

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT FIGUEROA AND BEATRICE VALERIO, ACCUSED. ROBERT FIGUEROA, ACCUSED-APPELLANT.

G.R. No. 134056. July 06, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Accused-appellant ROBERT FIGUEROA (hereafter OBET) appeals from the 18 May 1998 Decision[1] of the Regional Trial Court of Parañaque City, Branch 259, in Criminal Case No. 97-306, convicting him of violation of Section 14-A[2], Article III of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by RA. No. 7659. His co-accused Beatrice Valerio (hereafter Betty) was acquitted.

OBET and Betty were indicted under an information, dated 2 April 1997, whose accusatory portion reads as follows:

That on 16 February 1997 and for sometime prior thereto in Parañaque City and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, conspiring, confederating and helping one another, did then and there, wilfully, unlawfully and feloniously manufacture, produce, prepare or process methamphetamine hydrochloride or shabu, a regulated drug amounting to a 2.4 liters, directly by means of chemical synthesis.

CONTRARY TO LAW.[3]

When arraigned OBET and Betty each entered a plea of not guilty.[4] Trial on the merits then ensued.

The witnesses presented by the prosecution were NBI Forensic Chemist Mary Ann T. Aranas, NBI Special Investigator III Pio M. Palencia (hereafter PALENCIA), and NBI Intelligence Agent II Martin Soriano (hereafter SORIANO).

PALENCIA testified that on 15 February 1997, he was in the office of SORIANO at Project 6, Quezon City, when they received a call from their informant, a woman, who reported that a certain OBET was allegedly engaged in large-scale drug trafficking in Makati City. PALENCIA and SORIANO forthwith instructed their informant to establish contact with OBET for a buy-bust operation. After several hours, the informant reported that OBET was already waiting for her at No. 1485 Soliman Street, Makati City, with instructions for her to come alone as soon as she was ready with P150,000. PALENCIA then caused the dusting of fluorescent powder over ten pieces of authentic P100 bills as buy-bust money and gave them to the informant.[5]

On board a taxi, PALENCIA, SORIANO and their informant proceeded to the rendezvous area. They arrived at half past twelve o'clock in the early morning of 16 February 1997. As the gate was already open, the informant entered the premises, while PALENCIA and SORIANO discreetly crawled and positioned themselves near the gate of the house. Strategically positioned, PALENCIA overheard OBET ask the informant whether she had the

money. PALENCIA then saw the informant hand over the money to OBET. While counting the money, OBET sensed the presence of other people in the area. OBET, who was in possession of a .45 caliber pistol, fired it twice toward the direction of PALENCIA, while hurrying towards the house. OBET then held hostage his mistress, Estrella Brillantes, and her two children for the next three hours until the arrival of one Major Roberto Reyes to whom OBET surrendered. PALENCIA and SORIANO brought OBET, his firearm and the recovered buy-bust money to the WPD Headquarters for recording purposes and, thereafter, to the NBI Headquarters.[6]

At the NBI Headquarters, PALENCIA and SORIANO methodically interrogated OBET about the source of his shabu. OBET eventually volunteered that his source was a certain Betty of 263 El Grande Street, B.F. Homes, Parañaque City. PALENCIA and SORIANO took OBET to Betty's house as a follow-up operation. They arrived at around 6:00 a.m. of the same day, 16 February 1997. As OBET called Betty earlier to tell her that he was arriving, Betty already had the gate opened for them. After parking, PALENCIA saw Betty waiting for them. Upon seeing OBET in handcuffs, Betty asked what happened. OBET replied that he was just caught in a buy-bust operation. PALENCIA and SORIANO then tried to convince Betty to surrender the shabu that OBET insisted was hidden inside the house. As Betty persistently denied the existence of the shabu, PALENCIA told OBET to confer with Betty. After a while, OBET proceeded to the kitchen of the guesthouse located outside the main house, followed by Betty. OBET then promptly pointed to what he termed as liquid shabu inside a white pail along with other drug paraphernalia, such as a beaker spray. PALENCIA and SORIANO seized the items.[7]

Thereafter, PALENCIA requested a laboratory examination of all the seized items and an ultraviolet light examination over the persons of OBET, Betty and a certain Eva Baluyot.[8] PALENCIA claimed that based on the certification issued by the Forensic Chemistry Division of the NBI, all the items seized from Betty's residence were positive for methamphetamine hydrochloride except specimen no.7; while from among the persons subjected to ultraviolet light examination, only OBET was found positive for fluorescent powder.[9]

On cross-examination, PALENCIA admitted that he and SORIANO conducted the search without a search warrant, but with the consent of Betty.[10] He also admitted that he did not actually see OBET or Betty in the act of manufacturing shabu.[11]

NBI Intelligence Agent II SORIANO corroborated PALENCIA's testimony. He likewise admitted that the custodial investigation of OBET, during which he divulged Betty as the source of shabu, was conducted in the absence of any counsel. SORIANO also confirmed PALENCIA's testimony that they were not armed with a search warrant, but that they conducted the follow-up operation at Betty's house under the hot pursuit theory.[12] He further maintained that OBET, after conferring with Betty, uttered, "Ako na nga, ako na nga"(I will do it, I will do it). OBET then proceeded to the dirty kitchen, pointed to the refrigerator and had it moved. Thereafter, SORIANO saw a plastic pail containing liquid with floating brown substances.

SORIANO admitted that he and PALENCIA neither witnessed OBET and Betty manufacture shabu in the manner described in Section 2(j) of the Dangerous Drugs Act[13]; nor did they possess evidence, independent of the items they had seized, that OBET and Betty were engaged in the labeling or manufacturing of shabu.[14]

Forensic Chemist Mary Ann T. Aranas testified that on 16 February 1997, she conducted a laboratory examination for the presence of any prohibited or regulated drug on eleven different specimens (Exhibits "B"- "L").[15] The result of the examination disclosed that all the specimens except specimen no. 7 (Exhibit "H") were positive for methamphetamine hydrochloride.[16] She further observed that specimen no. 8 (Exhibit I- I-2), the brown liquid with floating solid flakes contained in a plastic pail, was positive for epedrine,[17] a substance used in the manufacture of methamphetamine hydrochloride. She opined that this crude form of shabu would have to undergo chemical processes, like extraction, crystallization, distillation, before it could be finally converted into

shabu's crystalline form. She also conducted a fluorescent powder examination over the persons of OBET and Betty. Only OBET gave a positive result.[18]

On the other hand, OBET testified that while he was watching television on the night of 15 February 1997, he heard the doorbell rang. Upon seeing Eva Baluyot, his childhood friend, he opened the door for her. Inside the house, Eva handed him a bundle of money and stated that she was buying shabu from him. OBET emphatically told Eva that he was not engaged in such illegal trade and returned the money. OBET then accompanied Eva out of the house. At the garage, OBET noticed someone peeping from the dark; so he told Eva to go back inside the house with him. Eva ignored the request. OBET thus left Eva at the garage and got his .45 caliber gun from his house. While he was locking the door, his handgun accidentally fired off, as he forgot that it had already been cocked. This blast was followed by shouts of people outside claiming that they were NBI men. Uncertain, OBET did not go out of the house but instead told the alleged NBI men to call the Makati Police, specifically Major Reyes. The NBI agents, however, persisted in convincing OBET to go out of the house. He did get out of his house after three hours when he heard the voice of Major Reyes. OBET gave to Major Reyes his gun. The Makati Police and the NBI men thereafter conducted a joint search inside OBET's house which, however, yielded nothing. OBET was then brought to the Makati Police Headquarters where the incident was recorded. Thereafter, PALENCIA, SORIANO and another NBI man brought OBET to the house of Betty, his former live-in partner, at El Grande Street, B.F. Homes, Parañaque City, upon the insistence and information of Eva Baluyot.[19]

Upon entering B.F. Homes, SORIANO instructed OBET to call and tell Betty that he was already near. The gate was already opened when they arrived, and the NBI men freely parked their car at the garage. Then, PALENCIA and SORIANO alighted from the car and entered Betty's house. OBET was left in the car under the charge of the third NBI man; hence, he knew nothing of what happened inside Betty's house.[20]

For her part, Betty admitted that she was romantically involved with OBET and had a child by him. She recalled that on 16 February 1997, OBET called at around 6:00 a.m. and requested her to open the gate for him, as he was already near. She ran down to the garage and opened the gate. Since her car was parked halfway through the garage, she went to the main house to get her car keys to make way for OBET's car. But as she came out of the main house, OBET's car was already parked inside the garage. She noticed that OBET had two companions with long firearms. The two, whom Betty later found out as NBI men PALENCIA and SORIANO, informed her that they had just come from a buy-bust operation and that OBET had led them to her house, as there were illegal chemicals kept in the premises. Shocked and amazed, she then asked for a search warrant, but the NBI men could not produce any.[21]

Betty further recalled that the NBI men claimed that they found contraband items near the dirty kitchen at a small space behind the refrigerator where cases of softdrinks were stored. Betty denied any knowledge that there were illegal chemicals inside her house and that these were manufactured into shabu. She also denied knowing Eva Baluyot.[22]

On cross-examination, Betty disclaimed her alleged consent to the search of her house, for she specifically asked the NBI men for a search warrant. She asserted that she did not see the NBI men find the shabu paraphernalia because she went up to the second floor of her house. She only saw that the NBI men were bringing several items out of her house.[23]

The trial court agreed with the prosecution's theory that the warrantless arrests of OBET and Betty were conducted within the purview of valid warrantless arrests enumerated in Section 5,[24] Rule 113 of the Rules of Court. It then ruled as valid the consented warrantless search conducted at the house of Betty. Consequently, it found that the very items seized by the NBI agents at the kitchen of Betty's guesthouse were admissible as the

corpus delicti of the violation of Section 14-A of the Dangerous Drugs Act. Thus, the trial court "believed" that the paraphernalia seized were indispensable to the processing or manufacturing of shabu into crystallized form. Although it conceded that the prosecution witnesses did not actually see the crystallization processes, the trial court observed that the Dangerous Drug Act does not require that there be actual manufacturing activities at the time of the seizure.

The trial court, however, acquitted Betty for failure of the prosecution to adduce evidence that she, in conspiracy with OBET, manufactured shabu without the requisite authority. It did not arrive at a similar conclusion as far as OBET was concerned, but declared that based on the evidence on record, OBET's guilt of the crime charged was proved beyond reasonable doubt. Thus, in the decision of 18 May 1998 the trial court decreed as follows:

WHEREFORE, finding the evidence insufficient to warrant the conviction of accused Beatrice Valerio y del Rosario for Violation of Sec. 14-a of Article III of R.A. 6425 as amended by R.A. 7659, this court pronounces her NOT GUILTY and considering that she is detained at the NBI the NBI is directed to immediately release her from custody unless there be some reasons for her detention. Finding, however, accused Robert Figueroa GUILTY as charged [of] the same offense in the absence of any mitigating or aggravating circumstances, this Court hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay a fine of P500,000.00 and to suffer the accessory penalties provided by law, specifically Art. VI [sic] of the Revised Penal Code.

The Clerk of Court is directed to prepare the Mittimus for the immediate transfer of Robert Figueroa to the Bureau of Corrections in Muntinlupa City.

SO ORDERED.

Unsatisfied with the verdict, OBET appealed the decision to us. He principally premises his prayer for acquittal on the failure of the State to show by convincing evidence that shortly prior to or during custodial investigation, he was apprised of his constitutional rights to remain silent, to have a competent and independent counsel preferably of his own choice, and to be informed of such rights. He asserts that he did not waive those rights. Thus, whatever admissions were allegedly extracted from him are inadmissible in evidence. Even assuming that his extrajudicial statements were admissible, Betty's acquittal would work in his favor because the indictment is based on conspiracy. In a conspiracy, the act of one is the act of all. Therefore, the acts imputed to him were also the acts of Betty, and vice versa. Since the trial court considered insufficient for conviction the acts of Betty, then he, too, should be acquitted.

In the Appellee's Brief, the Office of the Solicitor General (OSG) maintains that not all warrantless searches and seizures are illegal. For one, a warrantless search and seizure is not unreasonable and offensive to the Constitution if consent is shown. In this case, the prosecution convincingly proved that Betty consented to the search of her house. With her consent, Betty validly waived her constitutional right against unreasonable searches and seizure. Consequently, the items seized in her house by virtue of the consented search are admissible in evidence against her and OBET.

The OSG also contends that the acquittal of Betty does not per se work to absolve OBET of the crime charged. Betty's believable disavowal of the location of the paraphernalia and other circumstances on record reasonably indicative of her innocence cannot redound in favor of OBET. The latter apparently knew the exact location of the hidden paraphernalia. By such disclosure, it is not far-fetched to conclude that OBET had been actually engaged in the manufacture of shabu.

We first resolve the question of whether Betty's acquittal would benefit OBET.

We disagree with the theory of OBET that in an indictment based on conspiracy, the acquittal of a conspirator likewise absolves a co-conspirator from criminal liability. Indeed, the rule is well-settled that once a conspiracy is

established, the act of one is the act of all, and each of the conspirators is liable for the crimes committed by the other conspirators.[25] It follows then that if the prosecution fails to prove conspiracy, the alleged conspirators should be held individually responsible for their own respective acts. Accordingly, OBET's criminal liability in this case must be judged on the basis of his own acts as established by the quantum of proof required in criminal cases.

We should then determine whether the prosecution was able to establish beyond reasonable doubt OBET's guilt for unauthorized manufacture of shabu, a regulated drug.

After a meticulous review of the records and of the evidence adduced by the parties in this case, we find that what PALENCIA and SORIANO did left much to be desired, thereby resulting in a bungled prosecution of the case. The evidence for the prosecution miserably failed to prove OBET's guilt of the offense charged.

The buy-bust operation was a failure because no shabu or other regulated or prohibited drug was found in OBET's person and residence. No evidence was adduced to show that OBET handed shabu over to the informant. Yet, he was placed in custody. For what offense he was held in custody does not, initially, appear very clear on the record.

It was established that OBET fired two shots toward the direction of PALENCIA and SORIANO and held hostage his mistress and her two children. Yet he was not placed under custodial investigation for such crimes as grave threats, coercion, illegal possession of firearms, or crimes other than that with which he was charged.

On the contrary, OBET was held in custody and investigated or interrogated about the source of the shabu, none of which was found during the buy-bust operation. In short he was held in custody as a consequence of the failed buy-bust operation and as a follow-up to link him to the source and establish a conspiracy in the illegal trade of shabu. Allegedly, he admitted that the source was Betty. On the basis of that admission, PALENCIA and SORIANO, together with OBET, proceeded to the residence of Betty. Needless to state, OBET cannot be investigated for anything in relation to shabu while under custody without informing him of his rights to remain silent and to have a competent and independent counsel preferably of his own choice. Any waiver of such rights should be in writing and made in the presence of a counsel pursuant to Section 12 (1)[26], Article III of the Constitution. It has been held that these rights attach from the moment the investigation starts, i.e. when the investigating officers begin to ask questions to elicit information and confessions or admissions from the suspect.[27]

It is always incumbent upon the prosecution to prove at the trial that prior to in-custody questioning, the confessant was informed of his constitutional rights. The presumption of regularity of official acts does not prevail over the constitutional presumption of innocence.[28] Hence, in the absence of proof that the arresting officers complied with these constitutional safeguards, extrajudicial statements, whether inculpatory or exculpatory, made during custodial investigation are inadmissible and cannot be considered in the adjudication of a case.[29] In other words, confessions and admissions in violation of Section 12 (1), Article III of the Constitution are inadmissible in evidence against the declarant and more so against third persons.[30] This is so even if such statements are gospel truth and voluntarily given.[31] Such statements are useless except as evidence against the very police authorities who violated the suspect's rights.[32]

SORIANO admitted that the custodial investigation of OBET was conducted without the presence of a lawyer, and there is no proof that OBET waived said right and the right to remain silent. No waiver in writing and in the presence of a counsel was presented. Thus, pursuant to paragraph 3 of Section 12 of Article III of the Constitution any admission obtained from OBET in the course of his custodial investigation was inadmissible against him and cannot be used as a justification for the search without a warrant.

The search conducted on Betty's house was allegedly consented to by Betty. Indeed, a consented search is one of the exceptions to the requirement of a search warrant. In *People v. Chua Ho San @ Tsay Ho San*,^[33] we pointed out that:

This interdiction against warrantless searches and seizures, however, is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in instances of (1) search of moving vehicles, (2) seizure in plain view, (3) customs searches, (4) waiver or consented searches, (5) stop and frisk situations (Terry search), and (6) search incidental to a lawful arrest. The last includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrest, to wit: (1) arrest *flagrante delicto*, (2) arrest effected in hot pursuit, and (3) arrest of escaped prisoners.

In case of consented searches or waiver of the constitutional guarantee, against obtrusive searches, it is fundamental that to constitute, a waiver, it must first appear that (1) the right exists; (2) that the person involved had knowledge, either actual or constructive, of the existence of such right; and (3) the said person had an actual intention to relinquish the right.^[34] The third condition does not exist in the instant case. The fact is, Betty asked for a search warrant, thus:

Q

And of course, these NBI Special Investigators informed you of their purpose is that correct?

A

Yes sir.

Q

And of course believing that there was nothing in your house you acceded?

A

No sir, I was asking for a search warrant.

Q

And what was their reply?

A

They did not have any but that Figueroa had led them to the property.^[35]

Neither can the search be appreciated as a search incidental to a valid warrantless arrest of either Betty or OBET as intimated by the trial court. First, Betty's arrest did not precede the search. Second, per the prosecution's evidence OBET was not arrested for possession or sale of regulated or prohibited drugs as a consequence of the buy-bust operation. He surrendered after taking hostage Estrella and her two children, although he was thereafter held in custody for further questioning on illegal drugs.

There is no showing that the house occupied by Betty and the articles confiscated therefrom belong to OBET. That OBET pointed to PALENCIA and SORIANO the places where the articles were found provides no sufficient basis for a conclusion that they belonged to him. Even if the articles thus seized actually belonged to him, they cannot be constitutionally and legally used against him to establish his criminal liability therefor, since the seizure

was the fruit of an invalid custodial investigation.

WHEREFORE, in view of all the foregoing, the 18 May 1998 Decision of the Regional Trial Court, Branch 259, Parañaque City, convicting herein accused-appellant Robert Figueroa of violation of Section 14-A, Article III of the Dangerous Drugs Act, as amended, is hereby REVERSED and SET ASIDE. He is hereby ACQUITTED of the crime charged, and ORDERED immediately released from confinement or detention unless his continued detention is warranted by virtue of a valid legal cause. The Director of the Bureau of Corrections is directed to submit within five (5) days from receipt of a copy of this decision a report on the release of accused-appellant.

Costs de oficio.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, 20-37. Per Judge Zosimo V. Escano.

[2] The Sections reads:

Sec. 14-A. Manufacture 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 engage in the manufacture of any regulated drug.

[3] Rollo, 13.

[4] Original Record (OR), 52.

[5] TSN, 8 September 1997, 7-17.

[6] TSN, 8 September 1997, 26-49.

[7] Id., 50-69.

[8] TSN, 8 September 1997, 93.

[9] Id., 89-97.

[10] Id., 133-135.

[11] Id., 148.

[12] TSN, 20 October 1997, 78-80.

[13] Sec. 2(j) "Manufacture" - means the production, preparation, compounding or processing of a dangerous drug either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and shall include any packaging, or repackaging of such substance or labeling or relabeling of its container; except that such terms do not include the preparation, compounding, packaging, or labeling of a drug or other substance by a duly authorized practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice.

[14] TSN, 20 October 1997, 83-84.

[15] TSN, 11 August 1997, 11-24.

[16] Id., 25-26.

[17] Id., 26.

[18] OR, 96.

[19] TSN, 10 December 1997, 7-20.

[20] Id., 22-25.

[21] TSN, 9 February 1998, 13-16.

[22] TSN, 9 February 1998., 17-19.

[23] Id., 28-32.

[24] It reads:

Sec. 5. - Arrest, without a warrant; when lawful - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

[25] *People v. Veronas*, 179 SCRA 423, 427 (1989); *People v. Enriquez*, 281 SCRA 103 (1997); *People v. Cariquez*, G.R. No. 129304, 27 September 1999.

[26] It reads:

Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

[27] *People v. Rivera*, 245 SCRA 421, 431 (1995)

[28] *People v. Wong Chuen Ming*, 256 SCRA 182 (1996)

[29] See *People v. Nolasco*, 163 SCRA 623 (1988); *People v. Lim*, 196 SCRA 809 (1991); *People v. Javar*, 226 SCRA 103 (1993); *People v. Januario*, 267 SCRA 608 (1997); *People v. Santos*, 283 SCRA 443 (1997)

[30] See *People v. Ramirez*, 169 SCRA 711, 719 (1989)

[31] *People v. Agustin*, 240 SCRA 541, 556-557 (1995)

[32] *People v. Ramirez*, *supra* note 30.

[33] 308 SCRA 432, 444 (1999)

[34] Id., 450, citing *People v. Burgos*, 144 SCRA 1 (1986)

[35] TSN, 9 February 1999, 28-29.

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