

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZENG HUA DIAN ALIAS “CHAN CHANG HUA TIAN” A.K.A. “BOBONG CHUA” AND YANG YAN GIOU ALIAS “JACKSON YU AND JACKSON YANG,” DEFENDAN...

G.R. No. 145348. June 14, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

For review before this Court is the July 21, 2000 Decision[1] of the Regional Trial Court, Branch 16, Zamboanga City convicting herein appellants Zeng Hua Dian a.k.a. Chan Chang Hua Tian a.k.a. Bobong Chua and Yang Yan Giou alias Jackson Yu a.k.a. Jackson Yang for violation of Section 15, Article III of Republic Act 6425, otherwise known as the Dangerous Drugs Act, as amended by Republic Act 7659.

The Information, dated April 17, 1999, charged appellants as follows:

That on or about the 16th day of April 1999, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named, both Chinese [n]ationals, not being authorized by law to sell, deliver, distribute, transport or give away to another any regulated drug, conspiring and confederating together, mutually aiding and assisting with one another, did then and there wil[l]fully, unlawfully, and feloniously, SELL and DELIVER to SPO2 SALIM SAHAJI y SAHIOL, a member of the PNP designated as Chief Clerk/ Operative of the Special Operation Group of the Presidential Anti-Organized Crime Task Force, who acted as buyer, eight (8) heat-sealed white plastic packs each containing white crystalline substance having a total weight of 389.2963 grams which when subjected to qualitative examination gave positive result to the tests for METHAMPHETAMINE HYDROCHLORIDE (shabu), both accused knowing the same to be a regulated drug.

CONTRARY TO LAW.[2]

Appellants were arraigned on May 24, 1999.[3] They pleaded not guilty to the offense charged. After trial in due course, the lower court rendered its assailed Decision, the dispositive portion of which states:

WHEREFORE, the Court finds accused ZENG HUA DIAN alias “Chan Chang Hua Tian” a.k.a. Bobong Chua and Joseph Chan and accused YANG YAN GIOU alias Jackson Yu, Jackson Yang, Yu Yang Giou, and Yang Yan Piao GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Section 15, Article III in relation to Section 20, Article IV of Republic Act No. 6425, otherwise known as the Dangerous Drug Act of 1972, as amended, and SENTENCES each of said accused to suffer the penalty of RECLUSION PERPETUA and its accessory penalties, to pay a fine of EIGHT HUNDRED THOUSAND (P800,000.00) PESOS each, and to pay the costs.

The 389.2963 grams of methamphetamine hydrochloride or shabu (Exhs. “E;” “E-1” to “E-7”) confiscated from both accused are ordered to be turned over to the Dangerous Drugs Board thru the National Bureau of Investigation (NBI) in Zamboanga City, upon finality of this decision, for disposition in accordance with law.

The buy-bust money in the total amount of P2,000.00 (“G;” “G-1”) shall be returned to the Presidential Anti-Organized Crime Task Force (PAOCTF), Mindanao II Area, Zamboanga City, after the finality of the decision.

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts, as follows:

On April 15, 1999, at around 11:15 a.m., P/Sr. Supt. Jihani Valdez Nani, Chief of the Presidential Anti-Organized Crime Task Force (PAOCTF), Mindanao II Area, summoned P/Supt. Ahmadul Tindin Pangambayan to his office. There, the latter was introduced to a civilian informant and briefed that two Chinese nationals were involved in the business of selling illegal drugs or shabu in Zamboanga City. A few minutes thereafter, P/Sr. Supt. Nani summoned another police officer, SPO2 Salim Sahiol Sahaji and also introduced him to the civilian informant. SPO2 Sahaji was then instructed to go to Platinum Pension House at Barcelona St., Zamboanga City, where the alleged drug dealers were reportedly based, and conduct a test-buy of initially P100 worth of shabu. If given the genuine substance, they would then make a deal to make a further purchase of P200,000 worth of shabu.

The next day, April 16, 1999, at around 9:55 a.m., SPO2 Sahaji and the civilian informant arrived at the aforesaid pension house. They proceeded to Room 304 and once there, the civilian informant introduced SPO2 Sahaji to the person who opened the door, a man named Bobong. He was later identified in open court as appellant Zeng Hua Dian. Another person was also in the room and he was introduced to SPO2 Sahaji as Jackson. This man was also later identified as appellant Yang Yan Giou.

SPO2 Sahaji made an initial purchase of P100 worth of shabu during that meeting. He handed the money to appellant Zeng and the latter took out five (5) decks of shabu from his pocket, gave one (1) deck to SPO2 Sahaji and returned the remaining four (4) inside his pocket. SPO2 Sahaji then told appellant Zeng that if the shabu was of good quality, he would buy up to P200,000 worth of the merchandise. Appellant Zeng replied that they may return by 5:30 p.m. that day and even showed to SPO2 Sahaji a key to a bodega where the shabu was purportedly kept. Thereafter, SPO2 Sahaji and the civilian informant left the pension house and returned to the police headquarters.

Upon their arrival at the police headquarters, SPO2 Sahaji and the civilian informant reported to P/Supt. Pangambayan and gave him the shabu worth P100 which they had bought earlier. P/Supt. Pangambayan inspected the shabu and handed it to another police officer, PO2 Arthur Valdez, for the requisite laboratory examination at the PNP Crime Laboratory. PO2 Valdez was the one who prepared the request for laboratory examination, which was signed by P/Sr. Supt. Nani.[4] The PNP Crime Laboratory Service Unit 9, Zamboanga City received the said request together with the specimen at around 11:20 a.m. that very same day. By 1:00 p.m., the laboratory submitted a report which revealed that the said specimen tested positive for Methamphetamine Hydrochloride or shabu.[5]

The buy-bust operation was immediately planned thereafter at around 4:30 p.m. with P/Supt. Pangambayan assigned as the over-all supervisor of the team. SPO2 Sahaji was designated to act again as the poseur-buyer. The other members of the team were SPO3 Warid Argueli, SPO2 Menting Arab, PO2 Jul-Anni Karimuddin, PO2 Jauhal Usman, and the civilian informant. They agreed that the civilian informant would step out of the room to signal that the sale of shabu had already been consummated. They also prepared the boodle money to be used for the buy-bust operation. Two bundles of bond paper cut into the size of money bills were placed inside a white envelope. On top of each bundle was a genuine P1,000 bill to be used as the marked buy-bust money. The two police officers, P/Supt. Pangambayan and SPO2 Sahaji, placed their initials and markings on the bills. After everybody had been briefed about the plan, they all proceeded to the Platinum Pension House to commence the operation.

Upon their arrival at the pension house, SPO2 Sahaji and the civilian informant proceeded directly to the room at the third floor where they planned to meet the drug dealers. P/Supt. Pangambayan positioned himself around five meters from the door of the room, near the stairs. The other members of the team took their positions in other areas of the pension house. The civilian informant then knocked on the door and it was opened by appellant Zeng who ushered them inside. Appellant Zeng was alone inside the room. SPO2 Sahaji asked about the shabu, but appellant Zeng asked that he be shown the money first. SPO2 Sahaji opened his leather bag and showed appellant Zeng the buy-bust money. The latter then used his cellular phone and spoke to somebody in Chinese. Afterwards, he then informed the two poseur-buyers that somebody will soon arrive with the merchandise. A few minutes later, there was a knock on the door and when appellant Zeng opened it, appellant Yang entered the room. SPO2 Sahaji saw that appellant Yang had a cellular phone in his hand. Then, appellant Yang took out four (4) plastic heat-sealed packs of transparent cellophane from the pockets of his pants and gave these packs to SPO2 Sahaji, who in turn inspected them. After the latter was satisfied that the packs indeed contained the illegal substance, shabu, he placed these packs in his bag. Appellant Yang again took out another four (4) plastic heat-sealed packs from his pockets and handed these packs to SPO2 Sahaji. Again, these packs were inspected by SPO2 Sahaji and placed inside his bag after he was satisfied that these packs contained shabu. SPO2 Sahaji then took out the marked money and immediately, the civilian informant left the room.

Right away, P/Supt. Pangambayan rushed into the room just when appellant Zeng had the buy-bust money in his hand. P/Supt. Pangambayan and SPO2 Sahaji identified themselves to the two appellants as police officers and ordered them to place all their belongings on the bed. SPO2 Sahaji confiscated all the items belonging to appellants. He also took the buy-bust money from appellants and the eight (8) packs of the merchandise alleged to be shabu. SPO2 Sahaji also searched the room, but did not find any bag or clothing belonging to appellants, who, meanwhile, were being informed by P/Supt. Pangambayan of their constitutional rights.

Appellants were brought to the PAOCTF office at around 6:20 p.m. and presented to P/Sr. Supt. Nani. All the confiscated items were inventoried by PO2 Valdez. He also prepared the complaint sheet against appellants that evening. SPO2 Sahaji and P/Supt. Pangambayan wrote some markings on the eight (8) packs of shabu. PO2 Valdez likewise wrote some markings on the said packs.

The next morning, PO2 Valdez prepared a request for laboratory examination of the contents of the eight (8) plastic heat-sealed packs. The PNP Crime Laboratory received the said request at 10:15 a.m. that day.[6] Later, at around 12:10 p.m., the laboratory submitted a report which revealed that the eight (8) heat-sealed packs containing some white crystalline substance tested positive for Methamphetamine Hydrochloride or shabu.[7] The laboratory report was made by P/Sr. Inspector and Forensic Chemist Mercedes Delfin Diestro.

Appellants, on the other hand, question the identification by the prosecution of the shabu allegedly seized during the buy-bust operation. In their Brief, appellants claim that the chain of custody of the seized shabu was broken and this, therefore, is detrimental to the prosecution's case. Appellants assert that other witnesses should have been presented by the prosecution to prove that the chain of custody of the evidence was not broken and that the shabu presented before the court was the same substance seized during the buy-bust operation. They question the non-presentation as witness of PO3 Alamia, the police officer on duty who received the specimen together with the request for laboratory examination from PO2 Valdez. They maintain that the specimen which PO3 Alamia turned over to P/Sr. Insp. Diestro, the forensic chemist, may no longer be the same specimen given to him by PO2 Valdez. They also question the non-presentation as witness of SPO1 Grafia, the evidence custodian. According to appellants, SPO1 Grafia should have been presented as witness since P/Sr. Insp. Diestro turned over the shabu to his custody after examining the same.

Appellants further claim that when the packs of shabu were already presented before the court, the prosecution

witnesses failed to identify properly these packs as the very same ones seized during the buy-bust operation. They argue that SPO2 Sahaji's testimony identifying the shabu should not be given much credence. Allegedly, SPO2 Sahaji was not able to identify the marks he himself placed on the plastic packs. During his testimony, SPO2 Sahaji stated that he placed a mark using a pentel pen on the plastic packs which resembled the letter "W." However, when he was asked to point out these marks before the court, he had some difficulty finding the said marks since only blots of ink were found on the said packs.

After a thorough review of the records of this case, we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

Furthermore, the prosecution had other witnesses who were able to prove sufficiently that the chain of custody of the shabu was never broken from the time the police officers took the shabu from the possession of appellants up to the moment it was offered in evidence.

It was clearly proven that when SPO2 Sahaji and P/Supt. Pangambayan arrested appellants, they confiscated the shabu. SPO2 Sahaji placed the said shabu inside his brown leather bag. When they boarded the vehicle going to the PAOCTF office, SPO2 Sahaji was still in possession of the said bag. Upon their arrival at the PAOCTF office, the group immediately proceeded to the office of P/Sr. Supt. Nani. SPO2 Sahaji then placed all the confiscated articles on top of the table of P/Sr. Supt. Nani, who meanwhile had PO2 Valdez summoned. When PO2 Valdez entered the office, he was ordered by P/Sr. Supt. Nani to prepare a complaint sheet. Following the orders, PO2 Valdez made the complaint sheet and recorded therein not only the arrest of appellants but also the confiscated articles. While PO2 Valdez was writing down the articles, P/Supt. Pangambayan started placing his markings on the said articles, using as his mark the name he usually uses when he transmits messages over the radio. SPO2 Sahaji likewise placed his own mark on the confiscated items, using "S" which with his handwriting, looked like the letter "W." PO2 Valdez himself also marked the eight (8) plastic packs containing shabu with his initials "AV." After marking all the articles, PO2 Valdez then placed everything inside a bag and put the same inside his drawer. Before leaving the office, he locked the said drawer. The next day, April 17, 1999, PO2 Valdez arrived at around 8:00 a.m. and started preparing the request for laboratory examination. He himself submitted the said request for laboratory examination at 10:15 a.m. together with the eight (8) plastic packs of shabu to the PNP Crime Laboratory. These items were received by PO3 Alamia, the duty officer at that time, who immediately transmitted the items to the forensic chemist, P/Sr. Insp. Diestro. In her testimony, the latter stated that it is standard operating procedure for them to conduct an examination of the substance submitted to them the moment they receive the request. P/Sr. Insp. Diestro, therefore, lost no time in examining the substance and making her report. She also wrote on the plastic packs her signature and the marks "D-118-99" and "10:15 HRS, 17 April 1999," the time and date when she examined the same. Thereafter, she turned these over to SPO1 Grafia, the evidence custodian of the PNP Crime Laboratory Regional Office 9. SPO1 Grafia placed the packs inside the evidence room, particularly in a box marked "Dangerous Drugs Cases for the Year 1999." Before P/Sr. Insp. Diestro went to the court to testify on this case, she requested for the substance from SPO1 Grafia from the evidence room.

As to appellants' allegation of the prosecution's failure to identify properly the substance in court as the same one seized from appellants, the trial court noted that SPO2 Sahaji was still able to identify his markings on the plastic packs, albeit with a little difficulty since the markings were almost no longer apparent. Moreover, the other

persons who placed their own markings on the plastic packs, namely P/Supt. Pangambayan and PO3 Arthur Valdez, were still able to identify their own marks on the said plastic packs. It was proven, therefore, that the plastic packs of shabu presented before the court were the very same packs seized from appellants during the buy-bust operation.

Appellants' defense that they were victims of 'hulidap' or a frame-up cannot be given any merit. It must once more be emphasized that such a defense is viewed with disfavor, for it can easily be concocted and is a common ploy by the accused in cases for violations of the Dangerous Drugs Act.[8] Therefore, clear and convincing evidence of 'hulidap' must be shown for such a defense to be given merit.[9]

Finally, appellants impugn the credibility of the prosecution witnesses and claim that these witnesses' testimonies did not prove beyond reasonable doubt that appellants had indeed committed the crime. Time and again, this Court has deferred to the factual findings of the trial court, considering that it has the unique position of having observed the witnesses' deportment or demeanor on the stand, an opportunity denied to appellate courts.[10]

In a prosecution for illegal sale of regulated or prohibited drugs, conviction is proper if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.[11] In this case, the sale of the illegal substance was adequately established and the prosecution witnesses clearly identified both appellants as the offenders. Furthermore, the substance itself, was properly identified and presented before the court.

Under Section 15 of Article III of Republic Act No. 6425, as amended by RA 7659, the sale of regulated drugs without proper authority is penalized with reclusion perpetua to death and a fine ranging from P500,000 to P10,000,000. Under Section 20 thereof, the penalty in Section 15, Article III shall be applied if the dangerous drug involved in the case is Methamphetamine Hydrochloride or shabu and the quantity of said substance is 200 grams or more.

The rules on penalties in the Revised Penal Code have suppletory application to the Dangerous Drugs Act after the amendment of the latter by Republic Act No. 7659 on December 31, 1993.[12] Since no mitigating nor aggravating circumstance attended appellants' violation of the law, and since the aggregate quantity of shabu seized from appellants was 389.2963 grams, we find that pursuant to Article 63 of the Revised Penal Code the trial court correctly imposed the penalty of reclusion perpetua and the fine of Eight Hundred Thousand Pesos (P800,000).

WHEREFORE, the appealed Decision is hereby AFFIRMED. Costs against appellants.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, and Carpio, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Rollo, pp. 27-84; Penned by Judge Jesus Carbon, Jr.

[2] Rollo, p. 9.

[3] Records, p. 26; assisted by counsel, Atty. Eduardo Ledesma.

- [4] Request for Laboratory Examination dated April 16, 1999; Exhibit “A.”
- [5] Laboratory Report No. D-117-99; Exhibit “C.”
- [6] Request for Laboratory Examination dated April 17, 1999; Exhibit “D.”
- [7] Laboratory Report No. D-118-99; Exhibit “F.”
- [8] *People v. Barita*, 325 SCRA 22 (2000) cited in *People v. Patayek*, G.R. No. 123076, March 26, 2003.
- [9] *People v. Lacbanes*, 270 SCRA 193 (1997).
- [10] *People v. Guambos*, G.R. No. 152183, January 22, 2004 citing *People v. Sorongon*, G.R. No. 142416, February 11, 2003.
- [11] *People v. Mala*, G.R. No. 152351, September 18, 2003.
- [12] *People v. Corpuz*, G.R. No. 148919, December 17, 2002 citing *People v. Simon*, 234 SCRA 555 (1994) and *People v. Medina*, 292 SCRA 439 (1998).

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