

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROBERTO MENDOZA PACIS, APPELLANT.

G.R. No. 146309. July 18, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Entrapment is a legally sanctioned method resorted to by the police for the purpose of trapping and capturing lawbreakers in the execution of their criminal plans. Bare denials by the accused cannot overcome the presumption of regularity in the arresting officers' performance of official functions.

The Case

Roberto Mendoza Pacis appeals the August 18, 2000 Decision[1] of the Regional Trial Court (RTC) of Pasig City (Branch 265) in Criminal Case No. 6292-D, in which he was sentenced to reclusion perpetua after being found guilty of violating Section 15, Article III of Republic Act 6425 (RA 6425), as amended by Republic Act No. 7659 (RA 7659).

The Information dated June 3, 1998, and signed by State Prosecutor Marilyn RO. Campomanes, charged appellant as follows:

“That on the afternoon of April 07, 1998, inside Unit #375 Caimito Ville, Caimito Street, Valle Verde II, Pasig City and within the jurisdiction of the Honorable Court, the above named accused did then and there willfully, unlawfully and feloniously sell, distribute and dispatch 497.2940 grams of Methamphetamine Hydrochloride otherwise known as “SHABU”, a regulated drug to undercover NBI agents who acted as poseur-buyer[s], without the corresponding license, and/or prescription to sell, distribute and dispatch the aforementioned regulated drug, to the damage and prejudice of the Republic of the Philippines.”[2]

During his arraignment on July 30, 1998, appellant refused to plead despite the assistance of counsel.[3] Hence, a plea of not guilty was entered for him.[4] After due trial, the RTC rendered its Decision, the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing, the Court finds the [a]ccused, ROBERTO MENDOZA PACIS, GUILTY beyond reasonable doubt of the crime of Violation of Section 15, Article III [of] Republic Act No. 6425, as amended by Republic Act No. 7650, and hereby SENTENCES him to RECLUSION PERPETUA and to pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00), plus the cost of suit.

“The ‘Shabu’, subject matter of the Information in this case, is hereby ordered FORFEITED in favor of the [g]overnment and ordered TURNED OVER to the Dangerous Drugs Board for proper disposal as provided by law.”[5]

The Facts

Version of the Prosecution

The prosecution's version of the facts is summarized by the Office of the Solicitor General (OSG) as follows:[6]

"On April 6, 1998, Atty. Jose Justo S. Yap, supervising agent of the Dangerous Drugs Division-National Bureau of Investigation, received information that a certain Roberto Mendoza Pacis was offering to sell one-half (1/2) kilogram of methamphetamine hydrochloride or "shabu" for the amount of nine hundred fifty pesos (P950.00) per gram or a total of four hundred seventy five thousand pesos (P475,000.00). The NBI Chief of the Dangerous Drugs Division approved the buy-bust operation. Atty. Yap and Senior Agent Midgonio S. Congzon, Jr. were assigned to handle the case.

"In the afternoon of the same day, Atty. Yap, Senior Agent Congzon and the informant went to the house of appellant at 375 Caimito Ville, Caimito Street, Valle Verde II, Pasig City. The informant introduced Atty. Yap to appellant as interested buyer. They negotiated the sale of one-half (1/2) kilogram of shabu. The total price was reduced to four hundred fifty thousand pesos (P450,000.00). It was agreed that payment and delivery of shabu would be made on the following day, at the same place.

"On April 17, 1998, around 6:30 in the evening, the NBI agents and the informant went to appellant's house. Appellant handed to Atty. Yap a paper bag with markings "yellow cab". When he opened the bag, Atty. Yap found a transparent plastic bag with white crystalline substance inside. While examining it, appellant asked for the payment. Atty. Yap instructed Senior Agent Congzon to get the money from the car. When Senior Agent Congzon returned, he gave the "boodle money" to Atty. Yap who then handed the money to the appellant. Upon appellant's receipt of the payment, the officers identified themselves as NBI agents and arrested him.

"Per instruction of Atty. Yap, Senior Agent Congzon transmitted the shabu to the Forensic Chemistry Laboratory for examination.

"NBI Forensic Chemist Emilia A. Rosales testified that on April 8, 1998, she received the specimen from Senior Agent Congzon together with the letter request. The specimen weighed 497.292940 grams. After examination, the specimen was found positive for methamphetamine hydrochloride." (Citations omitted)

Version of the Defense

Appellant, on the other hand, presents the following version of the facts:[7]

"Accused-appellant, ROBERTO MENDOZA PACIS is a legitimate businessman having been engaged in the sale of imported automotive for quite a long time. On April 6, 1998, he was in his house at 375 Caimito Street, Caimito Ville, Valle Verde II, Pasig City. In the afternoon of April 6, 1998, he was in Caloocan City in Dome Street, in the house of defense witness Ramon Ty. He was there to pick-up witness Ty because they had an agreement that he was to bring him to far away Urdaneta, Pangasinan. They left right after lunch at about 2:00 o'clock in the afternoon. Witness Ty mentioned to him that they were to meet Mr. Andrada and Dr. Lachica. They reached Pangasinan at about 5:30 o'clock in the afternoon. They saw the persons they were supposed to meet in Urdaneta, Pangasinan and after seeing those persons, they stayed overnight. In his address at Valle Verde II, accused-appellant had a live-in partner named ANNIE GONZALES. He was a car owner and had a former driver named Rey, who drove for him for less than a year. He had to dismiss his driver Rey because he was always late or would be absent for work without informing him ahead of time. After staying overnight in far away Urdaneta, Pangasinan, they left for Manila on April 7, 1998 at 7:00 o'clock in the morning. When they reached Manila proper, he dropped off witness Ramon Ty in his house at Caloocan. Then, he went straight home to Valle Verde to take a nap. At more or less 3:00 o'clock in the afternoon of April 7, 1998, he was at home at Valle Verde, together with his live-in partner, ANNIE GONZALES. Later that afternoon, three (3)-armed persons entered his condominium unit. There was a commotion downstairs and his live-in partner Annie Gonzales opened the door and he was awakened. Annie told him that there were three (3) people with guns looking for him and they went up to the room right away. The three-armed men told him that they were NBI agents but did not show any identification. Agent Justo Yap, Jr. was one of them. Agent Congzon Jr. was also one of them, but NBI Special Investigator Larosa was not one of them. When they entered the room, the

gun of NBI Agent Yap was already pointed at him while the two (2) other agents were holding the butts of their guns. They were in civilian clothes. They told him to step-out and that they were looking for [s]habu. They were not able to find any in his room or downstairs. When they were looking for the [s]habu, the accused appellant responded “WHAT SHABU?” “What [s]habu are you looking for?” When he stepped out of the room to go down to the living room, he saw his former driver Rey together with his father. Rey[,] as stated before was his former driver and he had seen the father of Rey once or twice before. Rey and his father were also in the living room. A paper bag with the lettering “CAB” was presented to the accused appellant in his house. He noticed that the bag came from Rey and was hiding it behind him when he gave it to agent Yap. Agent Yap got it from the cabinet near the kitchen. Agent Yap wanted him to admit that it belongs to him and that it came from his condominium. Agent Yap also showed him the bag with white powder and what was shown to him was a white substance in powdery form. After it was shown to him and he was asked to admit that it was taken from his place, he and his live-in partner ANNIE GONZALES were brought to the NBI at Taft Avenue. He did not see Rey and his father anymore at the NBI Office. When they were at the NBI, the Agents asked the accused-appellant to admit that the shabu was taken from his apartment. He told them that it was not from his apartment. Agent Yap told him that if he will not admit he will stay in jail longer or will be put behind bars. The accused appellant was brought to the NBI Headquarters on April 7, 1998. When he was taken from his house by the three NBI Agents, he was not informed or appraised of his constitutional rights such as the right to counsel and to remain silent. The same thing is true when he was brought to the NBI Headquarters, where he was not appraised of these basic rights. When he was asked to admit that the shabu was taken from his place, he told them that it was not from him and asked why [they were] doing [this] to him. The NBI Agents insisted that he is hard-headed and if he would just follow them he will be free if he will tell the source of the shabu. There were no statements taken from the accused-appellant in the afternoon of April 7, 1998; no statements were also taken from him in the morning of April 8, 1998. The agents were trying to negotiate with him. The negotiation was such that if he cannot produce the source of the contraband, then he had to produce P200,000.00 in order to get himself free. The NBI Agents agreed to let Annie Gonzales go and look for money. Annie Gonzales was able to produce only P40,000.00. It was brought back by Annie Gonzales to the NBI on April 8, 1998 and gave the sum to Agent Yap. Agent Yap looked very disappointed when he received the money. He said that it was not the agreement that was made. That, the agreed price of P200,000.00 was short of P160,000.00. The accused-appellant requested again if he could use the phone to call up his cousin J-C Mendoza. He got in touch with his cousin, who said that he will try to get the amount. He again requested Agent Yap if he could allow Annie Gonzales [to] go to his cousin and see if there was cash that she can get. Annie Gonzales was allowed to leave again but the P160,000.00 was not produced. Annie Gonzales did not come back anymore because she was not able to produce the money. She did not show up anymore at the NBI Headquarters because she will be detained together with him (accused-appellant).

“Defense witness Ramon V. Ty corroborated, on all material points, the testimony of the accused-appellant. He was the driver of Joey Albert, the singer, for three (3) years more or less. He knows accused-appellant because he is the brother-in-law of Joey Albert. He first met Roberto Mendoza Pacis at his house, when he together with Vicente Pacis, husband of Joey Albert, went there. In the morning of April 6, 1998, he was at home. In the afternoon, they left his house at around 2:00 o’clock. They were bound [for] far away Urdaneta, Pangasinan, because his physical therapist, Dr. Lachica who resided in Pangasinan, was supposed to buy some instruments from him. He needed the instruments to help him exercise his body even without therapy because he had a stroke in 1993. When they reached Urdaneta, Pangasinan, he did not see his therapist because the latter was at his cousin’s house. After being told where Dr. Lachica was, they went to see him. They were able to get the gadget from him. They went to Manila the following morning. They left at about 7:00 o’clock in the morning of April 7, 1998 and reached his house in Caloocan City at around 10:30 o’clock in the morning. Whe[n] they reached Caloocan, he went home and Roberto Mendoza Pacis said that he will also go home.”

Ruling of the Trial Court

The trial court gave full faith and credence to the testimonies of the prosecution witnesses, noting that they

testified in a clear and straightforward manner. It debunked appellant's defense of "frame-up" as it was neither substantiated nor proven. It held that affirmative testimony, especially when it came from the mouth of a credible witness, was far stronger than a negative one.

Hence, this appeal.[8]

The Issues

Appellant raises the following alleged errors for our consideration:

"1. The lower court erred in finding accused-appellant guilty beyond reasonable doubt of the crime of violation of Section 15, Article III of RA 6425 as amended, despite the inherent incredibility of the NBI (National Bureau of Investigation) version of the manner the alleged buy-bust operation was conducted.

"2. The court a quo gravely erred in giving too much weight to the testimony of the witnesses for the prosecution when their testimonies were shot with material discrepancies and inconsistencies.

"3. The lower court erred when it failed to accord full significance [of] the fact that the informant was not presented in court when circumstances demand for his presentation.

"4. The lower court erred when it failed to give weight and credence to the alibi offered by the accused as a defense."[9]

These issues may be summed as follows: (1) whether the "buy-bust" operation that led to appellant's arrest was valid, (2) whether the presentation of the informant was necessary to prove appellant's guilt, and (3) whether the trial court erred in not giving weight and credence to appellant's alibi.

This Court's Ruling

The appeal is not meritorious.

First Issue:

Validity of the Buy-Bust Operation

Claiming that he was framed by the agents of the National Bureau of Investigation (NBI), appellant assails the validity of the buy-bust operation that led to his arrest.

Entrapment Distinguished from Instigation

In entrapment, ways and means are resorted to for the purpose of trapping and capturing lawbreakers in the execution of their criminal plan. In instigation on the other hand, instigators practically induce the would-be defendant into the commission of the offense and become co-principals themselves. It has been held in numerous cases by this Court that entrapment is sanctioned by law as a legitimate method of apprehending criminal elements engaged in the sale and distribution of illegal drugs.[10]

A careful examination of the records shows that the operation that led to the arrest of appellant was indeed an entrapment, not an instigation. The trial court's assessment of the credibility of witnesses must be accorded the highest respect, because it had the advantage of observing their demeanor and was thus in a better position to discern if they were telling the truth or not.[11] In the present case, the RTC noted that the prosecution witnesses testified in a clear and straightforward manner in narrating the events that had transpired before and during the buy-bust operation.

Furthermore, courts generally give full faith and credit to officers of the law, for they are presumed to have

performed their duties in a regular manner.[12] Accordingly, in entrapment cases, credence is given to the narration of an incident by prosecution witnesses who are officers of the law and presumed to have performed their duties in a regular manner in the absence of evidence to the contrary.[13]

No Proof of Ill Motive on the Part of NBI Agents

It is not unusual in criminal cases of this kind to have a version of the prosecution so diametrically opposed to that of the defense. However, upon a careful perusal of the records, we find the evidence presented by the defense to be unsound and self-serving.

Appellant did not submit any plausible reason or ill motive on the part of the arresting officers to falsely impute to him a serious and unfounded charge. Where there is nothing to indicate that the witnesses for the prosecution were moved by improper motives, the presumption is that they were not so moved, and that their testimony is entitled to full faith and credit.[14] The records show that appellant had a ready supply of shabu for sale and disposition to anyone willing to pay the right price.

Elements of Crime Duly Proven

Jurisprudence has firmly entrenched the following as elements in the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug.[15] These elements were duly proven in the case herein. The records show that appellant sold and delivered the shabu to NBI agents posing as buyers. It was seized and identified as a prohibited drug and subsequently presented in evidence. Appellant was likewise shown to be aware that what he was selling and delivering was a prohibited substance.

Second Issue: Identity of Informant Not Necessary

With respect to the informant's identity, we hold that it may remain confidential. There are strong practical reasons for keeping its secrecy, including the continued health and safety of the informant and the encouragement of others to report any wrongdoing to police authorities.[16] This is settled jurisprudence and we will not belabor it here.

Third Issue: Alibi as a Defense

On April 6, 1998, NBI agents, acting as poseur-buyers of illegal drugs, allegedly went to the house of appellant to discuss with him preliminary arrangements for the sale. However, Pacis disputed this allegation. To bolster his claim, he presented his sister-in-law's driver, Ramon V. Ty, who testified that he was with the former in Urdaneta, Pangasinan on that same day; hence, appellant could not have been with the poseur-buyers in Manila to discuss the quantity and the price of the shabu to be delivered the next day.

For the defense of alibi to prosper, the accused must prove that it was physically impossible for them to be at the scene of the crime at the time of its commission. The excuse must be so airtight that it admits of no exception.[17]

In the present case, however, we agree with the RTC that the claim of Ty was not substantiated by the testimonies of the persons he and appellant were supposed to have met in Urdaneta, Pangasinan.

Hence, appellant was unable to disprove the testimonies of the prosecution witnesses that on April 6, 1998, he was discussing the terms of the sale with the poseur-buyers.

Furthermore, it is a well-settled rule that the positive identification of the accused -- when categorical and consistent and without any ill motive on the part of the prosecution witnesses -- prevails over alibi and denial which are negative and self-serving, undeserving of weight in law.[18]

Compared with the detailed, convincing and well-documented Decision of the trial court, appellant's denial and alibi pale into insignificance.

WHEREFORE, the appeal is DENIED and the assailed Decision AFFIRMED. Costs against appellant.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Written by Judge Edwin A. Villazor; rollo, pp. 16-44; records, pp. 259-287. [2] Rollo, p. 5; records, p. 1. [3] Atty. Ernesto O. Pua. [4] Order dated July 30, 1998; records, p. 38.

[5] Assailed Decision, pp. 28-29; rollo, pp. 16-44; records, pp. 259-287. [6] Appellee's Brief, pp. 3-6; rollo, pp. 137-140. The Brief was signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Amy C. Lazaro-Javier and Associate Solicitor Elmira S. Cruz. [7] Appellant's Brief, pp. 5-11; rollo, pp. 63-69. The Brief was signed by Atty. Benjamin B. Bernardino. [8] This case was deemed submitted for resolution on March 4, 2002, upon receipt by this Court of appellee's Brief. The filing of a reply brief was deemed waived, as none had been submitted within the reglementary period.

[9] Appellant's Brief, p. 1; rollo, p. 59. Original in upper case. [10] *People v. Lapatha*, 167 SCRA 159, November 9, 1988; *People v. Rualo*, 152 SCRA 635, July 31, 1987; *People v. Natipravat*, 145 SCRA 483, November 13, 1986.

[11] *People v. Ruedas*, 194 SCRA 553, February 27, 1991. [12] *People v. Lamog*, 172 SCRA 342, April 17, 1989.

[13] *People v. Boholst*, 152 SCRA 263, July 23, 1987.

[14] *People v. Sanchez*, 173 SCRA 305, May 12, 1989.

[15] *People v. Lacerna*, 278 SCRA 561, 579, September 5, 1997; *People v. Manzano*, 227 SCRA 780, 785, November 16, 1993.

[16] *Ibid.* [17] *People v. Barera*, 262 SCRA 63, September 19, 1996. [18] *People v. Edgar Ayupan*, GR No. 140550, February 13, 2002.

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