

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS TRANCA Y ARELLANO, ACCUSED-APPELLANT.

G.R. No. 110357. August 17, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In an information filed on 10 May 1991 with the Regional Trial Court (RTC) of Makati, accused Carlos Tranca y Arellano was charged with the violation of Section 15, Article III of R.A. No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972. The accusatory portion of the information reads:

"That on or about 07 May 1991, in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of the Honorable Court, the above-named accused, without the corresponding license, prescription or being authorized by law, did, then and there, willfully, unlawfully and feloniously sell, deliver and distribute Methamphetamine Hydrochloride (shabu), which is a regulated drug, in violation of the above-cited law." [1]

The case was docketed as Criminal Case No. 2574 and assigned to Branch 136 of the said court.

At the trial of the case on its merits after the accused had pleaded not guilty at his arraignment on 25 October 1991, [2] the prosecution presented as witnesses for its evidence in chief Sgt. Jose Latumbo of the National Capital Region NARCOM Unit (NCRNU) with office at Camp Crame, Quezon City, SPO1 Francisco Matundan, Police Lt. Julita De Villa, and Teresita Alberto, and presented in rebuttal SPO1 Francisco Matundan and SPO3 Albert San Jose. The accused took the witness stand and presented his sister, Clarita Cheng, as his witness.

Through the testimonies of Sgt. Jose Latumbo and SPO1 Francisco Matundan, the prosecution established the following facts:

On 6 May 1991 at 11:00 p.m., a "confidential agent" or informer went to the office of the NCRNU and proceeded to the desk of their superior, Capt. Jonathan Miano. Sgt. Jose Latumbo, SPO3 Oliver Tugade, SPO2 Albert San Jose, SPO1 Francisco Matundan, and PO3 Lilia Ochia were summoned by Capt. Miano to a briefing. The latter told them that the informer had revealed that a certain "Jon-Jon" (later identified as the accused) was selling shabu along Kalayaan Avenue, Makati, Metro Manila. Capt. Miano then formed a buy-bust team with himself as the team leader, Sgt. Latumbo as the poseur-buyer, and the rest, including the informer, forming the support group. Capt. Miano gave to Sgt. Latumbo a P100 bill with serial number SN886097 (Exhibit "B") and which had been dusted with fluorescent powder to be used in the buy-bust operation.

The team, riding in two cars, then proceeded to the target area. At the corner of Kalayaan Avenue and J.B. Roxas Street, the informer spotted the accused, who was standing in front of a house, and pointed him out to the team members. The team then circled back and alighted from their vehicles. As planned, Sgt. Latumbo and the informer approached the accused while the rest of the team took vantage points so as to observe the operation and close in at the opportune time.

The informer introduced Sgt. Latumbo to the accused and told the latter that his companion was interested in

buying shabu. The informer then asked the accused if he had any for sale. The accused answered in the affirmative and asked for the quantity to be bought. Sgt. Latumbo replied, "Pare, tapatan mo na lang itong piso ko." (In illegal drug parlance, "piso" means one hundred pesos) The accused momentarily left the pair and entered his house. When the accused emerged, he gave a package (Exhibit "F--2") to Sgt. Latumbo who in turn handed to the accused the P100 marked money. Sgt. Latumbo examined the package he received and upon ascertaining that it was really shabu, gave the pre-arranged signal by scratching his head. Capt. Miano and the rest of the police officers then closed in on the accused. They introduced themselves as NARCOM agents and arrested the accused. Upon interrogation by Capt. Miano, the accused voluntarily surrendered one plastic bag of shabu (Exhibit "F-3") and the P100 marked money (Exhibit "B"). The accused was handcuffed and taken to the NARCOM headquarters.[3]

On 7 May 1991, SPO1 Matundan requested Teresita Alberto, the Chief Chemist of the Physical Identification Division of the PNP Crime Laboratory Service at Camp Crame, to examine the person of the accused and a P100 bill with serial number SN886097. She exposed the P100 bill to ultraviolet radiation and found the presence of fluorescent powder thereon. She likewise exposed the person of the accused to ultraviolet radiation and discovered fluorescent powder on his hands, face, and on the opening of the left-side pocket of the white shorts that he was then wearing. The results of her examination are contained in her Physical Identification Report No. PI-073-91 (Exhibit "C").[4] On the same date, SPO1 Matundan came to the office of Police Lt. Julita De Villa, a forensic chemist at the PNP Crime Laboratory Service in Camp Crame, to deliver specimens consisting of a 0.06-gram substance wrapped in aluminum foil (Exhibit "F-2") and a 1.04-gram substance contained in a plastic bag (Exhibit "F-3"), together with a letter-request (Exhibit "E") asking her to examine the two specimens. She subjected both specimens to three different laboratory tests, viz., chemical examination, thin-layer chromatographic examination, and infrared spectrometric record analysis. Both specimens were confirmed to be methamphetamine hydrochloride (shabu), as stated in her Initial Chemistry Report No. D-464-91 dated 7 May 1991 (Exhibit "G") and her (Final) Chemistry Report No. D-464-91 (Exhibit "H").[5]

The accused denied the allegations against him and contended that he was framed by the police officers. According to him, on 6 May 1991, he was inside his house from morning till night with his parents, three sisters (one of whom is Clarita Cheng), a brother, two nieces, a nephew, his wife, and one of his neighbors. At about 11:40 p.m., while he was fixing his videocassette recorder, he heard a knocking at the front door. He called to ask who was knocking and someone replied, "Joey." As he was busy, he asked his nephew, John David, to open the door. When the latter did so, four men suddenly barged in. He did not know the men then but he later came to know that they were Police Officers Latumbo, Matundan, Tugade, and San Jose, who had said that he was "Joey." San Jose grabbed him by the collar and asked if he was "Jon-Jon." He answered that he was. They told him, "Kung puede kailangan namin ng pera, kaya magturo ka na." He replied that he knew nothing. Capt. Miano, who by then had appeared, slapped him while San Jose poked a pistol at him and said, "Kung gusto mo, patayin ka na lang namin." He, together with his parents and the occupants of the house, pleaded with the police officers to stop. He was then brought out of the house by the men. He wanted to bring his sister, Clarita Cheng, with him but she was not allowed to board a police vehicle. He saw Matundan talking to her sister. Although he could not hear what they were saying, he noticed his sister giving some money to Matundan. He was first brought to a damaged building at the Metropolitan along Ayala Avenue, Makati, where he was made to alight and talk to Capt. Miano who told him to point to someone selling shabu; he answered that he knew no one selling shabu. After half an hour, he was brought to the NARCOM headquarters at Camp Crame.

At 10:40 a.m. the following day, he was investigated by Matundan. After he was investigated, he was made to stand up and place his hands behind his back after which he was handcuffed. Latumbo then got a P100 bill from a drawer and wiped this on the accused's hands and left pocket of his shorts. His handcuffs were then removed and

he was brought back to his cell. After thirty minutes, he was brought to the PNP Crime Laboratory for ultraviolet ray examination and then returned to his cell.[6]

Clarita Cheng's testimony corroborates that of the accused, his brother. She declared that she asked the police officers why they were treating her brother like that and told them that if they do not believe him, they should rather just kill him. She wanted to accompany her brother but they would not let her. Matundan told her not to worry because her brother would be brought back. He asked from her P1,000.00 for gasoline which she gave. His brother, however, was never returned. She searched for him and found that he was detained at Camp Crame.[7]

On rebuttal, SPO3 San Jose and SPO1 Matundan denied that they barged into the accused's house and illegally arrested him. SPO1 Matundan denied that he received P1,000.00 from Clarita Cheng. SPO3 San Jose also denied that he wiped a P100 bill on the accused's hands and pocket while the latter was detained.[8]

On 23 March 1993, the trial court promulgated its decision[9] finding the accused guilty as charged and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P30,000.00.

The accused appealed the decision to this Court. He asseverates that the constitutional presumption of innocence in his favor was not overcome by proof of guilt beyond reasonable doubt.

After assiduously going over the appellant's brief and the records of this case, we find no reason to overturn the trial court's judgment of conviction.

The trial court found the testimony given by the prosecution witnesses to be more credible and logical. It said that the prosecution witnesses "testified candidly and in a straightforward manner that exuded all the marks of truthfulness." [10]

Long settled in criminal jurisprudence 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 it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[11] We do not find any such oversight on the part of the trial court.

The NARCOM agents have in their favor the presumption of regularity in the performance of their official duties.[12] The accused was not able to prove that the police officers had any improper or ulterior motive in arresting him. The police officers are thus presumed to have regularly performed their official duty in the absence of any evidence to the contrary. The accused's allegation that the policemen barged into his house and demanded that he point to anybody selling drugs is somewhat hard to believe. As noted by the trial court:

"The ... version advanced by the accused and his sister is not only by itself weak and easily contrived, it suffers in logic and cause. Why would police officers barge into a private dwelling in the middle of the night only to force somebody to inform on unnamed drug dealers? They could much easier pick somebody on a street at a more convenient time when their target is alone and away from his family. And it is not logical that they would do it to extort money from the accused since by his own testimony none was demanded from the accused. As such, the defense raised merits scant considerations.[13]

Likewise, his contention that the marked money was wiped on his hands and pocket was supported by nothing more than his bare allegation. We have stated that an allegation that one was framed can be made with ease. That allegation must therefore be proved by clear and convincing evidence. The presumption that law enforcers have regularly performed their duties performance requires that proof of a frame-up must be strong.[14]

The accused also assails the fact that there was no prior surveillance before the alleged entrapment was effected

and contends that this casts doubt on the regularity of the police operation. This contention is untenable. A prior surveillance is not a prerequisite for the validity of an entrapment operation. There is no rigid or textbook method of conducting buy-bust operations.[15] Flexibility is a trait of good police work. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.

The accused also harps on the fact that there was no mission order for the buy-bust operation and that there was no investigation report made after the operation. A mission order is not an essential requisite for a valid buy-bust operation. The execution of an investigation report is likewise not indispensable considering further that SPO3 San Jose had testified that he prepared the booking sheet, receipt of property seized, and the affidavit of arrest.[16] To ask that every buy-bust operation be conducted in a textbook or blue ribbon manner is to ask for too much from our law enforcers.

The defense questions the non-presentation of the informer. There is no merit in this objection. The testimony of the informer would at best be corroborative since the testimonies of Sgt. Latumbo and SPO1 Matundan had sufficiently established how the crime was committed. The testimony or identity of the informer may be dispensed with since his narration would be merely corroborative and cumulative with that of the poseur-buyer who was himself presented and who took the witness stand for the precise purpose of attesting to the sale of the illegal drug.[17]

The defense contends that the right of the accused against self-incrimination was violated when he was made to undergo an ultraviolet ray examination. The defense also argues that Chief Chemist Teresita Alberto failed to inform the accused of his right to counsel before subjecting him to the examination. These contentions are without merit. What is prohibited by the constitutional guarantee against self-incrimination is the use of physical or moral compulsion to extort communication from the witness, not an inclusion of his body in evidence, when it may be material.[18] Stated otherwise, it is simply a prohibition against legal process to extract from the defendant's own lips, against his will, an admission of guilt.[19] Nor can the subjection of the accused's body to ultraviolet radiation, in order to determine the presence of ultraviolet powder, be considered a custodial investigation so as to warrant the presence of counsel.

In fine, we affirm the finding of the trial court that the accused was caught in flagrante selling shabu to the members of the buy-bust team. The penalty imposed upon the accused, however, must be modified in view of the new amendments introduced by R.A. No. 7659[20] 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 would be lower than that specified in said first paragraph, the penalty shall be from "prision 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 prision 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.[21]

In *People vs. Martin Simon y Sunga*, [22] 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 prision 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 Chemistry Report No. D-464-91 (Exhibit "H") [23] signed by Police Lt. Julita T. De Villa, PNP Forensic Chemist, that the quantity of the shabu recovered from the accused in this case is only 1.10 grams, 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 136 of the Regional Trial Court of Makati in Criminal Case No. 2754 is hereby **AFFIRMED** subject to the modification of the penalty. Accused **CARLOS TRANCA Y ARELLANO** 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 the accused.

SO ORDERED.

Bellosillo, Quiason, and Kapunan, JJ., concur.
Cruz, J., (Chairman), on official leave.

[1] Original Records (OR), 1; Rollo, 6.

[2] OR, 38.

[3] TSN, 22 July 1992, 2-11; TSN, 18 November 1992, 1-10.

[4] TSN, 11 June 1992, 2-9.

[5] Id., 15-24.

[6] TSN, 23 December 1992, 2-8.

[7] TSN, 17 December 1992, 4-11.

[8] TSN, 2 February 1993, 2-7.

[9] OR, 296-303; Rollo, 14-20. Per Judge Francisco Donato Villanueva.

[10] OR, 302; Rollo, 19.

[11] People vs. Pascual, 208 SCRA 393 [1992]; People vs. Francisco, 213 SCRA 746 [1992].

[12] People vs. Pascual, *supra*; People vs. Fernandez, 209 SCRA 1 [1992].

[13] OR, 302; Rollo, 19.

[14] People vs. Fernandez, *supra*.

[15] People vs. Cruda, 212 SCRA 125 [1992]; People vs. Gonzales, G.R. No. 105689, 23 February 1994.

[16] TSN, 2 February 1993, 5.

[17] People vs. Marilao, 177 SCRA 271 [1989]; People vs. Rumeral, 200 SCRA 194 [1991]; People vs. Macasa, G.R. No. 105283, 21 January 1994.

[18] United States vs. Tan Teng, 23 Phil. 145 [1912]; United States vs. Ong Siu Hong, 36 Phil. 735 [1917]; Villafior vs. Summers, 41 Phil. 62 [1920]; People vs. Otadora, 86 Phil. 244 [1950]; People vs. Gamboa, 194 SCRA 372 [1991].

[19] United States vs. Tan Teng, *supra*.

[20] "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."

[21] 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.

[22] G.R. No. 93028.

[23] OR, 261.

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