

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORMANDO DEL ROSARIO Y LOPEZ, ACCUSED-APPELLANT.

G.R. No. 109633. July 20, 1994

Ponente: MELO, J.

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MELO, J.:

Normando del Rosario was charged before Branch 17 of the Regional Trial Court of the Fourth Judicial Region stationed in Cavite City with Illegal Possession of Firearm and Ammunitions in Criminal Case No. 236-91 and Illegal Sale of Regulated Drugs in Criminal Case No. 237-91, under two informations reading, respectively, as follows:

Criminal Case No. 236-91

That on or about September 4, 1991, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did, then and there, willfully, unlawfully, feloniously and knowingly have in his possession and control a homemade (paltik)

caliber 22 revolver with three (3) live ammunition.

Contrary to law.

Criminal Case No. 237-91

That on or about September 4, 1991, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did, then and there, willfully, unlawfully, feloniously and knowingly sell to a poseur buyer an aluminum foil containing Methamphetamine Hydrochloride also known as "Shabu", a regulated drug.

Contrary to law.

(pp. 20-21, Rollo.)

Upon arraignment, accused-appellant pleaded not guilty to both charges, and after joint trial of the two cases, the court a quo rendered a decision, the dispositive portion of which reads :

WHEREFORE, in view of the foregoing, the Court finds the accused Normando del Rosario y Lopez guilty beyond reasonable doubt in the above-entitled cases and he is hereby sentenced to undergo imprisonment: in Crim. Case No. 236-91 for Violation of P.D. 1866 of Seventeen (17) years, Four (4) months and One (1) day of reclusion temporal, as minimum to Twenty (20) years of reclusion temporal, as maximum and in Crim. Case No. 237-91 for a Violation of Section 15, Article III of Republic Act 6425, as amended of life imprisonment and to pay a fine of P30,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs in both cases.

The shabu, the One Hundred Peso bill and other paraphernalia are hereby ordered confiscated in favor of the government.

(pp. 28-29, Rollo.)

From said decision, the instant appeal has been interposed.

The prosecution's version of the case, as set forth in appellee's brief, is as follows:

Upon application of SPO3 Raymundo Untiveros of the Philippine National Police (PNP) of Cavite City, Regional Trial Court Judge Arturo de Guia issued in the morning of September 4, 1991 a search warrant (Exh. T, p. 50, Rec.- Crim. Case No. 237-91) authorizing the search and seizure of an "undetermined quantity of Methamphetamine Hydrochloride commonly known as shabu and its paraphernalias" in the premises of appellant's house located at 828 R. Basa St., San Roque, Cavite City. However, the search warrant was not implemented immediately due to the lack of police personnel to form the raiding team (pp. 4, 7, tsn., Feb. 4, 1992).

At about 9 o'clock in the evening of that day, a raiding team was finally organized. SPO3 Untiveros headed the raiding team with PO3 Rogelio Francisco, SPO1 Eduardo Novero, SPO3 Reynaldo de la Cruz, PO1 Carlito Barbuco, PO3 Onrubio and SPO2 Villegas as members (pp. 5, 10, tsn., Feb. 4, 1992; p. 7, tsn., Dec. 11, 1991).

In the final briefing of the raiding team at the police station, it was agreed upon that PO1 Venerando Luna will buy shabu from appellant and after his return from appellant's house, the raiding team will implement the search warrant (p. 10, tsn., Feb. 4, 1992; pp. 17-18, tsn., Dec. 11, 1991). A marked money consisting of a P100 bill bearing serial no. PQ 329406 (Exh. P, p. 51, Rec.) was given by the Station Commander to PO1 Luna and entered in the police logbook (p. 12, Feb. 4, 1992). PO1 Luna with a companion proceeded to appellant's house to implement the search warrant. Barangay Capt. Mague, Norma del Rosario and appellant witnessed the search at appellant's house (p. 10, tsn., Dec. 11, 1991). SPO3 de la Cruz and PO3 Francisco found a black canister containing shabu, and aluminum foil, a paltik .22 caliber (Exh. O) atop the TV set, three used ammunitions in a cup and three wallets (Exhs. Q, R, S), one containing the marked money (Exh. P; pp. 11-12, tsn., Dec. 11, 1992). SPO1 Novero found inside a show box aluminum foils, napkins and a burner (p. 9, tsn., March 11, 1992). SPO3 de la Cruz turned over the wallet containing the marked money to PO3 Onrubio (p. 8, tsn., Jan. 7, 1992). The seized items were photographed thereat by Fred Agana and then turned over to PO3 Onrubio (pp. 8, 32, tsn., Jan. 7, 1992). SPO3 Untiveros issued receipts (Exhs. V, V-1, pp. 53-54, Rec.) for the seized items with Barangay Capt. Mague and appellant's sister Norma as signing witnesses. He also made a return (Exh. U, p. 52, Rec.) of the seized items to the court (pp. 11-155, tsn., Feb. 18, 1992).

At police station, the seized items were taped and initialed by SPO3 de la Cruz (p. 33, tsn., Jan. 7, 1992). The next day, SPO4 Pilapil, through PO1 Barbuco, forwarded to NBI Forensic Chemist Mary Ann Aranas for laboratory analysis the aluminum foil (Exhs. A, J, pp. 37, 46, Rec.) containing suspected shabu bought by PO1 Luna from appellant in the buy-bust operation as well as the aluminum foils (Exhs. G, K, pp. 43, 47, Rec.) containing suspected marijuana which were confiscated by virtue of the search warrant.

The findings of NBI Forensic Chemist Aranas disclosed that all the specimen submitted to her for laboratory analysis by SPO1 Pilapil, thru PO1 Barbuco, gave positive results for Methamphetamine Hydrochloride (pp. 2-9, tsn., Dec. 3, 1991; Exh. B, C, H, I, pp. 38, 39, 44, 45, Rec.).

(pp. 102-105, Rollo.)

Carefully evaluating the evidence on record, we believe that the prosecution has failed to prove the guilt of accused-appellant. Much is to be desired in the manner the police authorities effected the arrest of accused-appellant and the same observation may be made with regard to the way the prosecution conducted its case.

Foremost among the inadequacies of the prosecution is its failure to call to the witness stand PO1 Venerando Luna, the alleged poseur-buyer. There is, thus, a total absence of evidence to establish the purported sale of shabu

by accused-appellant to Venerando Luna, the supposed poseur-buyer. The omission to present the poseur-buyer casts serious doubts that an illegal sale of a dangerous drug actually took place.

The trial court gave much weight to the testimonies of the police members of the buy-bust operation. However, the prosecution did not present as witness the supposed poseur-buyer. Such omission casts serious doubt on appellant's guilt because without the testimony of the poseur-buyer, there is no convincing evidence to show that appellant sold marijuana. The testimonies of the rest of the buy-bust operation are hearsay in view of the fact that the poseur-buyer was never presented at the trial. There was even no testimony that when the accused-appellant handed the stuff to the poseur-buyer that the latter in turn handed the marked money. The failure of the prosecution to present the alleged buyer of the marijuana was a fatal flaw in the case against the accused.

(People vs. Fulgarillas, 212 SCRA 76, 80 [1992])

The testimony of prosecution witness PO3 Rogelio Francisco that Veneracion Luna, the alleged poseur-buyer, bought shabu from accused-appellant was derived solely from what Luna supposedly told him (pp. 19-20, tsn., December 11, 1991) and, therefore, is patently hearsay evidence, without any evidentiary weight whatsoever. Likewise, the statements of prosecution witnesses Policemen Reynaldo de la Cruz, Raymundo Untiveros, and Eduardo Novera, Jr. as to the alleged sale of shabu are hearsay, without weight, as all of them were not present during the alleged sale.

According to the version of the prosecution, during the alleged buy-bust operation, accused-appellant handed over to Veneracion Luna, the alleged poseur-buyer, a quantity of shabu, and Luna in turn paid accused-appellant a marked P100 bill and then returned to the police station and informed the raiding team that he had already bought the shabu from accused-appellant. Thereupon, the raiding team proceeded to the house of accused-appellant to implement the search warrant. The version of the prosecution is highly incredible. The record is devoid of any reason why the police officers did not make any attempt to arrest accused-appellant at the time he allegedly sold the shabu to Veneracion Luna who was accompanied by another police officer. That was the opportune moment to arrest accused-appellant. The version foisted by the prosecution upon this Court is contrary to human experience in the ordinary course of human conduct. The usual procedure in a buy-bust operation is for the police officers to arrest the pusher of drugs at the very moment he hands over the dangerous drug to the poseur-buyer. That is the very reason why such a police operation is called a "buy-bust" operation. The police poseur-buyer "buys" dangerous drugs from the pusher and "busts" (arrests) him the moment the pusher hands over the drug to the police officer.

We thus entertain serious doubts that the shabu contained in a small canister was actually seized or confiscated at the residence of accused-appellant. In consequence, the manner the police officers conducted the subsequent and much-delayed search is highly irregular. Upon barging into the residence of accused-appellant, the police officers found him lying down and they immediately arrested and detained him in the living room while they searched the other parts of the house. Although they fetched two persons to witness the search, the witnesses were called in only after the policemen had already entered accused-appellant's residence (pp. 22-23, tsn, December 11, 1991), and, therefore, the policemen had more than ample time to plant the shabu. Corollary to the constitutional precept that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved (Sec. 14(2), Article III, Constitution of the Republic of the Philippines) is the rule that in order to convict an accused the circumstances of the case must exclude all and each and every hypothesis consistent with his innocence (People vs. Tanchoco; 76 Phil. 463 [1946]; People vs. Constante, 12 SCRA 653 [1964]; People vs. Jara, 144 SCRA 516 [1986]). The facts of the case do not rule out the hypothesis that accused-appellant is innocent.

At any rate, accused-appellant cannot be convicted of possession of the shabu contained in a canister and

allegedly seized at his house, for the charge against him was for selling shabu with the information alleging that the "accused, without legal authority did . . . sell to a poseur buyer an aluminum foil containing Methamphetamine Hydrochloride. . .". Sale is totally different from possession. Article 1458 of the Civil Code defines sale as a contract whereby "one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent", while "possession is the holding of a thing or the enjoyment of a right" as defined by Article 523 of the Civil Code. Accused-appellant cannot be convicted of a crime which is not charged in the information for to do so would deny him the due process of law (People vs. Despavellador, 1 SCRA 205 [1961]; People vs. Mori, 55 SCRA 382 [1974]).

Neither can accused-appellant be convicted of illegal possession of firearm and ammunition. The search warrant implemented by the raiding party authorized only the search and seizure of ". . . the described quantity of Methamphetamine Hydrochloride commonly known as shabu and its paraphernalia" (Exh. O, p. 50, original record). Thus, the raiding party was authorized to seize only shabu and paraphernalia for the use thereof and no other. A search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to a crime. The Constitution itself (Section 2, Article III) and the Rules of Court (Section 3, Rule 126) specifically mandate that the search warrant must particularly describe the things to be seized. Thus, the search warrant was no authority for the police officers to seize the firearm which was not mentioned, much less described with particularity, in the search warrant. Neither may it be maintained that the gun was seized in the course of an arrest, for as earlier observed, accused-appellant's arrest was far from regular and legal. Said firearm, having been illegally seized, the same is not admissible in evidence (Stonehill vs. Diokno, 20 SCRA 383 [1967]). The Constitution expressly ordains the exclusion in evidence of illegally seized articles.

Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

(Section 3[2], Article III, Constitution of the Republic of the Philippines).

With the exclusion in evidence of the illegally seized firearm, there is, therefore, a total absence of evidence to support the charge of illegal possession of firearm, against accused-appellant.

The same may be said of the charge of illegal possession of ammunition.

WHEREFORE, the decision appealed from is hereby REVERSED and accused-appellant is hereby ACQUITTED in Criminal Case No. 236-91 and Criminal Case No. 237-91.

The immediate release of accused-appellant is hereby ordered unless there exists a pending valid cause against him.

The shabu, the marked P100 bill, firearm, and ammunition are hereby ordered confiscated in favor of the government.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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