

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO DE LOS REYES Y SOLTEO, ACCUSED-APPELLANT.

G.R. No. 106874. January 21, 1994

Ponente: MELO, J.

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MELO, J.:

Accused-appellant was charged with violation of Section 15, Article III of Republic Act No. 6425 (Dangerous Drugs Act), as amended, in an information reading as follows:

The undersigned Assistant City Prosecutor accuses RENATO DE LOS REYES y SOLTEO of a violation of Section 15 Article III Republic Act 6425, as amended, committed as follows:

That on or about the 6th day of July, 1991, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there wilfully, unlawfully and feloniously give, sell and deliver 0.02 grams of methamphetamine hydrochloride (shabu), a regulated drug, worth P200.00, Philippine currency, to Pat. Rodolfo Mercado, who acted as poseur buyer, in violation of said law. (p. 9, Rollo)

Upon arraignment, accused-appellant pleaded not guilty, but this posture notwithstanding, the trial court, after hearing, rendered a decision, the dispositive portion of which reads:

ACCORDINGLY, the accused RENATO DELOS REYES Y SOLTEO is hereby found guilty beyond reasonable doubt of Violation of Sec. 15, Article III, Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act, and is sentenced to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 and the costs.

Let the 0.02 grams of shabu (methamphetamine hydrochloride) be confiscated and ordered delivered to the headquarters, Philippine National Police, Camp Crame, for proper disposal. (p. 32, Rollo)

Accused-appellant's appeal is anchored on the lone and general assignment of error that the trial court erred in finding him guilty and in imposing on him the penalty of life imprisonment and payment of the fine.

The facts of the case as established by the evidence are as follows:

The District Anti-Narcotics Division, Camp Karingal, Quezon City had put accused-appellant under surveillance for suspected involvement in the sale and use of methamphetamine hydrochloride, commonly known as "shabu", at his residence at 15 Maligaya St., Barangay Gulod, Novaliches, Quezon City. After the surveillance, which according to District Chief Major Juan Adan produced positive determination of the illegal activities of accused-appellant (Exh. G-1), Major Adan formed a team composed of Sgt. Adolfo Arcoy, Policewoman Corazon Nebres, C2C Arturo Ulpindo, and Patrolman Rodolfo Mercado to engage in a buy-bust operation.

On the morning of July 6, 1991, the team, together with the police informant named "Ike", proceeded to the house of accused-appellant. Nebres, Arcoy, and Ulpindo stayed outside the house, while Mercado, acting as the poseur?buyer, and the informant went inside. The informant introduced Mercado to accused-appellant and told the

latter that they were buying shabu. Accused-appellant agreed to the sale and handed to Mercado a packet of aluminum foil containing 0.02 of a gram of shabu. In turn, Mercado gave to accused-appellant two P100 bills (Exhs. E and E-1). Thereupon, Mercado made the agreed-upon gesture and his police companions entered the house and arrested accused-appellant.

The police officers recovered the two P100 bills from accused-appellant and confiscated various paraphernalia consisting of an improvised burner, aluminum tin foils, a plaster water pipe, and a piece of rag. Accused-appellant was thereafter brought to the Sikatuna headquarters for investigation, and the confiscated items were turned over to the Desk Officer and presented to the investigator.

Upon Major Adan's request, Lt. Elizabeth Ayonon, Forensic Chemist, conducted physical, chemical, and confirmatory tests (p. 10, t.s.n., August 29, 1991) on the specimen (Exh. B) submitted by Major Adan, and based upon said tests, Lt. Ayonon concluded that the specimen submitted was methamphetamine hydrochloride or shabu (pp. 14-15, t.s.n., August 29, 1991). She reduced her findings into writing, initial report (Exh. C) and final report (Exh. D), wherein she stated that "[q]ualitative examination conducted on the above stated specimen gave POSITIVE result to the tests for Methamphetamine Hydrochloride (shabu), a regulated drug", and concluded that the specimen "contains Methamphetamine Hydrochloride (shabu), a regulated drug."

Lt. Ayonon also conducted a laboratory examination on the person of accused-appellant to determine the presence of ultraviolet fluorescent powder and in her report (Exh. H), she declared: "Examination conducted under the ultraviolet radiation revealed that the person of RENATO DELOS REYES --- POSITIVE for the presence of a bright yellow ultraviolet fluorescent powder on both hands, face, hair and arms." The reason why accused-appellant was made to undergo the aforesaid examination was to determine whether he held the two P100 bills, utilized during the buy-bust operation (p. 11, t.s.n., September 19, 1991).

Accused-appellant contends that the factual bases of the presumption of regularity in the performance by the police officers of their duties in connection with the narcotic buy-bust operation are non-existent. He asserts that there is no allegation or showing reflected on record that the information about the sale of shabu by him, obtained by the District Anti-Narcotics Division during a surveillance operation, was annotated in the police blotter or any other similar official document kept by the law enforcement unit. The argument is specious. In the first place, the presence or absence of an annotation in the police blotter of the fact of surveillance of the accused-appellant by the Anti-Narcotics Division was not inquired into by counsel for accused-appellant during the trial when the defense had the opportunity to do so, particularly during the cross-examination of Pat. Rodolfo Mercado, the principal prosecution witness. Neither may the non-presentation of the police blotter be considered suppression of evidence for the blotter was equally accessible or available to the prosecution as to the defense (*People vs. Martinez*, 205 SCRA 666 [1992]) through request for the issuance of a subpoena duces tecum. At any rate, Section 5, Rule 110 of the Rules of Court expressly provides: "All criminal actions ... shall be prosecuted under the direction and control of the fiscal" and what prosecution evidence should be presented during the trial depends solely upon the discretion of the prosecutor. The defense cannot dictate on the prosecution the choice of the latter's witnesses; it is the prerogative of each party to determine which evidence to submit (*People vs. Carpio*, 207 SCRA 569 [1992]).

Accused-appellant further contends that "the material particulars indicating the regularity of the preparation of the money allegedly used in the buy-bust operation" have not been annotated in the police blotter or in any similar record, citing the case of *People vs. Fulgarillas* (212 SCRA 76 [1992]), where this Court held that "The act of blottering is the correct and regular procedure by which the regularity of the preparation of marked money may be established. Without such blotter, all attempts at establishing the regularity remains dubious." *Fulgarillas* finds no application to the case at bar. The prosecution evidence in said case was inherently weak. The prosecution therein,

even as it failed to establish the fact of sale by its neglect to present the poseur-buyer, compounded its error by omitting to present evidence that the markings of the buy-bust money bills were blotted. In the case at bar, the poseur-buyer, Pat. Mercado, was called to the witness stand and he testified on the facts and circumstances of the buy-bust operation and the illegal sale resulting therefrom. Moreover, the mere failure to mark the bills is not fatal to the cause of the prosecution (*People vs. Castiller*, 188 SCRA 376 [1990]). Neither is the presentation in evidence of the buy-bust money indispensable to the conviction of an accused, provided that the sale of the dangerous drug is adequately proven by the prosecution (*People vs. Pascual*, 208 SCRA 393 [1992]).

Further, accused-appellant raises the point that there is no showing that after the aluminum foil of shabu sold by him was taken by the poseur-buyer and before it was turned over to the police investigator or to the PNP Crime Laboratory, distinguishing marks were placed thereon to serve as basis for identification in court. In the case of *People vs. de la Cruz* (191 SCRA 160 [1990]), this Court held that "the matter of what wrapper was used on the marijuana leaves [the prohibited drug subject-matter of said case] or what was the denomination of the buy-bust money are collateral matters and do not touch upon the commission of the crime itself which was consummated when accused-appellant gave the marijuana leaves, a prohibited drug, to the poseur-buyer." Similarly, we consider the absence of evidence on whether or not distinguishing marks were placed on the aluminum foil containing the shabu before it was turned over to the investigator or to the PNP Crime Laboratory as a collateral matter. Such circumstance does not adversely affect the prosecution's case concerning the commission of the crime itself which was consummated when accused-appellant handed over to Patrolman Mercado, the poseur-buyer, the aluminum foil containing the shabu.

Further, accused-appellant contends that the failure of any member of the buy-bust team to issue any receipt for the articles taken from him is highly irregular, citing the case of *People vs. del Mar* (210 SCRA 446 [1992]). Said case has no bearing to the case at bar for in *del Mar*, neither the confiscated shabu nor the marked money was mentioned in the inventory prepared by the arresting police officers. In the case at bar, Patrolman Mercado positively and categorically identified in court the shabu sold to him by the accused-appellant, and listed it in his affidavit (Exh. F) which was executed immediately after Pat. Mercado turned over accused-appellant and the articles confiscated to the investigator. Nor would the prosecution's omission to present in evidence the booking sheet and arrest report enfeeble its cause. As afore-stated, the fiscal has complete direction and control over the prosecution of criminal actions and what evidence is to be submitted during the trial depends solely upon his discretion. Needless to say, however, whether the evidence submitted by the fiscal is sufficient to convict depends upon the courts.

Accused-appellant further asserts that there is no "showing made on record that the police officers have complied with the Dangerous Drugs Board (DDB) Regulation No. 3, Series of 1979 xxx which imposes upon the apprehending team having initial custody of the drugs, immediately after seizure or confiscation, the responsibility and obligation to have them physically inventoried and photographed in the presence of the accused who shall be required to sign the copies of the inventory and be given a copy thereof." The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established (*People vs. Santiago*, 206 SCRA 733 [1992]) and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board.

Next, accused-appellant argues that the failure of the prosecution to present the informer vitiates the cause of the prosecution. The testimony of the informant is not indispensable to a successful prosecution for drug-pushing

since his testimony would be merely corroborative and cumulative with that of the poseur-buyer who was presented and who testified on the facts and circumstances of the sale and delivery of the prohibitive drug (People vs. Odicta, 197 SCRA 158 [1991]; People vs. Alerta, Jr., 198 SCRA 656 [1991]; People vs. Rumeral, 200 SCRA 194 [1991]; People vs. Carpio, 207 SCRA 569 [1992]; People vs. Bagame, 207 SCRA 761 [1992]).

Another point raised by accused-appellant is the failure of the prosecution to present any member of the buy-bust team to corroborate testimony of the poseur-buyer. The testimony of the other members of the buy-bust team is not necessary, for the lone testimony of a credible witness suffices to convict in drug cases (People vs. Abelita, 210 SCRA 497 [1992]). An assiduous analysis of the testimony of Pat. Mercado, the poseur-buyer, fails to disclose any inconsistency, contradiction, or fabrication. Mercado's testimony is candid, straightforward, and narrates in detail the circumstances of the buy-bust operation. Being a police officer, he is presumed to have regularly performed his duties in the absence of proof to the contrary and his narration of the incident is worthy of belief (People vs. Napat-a, 179 SCRA 403 [1989]; People vs. Vilorio, Jr., 191 SCRA 777 [1990]). Moreover, the testimony of Mercado finds corroboration in an irrefragable piece of evidence. Upon examination, accused-appellant was found positive for ultraviolet fluorescent powder (p. 4, t.s.n., September 27, 1991; Exh. H), clearly indicating that he handled the buy-bust money, which previously had been treated with ultraviolet fluorescent powder (p. 69, t.s.n., August 29, 1991).

Further, accused-appellant maintains that it was incumbent upon the prosecution to prove the negative allegation in the information "without any authority of law". The argument is far from persuasive, for the statute, Republic Act No. 6425, as amended, otherwise known as The Dangerous Drugs Act of 1972, applies generally to all persons and proscribes the sale, administration, delivery, distribution, transportation, and manufacture of dangerous drugs by any person, and no person is presumed authorized to sell, etc., such drugs. Rather, any person claiming the benefit of the exemption must prove that he falls under the protective mantle of the exemption.

. . . An Act of Congress prohibited and penalized the sale of intoxicating liquor in the territory of Alaska, except for mechanical, medicinal, or scientific purposes, and the indictment failing to negative this exception, counsel for defendant urged that it was fatally defective. The court held, however, that the purpose of the statute was to prohibit generally the sale of intoxicating liquors throughout the territory, and that the exception as to the sale of liquor for mechanical, medicinal, or scientific purposes merely withdrew such sales from the operation of the enacting clause of the statute, and that it mattered not that the exception appeared to be grammatically a provision of the enacting clause, and that under the technical rule laid down by the law writers it should be negated, practically it was more logical and convenient that the accused should aver and prove the fact that the sale made by him fell within the exception, than that the prosecutor should anticipate such defense and deny it.

So in the case at bar, the evident intent and purpose of the statute is to prohibit and to penalize generally the smoking of opium in these Islands. But the legislator desired to withdraw from the operation of the statute a limited class of smokers, to wit, those who smoked under the advice and by prescription of a licensed and practicing physician, and we do not think that it makes the slightest practical difference, whether the excepting proviso as to such persons is found in the enacting clause of the statute in a separate provision thereof or in a separate Act. Hence where one is charged with a violation of the general provisions of the Opium Law, it is "more logical as well as more practical and convenient," if he did in fact smoke opium under the advice of a physician, that he should set up this fact by way of defense, than that the prosecution should be called upon to prove that every smoker, charged with a violation of the law, does so without such advice or prescription. (United States vs. Chan Toco, 12 Phil. 263, 268--269 [1908]).

Accused-appellant's defense that there was inducement and not entrapment runs counter to the evidence. The facts of the case show legitimate entrapment. A buy-bust operation is a form of entrapment resorted to by peace officers to trap and catch a malefactor in flagrante delicto (People vs. Rodriguez, 205 SCRA 791 [1992]), and

entrapment is no bar to prosecution and conviction, not being prohibited by law (People vs. Liquen, 212 SCRA 288 [1992]).

Finally, accused-appellant insists that he was framed-up by the apprehending police officers. Such a charge of frame-up is the usual defense put up by persons who are accused of being drug pushers or sellers, and is easily fabricated; strong and convincing proof is necessary to overcome the findings of the trial court that the prosecution witnesses were telling the truth (People vs. Ruado, 152 SCRA 635 [1987]; People vs. Agapito, 154 SCRA 694 [1987]). Such proof is wanting in the record.

WHEREFORE, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Feliciano, Bidin, Romero, and Vitug, JJ., concur.

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