

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL C. MONTANO, ACCUSED-APPELLANT.

G.R. No. 130836. August 11, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 262, Pasig City, finding accused-appellant Arnel C. Montano guilty of violation of Art. III, §15 of Republic Act No. 6425 (Dangerous Drugs Act), as amended by Republic Act No. 7659, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P2 million and the costs of the suit.

The information[2] against accused-appellant alleged -

That in the afternoon of (the) 22nd of January, 1996, in the municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, feloniously and knowingly sell, distribute and/or deliver 229.7 grams of Methamphetamine Hydrochloride otherwise known as ‘shabu’ which is a regulated drug, without the corresponding license and/or legal authority to sell, distribute and/or deliver the same.

CONTRARY TO LAW.

When arraigned, the accused-appellant pleaded not guilty, whereupon he was tried.

The presentation of the testimony of the first witness for the prosecution, Forensic Chemist Demelen Dela Cruz of the National Bureau of Investigation (NBI), was dispensed with, as the defense entered into a stipulation with the prosecution concerning the following facts: (1) that 229.7 grams of a white crystalline substance was submitted to the NBI Forensic Chemistry Division for laboratory examination to determine if it was methamphetamine hydrochloride or shabu; (2) that a forensic examination was performed by the witness on the substance submitted; (3) that the substance was found to be positive for shabu; and (4) that the substance was the same 229.7-gram substance submitted for forensic examination by NBI Agent Timoteo Rejano. Accused-appellant denied, however, that the shabu had been seized from him.[3]

The prosecution presented evidence showing that the shabu had been seized from accused-appellant, thus:

Sometime in the second week of January 1996, NBI Agent Timoteo Rejano received a tip from a female confidential informant that the accused-appellant was engaged in the distribution of shabu in Taguig, Metro Manila.[4] Agent Rejano and the informant, therefore, conducted a “test-buy” operation on January 18, 1996 at accused-appellant’s residence at 104 N. P. Cruz St., Barangay Ususan, Taguig, Metro Manila.[5] When they arrived at the place, the female informant went inside the gate as Agent Rejano stayed behind. After thirty minutes, the informant asked Agent Rejano to come in, and the two then proceeded along a roofed alley with concrete walls on both sides. They entered a second gate where a store with a long bench was located. A woman, whom Agent Rejano came to know was accused-appellant’s mother, tended the store.

At the gate, the informant introduced Agent Rejano to accused-appellant as a Chinese drug-user and a big-time buyer of shabu. While Agent Rejano waited at the store, the informant went with accused-appellant in front of the latter's house about 15 meters away and transacted business with him on the porch. Agent Rejano saw them sniffing something while seated on the metal chairs. After thirty minutes, the informant returned to Agent Rejano and secretly told him that she already had the stuff from the accused-appellant. Thereafter, they left and returned to the NBI office in Taft Avenue, Manila.

The stuff was submitted for forensic examination and was found to be shabu. After Agent Rejano reported to his superiors what transpired during the operation, he was directed to conduct with the informant another "test-buy" operation on the accused-appellant in order to gain the latter's trust and confidence. The plan was eventually to make him sell a larger amount of shabu to them.[6]

On January 19, 1996, Agent Rejano, together with the female informant and another intelligence agent, returned to accused-appellant's house to purchase more shabu. Again, it was the informant who transacted with accused-appellant while Agent Rejano and the intelligence agent stayed at the store. After half an hour, the informant returned and discreetly told them that she had with her the stuff from accused-appellant and that the latter was willing to deliver 200 grams of shabu on January 22, 1996. Then, they left.

Upon arriving at the NBI, Agent Rejano made a request[7] for the forensic examination of the crystalline substance purchased from accused-appellant. Forensic Chemist II Emilia Andeo-Rosaldes issued a certification,[8] dated January 19, 1996, stating that the substance submitted was shabu. [9]

On January 22, 1996, a team of NBI agents proceeded to Taguig, Metro Manila aboard three vehicles. About 100 meters away from the target area, the buy-bust team, composed of Agent Reynaldo Esmeralda, Agent Regner Peneza, and the informant, took a tricycle to accused-appellant's house, while the rest of the NBI operatives waited for a signal at a distance. Accused-appellant and his mother met the buy-bust operatives. The informant informed accused-appellant that they already had the money and were ready to buy 250 grams of shabu. Accused-appellant then led the group to an alley towards the kitchen outside his house. The informant introduced Agent Peneza as her husband and Agent Esmeralda as the bodyguard of her employer, the Japanese financier. Accused-appellant's mother then served the group some snacks, consisting of leche flan and softdrinks. Accused-appellant left them and, after a few minutes, returned with Hector Tinga. Accused-appellant told the group to follow him. Accused-appellant's mother was left behind. They passed through a dark narrow alley leading to an enclosed space at the back of accused-appellant's house. Tinga brought out two plastic packets of a white crystalline substance and handed them to accused-appellant. Accused-appellant gave the packets to the informant who tested the contents by burning a small amount using an improvised tooter. When the informant confirmed that the substance was shabu, accused-appellant asked for the money.

Agent Esmeralda handed accused-appellant bundles of P100 bills. While the accused-appellant and Tinga were counting the money, Agents Esmeralda and Peneza announced the arrest and handcuffed the two. Esmeralda radioed the other members of the NBI team to proceed to the area.[10] After the team secured the house, Agent Auralyn Pascual served the search warrant to the mother of accused-appellant. With two barangay officials as witnesses, the NBI agents recovered from the search, besides the two packets of white crystalline substance, a tooter, a burner, aluminum foil, a pair of scissors, and a match.[11] The items were listed in the inventory of articles seized which was signed by Agent Pascual and attested to by the barangay officials.[12] Agent Pascual gave the mother of the accused-appellant a copy of the inventory.

The NBI team brought accused-appellant and Tinga to NBI Taft where they were booked and their photographs and fingerprints taken.[13] The two packets of white crystalline substance,[14] marked as AM-1 and AM-2

respectively, and the improvised tooter[15] seized during the search were forwarded to the forensic chemistry laboratory for examination.[16] Accused-appellant and Tinga were brought to the Department of Justice for inquest and then detained at the NBI Taft. The report on the forensic examination showed that the crystalline substance, weighing 229.7 grams, was shabu. The tooter, however, was negative for shabu.[17] Later, the Department of Justice, through Prosecutor Ferdinand Abesamis, issued a Resolution, dated February 1, 1996,[18] recommending the filing of an information only against accused-appellant on account of the insufficiency of evidence against Tinga.[19]

Accused-appellant denied that there were “test-buy” operations conducted on him on January 18 and 19, 1996. His version of the incident is as follows:

In the afternoon of January 18, 1996, while he was cleaning the passenger jeepney he was driving, a woman arrived and introduced herself as “Solly.” As she was looking for the residence of Hector Tinga, accused-appellant pointed to her the direction to the said house. After a few minutes, Solly returned and told him that the gate was closed. She requested him to fetch Tinga. Accused-appellant said he acceded to the request and that, after a while, Tinga came to meet the stranger. According to accused-appellant, Solly told him that she and Tinga met in a nightclub in Ermita, and that she worked for a Japanese employer. Accused-appellant said that he got interested, because he wanted to work abroad, and the stranger might be able to help him get employment overseas.

Accused-appellant testified that, on January 22, 1996 at around 2 p.m., Solly returned to his house with her husband and the bodyguard of her Japanese employer. They proceeded directly to the “dirty” kitchen of his house without knocking at the unlocked gate. Accused-appellant said he did not inquire into the purpose of their visit because he assumed it was about his application for overseas employment. They allegedly assured him that they would help him. He introduced them to his mother, who served them leche flan and softdrinks. Then, his mother left to fetch his children and his nephew from school. After eating, Solly and her companions moved to the garden, also inside the compound. Solly requested him to call Tinga. He was about to go, but he saw Tinga coming. Accused-appellant assumed that they agreed to meet at his house. After greeting Tinga and telling him that Solly was waiting for him in the garden, he went inside the kitchen to wash the dishes used by his visitors. Tinga and the visitors went inside his house and joined his children in watching television. Accused-appellant asked Tinga if he could help him in securing an overseas job and Tinga told him he would. He claims that he went out to get an electric fan for his visitors but, when he returned, he saw them already in the storage room at the back of his house. He stated that he saw Tinga handing two bags of shabu to the “bodyguard,” who turned out to be NBI Agent Esmeralda. According to accused-appellant, he told Tinga and the visitors that he might be implicated in the transaction, and that his mother would get angry because she did not know that they were transacting shabu in his house. They assured him, however, that they would take care he did not get involved in the deal. Then, he saw Solly’s “husband,” whom he later learned was Agent Peneza, handing over a bag of money to Tinga. It was then that the NBI agents identified themselves and ordered him and Tinga, at gun point, to lie face down on the floor. He and Tinga were handcuffed. He allegedly said, “Iyan na nga ba ang sinasabi ko tapos ito pa ang mapapala ko, kawawa naman ako.” Accused-appellant claimed he was kicked and was told that he would be “taken care of.”

Aurora Montano, accused-appellant’s mother, arrived and found her grandchildren running around. One of them told her that accused-appellant was handcuffed and lying face down on the floor. When his mother saw him and the NBI agents, she exclaimed, “Bakit ganito ang nangyari? Akala ko ba tutulungan ninyo ang anak ko, ngayon ito pa ang mapapala namin.” The NBI agents repeated to his mother that they would “take care of him.” Then, another group, presumably with the NBI team, arrived and took pictures of them. Accused-appellant and Tinga

were brought out of the storage room. Still another group arrived with the barangay chairman, showed his mother a search warrant, and conducted a search on the house. According to him, nothing was recovered from his house. He and Tinga were taken to the NBI office for fingerprinting. Again, he was told that he would be “taken care of.” He and Tinga were detained separately at the NBI Taft. Later, he said he was surprised to learn that Tinga was released. Subsequently, he was transferred for detention to MMRC, Camp Ricardo Papa, Bicutan.[20]

On cross-examination, accused-appellant testified that Solly approached him on January 18, 1996 because there was nobody else at that time she could ask for direction to Tinga’s house.[21] He said he was not investigated at the NBI office but was only asked by Agent Esmeralda as to who was the owner of the shabu.[22]

Aurora Montano, accused-appellant’s mother, also testified for the defense. She stated that, on January 18, 1996, she was at their house taking care of her grandchildren, but she denied that they had visitors that day. Likewise, she denied having any visitor at their house on January 19, 1996. According to her, on January 22, 1996 at around 2 p.m., she went out of the house and saw her son, two men, and a woman seated on the bench of their “dirty” kitchen along the passageway. She described the passage as 140 meters long, 2 ½ meters wide, six feet in height, with concrete walls on both sides, a roof, and three gates. According to her, the “dirty” kitchen was located 40 meters from their house and 100 meters away from the first gate. Her son introduced her to the visitors and requested her to prepare some snacks for them. She overheard them talking about a recruitment agency in Japan. She remembered one of them was named “Boyet.” After serving them leche flan and softdrinks, she said she went out to fetch her grandchildren from school. When she arrived, her son and his companions were not in sight. Then, a group of around twenty armed persons arrived and kicked their main and middle gates, shouting “shabu, shabu.” She told them there was no shabu in the house. After driving these people away, she went inside to look for her grandchildren. Some of them were at the back of their house where their storeroom was located. She went to the storeroom through another passage and found her son and Tinga with their arms raised. The visitors were also there and introduced themselves as NBI operatives. The other NBI agents arrived after a few minutes. Her son and Tinga were brought to the porch and handcuffed. Afterwards, another group arrived with the barangay chairman and showed her a search warrant. They conducted a search throughout the house but they allegedly did not find anything. Then, the two were taken to the NBI office in Taft Avenue.[23]

On cross-examination, she testified that she did not know the reason why her son, Tinga, and their visitors went to their storage room on January 22, 1996. She did not even notice them going there but only found out that they did when she went and saw her grandchildren in the storeroom. She testified that nobody could enter the storeroom without her son’s permission. Aurora Montano admitted that she knew Tinga was selling shabu but claimed that she could not forbid her son from associating with Tinga because they were neighbors. She said she was surprised why Tinga was released while her son remained in detention and was the only one charged in court. She stated that Tinga is the cousin of Congressman Dante Tinga.[24]

On August 29, 1997, the trial court rendered a decision,[25] the dispositive portion of which reads:[26]

WHEREFORE, judgment is hereby rendered finding accused Arnel C. Montano GUILTY beyond reasonable doubt of violating Section 15, in relation to Section 20, of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972. Said accused is hereby sentenced to: (a) suffer the penalty of reclusion perpetua, (b) pay a fine in the amount of Two Million Pesos (P2,000,000.00), and (c) pay the costs.

SO ORDERED.

Accused-appellant contends that the trial court erred in convicting him: (1) “despite its findings that the prohibited drug subject matter of (the) case did not originate from appellant but from Hector Tinga”; (2) “despite the fact that he was singled out for prosecution in violation of his right to equal protection of laws”; and (3) “on the basis

of an alleged buy-bust operation when it was shown to have been resorted to harass, extort and abuse.”[27] In the alternative, he prays that this Court find him guilty as an accomplice only, because he merely handed to the poseur-buyers the drug which Tinga produced.[28]

We find these contentions without merit.

First. This Court has held that the elements necessary for the prosecution of the illegal sale of drugs are: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[29]

Contrary to accused-appellant’s assertions, the evidence for the prosecution establishes these elements beyond reasonable doubt. NBI Agents Esmeralda and Peneza positively identified accused-appellant as the person who, together with Tinga, sold to them two plastic packets of a white crystalline substance.[30] Accused-appellant was thus caught in flagrante delicto in the buy-bust operation conducted by the NBI. The corpus delicti of the crime charged, i.e., the 229.7 grams of shabu, was duly established before the trial court.[31] In fact, accused-appellant, through his counsel, even admitted the same.[32] He delivered the drug to the buy-bust team and payment for it was made. The fact that the drug originally came from Tinga is immaterial. As held by this Court, proof of ownership of the drug is not necessary in the prosecution of illegal drug cases. It is sufficient that it was found in accused-appellant’s possession.[33]

Indeed, from the evidence adduced by the prosecution, it cannot be denied that accused-appellant had possession of the 229.7 grams of shabu. It was he who delivered the same to the NBI operatives after it was handed to him by Tinga.[34] After making the delivery, he and Tinga asked for the payment.[35]

Second. Accused-appellant invokes the defense of alibi. He claims that he went out of his house to get an electric fan and only witnessed the illegal transaction after his return and that he was merely implicated by the arresting officers.

This defense is uncorroborated. Accused-appellant’s mother testified that she too was out of the house at the time the buy-bust operation was being conducted and that, when she came back, she saw her son and Tinga already under arrest.

We have consistently held that the defense of alibi, if not substantiated by clear and convincing evidence, is weak, self-serving, and without weight in law, and thus undeserving of consideration by the courts. It cannot prevail over the positive identification of the prosecution witnesses who have no reason or ill motive to testify falsely against the accused-appellant.[36] In this case, the testimonies for the prosecution are consistent, unequivocal, and replete with details of the transaction with accused-appellant, and, therefore, merit our full faith and credence.[37]

Third. The presumption of regularity in the performance of their duties in favor of the arresting officers had not been sufficiently controverted by accused-appellant; hence, this Court is bound to uphold the same.[38] Except for his self-serving statements, accused-appellant failed to present evidence to establish that the buy-bust operation was “resorted to harass, extort and abuse.” In a vain attempt to establish his inculpability, he even questioned the validity of his arrest on account of the absence of a warrant. The fact, however, is that accused-appellant was apprehended in flagrante delicto during a buy-bust operation against him and his arrest falls within the ambit of Rule 113, §5(a) of the Rules on Criminal Procedure on arrests without a warrant. Indeed, this Court has already ruled that a buy-bust operation is “a form of entrapment which has repeatedly been accepted to be a valid means of arresting violators of the Dangerous Drugs Law.”[39] The validity of the arrest in this case must be sustained.

Fourth. Nor is there merit in accused-appellant’s assertion that, because of the release of Hector Tinga, he is

entitled to an acquittal. No principle of equality justifies setting free a man who is otherwise guilty just because his co-conspirator escaped prosecution. Accused-appellant's guilt is not dependent on whether or not Tinga was similarly charged with the same offense. As discussed above, the evidence against accused-appellant sufficiently establishes his guilt beyond reasonable doubt.

However, it cannot be denied that Agents Peneza and Esmeralda testified that Tinga, who brought out the sachets from his pocket and counted the purchase money with accused-appellant, also directly participated in the sale. What should be done, therefore, is to let a copy of the decision be given to the Department of Justice so that it may review its resolution in the case of Hector Tinga.

Alternatively, accused-appellant prays that he be held guilty merely as an accomplice. This cannot be done. Art. 18 of the Revised Penal Code defines an accomplice as a person who, not being a principal in the commission of a felony, cooperates in the execution of the offense by previous or simultaneous acts. On the other hand, Art. 17 thereof provides that principals are: (1) those who take a direct part in the execution of the act; (2) those who directly force or induce others to commit it; and (3) those who cooperate in the commission of the offense by another act without which it would not have been accomplished.[40]

The evidence shows that accused-appellant was indeed a principal in the commission of the crime charged in this case. Though it was Tinga who produced the two plastic packets of shabu, it was accused-appellant who delivered the same to the buy-bust team. He was the one who asked for payment, who received the same, and who counted it in the presence of the buy-bust team. It is undeniable that accused-appellant directly participated in the illegal sale of the shabu. Consequently, his conviction must be upheld.

WHEREFORE, the decision of the Regional Trial Court, Branch 262, Pasig City is **AFFIRMED** in toto.

Let a copy of this decision be furnished the Honorable Secretary of Justice for whatever action he may deem necessary to take in the case of Hector Tinga.

SO ORDERED.

Quisumbing, Buena, and De Leon, Jr., JJ., concur.

Bellosillo, J. (Chairman), on leave.

[1] Per Judge Gregory S. Ong.

[2] Rollo, p. 5.

[3] TSN, pp. 2-5, Aug. 14, 1996.

[4] TSN (Reynaldo Esmeralda), p. 7, Aug. 14, 1996; TSN (Timoteo Rejano), p. 5, Sept. 10, 1996.

[5] Id., pp. 7-8; Id..

[6] Id., p. 9; Id., p. 13.

[7] Exh. G; Records, p. 170.

[8] Exh. H; Id., p. 171.

[9] TSN (Timoteo Rejano), pp. 6-28, Sept. 10, 1996.

[10] TSN (Reynaldo Esmeralda), pp. 14-22, Aug. 14, 1996 ; TSN (Regner Peneza), pp. 5-9, Nov. 11, 1996.

[11] Id., pp. 22-24; TSN (Timoteo Rejano), pp. 7-9, Sept. 23, 1996; TSN (Regner Peneza), pp. 9-10, Nov. 11, 1996; TSN (Auralyn Pascual), pp. 6-8, Nov. 18, 1996.

[12] Exh. J; Records, p. 22.

[13] TSN (Reynaldo Esmeralda), p. 3, Sept. 4, 1996; TSN (Timoteo Rejano), p. 10, Sept. 17, 1996.

[14] Exhs. C and C-1, respectively, are in the trial court's custody per the Certification dated Oct. 10, 1997; Records, p. 282.

[15] Exh. C-2; Id.

[16] Exh. A; Records, p. 167.

[17] Exh. D; Id., p. 168.

[18] Rollo, p.6.

[19] TSN (Reynaldo Esmeralda), p. 21, Aug. 14, 1996.

[20] TSN (Arnel Montano), pp. 3-29, May 6, 1996.

[21] Id., pp. 32-33.

[22] Id., pp. 49-51.

[23] TSN (Aurora Montano), pp. 3-17, Jan. 29, 1997.

[24] Id., pp. 17-33.

[25] Rollo, pp. 17-31.

[26] Id., p. 17.

[27] Brief for the Appellant, p. 1; Rollo, p. 59.

[28] Reply Brief for the Appellant, p. 15.

[29] People v. Cueno, 298 SCRA 621 (1998); People v. De Vera, 275 SCRA 87 (1997).

[30] TSN (Reynaldo Esmeralda), p. 15, Aug. 14, 1996; TSN (Timoteo Rejano), pp. 7-8, Sept. 10, 1996; TSN (Auralyn Pascual), p. 7, Nov. 18, 1996.

[31] Id., p. 4; Id., p. 24; TSN (Regner Peneza), pp. 10-11, Nov. 11, 1996.

[32] TSN, pp. 4-5, Aug. 14, 1996.

[33] People v. Encinada, 280 SCRA 72 (1997).

[34] TSN (Reynaldo Esmeralda), p. 19, Aug. 14, 1996; TSN (Regner Peneza), p. 24, Nov. 11, 1996.

[35] Id., p. 20.

[36] People v. Atop, 286 SCRA 157 (1998); People v. Caisip, 290 SCRA 451 (1998); People v. De Vera, 275 SCRA 87 (1997); People v. Flores, 252 SCRA 31 (1996); People v. Brocamonte, 257 SCRA 380 (1996).

[37] People v. Guarin, 259 SCRA 34 (1996); People v. Buemio, 265 SCRA 582 (1996).

[38] Mallari v. Court of Appeals, 265 SCRA 456 (1996); People v. Jain, 254 SCRA 686 (1996).

[39] People v. Juatan, 260 SCRA 532 (1996).

[40] People v. Galapin, 293 SCRA 474 (1998).

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