

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO DE VERA Y SANTOS @ BOYET, ACCUSED-APPELLANT.*G.R. No. 112006. July 07, 1997*

Ponente: FRANCISCO, J.

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This case involves the illegal sale of shabu.

The facts lucidly summarized and given credence by the trial court are as follows:[1]

Prosecution witness SPO1 Antonio Paras, a policeman of Kalookan City, testified that he and another policeman Renato Dizon were standing at the corner of Osusan and Martinez Streets, Kalookan City at 9:30 o'clock in the evening of March 1, 1993 (p. 3, tsn June 22, 1993). They were conducting a buy-bust operation on the alleged drugs activity of the accused upon the instruction of police Chief Inspector Edgar Paulino when an informant told them that a certain "Boyot" whose complete name is Renato de Vera was selling shabu [id.]. Thereafter, the informant accompanied him and his companion to the place where the accused was conducting the alleged illegal activity of selling shabu (p. 4, tsn, id.). The witness further alleged that upon reaching their place, he hid himself at the strategic place and Renato Dizon posed himself as buyer of shabu (id.). He saw when Renato Dizon handed over the buy bust money to the accused (p. 6, tsn, id.). After the lapse of three minutes, the shabu was in turn delivered by the accused to the poseur buyer, Renato Dizon (id.). Consequently, Renato Dizon handcuffed the accused and he (Paras) assisted the former in arresting the accused [id.]. When asked where the shabu came from, the accused informed the two police officers that he only acted as a "runner-seller" of certain "Rene Pasay" and "Boy Tinga", both of Maypajo, Kalookan City [id.]. The accused was eventually brought to the headquarters where he gave his statement voluntarily (p. 9, tsn, id.). He prepared the referral slip (Exhs "H" and "H-1") to the NBI with respect to the specimens (Exhs. "D" to "D-4") which were confiscated from the accused. He likewise executed an affidavit (Exhs. "E" to "E-2") relative to the case.

The second witness, PO3 Renato Dizon is a policeman assigned at the CIP of Kalookan City, located at Tanique Street, Dagat-Dagatan Kalookan City (p. 2, tsn, July 13, 1993). He testified that at about 9:30 o'clock in the evening of March 1, 1993, he was with SPO1 Antonio Paras at Martinez street corner Osusan street, Kalookan City and was surveilling (sic) the place which was reported to be drugs[-] infested area (p. 3, tsn, id.). Upon instruction of the chief of police, Edgar Paulino, they proceeded at the corner of Martinez street cor Osusan street (p. 4, tsn, id.). While standing thereat, an informant approached and informed them that a certain "Boyot" was selling shabu [id.]. He was introduced by the informant to the accused as a buyer, by uttering the words in the vernacular, to wit; "I-Iscore ito" (pp. 8-9, tsn id.). He gave the buy-bust money in the amount of P200.00 in 2 pieces of P100.00 bill (p. 9, tsn, id.). He was told by the accused to wait for a while and thereupon the latter left the place but he returned after the lapse of three to four minutes and handed to him a small sachet containing shabu (pp. 9-10, tsn, id.). Consequently, he held the right hand of the accused and his companion Antonio Paras, who was hiding nearby rush (sic) to him and helped him in arresting the accused (pp. 10-11, tsn, i

d). The white crystalline substance taken from the appellant which weighs less than one (1) gram,[2] upon laboratory examination by the NBI, was found positive of the regulated drug of metamphetamine hydrochloride or

shabu.[3]

Thereafter, appellant was charged with[4] and tried for the unauthorized sale of shabu in violation of Section 15 of R.A. 6425.[5] Over his defenses of denial and alibi, the trial court in a decision dated August 10, 1993 convicted appellant of the crime charged and sentenced him to suffer life imprisonment and to pay the fine of P20,000.00,[6] which were the penalties prescribed by law at the time of the rendition of judgment a quo. Hence, appellant interposes this appeal arguing that the trial court erred in finding that the prosecution had proven his guilt beyond reasonable doubt as well as in giving credence to the testimony to the prosecution's witnesses.[7]

After examining the records, the Court is convinced that the errors imputed to the trial court bear no merit.

What appellant assails are fundamentally questions of facts and credibility. Settled is the rule that the factual findings of the trial court, when supported by substantial evidence on record carries great weight on appeal absent any material facts or circumstances that were overlooked or disregarded by the trial court which if considered might vary the outcome of the case.[8] Likewise, the appraisal and evaluation of the credibility of witnesses below is herein upheld not only because of the trial court's unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand, which opportunity is denied to the reviewing court[9] but more so since the ulterior motives appellant ascribes on the part of the arresting officers are self-serving and deserve no weight.

The elements necessary in every prosecution for the illegal sale of shabu are:

- (1) identity of the buyer and the seller, the object, and consideration; and
- (2) the delivery of the thing sold and the payment therefor.[10]

Contrary to appellant's assertion, the prosecution had presented evidence that established both elements by the required quantum of proof i.e. guilt beyond the shadow of reasonable doubt.[11]

Appellant was positively identified by the prosecution's eyewitnesses as the person who sold to the poseur-buyer a sachet containing white crystalline substance.[12] His identity as the culprit cannot be doubted having been caught in flagrante delicto in an entrapment operation conducted by the police. Such positive identification prevails over appellant's lone, uncorroborated and weak defenses of denial and alibi.[13] Both defenses which are the common and standard ploy in most prosecutions for violation of the Dangerous Drug Act have been invariably viewed by the courts with disfavor as they can be fabricated or concocted with familiar ease.[14] In this case, appellant failed to strictly satisfy the two-fold elements of alibi respecting time and place, viz:

- a) that he was in another place at the time of the commission of the offense, and
- b) that he must demonstrate that it would be physically impossible for him to be at the locus criminis at the time of the alleged crime.[15]

Appellant's contention that he and his friend Allan Marukot were attending the wake of a certain Vivian in Mabini Extension deserves the barest consideration since said wake, assuming it is true, is only about 40 meters away from the corner of Osusan and Martinez Streets, the place where the illegal sale took place. The propinquity or short distance of the place of the wake to that of the crime scene does not foreclose the physical possibility that appellant could have easily moved to the latter place.[16] His alibi is all the more weakened by the non-representation of his alleged companion Marukot to corroborate his testimony regarding his whereabouts. Moreover, appellant's other defense of denial, like his alibi cannot be believed in the light of positive testimonies from credible eyewitnesses who are themselves active participants in the entrapment operation. Applicable herein is the rule that:

“Denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.”[17]

Appellant also contends that the prosecution had not proven that he knew he (appellant) is selling a regulated drug. Such knowledge, however, is not an element of the crime of illegal sale of shabu. Besides, horrendous traders of illegal drugs conduct their business in the dark and sell their articles in a language vague to ordinary people but clear along the avenues of the markets in the underworld. No wonder why the informant’s words “Pare, iiskur ito, baka mayroon ka?”[18] conveyed a clear idea that a poseur-buyer makes a complete offer to buy regulated drug at a certain quantity or price. When the seller accepts the offer or asks ‘how much’, it shows that he knew what is being brought from him, that he is aware of the prohibited transaction he is entering into and that he is not authorized to do so, otherwise, he would not have sold his contraband under the cloak of the night but instead exposed his business without apprehension of fear.

With respect to the corpus delicti of the crime, the same has been established with certainty and conclusiveness.[19] Appellant after leaving the poseur-buyer at the crime scene for about three to four minutes, came back and handed to the latter the sachet containing the shabu. The buyer gave appellant Two hundred pesos (P200.00) for the drug. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the “buy-bust” transaction between the entrapping officers and the appellant.[20] As shown in the laboratory examination, the white crystalline substance contained in the sachet is positive for the regulated drug of shabu. Appellant, thru counsel, even made an admission to that effect.[21]

In a vain attempt to exculpate himself from his felonious act, appellant argues that the prosecution witness (Dizon) who acted as the poseur-buyer was allegedly wrongfully motivated because the former fought with a certain person who was a nephew of the latter. The court cannot believe this excuse. Aside from the presumption that official duty has been regularly performed,[22] the testimony of said witness who is a police officer carries more weight than the negative assertion of appellant. With the proof of sale and the presentation of the corpus delicti, appellant’s conviction is in order.

As for the penalty, the life imprisonment and fine imposed on appellant by the trial court would have been correct. However, pursuant to the second paragraph of Section 20 of R.A. 6425 as amended by Section 17 of R.A. 7659 which is given retroactive application[23] being favorable to the accused and in accordance with the ruling laid down in *People v. Martin Simon*,[24] the proper penalty for the sale of less than a gram of shabu would be prision correccional. There being neither mitigating nor aggravating circumstance, the penalty should be imposed in its medium period. Applying the Indeterminate Sentence Law, the impossible penalty for appellant in lieu of ‘life imprisonment and fine’ should be modified to an imprisonment of six (6) months of arresto mayor, as the minimum, to four (4) years and two (2) months of prision correccional medium, as the maximum.[25] Notwithstanding the absence of any petition for a writ of habeas corpus or any similar judicial relief, appellant’s release from imprisonment is in order since he had already served the maximum of the impossible penalty.

WHEREFORE, premises considered, the decision of the trial court convicting appellant De Vera of the crime charged is **AFFIRMED** subject to the **MODIFICATION** that he shall suffer an indeterminate penalty of six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional medium, as maximum. However, since appellant had already served more than the maximum impossible penalty, he should be **IMMEDIATELY DISCHARGED** from confinement unless held for some other lawful cause.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, and Panganiban, JJ., concur.

Davide, Jr., J., did not take part in the deliberation; on sick leave.

[1] RTC Decision, pp. 1-2; Rollo, pp. 8-9, 80-82.

[2] 0.1597 gram.

[3] Forensic Chemistry Report of the National Bureau of Investigation - Exh. "B".

[4] Criminal Information for violation of Section 15 of R.A. 6425 filed on April 3, 1993 (RTC Records, p. 1).

[5] The Dangerous Drug Law.

[6] RTC Decision penned by Judge Adoracion C. Angeles of Branch 21, Kalookan City.

[7] Rollo, p. 27.

[8] *People v. Deniega*, 251 SCRA 626 (1995); *People v. De Leon*, 245 SCRA 538; *People v. Hilario*, 244 SCRA 633; *People v. Daquipil*, 240 SCRA 314.

[9] *Almeda v. CA and People of the Philippines*, G.R. No. 120853, March 13, 1997.

[10] *People v. Zervoulakos*, 241 SCRA 625 (1995).

[11] *People v. Pidia*, 249 SCRA 687 (1995); *People v. Tadepa*, 244 SCRA 339 (1995).

[12] See *People v. Namayan*, 316 Phil. 795.

[13] *People v. Broncano*, G.R. No. 104870, August 22, 1996; *People v. Pagcu, Jr.*, 315 Phil. 739; *People v. Lopez*, 315 Phil. 59; *People v. Miranday*, 242 SCRA 620 (1995); *People v. Villanueva*, 242 SCRA 47 (1995).

[14] *People v. Rosario*, 316 Phil. 810; *People v. Solon*, 244 SCRA 554 (1995).

[15] *People v. Tazo*, G.R. No. 118099-100, August 22, 1996; *People v. Dayson*, 242 SCRA 124 (1995); *People v. Rivera*, 242 SCRA 26 (1995); *People v. Umali*, 241 SCRA 17 (1995).

[16] *People v. Sotes*, G.R. No. 101337, August 7, 1996; *People v. Acob*, 316 Phil. 877.

[17] *People v. Belga*, 258 SCRA 583, 594 (1996); *Abadilla v. Tabiliran, Jr.*, 249 SCRA 447 (1995).

[18] TSN, Renato Dizon, July 13, 1993, pp. 8-9.

[19] See *People v. Flores*, 243 SCRA 374 (1995).

[20] *People v. Herrera*, 247 SCRA 433 (1995); *People v. Solon*, *supra*; *People v. Flores*, *supra*.

[21] TSN, Alicia Liberato, June 14, 1993, p. 3.

[22] *People v. Ong Co*, 245 SCRA 733 (1995).

[23] *People v. Ballagan*, 247 SCRA 535 (1995); *People v. Andaya*, 245 SCRA 14 (1995); *People v. Tabarno*, 242 SCRA 456 (1995); *Lamen v. Director, Bureau of Corrections*, 241 SCRA 573 (1995).

[24] 234 SCRA 555 (1994).

[25] *People v. Juatan*, G.R. No. 104378, August 20, 1996; *People v. Manalo*, 245 SCRA 493 (1995).

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