

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELIZABETH GANGUSO Y DECENA, ACCUSED-APPELLANT.

G.R. No. 115430. November 23, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The accused-appellant appeals from the joint decision[1] of Branch 114 of the Regional Trial Court (RTC) of Pasay City in Criminal Cases Nos. 92-1932 and 92-1933 convicting her of the violation of Section 15, Article III of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and of illegal possession of firearms. This decision was rendered after a motion for new trial on the ground of newly discovered evidence[2] was granted.[3] The earlier judgment of conviction was set aside.[4]

The accusatory portions of the informations under which the appellant was tried and convicted read as follows:

Criminal Case No. 92-1932

That on or about the 26th day of November, 1992 in Pasay City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, Elizabeth Ganguso y Decena, without authority of law did then and there wilfully, unlawfully and feloniously sell and deliver to another Methamphetamine Hydrochloride (shabu), a regulated drug.

Contrary to law.[5]

Criminal Case No. 92-1933

That on or about the 26th day of November, 1992 in Pasay City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, Elizabeth Ganguso y Decena with intent to use, did then and there, wilfully, unlawfully and feloniously have in her possession, custody and control a .38 cal (Paltik) revolver, without the necessary license to possess the same.

Contrary to law.[6]

The evidence for the prosecution is summarized by the trial court as follows:

That at about 7:30 in the evening of November 26, 1992, Major Juvenile Sulapas, Officer-in-charge, Dangerous Drugs Enforcement Section, Pasay City Police Station, received confidential report from an informant about rampant trafficking of drugs by a certain "Beth Tomboy", who lives at house No. 2445, Celedonia Street, Pasay City; that a buy-bust operation was planned by subject officer and a briefing conducted wherein P03 Dennis Vermug was to act as poseur-buyer, backed-up by SPO1 Lumapat, SPO1 Gabutin, P03s Mendoza and Garcia with SPO3 Fucanan as team leader; Major Sulapas provided P03 Vermug with a P500.00 bill, the serial number of which was entered in the police blotter. Proceeding to the target area aboard two (2) tricycles at about 8:10 P.M., "Beth Tomboy" was pointed at by the informant to PO3 Vermug, who lost no time in offering to buy P500.00 worth of shabu, to the suspect while the rest of the team members were observing from a distance; that "Beth

Tomboy", after accepting the money, went into an interior alley to get the stuff from a man to whom she also handed the money; that as soon as she returned, she handed an aluminum packet (Exh. "B-1-a") to PO3 Vermug who, upon executing a pre-arranged signal to his companions arrested the suspect. When frisked subsequent to the arrest by SPO2 Prudencio Lumapat, the suspect yielded a .38 caliber Paltik revolver; that PO3 Vermug ran after the man in the alley to recover the buy-bust money but failed to catch him. The suspect, who turned out to be Elizabeth Ganguso y Decena, a tomboy, was brought to Headquarters and accordingly charged of drug pushing and illegal possession of firearm. The testimony of PO3 Dennis Vermug was corroborated in material points by SPO2 Prudencio Lumapat and SPO3 Dalmacio Fucanan.

The prosecution marked and offered following documentary exhibits which the Court admitted in evidence: For Criminal Case No. 92-1932: Exhibit "A", letter request for laboratory examination; Exhibit "B", white letter envelope containing Exhibit "B-1", transparent plastic bag and Exhibit "B-1-a", aluminum foil containing shabu; Exhibit "C", certification and DDB Report No. DD 92-1439, which found the specimen positive for Methamphetamine Hydrochloride; and, Exhibit "E", affidavit of arrest (both for Crim. Cases No. 92-1932 and 92-1933). For Criminal Case No. 92-1933: Exhibit "A", FEO Certification that accused is not a licensed firearm holder; Exhibit "B", .38 caliber revolver; and Exhibit "C" and "D", live .38 caliber bullets.[7]

On the other hand, the appellant testified that at around 8:00 p.m. of 26 November 1992, she was washing clothes by the side of her house at No. 2445 Celedonia Street corner Decena Street, Pasay City. At that time, there were two other persons in her house, namely, her cousin Elvira de Leon and her cousin's maid, Ligaya Rojas. Suddenly, seven police officers barged into her house and, in her presence, searched the premises without a search warrant. They also searched her person. The policemen found nothing illegal in the house nor did they find anything on her. She was made to board a tricycle and was brought to the police station. At the station, a police officer by the name of Carbonell asked her who was selling shabu in their place, but she could not give him any name as she did not know. She denied selling shabu to PO3 Vermug. She also denied that a .38 caliber revolver was recovered from her.[8]

At the new trial, the defense presented Elvira de Leon and Lilia Magallanes, who tried to show that no firearm was confiscated from the appellant and that no buy-bust operation took place. Lilia claimed that she saw the arrival of five policemen riding on two tricycles. The policemen entered the house of the appellant without talking to anyone at the door. According to Elvira, she heard the appellant and the policemen arguing inside the house, with the former asking the policemen whether they had a warrant and the latter answering that they needed none as they were just going to ask her a few questions.

The trial court considered as credible the narration by the police witnesses of the events which led to the arrest of the accused. It disregarded the appellant's defense of alibi as well as the testimonies of her witnesses at the new trial which it found as "untruthful and contradictory to each other on material points." [9] It then convicted the accused of both charges and sentenced her as follows: (1) in Criminal Case No. 92-1932 — to suffer the penalty of life imprisonment and to pay a fine of P30,000.00, plus costs; and (2) in Criminal Case No. 92-1933 -- -to suffer an indeterminate penalty of ten years and one day of prision mayor, as minimum, to twelve years and one day, as maximum, and to pay a fine of P17,000.00, plus costs.

In this appeal, the appellant urges us to acquit her because the trial court erred

I

IN FINDING THAT THE PROSECUTION HAS FULLY MET THE TEST OF MORAL CERTAINTY AS TO THE GUILT OF THE ACCUSED ON BOTH CHARGES OF VIOLATION OF SECTION 15, ARTICLE III OF REPUBLIC ACT 6425 AND PRESIDENTIAL DECREE NO. 1866;

II

IN ADMITTING AS EVIDENCE THE .38 CALIBER [REVOLVER] (EXHIBIT "B") AGAINST THE ACCUSED DESPITE THE ABSENCE OF A BUY-BUST OPERATION JUSTIFYING WARRANTLESS ARREST UNDER SECTION 5, RULE 113 OF THE RULES OF COURT.

In the first assigned error, the appellant assails the testimonies of the prosecution witnesses as inconsistent and unconvincing. She points out that both SPO2 Lumapat and SPO3 Fucanan could not have seen the object of the transaction between her and PO3 Vermug, since they were watching from a distance. She further asserts that the absence of prior surveillance and the non-presentation of the marked money cast doubt on her guilt for the crime charged.

In her second assigned error, the appellant maintains that since her warrantless arrest did not come under Section 5, Rule 113 of the Rules of Court, the same was unlawful; hence, the warrantless search and seizure of the firearm, assuming that she had it, was also unlawful. Elsewise stated, if an arrest without a warrant is unlawful at the moment it is made, nothing that happens or is discovered afterwards can make it lawful, for the fruit of a poisoned tree is necessarily tainted.[10]

In its Brief, the Appellee, through the Office of the Solicitor General, submits that the trial court committed no error in finding the appellant guilty beyond reasonable doubt of the crimes charged but asks for a modification of the penalties imposed. It recommends that in the light of the amendments introduced by R.A. No. 7659 to R.A. No. 6425, as amended, and of the decision of this Court in *People vs. Simon*,^[11] the penalty to be imposed in Criminal Case No. 92-1932 should be an indeterminate sentence of two to four years of prision correccional.^[12] It, however, asks this Court to review and clarify its ruling in *Simon* regarding the application of penalties and then submits that the adoption in R.A. No. 7659 of the penalties in the Revised Penal Code does not make the offense under the Dangerous Drugs Act punishable under the Revised Penal Code, and that the said Act as thus further amended by R.A. No. 7659 remains a special law; hence, under the Indeterminate Sentence Law, "the imposable penalty should be that whose minimum term should not be less than the minimum prescribed by the special law (the Dangerous Drugs Act), i.e., not lower than six (6) months and one (1) day of prision correccional." The Appellee also contends that the imposable penalty in Criminal Case No. 92-1933 should be "seventeen (17) years, four (4) months and one (1) day, as minimum, to twenty (20) years, both of reclusion temporal, respectively, pursuant to the first paragraph of Section 1 of P.D. 1866."^[13]

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees.^[14] Unless his guilt is shown beyond reasonable doubt,^[15] he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.^[16] The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal.^[17] Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.^[18] The conscience must be satisfied that the accused is responsible for the offense charged .^[19]

The evidence for the prosecution has established that when the poseur-buyer, PO3 Vermug, was already in front of the appellant, the former asked her if he could buy P500.00 worth of "S" (shabu). After she received the money, she went toward the interior where she met a man to whom she handed the money. The man then gave her something. She returned to where Vermug was and gave to him that something she received from the man. Thereupon, Vermug placed it in his pocket and arrested the appellant. Thus:

Q

So when you approached her, wearing a white t-shirt, what happened next?

A

I handed P500.00 to Beth.

Q

You immediately handed to her P500.00 without telling her anything?

A

First, I talked to her and asked her if I could buy P500.00 worth of "S".

Q

How did you talk to her?

A

I approached her and told her that I was going to buy P500.00 worth of "S" and handed to her the P500.00.

Q

What are the exact words that you told her?

A

"Beth PABILI NG WORTH P500.00 NG "S".

Q

What did Beth Tomboy say if any?

A

She got the money.

Q

Without telling you anything?

A

By saying: "SANDALI LANG".

x x x

Q

After Beth received the P500.00, what did she do, if any?

A

She went inside an interior and talked with a man, a tall and well built man.

Q

How far was this man from your position?

A

More or less five (5) meters away, sir.

Q

After Beth approached this man, what happened next?

A

That man gave something to Beth.

Q

If you know what was that something handed down by the man to Beth?

A

The shabu we were buying.

Q

After the man handed Beth something as you said the shabu, what did Beth do, if any?

A

She returned to me and delivered to me the stuff.

Q

Did you receive the stuff?

A

Yes, sir.

Q

What did you do next?

A

I held my head with my left hand, as our pre-arranged signal.

Q

Where was Beth that time?

A

Just in front of me.

Q

What happened next?

A

Immediately after delivering to me the stuff, I held my head and at the same time introduced myself as police officer and held Beth, after that, my companions arrived and took hold of Beth. On my part, I ran after the man whom Beth talked to earlier.[20]

We cannot, even by any stretch of the imagination, say that the appellant was merely used by PO3 Vermug to buy shabu. In the first place, she was the target of the buy-bust operation, there having been an information received at the police station that she was engaged in selling drugs. Second, she did not know Vermug; hence, she could not be expected to oblige him by buying a dangerous drug for him. Third, it was to her that Vermug's offer to buy was made.

The version offered by the prosecution is susceptible of two interpretations though. One of which is that the appellant was engaged in the buy-and-sell of dangerous drugs. When Vermug offered to buy P500.00 worth of "S" and the appellant got the money without asking what "S" meant, it was apparent that she already understood what "S" stood for. There was, therefore, a meeting of minds upon a definite object and upon the price. The appellant's acceptance of the payment was an indication that she had given her consent to the contract of sale. It was a clear evidence that the contract between her and Vermug was perfected and was even partially fulfilled and executed.[21]

The appellant did not, however, have in her possession or disposition the object of the sale. Article 1459 of the Civil Code provides in part that the vendor must have a right to transfer the ownership of the subject sold at the time it is delivered. This means that the seller must be the owner of the thing sold at the time of delivery. But, he need not be the owner at the time of the perfection of the contract.[22] There is no doubt that the appellant had already a right to dispose of the prohibited stuff at the time she delivered it to Vermug, for ownership thereof was acquired by her from the moment it was delivered to her by the man from the interior after her payment of the price therefor.[23] Two transactions were then consummated, viz., that between the appellant and Vermug, with the appellant as the seller, and that between the appellant and the man from the interior, with the former as the buyer.

The other interpretation is that the appellant was merely acting as an agent of the supplier or seller of dangerous drugs. In either way, she is criminally liable. In the first interpretation, she is culpable for selling dangerous drugs, and in the second, for delivering such drugs. Section 15 of R.A. No. 6425, as further amended by R.A. No. 7659, provides:

SEC. 15. Sale, Administration, Dispensation, Delivery, Transportation, and Distribution of Regulated Drugs. — The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. (emphasis supplied)

The fact that Vermug did not open the aluminum foil given by the appellant to him does not destroy the evidence for the prosecution. It must be noted that when the man in the interior handed that "something" to the appellant, Vermug believed that the same was shabu, thus:

Q

After Beth approached this man, what happened next?

A

That man gave something to Beth.

Q

If you know what was that something handed down by the man to Beth?

A

The shabu we were buying.[24]

It was understandable that he did not bother to open that "something," as he was apparently in a hurry to arrest the appellant and the man from whom the stuff was obtained. He kept the stuff in his pocket, and upon reaching their office, he turned it over to Antonio Conlu, who then marked it with his initials "AC." When the latter opened the foil, Vermug saw a crystalline substance which, upon examination by the Forensic Chemist, gave a positive result for Methamphetamine Hydrochloride, confirming therefore his belief that it was shabu.

The fact that SPO2 Lumapat and SPO3 Fucanan were not able to see at close range the object of the transaction between the appellant and Vermug does not adversely affect the evidence for the prosecution. Their testimonies regarding the buy-bust operation, being merely corroborative, are not indispensable for the conviction of the appellant. Neither are prior surveillance and the presentation in evidence of the marked money. It has been held that a prior surveillance is not a prerequisite for the validity of an entrapment operation[25] especially when the buy-bust team members were accompanied to the scene by their informant.[26] The absence of the marked money neither creates a hiatus in the evidence for the prosecution so long as the sale of the dangerous drugs is adequately proven[27] and the drug subject of the transaction is presented before the court.[28]

There being proof beyond reasonable doubt that the appellant was caught in flagrante delicto in the act of selling shabu, her conviction must stand.

The penalty imposed on her should, however, be modified in view of R.A. No. 7659. Notably, the trial court's decision was rendered on 12 January 1994 and promulgated on 10 March 1994. R.A. No. 7659 took effect on 31 December 1993 yet. The trial judge must not have been aware of that law yet or was hesitant to apply it to this case. Being patently favorable to the appellant, that amendatory law should be applied retroactively to the instant case.

It is now settled that where the quantity of methamphetamine hydrochloride (shabu) is less than 200 grams, the penalty is prision correccional to reclusion temporal depending upon the quantity. The shabu sold by and confiscated from the appellant weighs 0.1954 grams only. Applying R.A. No. 7659, the Indeterminate Sentence Law, and the People vs. Simon[29] case, and there being neither aggravating nor mitigating circumstances, the proper penalty should be that within the range of arresto mayor in its medium period, as minimum, to prision correccional in its medium period, as maximum.

The submission of the Appellee that the minimum term to be imposed on the appellant should not be less than the minimum prescribed in R.A. No. 6425, as further amended by R.A. No. 7659, must be rejected. This Court's ruling on this matter in the Simon case is clear. Thus:

It is true that Section 1 of [the Indeterminate Sentence Law], after providing for indeterminate sentence for an offense under the Revised Penal Code, states that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same." We hold that this quoted portion of the section indubitably refers to an offense under a special law wherein the penalty imposed was not taken from and is without reference to the Revised Penal Code, as discussed in the preceding illustrations, such that it may be said that the "offense is punished" under that law.

There can be no sensible debate that the aforequoted rule on indeterminate sentence for offenses under special laws was necessary because of the nature of the former type of penalties under said laws which were not included or contemplated in the scale of penalties in Article 71 of the Code, hence there could be no minimum "within the range of the penalty next lower to that prescribed by the Code for the offense," as is the rule for felonies therein. x

x x

We repeat, Republic Act No. 6425, as now amended by Republic Act. No. 7659, has unqualifiedly adopted the penalties under the Revised Penal Code in their technical terms, hence with their technical signification and effects. In fact, for purposes of determining the maximum of said sentence, we have applied the provisions of the amended Section 20 of said law to arrive at prison correccional and Article 64 of the Code to impose the same in the medium period. Such offense, although provided for a special law, is now in effect punished by and under the Revised Penal Code. Correlatively, to determine the minimum, we must apply the first part of the aforesaid Section 1 which directs that "in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." (*Italics ours.*)

This Court, however, has serious doubts about the alleged confiscation of the firearm from the accused. SPO2 Lumapat declared in a cavalier fashion that he just happened to touch the accused's right waistline and felt something hard which turned out to be a rusty firearm with a string attached to its handle, and when he remarked, "O may baril ka," the accused told him that the gun was not hers. Thus:

Q

After Dennis Vermug surrendered this person who looked like a man to you, what did you do?

A

After Dennis Vermug handed to me the person of the accused I happened to touch something hard at the waistline of the suspect sir.

Q

Which waistline did you touch?

A

Right waistline sir.

Q

After you were able to touched [sic] hard object on the right waistline of the suspect, what did you do next?

A

I did not release it anymore and I took it and I found it to be a gun sir.

Q

What did you see [sic] if any to the suspect after you got the said gun from her right waistline?

A

I was only able to utter "O may baril ka."

Q

What was the reply of the suspect?

A

According to her the gun was not hers sir.

Q

Can you describe to us the gun which you recovered?

A

It was something rusty and the handle has a string sir.

Q

What kind of gun is it?

A

.38 caliber sir.[30]

Yet, team leader Fucanan testified on direct examination that it was only in their office that he actually saw the gun and learned that it was a .38 caliber. Thus:

Q

Why do you know that it is a .38 caliber?

A

We saw it in our office.[31]

According to Lumapat, the gun is somewhat rusty with a string attached to the handle. Absent any evidence of any derogatory report against her as a possessor of an unlicensed firearm, this Court finds it incredulous for the appellant to keep in her waistline a rusty firearm, the handle of which was merely tied or bound together by a copper wire. Then too, she was not even investigated on the firearm and made to sign any paper wherein she acknowledged that a firearm was taken from her. Neither did Lumapat issue her a receipt for the firearm. She should therefore be acquitted, there being a reasonable doubt that she had in her possession an unlicensed firearm at the time she was arrested.

WHEREFORE, the instant appeal is partly GRANTED, and the challenged decision in Criminal Cases Nos. 92-1932 and 92-1933 of Branch 114 of the Regional Trial Court of Pasay City is hereby MODIFIED. As modified, accused-appellant ELIZABETH GANGUSO Y DECENA is hereby ACQUITTED in Criminal Case No. 92-1933 on ground of reasonable doubt. The penalty imposed on her in Criminal Case No. 92-1932 is hereby reduced to an indeterminate sentence of three (3) months of arresto mayor, as minimum, to three (3) years of prision correccional, as maximum.

Costs de oficio.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Original Records (OR), 260-266; Rollo, 22-28. Per Judge Vicente L. Yap.

[2] OR, 163.

[3] Id., 185.

[4] Id., 155 et seq.

[5] OR, 1.

[6] Id., 4.

[7] Rollo, 23-24.

[8] TSN, 22 March 1993, 3-10, 13.

[9] OR, 262; Rollo, 26.

[10] Citing *People vs. Argawanon*, 215 SCRA 652 [1992].

[11] 234 SCRA 555 [1994].

[12] Brief for the Appellee, 22; Rollo, 90.

[13] Id.

[14] Section 14(2), Article III, Constitution.

[15] Section 2, Rule 133, Rules of Court.

[16] *People vs. Garcia*, 215 SCRA 349 [1992]; *People vs. Aguilar*, 222 SCRA 394 [1993].

[17] *People vs. Dramayo*, 42 SCRA 59 [1971]; *People vs. Garcia*, supra note 16.

[18] Section 2, Rule 133, Rules of Court. See *People vs. Matrimonio*, 215 SCRA 613 [1992].

[19] *People vs. Casimillo*, 213 SCRA 777 [1992].

[20] TSN, 12 February 1993, 7-8.

[21] Article 1475, Civil Code. See *Clarín vs. Rulona*, 127 SCRA 512 [1984].

[22] EDGARDO J. PARAS, *Civil Code of the Philippines*, vol. V, 11 [1986].

[23] Article 1496, Civil Code.

[24] TSN, 12 February 1993, 8.

[25] *People vs. Tranca*, 235 SCRA 455 [1994].

[26] *People vs. Bay*, 222 SCRA 723 [1993].

[27] *People vs. Pascual*, 208 SCRA 393 [1992]; *People vs. Cuachon*, 238 SCRA 540 [1994].

[28] *People vs. Reyes*, 236 SCRA 264 [1994].

[29] Supra note 11.

[30] TSN, 26 February 1993, 10.

[31] TSN, 2 March 1993, 6.

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