

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALICIA DE LA CRUZ CONSTANTINO, ACCUSED-APPELLANT.

G.R. No. 109119. August 16, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Alicia de la Cruz Constantino appeals from the decision[1] of Branch 131 of the Regional Trial Court of Kalookan City in Criminal Case No. 40241, promulgated on 9 February 1993, finding her guilty of selling methamphetamine hydrochloride or "shabu," a regulated drug, in violation of Section 15, Article III of R.A. No. 6425 (Dangerous Drugs Act of 1972), as amended, and sentencing her to "suffer LIFE IMPRISONMENT and to pay a fine of TWENTY THOUSAND (P20,000.00) PESOS."

It appears that on 3 June 1992 at 11:30 a.m., the accused was apprehended at the vicinity of her house in Sta. Catalina Street, 1st Avenue, Kalookan City, during a buy-bust operation conducted by Northern Police District operatives from the Dagat-dagatan Police Station. The following day, Assistant City Prosecutor Mary June P. Inciong filed the information in accordance with Section 7, Rule 112 of the Rules of Court. The accusatory portion of the information reads as follows:

"That on or about the 3rd day of June 1992 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously sell and deliver to PO3 Manuel Panlaque, who posed as buyer, METHAMPHETAMINE HYDROCHLORIDE, a regulated drug, without the corresponding license or prescription therefore [sic], knowing the same to be such." [2]

The accused filed a motion for reinvestigation, dated 10 June 1992, which the trial court granted.[3] Since she did not submit any counter-affidavit or controverting evidence at the reinvestigation, 3rd Assistant City Prosecutor Eulogio Mananquil, Jr. recommended that the records of the case be remanded to the trial court for trial on the merits. City Prosecutor Gabriel dela Cruz approved the recommendation.

On 19 October 1992, the accused pleaded not guilty upon arraignment.[4]

At the trial on the merits, the prosecution presented Police Officer Manuel Panlaque and PNP Forensic Chemist Sr. Inspector Tita Advincula as its witnesses. The accused testified in her own behalf.

The evidence for the prosecution, as summarized by the trial court[5] and adopted in toto by the appellee,[6] is as follows:

"The evidence for the prosecution consists of the following: The marked money used in the buy-bust operation with Serial No. BV961007 as Exhs. 'A,' 'A-1' and 'A-2'; joint affidavit executed by PO3 Valentin F. Orosco and PO3 Manuel Panlaque as Exhs. 'B,' 'B-1,' 'B-2' and 'B-3'; Certificate of Laboratory Result dated June 3, 1992 as Exhs. 'C,' 'C-1,' 'C-2' and 'C-3'; letter referral/request signed by Sr. Insp. Venancio C. Bantog, PNP as Exhs. 'D' and 'D-1'; Chemistry Report No. D-243-92 as Exhs. 'E,' 'E-1,' 'E-2' and 'E-3'; the stuff subject matter of this case commonly known as shabu as Exhs. 'F'; the aluminum foil as

‘F-1’; a piece of white paper as Exh. ‘F-2’; the plastic tea bag as ‘F-3’ and half-cut envelope as ‘F-4.’

The version of the prosecution is as follows:

That Police Officers Manuel Panlaque and Valentin Orosco are bona fide members of the Police Force, assigned at the Northern Police District, Intelligence Unit, Dagat-dagatan, Kalookan City, with tour of duty from 8:00 a.m. to 8:00 p.m. On June 3, 1992, at around 11:30 a.m. and while on duty, PO3 Panlaque received a telephone call from an informer, who was likewise his friend, informing him that there was a lady drug pusher named Alicia at the vicinity of 1st Street, 1st Avenue, Kalookan City. That the 'drug pusher' was described by the informer to be petite looking. PO3 Panlaque relayed the information to PO3 Orosco and the two of them relayed the message to their officer-in-charge Capt. Venancio Bantog. Reacting to that information, Capt. Bantog immediately dispatched PO3 Panlaque and PO3 Orosco to conduct a buy-bust operation at the aforementioned place in Kalookan City. Capt. Bantog gave PO3 Panlaque one-hundred-peso bill (P100.00) with Serial No. BV961007 (Exh. ‘A’) to be used in their operation.

Arriving at the site of the operation, PO3 Panlaque and PO3 Orosco were met by the informer. Thereafter, PO3 Panlaque, acting as the poseur buyer, together with the informer proceeded to the house of Alicia. The two knocked at the door and a lady, who fits the descriptions earlier furnished to PO3 Panlaque by the former, opened the door. When the lady went out, the informer told her that PO3 Panlaque was interested to buy shabu. After which, Alicia went inside her house and as soon as she came back, she handed to PO3 Panlaque the stuff now subject matter of this case (Exh. ‘F’) and, in return, PO3 Panlaque gave the one-hundred-peso marked Bill (Exh. ‘A’) to Alicia.

After the sale of the prohibited stuff took place, PO3 Panlaque raised his left hand and in accordance with the pre-arranged operational plan, PO3 Orosco appeared and the two of them effected the arrest of Alicia dela Cruz, the herein accused.

The stuff handed by accused Alicia [to] PO3 Panlaque when examined, yielded positive result for the test of methamphetamine hydrochloride. Thus a case for selling prohibited [regulated] drug was lodged against the herein accused, hence, this case.

On cross-examination, PO3 Panlaque testified that the accused made use of her right hand in handling [sic] to him the shabu as well as in receiving from him the marked money. That the informer is a male and is a resident of 2nd Street, Kalookan City. That as soon as it was intimated to Alicia by the informer that PO3 Panlaque was interested to buy shabu, the accused merely asked him ‘how much?’ and in reply, he said ‘piso’ (the equivalent of P100.00 in street parlance) and then accused told them ‘for awhile.’

Another prosecution witness, Captain Tita Advincula, Forensic Chemist of the PNPCL, took the witness stand and testified that she was the one who conducted the laboratory examinations on the specimen subject matter of this case (Exh. ‘F’). That as per her findings, which is reflected in the Certificate of Laboratory Result (Exh. ‘C’) and Chemistry Report No. D-243-92 dated June 3, 1992 (Exh. ‘D’), the stuff is positive for the tests of shabu."

On the other hand, the accused presented a different version of the facts. She denied that a buy-bust operation was ever conducted and claimed that no informer accompanied the policemen when they arrived at her house. According to her, she was hanging clothes out to dry when she was approached by PO3 Panlaque and PO3 Orosco who were looking for a certain Nato. They demanded from her information regarding Nato's whereabouts. She denied knowing Nato or his whereabouts. For not giving the information the two were asking for, she was frisked, dragged, and brought to the Dagat-dagatan Police Station. Her efforts to stop them from bringing her to the police station as no one would attend to her children proved futile. At the precinct, Orosco and Panlaque showed her a P100-peso bill and an aluminum foil containing shabu which they said would be used as evidence against her. The two threatened to detain her indefinitely if she did not reveal Nato's whereabouts. From the police

station she was then brought before a woman whom the policemen addressed as "Ninang." [7]

The trial court gave full credit to the prosecution's evidence. It ruled that the presumption of regularity in the performance of official duty in favor of the arresting officers was not overcome by the accused, and that she was unable to substantiate by clear and convincing evidence her allegation that she was framed.

In her brief, the accused maintains that the trial court erred "in finding [her] guilty beyond reasonable doubt of violation of Sec. 15, Art. III, R.A. 6425, as amended, or drug-pushing" and argues that the testimony of the prosecution's lone eyewitness, Panlaque, lacks credibility. She contends that Panlaque never knew her physical appearance nor was he familiar with her address and that he could not have conducted the buy-bust operation that same morning when he was tipped off by his informer without first undertaking a surveillance. She finds unbelievable the fact that there was no mission order for the buy-bust operation and that the police officers began the operation merely upon the suggestion of their alleged informer and without the written order of their superior officer. She suggests that the informer should have been presented as a prosecution witness considering that not only did he act as an intermediary of Constantino and Panlaque but also posed as the buyer.

To further discredit Panlaque's testimony, the accused points out inconsistencies in his testimony regarding details in the alleged sales transaction, like whether or not she was still holding the money when she delivered the shabu to Panlaque. She also brands as incredible Panlaque's statement that a "piso" worth of shabu in street parlance means one hundred pesos. Insisting that she was a victim of a frame-up, she claims that there was no other shabu allegedly recovered from her except that which was purportedly sold to Panlaque. If she were indeed a pusher, nothing could have stopped the police from conducting a search of her house where the drugs were allegedly kept.

In its brief, the appellee prays for the affirmance of the lower court's decision as the guilt of the accused "has been established to a moral and legal certainty." [8]

The issue in this case is factual and primarily concerns the credibility of the witnesses. Settled is the rule that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless the trial court has plainly overlooked certain facts or circumstances of substance and value, which if considered might affect the result of the case. [9]

After a painstaking review of the records and the evidence adduced, we are convinced that the factual findings of the trial court are firmly supported by the evidence and that no cogent reason exists for disturbing such findings.

We find that an actual buy-bust operation was conducted wherein the accused was caught redhanded selling "shabu." It is conceded that no prior surveillance was conducted before the buy-bust operation. However, the accused was identified and described by the informer. Panlaque immediately sought permission to conduct a buy-bust operation in the said vicinity. [10] He was forthwith provided with the marked money to be used in the operation; [11] the marked money, a P100-peso bill bearing serial no. BV961007, was initialed at the back by Panlaque. [12] Panlaque then met the informer who accompanied him to the house of the accused, [13] and in front of the latter's house, the sale was negotiated with the informer acting as the broker between Panlaque and the accused. [14] After the sale was consummated with the delivery of the shabu by the accused to Panlaque and the latter's payment with the marked money, and after the pre-arranged signal was given by Panlaque, PO3 Orozco emerged and together with Panlaque arrested the accused. [15] The shabu was subjected to laboratory tests and was confirmed to be methamphetamine hydrochloride, a regulated drug. [16]

The inconsistencies in Panlaque's testimony as pointed out by the accused are minor and do not affect Panlaque's

credibility; they are but natural and even enhance his credibility as they indicate that his responses were honest and unrehearsed.[17] The presentation of the informer was not necessary. His testimony would merely be corroborative and may thus be dispensed with.

The accused's claim that she was framed deserves scant consideration. Such a defense requires stronger proof in the face of the presumption that public officers acted in the regular performance of their official duties.[18] Also, the defense of frame-up must be proved by clear and convincing evidence because it is of the same category as alibi.[19] More importantly, there is no showing that the policemen were actuated by any improper motive when they undertook the buy-bust operation and arrested the accused for selling shabu. She did not assert that she had any misunderstanding with the members of the buy-bust team. Where there is no evidence and nothing to indicate that the principal witnesses for the prosecution were impelled by any improper motive, the presumption is that they were not and their testimonies are thus entitled to full faith and credit.[20] In this case, we are convinced that the guilt of the accused was proved beyond reasonable doubt.

However, the penalty imposed upon the accused must be modified in view of the new amendments introduced by R.A. No. 7659[21] to Section 15, Article III, and Section 20, Article IV of R.A. No. 6425, as amended. R.A. No. 7659 was approved on 13 December 1993 and took effect on 31 December 1993. As thus further amended, the penalty prescribed in Section 15 was changed from "life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos" to "reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos." However, pursuant to Section 17 of R.A. No. 7659, which amends Section 20 of R.A. No. 6425, the new penalty shall be applied if the quantity of the dangerous drugs involved falls within the first paragraph of the amended Section 20, and if the quantity is lower than those specified in said first paragraph, the penalty shall be from "prison correccional to reclusion perpetua." The pertinent portion of the amended Section 20 reads as follows:

"SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instrument of the Crime. -- The penalties for offenses under Section 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:

x x x

3. 200 grams or more of shabu or methylamphetamine hydrochloride;

x x x

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."

The penalty then in Section 15 is now based on the quantity of the regulated drugs involved, except where the victim is a minor or where the regulated drug involved in any offense under Section 15 is the proximate cause of the death of the victim, in which case the maximum penalty prescribed in Section 15 shall be imposed regardless of the quantity of the regulated drugs involved.[22]

In *People vs. Martin Simon y Sunga*,[23] decided on 29 July 1994, this Court ruled as follows:

(1) Provisions of R.A. No. 7659 which are favorable to the accused shall be given retroactive effect pursuant to Article 22 of the Revised Penal Code.

(2) Where the quantity of the dangerous drug involved is less than the quantities stated in the first paragraph of Section 20 of R.A. No. 6425, the penalty to be imposed shall range from prison correccional to reclusion temporal, and not reclusion perpetua. The reason is that there is an overlapping error, probably through oversight in the drafting, in the provisions on the penalty of reclusion perpetua as shown by its dual imposition,

i.e., as the minimum of the penalty where the quantity of the dangerous drugs involved is more than those specified in the first paragraph of the amended Section 20 and also as the maximum of the penalty where the quantity of the dangerous drugs involved is less than those so specified in the first paragraph.

3) Considering that the aforesaid penalty of prision correccional to reclusion temporal shall depend upon the quantity of the dangerous drugs involved, each of the component penalties thereof -- prision correccional, prision mayor, and reclusion temporal -- shall be considered as a principal imposable penalty depending on the quantity, such that the quantity of the drugs enumerated in the second paragraph should then be divided into three, with the resulting quotient, and double or treble the same, as the bases for determining the appropriate component penalty.

4) The modifying circumstances in the Revised Penal Code may be appreciated to determine the proper period of the corresponding imposable penalty or even to effect its reduction by one or more degrees; provided, however, that in no case should such graduation of penalties reduce the imposable penalty lower than prision correccional.

5) In appropriate instances, the Indeterminate Sentence Law shall be applied and considering that R.A. No. 7659 has unqualifiedly adopted the penalties under the Revised Penal Code with their technical signification and effects, then the crimes under the Dangerous Drugs Act shall now be considered as crimes punished by the Revised Penal Code; hence, pursuant to Section 1 of the Indeterminate Sentence Law, the indeterminate penalty which may be imposed shall be one whose maximum shall be within the range of the imposable penalty and whose minimum shall be within the range of the penalty next lower in degree to the imposable penalty.

With the foregoing as our touchstones, and it appearing from the Certification of Laboratory Result[24] signed by Sr. Inspector Tita B. Advincula, the Forensic Chemist, that the quantity of the shabu sold by the accused in this case is only 0.01 gram, the imposable penalty under the second paragraph of Section 20 of R.A. No. 6425, as further amended by Section 17 of R.A. No. 7659, should be prision correccional.

Applying the Indeterminate Sentence Law, the accused may then be sentenced to suffer an indeterminate penalty ranging from six (6) months of arresto mayor as minimum to six (6) years of prision correccional as maximum.

WHEREFORE, the challenged decision of Branch 131 of the Regional Trial Court of Kalookan City in Criminal Case No. 40241 is hereby AFFIRMED subject to the modification of the penalty. Accused-Appellant ALICIA DE LA CRUZ CONSTANTINO is hereby sentenced to suffer an indeterminate penalty ranging from Six (6) months of arresto mayor as minimum to Six (6) years of prision correccional as maximum.

Costs against accused-appellant.

SO ORDERED.

Bellosillo, Quiason, and Kapunan, JJ., concur.

Cruz, J., (Chairman), on official leave.

[1] Original Records (OR), 129-132; Rollo, 9-12. Per Judge Antonio J. Fineza.

[2] OR, 1.

[3] Id., 3-4.

[4] Id., 7.

[5] OR, 129-131; Rollo, 9-11.

[6] Rollo, 71-73.

[7] OR, 131; Rollo, 11.

[8] Rollo, 79.

[9] *People vs. Pascual*, 208 SCRA 393 [1992]; *People vs. Garcia*, 209 SCRA 164 [1992]; *People vs. Florida*, 214 SCRA 227 [1992].

[10] TSN, 17 November 1992, 4-5.

[11] *Id.*, 5-6.

[12] OR, 20; Exhibit "A."

[13] TSN, 17 November 1992, *op. cit.*, 6-7.

[14] *Id.*, 7-8.

[15] *Id.*, 9.

[16] OR, 24; Exhibit "E."

[17] *People vs. Barba*, 203 SCRA 436 [1991]; *People vs. De los Reyes*, 203 SCRA 707 [1991]; *People vs. Martinado*, 214 SCRA 712 [1992].

[18] *People vs. Macuto*, 176 SCRA 762 [1989]; *People vs. Como*, 202 SCRA 200 [1991]; *People vs. Francisco*, 213 SCRA 746 [1992].

[19] *People vs. Fernandez*, 209 SCRA 1 [1992].

[20] *People vs. Simon*, 209 SCRA 148 [1992].

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

[22] Section 15, second paragraph, as amended by R.A. No. 7659. See also Section 4, second paragraph; Section 5, second and third paragraphs; and Section 15-a, second and third paragraphs.

[23] G.R. No. 93028.

[24] Exhibit "C," OR, 22.

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