

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTORINO PABLO AND IMELDA CUSTODIO, ACCUSED-APPELLANTS.*G.R. No. 105326. December 28, 1994*

Ponente: BELLOSILLO, J.

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For allegedly selling shabu, Victorino Pablo and Imelda Custodio were charged with violating Sec. 21, par. (b), Art. IV, in relation to Sec. 15, Art. III of R.A. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended, in an information filed before the Regional Trial Court of Manila.

On 30 April 1991, the court a quo rendered a decision finding both accused guilty of the crime charged in the information and sentencing each to life imprisonment and to pay a fine of P20,000.00.[1]

Both accused are now before us on appeal alleging that the trial court erred (a) in giving full faith and credence to the conflicting and unreliable testimony of prosecution witness Pat. Ramir Reciproco; (b) in not declaring as unconstitutional and illegal the search and seizure conducted in the person of appellant Imelda Custodio and as inadmissible the evidence seized from her; (c) in holding that there was conspiracy on the part of appellants relative to the crime attributed to them; and, (d) in finding them guilty of the crime charged despite the fact that their guilt has not been proved beyond reasonable doubt.

The evidence of the prosecution shows that on 27 February 1990, at about one forty-five in the morning, upon the instruction of Officer-in-Charge Lt. Arthur de Guzman, Pat. Ramir Reciproco together with Pat. Emmanuel Lopez of the Dangerous Drugs Enforcement Section of the Makati Police Station conducted a surveillance and a possible buy-bust operation on appellants along Pasong Tamo Street, Makati. Lt. de Guzman ordered that a buy-bust operation be done based on the information of the anonymous caller that appellants were peddling drugs in the area.

Forthwith, the two police officers contacted a confidential informant who was acquainted with the two appellants. Thereafter, together with the confidential informant, they proceeded to the Ever Disco Pub. When they were within the area, the two police officers were able to determine the descriptions of the two appellants and to observe their actuations. The appellants were observed by the police officers to be transacting business with some persons outside the pub.

Subsequently, Pat. Reciproco was introduced by the confidential informant to appellant Pablo alias "Vic." Meanwhile, Pat. Lopez posted himself in a nearby store, about ten (10) meters away from them. After a short conversation, the confidential informant left. Appellant Pablo asked Pat. Reciproco if he wanted to "score" (in street language it means desire to buy drugs). Pat. Reciproco replied in the affirmative but for only one (1) deck which was about 1/10 of a gram. Appellant Pablo then immediately called his co-appellant Custodio who was in front of the Ever Disco Pub and asked her to give him one (1) deck of the merchandise. Pat. Reciproco handed the P100.00 marked money to Pablo who gave it to Custodio. The latter handed the white crystalline substance to Pablo who in turn handed it to Pat. Reciproco. At this point, Pat. Reciproco gave the pre-arranged signal to Pat.

Lopez and together they approached the two (2) appellants and introduced themselves as members of the Makati Police Force. Pat. Lopez recovered the marked money from Custodio.

The police officers later brought the two (2) appellants to the Office of the Dangerous Drugs Enforcement Section of the Makati Police Station. There the two accused were investigated by Cpl. Bienvenido Venturina who received the pre-marked P100.00-bill and the confiscated white crystalline substance which was later delivered to the NBI for examination. The two police officers executed an affidavit of arrest.

On 27 February 1990, the NBI Forensic Chemist Felicisima Francisco issued a certification and a Dangerous Drugs Report stating that upon examination, the specimen submitted yielded positive results for methamphetamine hydrochloride.

On the other hand, the defense presented a different version. According to appellant Pablo, he has been a regular waiter at the Ever Disco Pub for nine (9) years. On 27 February 1990, at about one forty-five in the morning, while on duty at the disco pub, his co-appellant and live-in partner Imelda Custodio asked him to buy a newspaper. After buying and while he was in front of the disco pub, Pat. Emmanuel Lopez suddenly grabbed him on the neck and forcibly placed him on board a jeep. He asked Pat. Lopez the reason for the arrest but the latter did not reply. The manager of the disco pub by the name of "Ate Winnie" then called his co-appellant who was sleeping in the VIP Room of the pub but the policemen also arrested her.

On her part, appellant Imelda Custodio narrated that on 26 February 1990, at around eleven in the evening, she visited appellant Pablo at the Ever Disco Pub. By midnight she was already resting in the VIP Room while appellant Pablo went out to buy a tabloid. At about one o'clock in the morning, she was awakened by a woman who told her that her co-appellant Pablo was placed in a jeep. As she went out of the disco pub to find out what happened, Pat. Lopez approached her, placed his hand on her shoulder and told her not to run. Instead, he told her to go with them. She asked him why, but Pat. Lopez did not answer. The two appellants were then taken to the Narcotics Section of the Makati Police Station where they were booked for drug pushing. Pat. Reciproco brought out one deck of shabu from his pocket alleging that he recovered it from appellants. Pablo denied the accusation and was mauled by the police officers to force him to admit that he committed the crime. Meanwhile, Custodio was brought to the comfort room where she was told to undress since they were looking for something. She remained naked for about thirty (30) minutes while Pat. Reciproco was standing there. After that, she was brought back to the Narcotics Section where she saw co-appellant Pablo still being mauled by the policemen.

We affirm the conviction of appellants Victorino Pablo and Imelda Custodio. The errors imputed to the trial court are bereft of merit. The basic issue raised in this appeal is the credibility of witnesses. It is settled that the findings of the trial court on credibility are entitled to great weight and respect unless some material facts have been overlooked or misconstrued as to affect the result.[2] We find that the exceptions to the rule do not apply in this case.

Appellants argue that the testimony of prosecution witness Pat. Reciproco is full of inconsistencies which cast grave doubt on its veracity. They further claim that Pat. Reciproco testified on direct examination that he saw appellant Pablo handing the marked P100.00-bill to appellant Custodio while the latter gave the shabu to the former. However, appellants further argue, on cross-examination he denied having seen the exchange of the marked money and the shabu between the appellants since their backs were turned from him. Still further, appellants contend that Pat. Reciproco alleged during the direct examination that while he was observing Pablo, some people approached the latter and the confidential informant also told him that the persons who talked to Pablo usually bought shabu. However, on cross-examination, Pat. Reciproco stated that he was on the other side of the street and that he did not see any person talking to Pablo.

The inconsistencies mentioned by the defense are baseless. Even on cross-examination and re-direct examination, Pat. Reciproco affirmed that Pablo handed to him one (1) deck of shabu and that as soon as he gave the P100.00-bill to Pablo, he saw the latter and his co-appellant talk for three (3) minutes.[3] Regarding the other alleged inconsistencies pointed to by appellants, the same refer to minor matters which do not affect the credibility of the prosecution witness. Besides, the manner by which appellants transferred to each other the shabu and marked money before giving the shabu to Pat. Reciproco is not material as it is not an essential element of the offense with which they are charged.

Appellants vehemently contend that since Pat. Reciproco could not testify as to the alleged participation of Custodio, the search conducted on her person is illegal and the marked bill and shabu obtained in her possession are inadmissible in evidence.

After a careful review of the evidence, we are convinced that as a consequence of the buy-bust operation conducted by the police officers, appellants were caught in flagrante delicto engaging in the illegal sale of a prohibited drug. The prosecution was able to prove beyond reasonable doubt that appellants did sell one (1) deck of shabu to Pat. Reciproco. The latter positively testified on such fact and the details of the sale. Since the appellants were caught while actually committing the crime, their arrest was lawfully effected without a warrant,[4] and the warrantless search conducted on Custodio who was lawfully arrested was likewise valid and legal as an incident to a lawful arrest.[5] The drug sold to Pat. Reciproco by appellants as a result of the buy-bust operation was confirmed to be shabu by the NBI forensic chemist. Hence, there is no doubt that the article seized is admissible in evidence against appellants.

As between the straightforward and positive testimony of Pat. Reciproco and the bare denial or negative testimony of appellants, the former undeniably is entitled to credence and deserves great weight. We have held that the testimony of only one witness if credible and positive and satisfies the court beyond reasonable doubt, is sufficient to convict.[6]

Moreover, the entrapment and arrest of appellants were made in accordance with law. A surveillance was conducted by the police officers upon the instruction of the officer in charge before the buy-bust operation was effected. No ill motive was or could be attributed to the police officers. In fact, appellants do not know of any reason why they were arrested and charged with this crime. Such lack of an improper motive coupled with the presumption of regularity in the performance of official functions as well as the findings of the trial court on the credibility of witnesses should prevail over the self-serving and uncorroborated denial and alibi of appellants.

In view thereof, there is no ground to reverse the judgment of the trial court. However, with the passage of R.A. 7659[7] amending certain sections of The Dangerous Drugs Act, and following our ruling in *People v. Simon*[8] to make the amendatory provisions apply retroactively as they are favorable to the accused, the penalties imposed by the trial court must be modified accordingly.

Appellants are found guilty of violating Sec. 21, par. (b), Art. IV, in relation to Sec. 15, Art. III, of R.A. No. 6425 which, as amended by R.A. 7659, carry the penalty of reclusion perpetua to death and an increased fine of P500,000.00 to P10,000,000.00 if the shabu involved is 200 grams or more; otherwise, if the quantity sold, delivered or distributed be less, only the penalty ranging from prision correccional to reclusion temporal shall be imposed.

In the instant case, the weight of the shabu sold by appellants is 0.071 gm.[9] Since the weight of the shabu is less than 200 grams, the reduced penalty of prision correccional to reclusion temporal should apply. With no attendant mitigating or aggravating circumstance, the proper imposable penalty is prision correccional in its medium period. Applying the Indeterminate Sentence Law, the maximum shall be taken from the medium period of prision

correccional, which is two (2) years, four (4) months and one (1) day to four (4) years and two (2) months, while the minimum should be drawn from the penalty next lower in degree, which is arresto mayor, the range of which is one (1) month and one (1) day to six (6) months.

WHEREFORE, the decision appealed from finding accused-appellants VICTORINO PABLO and IMELDA CUSTODIO guilty beyond reasonable doubt of violating Sec. 21, par. (b), Art. IV, in relation to Sec. 15, Art. III, of R.A. 6425, as amended, is AFFIRMED with the modification that each of the appellants is sentenced to suffer an indeterminate prison term of four (4) months and twenty (20) days of arresto mayor maximum as minimum, to four (4) years and two (2) months of prision correccional medium as maximum, with costs against both accused-appellants.

SO ORDERED.

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

[1] Penned by Judge Oscar B. Pimentel, Br. 148, Manila; Rollo, pp. 79-90.

[2] People v. Lañaylahay, G.R. Nos. 104737-38, 26 October 1994.

[3] TSN, 29 October 1990, pp. 11-12.

[4] Sec. 5, Rule 113, 1985 Rules on Criminal Procedure, as amended.

[5] Sec. 12, Rule 126, id.

[6] People v. Trigo, G.R. No. 74515, 14 June 1989, 174 SCRA 93.

[7] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose The Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes.

[8] G.R. No. 93028, 29 July 1994.

[9] Records, p. 9.

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