witness referring to Exhibit B-a.”[30]

Finally, if indeed Pat. Buenaobra was the poseur-buyer in this case, we find it hard to believe that when the accused-appellant allegedly handed to him the deck of shabu and he received it, he did not immediately arrest her. She was still able to re-enter her house.

WHEREFORE, the challenged decision of Branch 5 of the Regional Trial Court of Manila in Criminal Case No. 91-91511, insofar as it found the accused-appellant guilty of the crime charged, is REVERSED, and accused-appellant RHODORA SULIT y MONASTERIAL is hereby ACQUITTED and ordered immediately RELEASED from detention, unless she is confined for another unlawful cause.

Costs de officio.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Original Records (OR), 59-71; Rollo, 93-105. Per Judge Ildefonso E. Gascon, Assisting Judge pursuant to Supreme Court Administrative Order No. 26-90, as amended. The decision is dated 21 January 1992.

[2] OR, Criminal Case No. 91-91511, 1.

[3] OR, 71; Rollo, 105.

[4] OR, 24.

[5] Alicia P. Liberator; Id., 44-47.

[6] TSN, 31 July 1991, 2-25.

[7] OR, 61-64.

[8] Id., 69.

[9] OR, 69.

[10] Rollo, 73-92.

[11] Id., 79-80.

[12] 18 SCRA 155 [1966].

[13] Rollo, 115 et seq.

[14] Decision, 8; OR, 66.

[15] TSN, 22 August 1991, 1-5.

[16] Id., 5-8.

[17] People vs. Pido, 200 SCRA 45 [1991].

[18] OR, 1.

[19] People vs. Garcia, 215 SCRA 349 [1992].

[20] TSN, 31 July 1991, 9-10.

[21] Id., 10.

[22] Id., 11.

[23] Id., 8.

[24] Nickname of the accused-appellant.

[25] TSN, 31 July 1991, 20. Emphasis supplied.

[26] Id., 22. Emphasis supplied.

[27] Paragraphs (e) (1) and (i), Section 2, R.A. No. 6425, as amended.

[28] Paragraph (e) (2), Section 2, Id.

[29] OR, 24.

[30] TSN, 31 July 1991, 13.

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