

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO MENDIOLA Y DE LA CRUZ, ACCUSED-APPELLANT.**

G.R. No. 110778. August 04, 1994

Ponente: MELO, J.

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MELO, J.:

Charged with violation of Section 15, Article III, Republic Act No. 6425, The Dangerous Drugs Act of 1972, as amended, in an Information reading :

That on or about the 26th day of August, 1992, in Quezon City, Metro Manila, Philippines, the said accused, without any authority of law, did, then and there willfully, unlawfully and feloniously give, sell and deliver 0.18 gram of methamphetamine hydrochloride (shabu), a regulated drug, worth P700.00, Philippine Currency, to P02 RODELIO RECTO PNP, who acted as poseur buyer, in violation of the aforesaid law.

(p. 5, Rollo.)

accused, upon arraignment, pleaded not guilty.

After trial, the court a quo found him guilty as charged in a decision, the dispositive portion of which reads as follows:

ACCORDINGLY, judgment is hereby rendered finding Alejandro Mendiola y de la Cruz GUILTY beyond reasonable doubt as a principal for the crime of Violation of Section 15, R.A. 6425, also known as the Dangerous Drugs Act, and he is hereby sentenced to a jail term of life imprisonment and to pay a fine of P25,000.00.

(p. 17, Rollo.)

Accused-appellant appealed, contending that the trial court erred:

- 1) In giving credence to the testimony of the prosecution that there was a real buy-bust operation instead of a frame-up.
- 2) In convicting accused-appellant despite failure of the prosecution to prove his guilt beyond reasonable doubt.

(p. 32, Rollo.)

The prosecution's version was synthesized by the trial judge, the Honorable Jaime N. Salazar, Jr., in the following manner, which was adopted and quoted by the Solicitor General in his brief:

In the testimony of PO2 Rodelio Recto he identified the accused as the person from whom he got a small packet containing crystalline granules for P700.00 at the corner of Abbey Road and Sanyo Road, Bagbag, Novaliches, Quezon City.

PO2 Recto was assigned to act as the poseur-buyer by his sub-station commander (Sub-station 2, Sangandaan,

Novaliches, Quezon City) in a police entrapment job. He used the underworld of drugs code words 'Pa-score ng bato' in offering to buy from the accused. When the latter received the seven (7) one hundred peso marked bills and put out his hand over to PO2 Recto, he immediately grabbed the hand of the accused who offered some resistance. When the palm of Alejandro was forced open it showed a small plastic packet with white crystals inside. (Exh. 'G')

The said packet was submitted to the crime laboratory of PNP for examination. Forensic Chemist Tita Advincula testified that the granules found inside the said packet (Exh. 'G') is positive for methamphetamine hydrochloride or 'shabu').

(pp. 3-4, Appellee's Brief; p. 82, Rollo.)

On the other hand, accused-appellant's version of the case is as follows:

. . . According to the accused-appellant, in the morning of August 26, 1992, he was at his house at G-60 Abbey Road, Novaliches, Quezon City taking care of his pigs (p. 7, TSN, Dec. 1, 1992). At around 2 in the afternoon, Danding Coronel arrived at his house and invited the accused to act as "Kristo" in a cockfight at Sta. Quiteria, Sangandaan. Since he had known Danding Coronel since 1982, he acceded to his invitation and immediately proceeded to the cockpit arena.

When the two were nearing the cockpit arena, Danding Coronel told the accused that they will first pass by a police station in Sangandaan (pp. 14-15, TSN, Dec. 1, 1992). When they arrived at the police station, Danding Coronel went inside the room and accused was left in front of the desk officer (p. 16, TSN, Dec. 1, 1992). After twenty minutes, Danding Coronel went out and told the accused that he will just buy cigarettes downstairs. Since then, Danding never returned and accused-appellant never saw him anymore.

Since Danding Coronel never returned, he tried to leave the police station. But he was prevented from leaving the said station by a policeman named Isorena (p. 20, TSN, Dec. 1, 1992). Accused-appellant inquired why he was not allowed to leave and according to Isorena he was "palit ulo" for Danding Coronel who had left him behind. From that time on, he was detained and was accused of selling shabu.

(pp. 34-35, Rollo.)

A thorough examination of the record leads to the unavoidable conclusion that the evidence fails to sustain the conviction of accused-appellant.

In view of the severity of the penalty imposable for drug offenses, courts must exercise extra vigilance in trying drug cases lest an innocent person may be unduly convicted and made to suffer a long prison term or even sentenced to death (People vs. Alen, 145 SCRA 50 [1986]; People vs. William, 209 SCRA 808 [1992]). Of course, with the passage of Republic Act No. 7659, the penalty for violation of the Dangerous Drugs Act now depends on the quantity of the prohibited drug involved. Still and all, courts must exert utmost scrupulousness in evaluating the evidence of the prosecution for it is elementary that the conviction of an accused must rest on the strength of the prosecution and not on the weakness of the defense (People vs. Cruz, 215 SCRA 339 [1992]). The prosecution must overcome the constitutional presumption of innocence by proof beyond reasonable doubt; otherwise, the acquittal of the accused is ineluctably demanded. It is upon the premise that the accused-appellant's guilt has not been shown beyond reasonable doubt that we now decide this case instead of referring it to the Court of Appeals for disposition which referral may just result in the delay of the release of accused-appellant who has been detained since August, 1992.

In all prosecutions for violation of The Dangerous Drugs Act, the existence of the dangerous drug (the shabu in this case) is a sine qua non for conviction. The dangerous drug is the very corpus delicti of the crime of violation of The Dangerous Drugs Act (People vs. Macato, 176 SCRA 762 [1989]; People vs. Vocente, 188 SCRA 100

[1990]; People vs. Mariano, 191 SCRA 136 [1990]).

Examining the evidence for the prosecution, we find that the prosecution's evidence on the identification of the shabu allegedly seized from accused-appellant is demonstrably weak, unreliable, and unconvincing. Prosecution witnesses clearly failed to identify the shabu (Exhibit G) presented in court as the very shabu allegedly seized from accused-appellant. Per testimony of P02 Rodelio Recto, the alleged poseur-buyer, he did not place any identifying mark or his initials on the packet of shabu he allegedly bought or seized from accused-appellant and that it was the investigator, Sotero G. Basilio, who affixed his signature on the packet. Recto testified as follows:

ATTY. CEDILLO:

Q. Now you mentioned the word initial, did you affix your initial there?

WITNESS:

A. No sir, our investigator has initial there, sir.

ATTY. CEDILLO:

Q. The investigator is the one who affix the initial?

WITNESS:

A. Yes sir.

ATTY. CEDILLO:

Q. That was you were the one turn over to him?

WITNESS:

A. Yes, sir.

ATTY. CEDILLO:

Q. How about you, you did not affix your initial here?

WITNESS:

A. No sir.

ATTY. CEDILLO:

Q. Why?

WITNESS:

A. Because the duty of the investigator is to give it to the laboratory, to bring that to the laboratory and to sign that.

ATTY. CEDILLO:

Q. Now, actually, from whom or who actually recovered this one, this specimen, from the accused?

WITNESS:

A. I am the one sir.

ATTY. CEDILLO:

Q. And that is what you said, it cost P700.00 am I correct?

WITNESS:

A. Yes sir.

ATTY. CEDILLO:

Q. So, you said it was the investigator who indicated this initial whose initial is this do you know?

WITNESS:

A. S.G.B.

ATTY. CEDILLO:

Q. What is that SGB stands for?

WITNESS:

A. Sotero G. Basilio.

ATTY. CEDILLO:

Q. Was that SGB found there?

WITNESS:

A. Yes sir.

ATTY. CEDILLO:

Is that SGB (Counsel referring to the initial in Exh. G for the prosecution)?

WITNESS:

A. Yes sir.

ATTY. CEDILLO:

Manifestation your Honor, there is no such thing as SGB initial found in this plastic transparent bag contain of this specimen, that will be all, your Honor.

(pp. 3-16, tsn, Oct. 6, 1992.)

However, when Sotero G. Basilio, the investigator, was called to the witness stand, he testified that he could not find his initials on the plastic bag of shabu (Exhibit G) submitted in court. He thus testified:

FIS. PONFERRADA:

Q. I am showing to you this plastic transparent bag, please examine this and tell us what relation is that to the evidence presented to you during the investigation, that was already marked as Exh. G?

ATTY. CEDILLO:

Witness is trying to examine the specimen try to find out if there is marking there.

WITNESS:

A. I am not sure if this was the one presented to me because I remember I wrote my signature on a plastic bag, sir.

FIS. PONFERRADA:

Q. Did you find your signature there?

WITNESS:

I have no signature, sir.

(pp. 24-25, tsn, Oct. 6, 1992.)

The above declarations, ungrammatical as they may be, amply demonstrate the inability of the investigator to positively and categorically identify the shabu presented in court as the very shabu sold by or seized from accused-appellant. Withal, the prosecution has failed to prove the indispensable element of corpus delicti of the crime, which deficiency engenders in the mind of the Court serious doubts as to the guilt of accused-appellant. The constitutional presumption of innocence has thus not been overcome by the prosecution.

Still in fractured fashion, the prosecution attempted through Investigator Sotero G. Basilio to establish that the plastic bag of shabu (Exhibit G) is similar to the shabu seized from accused-appellant.

FISCAL PONFERRADA:

Q. Please examine this and tell us how to compare, what is the relation of that and tell the court the description of that thing given to you during the investigation and that Exh. G now?

ATTY. CEDILLO:

Well your Honor, with the sub-answer, he is not sure.

FIS. PONFERRADA:

Q. Please examine the same?

WITNESS:

A. This is similar thing to the evidence which presented to me.

FIS. PONFERRADA:

Q. When you said similar, what do you mean by that?

WITNESS:

A. Similarity of the plastic bag and the contents like the suspected shabu which was recovered.

(pp. 26-27, tsn, Oct. 6, 1992.)

Considering that in criminal cases, proof beyond reasonable doubt is required to establish the guilt of an accused, similarity in identifying the corpus delicti is insufficient; unwavering exactitude in identification is necessary. Every fact necessary to constitute the crime must be established by proof beyond reasonable doubt (*People vs. Garcia*, 215 SCRA 349 [1992]).

In view of the foregoing findings, there is no need to discuss the other assigned errors raised by accused-appellant. However, we wish to state that, on account of the weakness of the prosecution evidence, the alibi of accused-appellant that on the morning of August 26, 1992 up to 1 p.m. of that day he was in his house (the buy-bust operation allegedly took place at around 11 p.m. of August 26, 1992), assumes weight and significance (*People vs. Jalon*, 215 SCRA 680 [1992]). His alibi is corroborated not only by his wife and brother but also by Eusebio Agapito (p. 9, t.s.n., November 9, 1992) and Sofia Fernando (p. 27, November 9, 1992), who are totally

unrelated to him.

WHEREFORE, the decision of the trial court is hereby REVERSED and accused-appellant is hereby ACQUITTED.

Accused-appellant is hereby ordered immediately released unless there is a pending valid cause against him.

The shabu (Exhibit G) is hereby ordered confiscated in favor of the government.

SO ORDERED.

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

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