

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONITO PONSICA Y PUEBLAS, ACCUSED-APPELLANT.

G.R. No. 108176. February 14, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Ronito Ponsica y Pueblas appeals from a decision of the Regional Trial Court of Cebu City, finding him guilty of violation of Section 15, Article III of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act.

Appellant was charged under the following information:

"That on or about the 4th day of January, 1992, at about 1:30 in the afternoon, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there sell, deliver and give away one (1) pack of shabu powder which contains a methamphetamine hydrochloride, a regulated drug, to a person who posted [sic] himself as buyer, without authority of law.

Contrary to law."[1]

At arraignment, appellant Ponsica entered a plea of not guilty. Trial ensued and judgment was rendered on 19 August 1992 as follows:

"WHEREFORE, the accused Ronito Ponsica Y Pueblas is hereby found guilty beyond a reasonable doubt of the offense alleged in the information. He is accordingly sentenced to life imprisonment and to pay a fine of P25,000.00. The one deck of shabu or methamphetamine hydrochloride is hereby ordered confiscated in favor of the Dangerous Drugs Board.

Costs against the accused. SO ORDERED."[2]

The prosecution's version of the relevant facts is as follows.

On 4 January 1992, a Narcotics Command, PNP, "buy-bust" team composed of SP02 Hermes Recla, SP02 Ibrahim Mohammadshaid and SPO1 Felixberto Sultan was formed to entrap and arrest appellant Ponsica who had been the subject of numerous complaints from concerned parents for drug pushing. This operation ensued after surveillance of Ponsica which had been initiated on 1 January 1992 at the Carbon Market in Sitio Bato, Barangay Ermita, Cebu City, and during which he had been observed to be openly selling shabu.

At about 1:30 in the afternoon of 4 January 1992, the team reached their target area which was a small alley in the Carbon Market. SP02 Recla, who was designated to act as poseur-buyer, approached appellant Ponsica and told the latter that he wanted to "score" two hundred pesos (P200.00) worth of shabu. SPO2 Recla then handed Ponsica two marked one hundred peso bills which had been initialed by SP01 Sultan. Appellant accepted the money and then left for a while. When appellant returned, he gave SPO2 Recla a small package wrapped in brown paper. SPO2 Recla examined the package and upon finding that it contained shabu, immediately tapped the right

side of his head, the prearranged signal that the sale had been consummated. The back-up persons consisting of SPO2 Mohammadshaid and SPO1 Sultan approached them and arrested Ponsica. The marked money was promptly recovered by SPO1 Sultan from the right pocket of Ponsica's maong pants.[3]

The seized shabu (Exhibit "C") was taken to the PNP Crime Laboratory where PNP Inspector Myrna Areola, Chief of the Chemistry Section, examined and analyzed the material. She found that the white crystalline substance weighing about one (1) gram, subject of this indictment, consisted of methamphetamine hydrochloride, a regulated drug also known as shabu.[4]

Appellant Ponsica sought to counter the prosecution's view of the incident by presenting his own version which was reported by the trial court as follows:

"On 4 January 1992, at about 10:00 a.m., he went to see his father in Talamban, Cebu City to ask money for his sick child. As his father was not home, he went to his mother at Carbon Market, Cebu City for the same purpose. She gave him P200.00. He also ate lunch at his mother's place.

After lunch, he went to a store to buy softdrinks. At the store a certain person — who turned out to be SPO2 Hermes Recla — approached him if he knew a certain Cesar who was living nearby, and he answered in the negative. Nonetheless, Recla insisted that he look for Cesar because Recla wanted to buy a certain stone ('bato') from Cesar. Recla promised to give him P50.00 if he could locate Cesar and buy for him (Recla) that bato from Cesar.

With the help of a young man who directed him to where Cesar was, he succeeded in locating Cesar 'beside the house'.

Upon meeting Cesar for the first time, Cesar asked who the person looking for him was. Ponsica replied that the man was outside 'at the store where I bought softdrink and where that man also took softdrink.'

After that, Cesar gave me something, a small pack' which was wrapped in brown paper and which he carried in his hands.

Upon delivery of that small pack to Recla, the latter, instead of giving him the P50.00 which he promised, held him by the shoulder, and Recla and two of his companions placed him under arrest, frisked him, removed his shorts and took away his belt and his wallet with the photograph of his wife, and the sum of P215.00 which he had with him at the time. The wallet and its contents were never returned to him."[5]

The single error assigned by appellant is that:

"The lower court erred in finding that there was a buy-bust operation and in finding the accused guilty."[6]

Ponsica pleads instigation as a defense. He claims that the procedure adopted by the Narcom agents on 4 January 1992 did not constitute a "buy-bust" operation where there is a simultaneous giving of marked money by the poseur-buyer and handing over of the drugs by the pusher, popularly known as "kaliwaan." Appellant stresses that he had merely acted as an errand boy in the transaction and prays for acquittal.

The Court notes that Ponsica had previously been placed under surveillance by the Narcom agents on the information that Ponsica had been selling shabu in the Carbon Market area. The arresting officers had identified and witnessed appellant engaged in the sale of material believed to be shabu three (3) days before the "buy-bust" operation was actually mounted. In short, the 4 January 1992 "buy-bust" operation was designed to catch Ponsica in flagrante delicto and to arrest him.

The record shows that SP02 Recla, posing as a buyer, did not induce appellant to commit the crime charged.

Ponsica had been observed openly selling shabu days before his arrest and needed no prodding from the police authorities. SP02 Recla's testimony, in relevant part, follows:

"Q —

How did you know that he was engaged in that business when you saw him for the first time seated by the store and all of a sudden you further said, 'Pare, I wanted to scure a shabu (sic).'

A —

We are basing the complaint of the parents in that area.

xxx xxx xxx

ATTY. MONTECILLO: So you had some surveillance, you mean to say?

A —

Yes, Sir.

Q —

How did you know that that person was Ronnie?

A —

Thru my surveillance.

Q —

How many days before you approached him did you conduct surveillance.

A —

Before conducting buy bust operation, I have initially conducted a surveillance.

Q —

So several days before you approached him, you already know that that person was Ponsica?

A —

Only the name Ronnie.

Q —

But there are so many Ronnies in the Carbon area?

A —

But he was our target there, Ronnie, and who openly sold there.

XXX XXX XXX

Q —

From whom did you gather information that he was openly selling shabu?

A —

I myself, sir.

Q —

Did you see him selling shabu?

A —

Yes, sir, during my surveillance.[7]

xxx xxx xxx

Q —

While you were entering a small alley, as you mentioned, what happened?

A —

I am able to approach a guy, a certain Ronnie.

Q —

Then what did you do after you approached that certain guy?

A —

I just informed him that I would like to score some shabu.

Q —

And what was his reply, if any?

A —

And he asked how much, and I said just worth two hundred pesos (P200.00).

Q —

After that, what did you do?

A —

So I handed him our marked money and he told us to just wait."[8] (Underscoring supplied)

Ponsica's denials cannot prevail over the detailed and unshaken testimonies of the arresting officers who caught him red-handed selling shabu."[9]

Moreover, the following acts of appellant belie his assertion that he had been merely used as an errand boy: first, Ponsica's demand for the purchase price from SPO2 Recla and his acceptance of the two hundred pesos (P200.00) marked money from SPO2 Recla; second, after receiving the marked money, Ponsica went inside a house and soon after emerged with the package containing shabu which he delivered to SPO2 Recla; and third, upon his arrest, the marked money was retrieved by the arresting officers from Ponsica. It is also important to note that Ponsica's arrest was the sole purpose of the buy-bust operation, being the "main target" of the Narcom agents[10] and Ponsica admitted before the trial court that he had delivered the package containing shabu to SPO2 Recla.[11] The foregoing facts alone prove the completion of the crime.[12]

Appellant denies having received any money from SPO2 Recla and claims that what was recovered from him was not the marked money consisting of two (2) one hundred peso (P100.00) bills but the two hundred pesos his mother had given him with which to buy medicine for his sick child. This assertion was controverted by the straightforward testimony of SP02 Recla which was corroborated by SPO1 Sultan:

"Q —

How much was the marked money handed by you to him?

A —

Two hundred pesos (P200.00).

Q —

Did he receive?

A —

Yes, Sir.[13]

XXX XXX XXX

Q —

Who was able to recover the marked money?

A —

Sgt. Sultan, sir.

Q —

From what part of the body or pocket of the accused that the marked money was recovered?

A —

From his right maong pants."[14]

Appellant himself was confused as to the amount of money he actually had on him the day of his arrest. He maintains that he had with him a total of two hundred and fifteen pesos (P215.00) which was taken by the police.[15] However, Ponsica also stated that the two hundred pesos (P200.00) his mother had given him consisted of one fifty peso (P50.00) bill and five twenty peso (P20.00) bills. Aside from this, appellant said he had fifteen pesos (P15.00) pocket money.[16] But this adds up to one hundred sixty five pesos (P165.00) only. This appears to be a transparent and vain attempt on the part of Ponsica to overcome the testimony to the effect that marked money had been recovered from him.

Ponsica next claims that he got the package allegedly containing the shabu from a certain Cesar whom he found beside the latter's house. Appellant's claim, however, was rebutted by the following testimony of SP01 Sultan:

"Q —

Yes, but when Ponsica left the place to get the stock, you lost sight of him. Am I correct?

A —

I saw him when he left and entered the house but when he was already inside the house, I did not see him anymore.

Q —

So you actually saw Ponsica enter the house?

A —

Yes.

Q —

Did he knock by the door when he entered the house or he just went up the house without any greeting or knocking the door (sic)?

A —

Because it is his house so he did not knock anymore. He just immediately entered the house.

xxx xxx xxx

Q —

From the place where Recla was until he (Ponsica) entered the house, you never lost sight of him. Is that correct?

A —

Yes, I saw him.

Q —

So when he (Ponsica) came out also from the house, until he reached the place where Recla was, you also saw him?

A —

I also saw him.

Q —

Did you see any other person in the house when Ponsica allegedly entered that house?

A —

I only saw Ronnie entering his house."[17]

(Underscoring supplied)

Ponsica has failed to show that the Narcom agents, in testifying against him, were motivated by reasons other than their duty to curb drug abuse. Appellant himself admitted before the trial court that he had no misunderstanding or trouble of any kind with SPO2 Recla or SPO1 Sultan at any time prior to his arrest.[18] In the absence of proof of any intent on the part of the police authorities falsely to impute such a serious crime against appellant, the presumption of regularity in the performance of official duty as well as the principle that findings of the trial court on the credibility of witnesses are entitled to great respect, must prevail over the self-serving and uncorroborated claim of appellant that he had been "framed".[19]

The trial court correctly rejected Ponsica's claim that he had obtained the shabu from one Cesar, who, in Ponsica's story, was the real vendor of the shabu. Ponsica never proved the existence of Cesar; he did not present Cesar as a witness nor did he seek to compel his attendance by subpoena.

Ponsica's assertion that he thought that the "bato" which SPO2 Recla wanted was a real stone or a gemstone and not shabu, was also rejected by the trial court and, we believe, rightly so. SPO2 Recla testified before the trial

court that he told Ponsica that he wanted "to score a Shabu".[20] This was corroborated by SPO1 Sultan who also testified that he positively heard SPO2 Recla tell Ponsica that he, (SPO2 Recla) wanted "to score a shabu".[21] It is widely known that "to score" means to buy in the common parlance of the drug trade.[22] By the use of the word "shabu", it is clear that SPO2 Recla was referring to the drug, nothing else.

Finally, Ponsica maintains that because there was no simultaneous delivery of the shabu and payment for the drug or "kaliwaan", the operation conducted on 4 January 1992 which led to his arrest, was not a "buy-bust" or entrapment operation. We do not agree. There is no fixed procedure for conducting "buy-bust" operations and no rule of law requires the simultaneous exchange of the marked money and the prohibited or regulated drug between the poseur-buyer and the pusher or seller.[23] The well-entrenched principle is that the crime of illegal sale is committed as soon as the sale transaction is consummated[24], whether payment precedes or follows delivery of the drug sold. Finally, the records show no irregularity in the conduct of the "buy-bust" operation which would in any way exculpate the accused.

WHEREFORE, for all the foregoing, the decision of the trial court is hereby **AFFIRMED** in its entirety. No pronouncement as to costs.

SO ORDERED.

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

[1] Information, p. 1; Rollo, p. 3.

[2] RTC Decision, p. 10; Rollo, p. 16.

[3] TSN, SPO2 Hermes Recla, 5 March 1992, pp. 3-5; TSN, SPO1 Felixberto Sultan, 5 March 1992, pp. 20-28.

[4] RTC Decision, p. 7; Rollo, p. 14.

[5] Id., pp. 7-8; TSN, pp. 34-35.

[6] Appellant's Brief, p. 2; Rollo, p. 25.

[7] TSN, SPO2 Recla, 5 March 1992, pp. 11-12.

[8] TSN, SP02 Recla, 5 March 1992, p. 4.

[9] People v. Mauyao, 207 SCRA 732 (1992); People v. Arcega, 207 SCRA 681 (1992); People v. Pascual, 208 SCRA 732 (1992); People v. Mendoza, 210. SCRA 517; People v. Pasiliao 215 SCRA 163 (1992).

[10] Appellee's Brief, p. 14.

[11] TSN, Ronito Ponsica, 12 March 1992, p. 7.

[12] People v. Angeles 209 SCRA 799 (1992); People v. Rumeral, 200 SCRA 194 (1991); People v. De la Cruz, 184 SCRA 416 (1990).

[13] TSN, SP02 Recla, 5 March 1992, p. 4.

[14] Id., p. 5.

[15] Appellee's Brief, p. 23.

[16] TSN, Ronito Ponsica, 12 March 1992, p. 8.

[17] TSN, SP01 Sultan, S March 1992, pp. 24-25.

[18] RTC Decision, p. 9; Records, p. 35.

[19] People v. William 209 SCRA 808 (1992); People v. Cruda 212 SCRA 125 (1992); People v. Lopez 214 SCRA 323(1992); People v. Marcos 212 SCRA 748 (1992); People v. Fernandez 209 SCRA 1 (1992).

[20] TSN, SPO2 Recla, 5 March 1992, p. 9.

[21] TSN, SPO1 Sultan, 5 March 1992, p. 27.

[22] People v. Blas, 209 SCRA 339 (1992).

[23] People v. Cruda, 212 SCRA 125 (1992); People v. Agustin 215 SCRA 725 (1992).

[24] People v. Santiago, 206 SCRA 733 (1992); People v. Macuto, 176 SCRA 762 (1989); People v. Dekingco, 189 SCRA 512 (1990); People v. Enrique, Jr., 204 SCRA 674 (1991).

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