

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SY BING YOK A.K.A. ARTURO MARCELO SY, ACCUSED-APPELLANT.

G.R. No. 121345. June 23, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In an Amended Information dated May 31, 1993, Armando Pulongbarit y Pastrana alias "Mike" and Sy Bing Yok alias "Arturo Marcelo Sy," or "Arturo Marcelo Lim" or "Willie" were charged before the Regional Trial Court of Quezon City, Branch 96, with violation of Section 15, Article III of Republic Act 6425 (otherwise known as The Dangerous Drugs Act of 1972, as amended). The amended information reads as follows:

That on or about the 15th day of May, 1993, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, acting in confabulation and confederating with one another, with unity of purpose and design, did, then and there wilfully, unlawfully and feloniously sell, deliver, transport and distribute METAMPHETAMINE (sic) HYDROCHLORIDE otherwise known as "SHABU," a regulated drug, without lawful authority, to a posseur-buyer (sic), approximately weighing a total of eleven (11) kilograms of said substance packed and contained in several plastic transparent bags, and with a street valued of (sic) of P11 million more or less.

CONTRARY TO LAW.[1]

Upon arraignment, both accused, with the assistance of their respective counsel, pleaded "not guilty." Hence, the trial on the merits.

On September 5, 1994, the lower court rendered Judgment finding both accused guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

WHEREFORE, the accused ARMANDO PULONGBARIT Y PASTRANA [a.k.a. Mike] guilty beyond reasonable doubt (sic) for unlawful selling/delivering/transporting methamphetamine hydrochloride otherwise known as "shabu," a regulated drug without lawful authority in violation of Section 15, Article III of the Republic Act No. 6425, as amended, and sentences him to serve an indeterminate penalty of six (6) months of arresto mayor as minimum to six (6) years of prision correccional as the maximum thereof, and to pay a fine of P20,000.00 and to pay the costs.

2.) Finding the accused SY BING YOK [a.k.a. Arturo Marcelo Sy, Arturo Marcelo Lim or "Willie"] guilty beyond reasonable doubt for unlawfully selling/delivering/transporting methamphetamine hydrochloride otherwise known as "shabu," a regulated drug without lawful authority in violation of Section 15, Article III of Republic Act No. 6425, as amended, and sentences him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00 and to pay the costs.

Further, all the methamphetamine hydrochloride (shabu) taken and seized from both accused during the aforesaid buy-bust operation are forfeited and confiscated in favor of the government and shall be turned over to the Dangerous Drugs Board pursuant to law for proper disposal without delay.

SO ORDERED.[2]

Only accused Sy Bing Yok alias "Arturo Marcelo Sy" appealed his conviction. Accused Armando Pulongbarit y Pastrana alias "Mike" applied for probation.

But first, the antecedent facts:

Based on information given by one Marlon G. Germedia,[3] pointing to accused Armando Pulongbarit alias "Mike" as his source/supplier, a team of PNP Narcotic Command (NARCOM) Operatives, led by Chief Inspector Jerry Valeroso, decided to conduct a buy-bust operation to arrest the latter. Hence, at around 5 o'clock in the morning of May 15, 1993, said team of NARCOM agents, with the aforementioned Marlon G. Germedia who is known to accused Pulongbarit, went to the latter's residence in No. 20-A Ofelia Extension, Project 8, Quezon City. SPO3 Agustin Timbol acting as "poseur-buyer" and Germedia approached Pulongbarit's house while the other members of the NARCOM team positioned themselves strategically outside Pulongbarit's house. They had earlier agreed that SPO3 Timbol would give a pre-arranged signal for the other agents to come forward and effect the arrest of accused Pulongbarit.

SPO3 Timbol and Germedia knocked on the door and were admitted by Pulongbarit himself. Germedia greeted Pulongbarit with "O, Mike, kumusta ka" after which, the latter led them into his house.[4] At this point, Germedia introduced SPO3 Timbol as "an interested buyer of shabu" saying, "may bago tayong kustomer, malakas din itong tumalak;" while SPO3 Timbol introduced himself as "Jun from Pasay." [5]

After a short conversation between accused Pulongbarit and SPO3 Timbol, accused Pulongbarit agreed to sell 100 grams of "shabu" for P70,000.00. SPO3 Timbol showed Pulongbarit a wad of money which was actually a show money, sandwiched between two P1,000.00 bills. Pulongbarit went upstairs where he got a transparent plastic bag containing 100 grams of "shabu." This he handed over to SPO3 Timbol, who then introduced himself as a police officer and arrested Pulongbarit for selling prohibited drugs at the same time apprising him of his constitutional rights. Thereafter, the NARCOM agents persuaded Pulongbarit to surrender more of the methamphetamine hydrochloride ("shabu") in his possession. Pulongbarit handed over four (4) additional transparent plastic bags, or including that seized from Pulongbarit, a total of 6 kilos more or less, of "shabu."

Accused Pulongbarit was taken to the PNP NARCOM Headquarters in Camp Crame, Quezon City. It was while he was under interrogation when Pulongbarit volunteered the information that his supplier was a certain Arturo Sy alias Marcelo Sy (Willie Sy). He also expressed his willingness to help the NARCOM agents in the entrapment of said "Willie Sy." Thereupon, the NARCOM agents devised a plan to entrap "Willie Sy." [6]

Pursuant to said plan, the NARCOM agents together with Pulongbarit returned to the latter's residence on that same day, May 15, 1993. At about 3:30 p.m., Pulongbarit succeeded in contacting "Willie Sy" through his cellular phone.[7] The conversation that transpired between them was overheard by SPO3 Timbol who subsequently testified thereon as follows:

xxx.

Q. Now, how far were you when Mr. Pulongbarit was talking on the cellular phone with a certain Willie Sy?

A. I am very near almost, my hear (ear), my head was also were (where) Pulongbarit was using (sic).

Q. What were the words that you heard if you can still recall as far as the call?

A.

What I heard?

Q. What did Pulongbarit first say?

A. "Willie, ubos na yung dinala mo rito, magdala ka uli ng limang kilo."

Q.

What else did you hear?

A. And on the other line I heard was, also answered (sic); "oo, pare, ako hatid diyan," then he asked, "ubos na ba dala diyan? Oo, dito na pera."

Q. Who said this "dito na pera," Was it Pulongbarit or the answering line?

xxx.

A. It was Pulongbarit, sir.[8]

The NARCOM team then waited for the arrival of "Willie Sy" inside the house of Pulongbarit. At around 5:30 p.m., a red Toyota car parked in front of Pulongbarit's house. A man in t-shirt, who turned out to be "Willie Sy," alighted carrying a carton box. As he entered Pulongbarit's house, he was immediately accosted by the NARCOM agents who seized the carbon box he was carrying. When the box was opened, it yielded five (5) kilos of crystalline substance. Said substance was inventoried and turned over to Col. Angelito Moreno, Chief of the Legal and Investigation Service, NARCOM, who forwarded it to the PNP Crime Laboratory for examination.[9]

In due time, Forensic Chemist Julita de Villa submitted Physical Science Report No. D-418-93, dated May 17, 1993, which contained the following findings:

Qualitative examination conducted on the above specimen gave POSITIVE result to the tests for Methamphetamine Hydrochloride (Shabu), a regulated drug. xxx.[10]

On May 18, 1993, an Information was filed wherein Armando Pulongbarit y Pastrana a.k.a. "Mike," Arturo Marcelo Sy a.k.a. "Arturo Marcelo Lim" or "Willie," and Samson Sio were charged with violation of Section 15, Article III, Republic Act No. 6425, as amended.[11]

On June 4, 1993, the Assistant City Prosecutor filed a motion to admit amended information stating therein that the real name of accused Arturo Marcelo Sy a.k.a. "Arturo Marcelo Lim" or "Willie" is Sy Bing Yok; and, that accused Samson Sio was not actually arrested and therefore his name should be deleted from the information.[12] The lower court granted said motion.[13]

On September 5, 1994, the lower court rendered the above-quoted decision.[14]

On January 18, 1995, accused-appellant Sy Bing Yok filed a Motion for Reconsideration of the above decision. Subsequently, on May 29, 1995, he filed a Motion for New Trial on the ground of newly discovered evidence.

On July 18, 1995, the lower court, treating the subsequent motion as having superseded the Motion for Reconsideration, denied the same for lack of merit.

Hence, this appeal by accused-appellant Sy Bing Yok wherein he makes the following assignment of errors:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED ON THE BASIS OF THE INCREDIBLE, DUBIOUS, UNBELIEVABLE, AND CONTRADICTING TESTIMONIES OF THE PRINCIPAL WITNESSES FOR THE PROSECUTION AS AGAINST THE STRAIGHTFORWARD, UNSHAKEN, AND UNCONTRADICTED TESTIMONY OF ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE A SERIOUS DOUBT AS TO HIS IDENTITY AS THE OWNER OF THE DRUGS ALLEGEDLY FOUND IN HIS POSSESSION.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ON THE GROUND THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BY PROOF BEYOND PERADVENTURE OF DOUBT.[15]

At the outset, appellant assails the decision for having been rendered by a judge who did not personally hear the case but merely a small portion thereof, i.e., only the testimony of appellant. He states that "it came rather as a surprise why the Presiding Judge of Branch 96 was inhibited from continuing to take over the case (sic), and the case re-ruffled (sic) to Branch 84 which merely heard the testimony of accused-appellant x x x." [16]

Appellant further insists that "the determination of the sincerity and credibility of the prosecution witnesses cannot be left to the judge who penned the questioned decision as he did not have the vantage position of observing the demeanor and deportment of the witnesses while on the witness stand." [17]

Appellant's contention is untenable.

The fact that the judge who rendered the decision was not the same judge who heard the greater part of the case is of no moment.[18] For, a judge may validly render a decision although he partly heard the testimonies of the witnesses.

As held in *People v. De Paz* [19] -

x x x. While it is true that the trial judge who conducted the hearing would be in a better position to ascertain the truth or falsity of the testimonies of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision since the latter can also rely on the transcribed stenographic notes taken during the trial as the basis of his decision.

Appellant points out that the testimonies of the witnesses for the prosecution, namely, Chief Inspector Jerry Valeroso and SPO3 Agustin Timbol are fraught with inconsistencies and contradictions so much so that the identity of appellant as the possessor/owner of the "shabu" allegedly seized from him has become highly questionable. According to appellant, Chief Inspector Valeroso testified that appellant was "wearing a sando," [20] contrary to the declaration of SPO3 Timbol who described appellant as "wearing a tee-shirt." [21] Appellant further claims that while witness Valeroso testified that when the car appellant was riding arrived at Pulongbarit's house, the latter came out to meet the passengers at the gate, SPO3 Timbol, on the other hand declared that

appellant immediately entered the house of Pulongbarit.[22]

We note, however, that these seeming contradictions are more apparent than real. Besides, it is to be expected that the testimony of witnesses regarding the same incident may be inconsistent in some aspects because different persons may have different impressions or recollection of the same incident.[23]

Moreover, these alleged inconsistencies and contradictions are only with respect to minor details and are so inconsequential that they do not in any way affect the credibility of the witnesses nor detract from the established fact of illegal sale of shabu by appellant.[24] As held by this Court in *People vs. Inocencio*,[25] testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence. Thus, whether appellant wore a "sando" or a "tee-shirt" is immaterial.

Appellant would have this Court believe that he was merely asked to deliver the box to Pulongbarit and that he was not aware of the contents thereof. We are not convinced. As a rule, denials are weak forms of defenses, particularly where they are not substantiated by clear and convincing evidence.[26] The defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[27] In the case at bar, appellant's bare denials cannot prevail over the positive identification by the prosecution witnesses of appellant as the person who was in possession of, and who delivered, five (5) kilos of methamphetamine hydrochloride ("shabu") to Armando Pulongbarit.

Furthermore, the crime under consideration is *mala prohibita*. It is settled that lack of criminal intent and good faith are not exempting circumstances where the crime charged is *malum prohibitum*. [28] Hence, appellant's contention that he did not know that the box he was carrying contained "shabu" cannot constitute a valid defense. Mere possession and/or delivery of a regulated drug, without legal authority, is punishable under the Dangerous Drugs Act.

Finally, appellant contends that the prosecution failed to establish his guilt by proof beyond reasonable doubt.

Such contention is untenable. Records will show that appellant was caught in *flagrante delicto*. He was arrested in a "buy-bust" operation conducted by a team of PNP Narcotics (NARCOM) Operatives. SPO3 Agustin Timbol, a prosecution witness, narrates the incident as follows:

xxx

Q.

What is the full name of Mike?

A Armando Pulongbarit, sir.

Q. What was the result of this interrogation?

A. He admitted, he gave his source.

Q. Who was that source?

A. It was, according to Armando Pulongbarit, it was Willie Sy.

Q. Upon knowing that the source of shabu was one Willie Sy, what did you do or your team do or plan?

A. We, after he mentioned Willie Sy as his source, we composed a team for possible arrest of the suspect Willie Sy.

Q. Then what steps did you do to effect that plan?

A. A team was formed and we returned back to the residence of Pulongbarit because their way of ordering shabu is by calling by cellular phone.

Q. What time was that when you returned to his residence?

A. More or less 3:00 p.m. of May 15.

Q. What did he do after you reached his residence?

A. At about 3:30 he was able to contact Willie Sy and ordered five kilos of shabu.

xxx

Q. After this conversation through the phone what did you and your team do?

A. Because Willie Sy said to Pulongbarit, "oo, pare, hintay, ako dating diyan," we waited and after Pulongbarit (sic) we waited until the suspect arrived.

Q. Where did you wait?

A. Inside the residence of Pulongbarit.

Q. How about your companions?

A. Also inside the residence of Pulongbarit.

Q. Who were your companions?

A. Chief Inspector Valeroso, SPO1 Antonio, PO3 Bulan and an agent and myself, we were all five.

Q. All of you were inside the residence?

A. Yes, sir.

Q.

No other, none police officer (sic) was present aside from Pulongbarit?

Atty. Habitan:

We will object, leading and assuming a fact.

Court:

Reform.

Q. In what part of the house were you specifically located while waiting?

A. Downstairs.

Q. Where was Mr. Pulongbarit while you were waiting?

A. He is with us.

Q. About past 5:00 what transpired about 5:30 in the afternoon of May 15, 1993?

A. A red toyota car parked in front of the residence of Armando Pulongbarit.

Q. What happened after the car was parked?

A. One man wearing a tee-shirt alighted from the car carrying a carton bag and proceeded to the residence of Pulongbarit.

Q. What happened after that?

A.

When he entered we accosted him, introduced ourselves as police officers and we asked what is the contents of the carton, we inspected it and we noticed that it was methamphetamine hydrochloride and at that time we effected the arrest after also apprising his constitutional rights.

Q. If that person from whom you confiscated the five bags of so called shabu is in the courtroom, will you please point at him or go near?

A.

(Witness tapping accused Arturo Marcelo Sy on the shoulder)

Q. What happened after that?

A.

When we effected the arrest of Marcelo Sy, we also asked him whose companions inside the car he answered, it was Samson Siu who was able to elude arrest after noticing the arrest of Willie Sy and at that time we searched the car and we recovered the car registration and insurance of the car in the name of Samson Siu.

Q.

What did your team do in respect of the five bags of shabu taken from Mr. Sy?

A. We brought the confiscated evidence together with the suspect at our headquarters, Narcom, Camp Crame, Q.C.[29]

Chief Inspector Jerry Valeroso, team leader of the NARCOM team, fully corroborated SPO3 Timbol's testimony. It may be noted that there is nothing on record to indicate that the above-named witnesses harbored ill motives against appellant. In several drug cases, this Court has consistently held that in the absence of proof to the contrary, law enforcers are presumed to have regularly performed their duty.[30]

WHEREFORE, the Decision dated September 5, 1994 of the Regional Trial Court, Branch 96 of Quezon City in Criminal Case No. Q-93-44575 finding herein appellant Sy Bing Yok a.k.a. Arturo Marcelo Sy guilty beyond reasonable doubt of unlawfully selling/delivering/transporting methamphetamine hydrochloride or "shabu" in violation of Section 15, Article III of R.A. No. 6425, is hereby AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Pardo, and Ynares-Santiago, JJ., concur .

[1] Records, p. 51.

[2] Id., at 221-222.

[3] Germedia was earlier arrested in a buy-bust operation for selling one (1) gram of methamphetamine hydrochloride ("shabu") and consequently charged with violation of Sec. 15, Article III of Republic Act No. 6425, as amended, in Criminal Case No. Q-93-45369 and illegal possession of firearms in Criminal Case No. 93-45371. He was convicted in the former case and acquitted in the latter. (Records, pp. 239-249.)

[4] TSN, September 1, 1993.

[5] Ibid.

[6][TSN, July 5, 1993, pp. 35-40; TSN, Aug. 25, 1993, pp. 14-15; TSN, Aug. 25, 1993, pp. 5-13.]

[7] TSN, July 5, 1993, pp. 40-42.

[8] TSN, Aug. 25, 1993, pp. 14-16.

[9] TSN, July 5, 1993, pp. 42-47; TSN, Aug. 25, 1993, pp. 18-22.

[10] Records, pp. 15, 144; TSN, July 30, 1993, pp. 9-18,; TSN, Aug. 10, 1993, pp. 6-9.

[11] Records, p. 2.

[12] Id., at 49-50.

[13] Id., at 54, Order dated June 9, 1993.

[14] Id., at 213-222.

[15] Rollo, p. 43.

[16] Id., at 52.

[17] Ibid.

[18] Rollo, p. 124, citing *Ayco vs. Fernandez*, 165 SCRA 328 (1991).

[19] 212 SCRA 56 (1992).

[20] TSN, July 5, 1993, p. 42.

[21] TSN, Aug. 25, 1993, p. 17.

[22] Id., at 53-54.

[23] *People vs. Gazmen*, 247 SCRA 414 (1995).

[24] *People vs. Zervoulakos*, 241 SCRA 625 (1995).

[25] 229 SCRA 517 (1994).

[26] *Quinones vs. National Labor Relations Commission*, 246 SCRA 294 (1995).

[27] *People vs. Solon*, 244 SCRA 554 (1995).

[28] *People vs. Go Shiu Ling*, 251 SCRA 379 (1995).

[29] TSN, August 25, 1993, pp. 13-18.

[30] *People vs. Ong Co*, 245 SCRA 733 (1995).

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