

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MICHAEL MONTE Y ABDUL, APPELLANT.

G.R. No. 144317. August 05, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 99-171228, finding appellant Michael Monte guilty beyond reasonable doubt of violation of Article III, Section 15 of Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972,[2] as amended, and sentencing him to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law, and to pay the costs.

Appellant Michael Monte was charged with violation of Article III, Section 15, of RA 6425, as amended, in an information which reads:

That on or about March 1, 1999, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there wilfully, unlawfully, and knowingly sell or offer for sale five (5) heat-sealed transparent plastic bags each containing white crystalline substance with a total weight [of] 262.272 grams known as shabu containing methamphetamine hydrochloride, which is a regulated drug.

Contrary to law.[3]

When arraigned, appellant pleaded not guilty. Thereafter, trial ensued.

The following facts are established:

On March 1, 1999, at about 6:00 in the morning, SPO2 Virgilio Martinez of the Metro Manila Drug Enforcement Group, National Capital Region Police Office (MMDEG-NCRPO), Camp Bagong Diwa, Taguig Metro Manila, received a call from a confidential informant about the illegal drug activities of appellant Michael Monte on P. Casal Street, San Miguel Manila.[4] A team of eight operatives, SPO1 Isagani Jimenez included, was organized to conduct surveillance and buy-bust operations.[5] They prepared fake money which were arranged in a bundle placed in between genuine P500.00 bills.[6] SPO1 Jimenez was designated as the poseur buyer.[7] Upon arriving at P. Casal Street, the confidential informant met SPO1 Jimenez and introduced him to appellant as a prospective buyer of 250 grams of shabu. Appellant told them that he can deliver the desired quantity of shabu at P50,000.00 per 50 gram. After SPO1 Jimenez agreed to the price, appellant told him to come back at 10:00 in the evening of the same day.[8]

The team returned to the scene at the designated time and positioned themselves strategically around the area. After a few minutes, the informant and appellant arrived and, after a brief conversation, SPO1 Jimenez handed the bundle of money to appellant, who in turn gave Jimenez white crystalline substance contained in five plastic sachets. Immediately, SPO1 Jimenez introduced himself as a police officer and simultaneously raised his right

hand as a pre-arranged signal to his companions that the sale had been consummated. Appellant tried to escape, but he was arrested by SPO1 Jimenez, with the help of his companions who had rushed to the scene after seeing the signal. SPO1 Jimenez confiscated from appellant the bundle of money. Appellant was then brought to the MMDEG-NCRPO station for investigation. The five plastic sachets containing the white crystalline substance, which weighed 262.272 grams were forwarded to the PNP Crime Laboratory for examination and were found positive for methamphetamine hydrochloride or shabu, a regulated drug.

Appellant denied the charge and claimed that he was framed up by the police. He alleged that on March 1, 1999, at 3:30 in the afternoon, his friend, a certain Sherman, and the latter's female companion, dropped by his sister's house where he was then staying. Sherman invited him to go with them to the Luneta Park and later to have a snack at Jollibee.[9] They boarded a black Mitsubishi Pajero. As soon as they passed Ayala bridge, they were blocked by a Honda Civic. Eight armed men in civilian clothes alighted therefrom and introduced themselves as police officers. Appellant and his companions were ordered to alight from the Pajero and were frisked.[10] Afterwards, appellant was made to board the Honda Civic while Sherman and his female companion boarded the Pajero.[11] Inside the Honda Civic, appellant was mauled by the police officers.[12] He was brought to the Drug Enforcement Unit in Bicutan, Taguig, where he was tortured by putting a plastic bag over his head and tying it around his neck.[13] He was told to put up a bailbond for his release.[14]

On July 10, 2002, the trial court rendered a decision convicting appellant of the crime charged, the dispositive portion of which reads:

WHEREFORE, the accused, Michael Monte y Abdul, is hereby convicted of the crime of Violation of Section 15, Article III of R.A. 6425 as amended without any aggravating and/or mitigating circumstances, and sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law and to pay the costs.

The 262.272 grams of shabu is forfeited in favor of the government and is ordered turned over to the Dangerous Drugs Board, for proper disposition.

SO ORDERED.[15]

Hence this appeal, raising the following errors:

- THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNBELIEVABLE TESTIMONY OF PROSECUTION WITNESS SPO1 ISAGANI JIMENEZ AND IN GIVING IN HIS FAVOR THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY DESPITE THE APPARENT IRREGULARITIES IN THE MANNER THEY CONDUCTED THE ALLEGED BUY-BUST OPERATION.
- THE COURT A QUO GRAVELY ERRED IN GIVING SCANT CONSIDERATION TO THE EVIDENCE PRESENTED BY THE ACCUSED APPELLANT.
- THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[16]

The issue of whether or not the prosecution was able to prove beyond reasonable doubt the guilt of appellant Michael Monte is the core of the instant appeal.

Appellant argues that the trial court failed to consider the irregularities in the conduct of the buy-bust operation which could have exculpated him from criminal liability. He said that while the prosecution claimed that two genuine 500 peso bills were put, one on top and the other at the bottom of the fake money, it failed to show the

source of the said bills, which creates doubt as to their existence and to the prosecution's claim that said genuine 500 peso bills were taken from appellant. Appellant maintains that as a standard operating procedure in buy-bust operations, the law enforcers put mark on the money bills and have them photocopied. In the case at bar, the police officers who participated in the buy bust neither marked nor photocopied the two 500 peso bills. Also, SPO1 Jimenez, the lone prosecution witness, testified that he confiscated from appellant 262.272 grams of shabu. However, he did not present the Booking Sheet and Arrest Report which would show that shabu was indeed taken from appellant.

The appeal is without merit.

In the prosecution for the sale of regulated drugs, like shabu, what is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the corpus delicti.[17] Corpus delicti is the body or substance of the crime, and establishes the fact that a crime has been actually committed.[18] It has two elements, namely: (1) proof of the occurrence of a certain event; and (2) some person's criminal responsibility for the act.[19]

SPO1 Jimenez, the poseur-buyer, clearly established the above elements, viz: an illegal sale of the regulated drug actually took place and appellant was the author thereof. He testified as follows:

Prosecutor Panfilo Pabelonia, Jr. to witness

Q: When you arrived at that bridge [P. Casal], was the accused already there?

A: He was not yet there, Sir.

Q: How long did you wait?

A: Around 10 minutes then the accused arrived.

Q: The accused arrived together with the confidential informant?

A: Yes, Sir.

Q: After the accused arrived together with the confidential informant, what transpired?

A:

He asked me the money and I also asked him where is the shabu, and when I handed the money to him I asked him to hand to me the shabu and when the shabu was handed to me, I introduced myself as police officer and at the same time I held the accused and signaled for my companions to approach us.[20]

The result of the laboratory examination conducted on the white crystalline substance confiscated from appellant and forwarded to the Western Police District bolsters the foregoing testimony that, indeed, what was sold by appellant was shabu, a regulated drug. The results of the examination states:

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE results to the tests for methylamphetamine hydrochloride, a regulated drug. x x x

CONCLUSION:

Specimen A contains methylamphetamine hydrochloride, a regulated drug. x x x.[21]

Moreover, the prosecution witness was able to present and identify in court the confiscated drugs, which are corroborating pieces of evidence of the corpus delicti, thus:

Prosecutor Jaime Guray to witness:

Q:

And you also testified that you were handed by the accused 5 plastic sachets containing white crystalline substance?

A: Yes, sir.

Q:

If shown to you these five plastic sachets containing white crystalline substance which you said was handed to you by the accused, will you be able to identify the same?

A: Yes, sir.

Q:

May I invite you in the table, Mr. witness, and examine these five plastic sachets which have been marked as Exhibit F, F-1 to F-5 for the prosecution and tell us what relation is these five plastic sachets to the plastic sachets which you stated that was handed to you by the accused?

A:

These were the shabu that were sold to me by the accused, sir.[22]

We find no reason to deviate from the findings of the trial court. It is very clear from the testimony of the prosecution witness that his narration of events was positive, probable and in accord with human experience. It bears the badges of truth, such that it is extremely difficult for a rational mind not to find it credible. SPO1 Jimenez's testimony was coherent, straightforward and unperturbed even under the intense cross-examination by the defense and searching questions by the trial court.

Appellant claims that there were irregularities in his arrest. He said that instead of bringing him to the Western Police District on United Nations Avenue, Manila, the arresting officers brought him to the Drug Enforcement Unit in Bicutan, Taguig, Metro Manila, in clear violation of the mandate of Section 5, Rule 113 of the Rules of Court.[23] Further, the arresting officers did not inform him of his basic constitutional rights. He was not afforded the assistance of a competent and independent counsel of his choice during custodial investigation.

We find nothing irregular in the turn-over of appellant to the Drug Enforcement Unit in Taguig, Metro Manila, although the Rules provide that persons arrested without a warrant shall be delivered to the nearest police station or jail. As correctly argued by the Solicitor General, the place where appellant was brought after the arrest for inquest is immaterial to the ultimate issue of whether he peddled illicit drugs. Moreover, the records show that appellant was brought to the Drug Enforcement Unit in Taguig, Metro Manila because the arresting officers belonged to the Metro Manila Drug Enforcement Group, National Capital Region Police Office (MMDEG-NCRPO), Camp Bagong Diwa, Taguig, Metro Manila, which office was more specialized in the area of drug investigation.

In *People v. Garcia*,[24] it was held that there was nothing irregular in the turn-over of appellant, who was arrested without a warrant for illegal possession of marijuana, to the Criminal Investigation Service (CIS) Office at the Baguio Water District Compound instead of bringing him to the nearest police station, since the CIS office was more specialized in the area of investigation of drug offenses.

Nevertheless, considering that appellant had entered his plea and actively participated in the trial of the case, he submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.[25]

Even assuming that appellant was not afforded the assistance of a counsel of his own choice, the proceedings in the trial court will not necessarily be struck down because no incriminatory evidence in the nature of a compelled or involuntary confession or admission was used as evidence against him. Appellant's guilt was clearly established by the evidence adduced by the prosecution, which consisted of the testimony of SPO1 Jimenez, the arresting officer and poseur buyer, together with the documentary and object evidence which were formally offered and admitted in evidence in the trial court.

Anent the appellant's defense that he was framed-up, we are aware that in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.[26] However, like alibi, frame-up is viewed with disfavor for it is self-serving, can easily be fabricated and is a common standard defense ploy in most prosecutions for violations of the Dangerous Drugs Act.[27] Clear and convincing evidence is required to prove the defense.[28]

In the case at bar, apart from claiming that he was a victim of frame-up and extortion by the narcotics agents of the MMDEG-NCRPO, appellant failed to present any evidence to substantiate his claim. He testified that he was accompanied by a friend, a certain Sherman and the latter's female companion, when the vehicle they were boarding was blocked by the Honda Civic being used by the narcotics operatives. However, he failed to present in court these two persons to corroborate his claim.

Everything considered, we find that the prosecution has established appellant's guilt beyond reasonable doubt. Accordingly, he must suffer for his serious crime of being a merchant of death, a "killer without mercy who poisons the mind and deadens the body" of his victims.[29]

The penalty prescribed under Section 15 of Article III, in relation to Section 20 of Article IV, of the Dangerous Drugs Act of 1972, as amended by RA 7659, for unauthorized sale of 200 grams or more of shabu or methylamphetamine hydrochloride is reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos. In the case at bar, as the penalty of reclusion perpetua to death consists of two (2) indivisible penalties, appellant was correctly meted the lesser penalty of reclusion perpetua, conformably with Article 63 (2) of the Revised Penal Code that when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

However, we note that the trial court did not impose a fine. The imposition of fine is mandatory in cases of conviction of unauthorized sale of regulated drugs. Courts may fix any amount within the limits established by law and; in fixing the amount in each case, attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit.[30] As stated above, the law prescribes the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos if the shabu involved weighs 200 grams or more. Considering that the amount of shabu sold in this case weighed 262.272 grams, we deem the amount of Five Hundred Thousand Pesos (P500,000.00) reasonable.[31]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 99-171228, finding appellant Michael Monte y Abdul guilty beyond reasonable doubt of violation of Article III, Section 15 of Republic Act No. 6425, as amended, and sentencing him to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law, is **AFFIRMED**, with the **MODIFICATION** that appellant is further ordered to pay a fine in the amount of Five Hundred Thousand Pesos (P500,000.00).

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] RTC Record, pp. 66-68.

[2] Section 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.

[3] Id. at 1.

[4] TSN, August 18, 1999, pp. 3 14.

[5] Id. at 3 4.

[6] Id. at 8.

[7] Id. at 6.

[8] Id. at 8 9.

[9] TSN, October 18, 1999, p. 4.

[10] Id. at 5.

[11] Id. at 6.

[12] Ibid.

[13] TSN, October 18, 1999, pp. 6-7.

[14] Id. at 7.

[15] Id. at 68.

[16] Rollo, p. 45.

[17] People v. Requiz, G.R. No. 130922, 19 November 1999, 318 SCRA 635.

[18] People v. Oliva, G.R. No. 122110, 26 September 2000, 341 SCRA 78.

[19] People v. Boco, 368 Phil. 341 (1999).

[20] TSN, August 18, 1999, p. 10.

[21] RTC Records, p. 4.

[22] TSN, October 4, 1999, p. 2.

[23] Section 5. Arrest without 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 just been committed and he has probable cause to believe based on personal knowledge

of facts or circumstances 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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

[24] *People v. Garcia*, G.R. 126252, 30 August 1999.

[25] *People v. Lipitaje*, G.R. No. 132042, 19 February 2003.

[26] *People v. Pagaura*, 334 Phil. 683 (1997).

[27] *People v. Evelyn Patayek y Calag and Arlene Goya y Taya*, G.R. No. 123076, 26 March 2003.

[28] *People v. Chen Tiz Chiang*, G.R. Nos. 131872-73, 17 February 2000, 325 SCRA 776; citing *People v. Cheng Ho Chua*, 364 Phil. 497 (1999).

[29] *People v. Abedes*, G.R. No. L-73399, 28 November 1986, 146 SCRA 132.

[30] *People v. Khor*, 366 Phil. 762 (1999).

[31] *People v. Lee*, G.R. No. 140919, 20 March 2001.

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