

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LI KA KIM ALIAS ED, APPELLANT.

G.R. No. 148586. May 25, 2004

Ponente: VITUG, J.

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VITUG, J.:

Faced with the grim scenario of having to suffer the extreme penalty of death, appellant is now before this Court urging to overturn his conviction for violation of Section 15, Article III, of Republic Act No. 6425, as so amended by Republic Act 7659.

The Information filed against appellant was to the following effect; viz:

“That on or about September 19, 1999, in Paranaque City, Philippines, and within the jurisdiction of this Honorable Court, accused Li Ka Kim alias Ed, for the amount of Four Hundred Thousand (P400,000.00) Pesos, Philippine currency, did then and there, willfully, unlawfully and feloniously, sell, deliver and give away to a poseur-buyer, NINE HUNDRED NINETY FOUR POINT SEVEN SEVEN THREE (994.773) grams of Methamphetamine Hydrochloride commonly know as ‘Shabu,’ a regulated drug without authority of law or the corresponding license therefor.”[1]

Appellant, acting upon advice of counsel, did not enter any plea during his arraignment; the court was thus constrained to enter a plea of “not guilty” in his behalf.

The prosecution presented its evidence.

At six o’clock on the morning of 19 September 1999, the Regional Intelligence and Investigation Division (RIID) of the Philippine National Police, Region IV Office at Camp Vicente Lim, Calamba, Laguna, received a report from an informer, named “Boy,” that a certain alias “Ed,” known to be a drug dealer operating in the southern part of Metro Manila, was looking for a buyer of shabu. At seven-thirty that morning, PO2 Christian Trambulo, an officer of RIID, made initial contact with Ed through a phone call using Boy’s cellular phone. Boy introduced PO2 Trambulo to Ed as “Rollie,” a buyer of shabu.[2] The parties agreed to meet at the parking space of “McDonald’s” at Uniwide Coastal Mall in Parañaque City between four o’clock and five-thirty in the afternoon where Ed was supposed to give PO2 Trambulo (a.k.a. Rollie) a kilo of shabu and the latter to pay for it an amount of P400,000.00. After the phone call, PO2 Trambulo was instructed by P/Chief Inspector Julius Caesar Mana to be the poseur- buyer and was given P4,000.00 in four (4) P1,000.00 genuine bills which was arranged in such a way as to make it appear to be the agreed amount of P400,000.00 in boodle money.[3]

At the agreed time and place of the transaction, PO2 Trambulo, together with sixteen (16) other officers of the RIID, waited for appellant. PO2 Trambulo noticed a red Honda Civic car passing several times in front of him. Finally, a Chinese-looking man alighted from the driver’s side of the vehicle. “Boy” introduced PO2 Trambulo (a.k.a. Rollie) to appellant (a.k.a. Ed) who also introduced himself to Rollie, using “broken” Tagalog language. Ed then gave Rollie a brown paper bag containing a white crystalline substance wrapped in a Christmas wrapper. After looking at the contents of the wrapper and pinching it to test the crispiness of the substance, Rollie gave Ed

the buy-bust money. When Ed reached for the money with his hands, Rollie informed Ed that he was a police officer. Police Inspector Emerito Estrada came and informed Ed of his constitutional rights. Appellant was arrested and the boodle money was recovered.[4]

At the trial, PO2 Trambulo pointed to appellant as being the seller of the confiscated shabu and positively identified the brown paper bag given to him by appellant containing the prohibited drug which he marked "CVT," his initials (Christian Ventura Trambulo). [5]

Appellant had a different story to tell.

Testifying through an interpreter, appellant claimed to be a Chinese, jobless, and born in Fookien, China, unable to speak English or Filipino, who came to the Philippines on a tourist visa on 13 May 1999, when invited by his friend Tan Eng Hong. According to appellant, he stayed with Tang Eng Hong at Room 1003 Gotesco Building, Manila, up until 19 September 1999. He denied having been in Southern Tagalog. About two to three o'clock on the afternoon of 19 September 1999, he and Tan Eng Hong went out and took a ride going to the airport. He did not know the name of the commercial center but he was sure that it was leading to the airport. Upon their arrival, Tan Eng Hong alighted from the car and went inside the mall. While waiting for Tan Eng Hong and smoking a cigarette, five persons accosted him. At the point of a gun, he was forced inside the car, which he and Tan Eng Hong used in going to the mall. The police officers, who were all armed, brought him to a gasoline station where he was frisked but they were not able to find anything on him except for a pack of cigarettes. He heard one of them saying "wala" and one of them slapped him. He was asked things he did not understand. Later, he was brought to the police station. A Chinese woman approached him while he was at the police station, and he then explained what had happened. He denied that Trambulo was introduced to him by Boy, the informer, whom he did not know. The Chinese woman told him in the presence of three or four police officers that if he could produce P1,000,000.00 and give it to the police officers who brought him there, he would be allowed to go home.

The court a quo adjudged the case for the prosecution.

The trial court debunked appellant's defense of denial. The court found it hard to believe that appellant would be singled out by the police officers from scores of people at the mall where he was arrested and later indicted for selling shabu. Strangely, the court observed, appellant's friend, a certain Tan Eng Hong, did not appear in court to corroborate his testimony. The court likewise noted that the car, as well as the license plate, used by appellant had been stolen, and that appellant was an undocumented alien as so shown by the letter, dated 13 October 2000,[6] of then Commissioner on Immigration and Deportation Rufus B. Rodriguez, to State Prosecutor Reynaldo J. Lugtu.

Finding the prosecution's evidence far more credible than that of the defense and to have overwhelmingly established the elements of the crime charged, the trial court convicted appellant and decreed the penalty of death. In arriving at that penalty, the trial court considered the use of a motor vehicle to be an aggravating circumstance.

Appellant assigned the following "errors" supposedly committed by the court a quo:

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

"ASSUMING ARGUENDO THAT ACCUSED-APPELLANT IS GUILTY OF THE CRIME CHARGED, NONETHELESS, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH." [7]

Initially, appellant, in this appeal, was represented by Atty. Eldorado Lim, who filed a brief for the defense. On 04 October 2002, Fernandez, Pacheco & Dizon Law Offices filed its entry of appearance as being the new counsel for appellant only to be substituted later by Guzman, Tanedo, & Acain Law Offices. On 10 June 2003, the Court

noted and granted the request of the law firm to be furnished with copies of all motions, orders, resolutions and judgment in connection with the case. On 01 September 2003, appellant filed a motion to remand the case for new trial. In his motion, appellant would attempt to overturn his conviction or, at the very least, to be given a chance for a new trial, citing Section 14, Rule 121, of the Rules on Criminal Procedure, because of newly discovered evidence, i.e., his passport which would establish his true identity as Huang Xiao Wei, a Chinese National, and as having entered the Philippines as a tourist. Invoking his constitutional right to an effective counsel, appellant chides his former counsel for having failed to secure and present his travel documents.

The Court is not convinced.

The requisites of newly discovered evidence in order to justify a new trial are that - (a) the evidence is discovered after trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) the evidence is material, not merely cumulative, corroborative, or impeaching, and of such weight that, if admitted, would likely change the judgment.[8]

Not one of the requisites mentioned is attendant. Appellant's passport could have easily been presented and produced during the trial. Then, too, the presentation of appellant's passport, would hardly be material to the outcome of the case. Appellant was positively identified by the prosecution witnesses as being the perpetrator of the crime. Most importantly, appellant even identified himself as Li Ka Kim at the trial and not as Huang Xiao Wei,[9] that bolsters the conclusion that appellant deliberately concealed his true identity in the nefarious enterprise.

Now to the merits.

The totality of evidence presented is convincing and points to appellant as being a person engaged in the sale of illegal drugs. The testimony of the prosecution witnesses identifying appellant to be a seller of illegal drugs appears to be categorical and unfabricated. No ill motive on the part of the witnesses has been shown to tarnish their testimony. Such positive evidence certainly prevails over mere denial and alibi which, if not substantiated by clear and convincing evidence, are negative and self-serving unworthy of credible weight in law.[10]

Appellant's argument that a surveillance or a test buy should have first been conducted deserves scant consideration. In a prosecution for illegal possession of dangerous drugs, it is enough to show that - (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused has freely and consciously possessed the prohibited drug.[11] Neither a prior surveillance of the suspected offender[12] nor the presentation of the informant would be an indispensable requirement to the successful prosecution of a drug case.[13]

Appellant was caught in flagrante delicto selling 994.773 grams of shabu to the poseur buyer on the morning of 19 September 1999. He handed over the bag containing shabu to the poseur buyer, in exchange of "P400,000.00" in buy bust money. He was promptly arrested and taken into custody after being informed of his constitutional rights. Clearly, all the elements of the sale of illegal drugs were established.

The Court has great respect for the judgment of the trial court in passing upon the credibility of witnesses. It is often said that, unless there appears in the record some fact or circumstance of weight and substance, and there is none, which has been overlooked or the significance of which has been misinterpreted,[14] an appellate court will not interfere in the factual findings of the trial court.

There is merit, however, in appellant's contention that the court a quo erred in imposing the penalty of death. Rule 110 of the Rules on Criminal Procedure requires the recitation in the information of aggravating or qualifying circumstances in order to be appreciated as such. The use of a motor vehicle considered by the trial

court in decreeing the death penalty is inappropriate, that aggravating circumstance not having been aptly alleged in the Information. The pertinent provisions of the rules read:

“Sec. 8 Designation of the offense. - The complaint of information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

“Sec. 9 Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.” (underscoring supplied.)

The requirements are mandatory not only to afford the accused the right to object to the presentation of evidence showing such aggravating circumstances not so alleged but also to preclude the court from even taking such aggravating circumstances into account. [15]

Quite recently, the Court has held that the provisions of the Revised Rules on Criminal Procedure, particularly Section 8, Rule 110, thereof, must be given retroactive effect in the light of the well-settled rule that statutes or rules regulating the procedure of the court will be construed as being applicable to actions pending and undetermined at the time of their passage.[16]

The quantity of the drugs seized from appellant, which is 994.773 grams of “shabu,” warrants the application of the penalty under Section 16, in relation to Section 17, of Republic Act No. 7659, otherwise also known as “An Act to Impose the Death Penalty on Certain Heinous Crimes,” of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos. Applying the provisions of Article 63 of the Revised Penal Code, the lesser penalty should be imposed, there being neither mitigating nor aggravating circumstances that can be considered, for the commission of the offense. [17]

WHEREFORE, the judgment of conviction against appellant Li Ka Kim, a.k.a. “Ed,” is **AFFIRMED** with modification in that the penalty of **DEATH** imposed by the trial court is hereby reduced to **RECLUSION PERPETUA**. In other respects, the judgment of the court a quo is sustained. Costs de officio.

SO ORDERED.

Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Davide, Jr., C.J., and Puno, J., on official leave.

[1] Rollo, p. 8.

[2] TSN, 02 March 2000, pp. 6-8.

[3] Ibid, pp. 9-11.

[4] Ibid, pp. 13-16.

[5] Ibid, pp.17-18, Exhibit “C-7.”

[6] Exhibit “M-Rebuttal.”

[7] Rollo, p. 76.

[8] People vs. Tirona, G.R. No. 128907, 22 December 1998 (300 SCRA 431); Tinio vs. Manzano, G.R. No. 132102, 19 May 1999 (307 SCRA 460); Olan vs. Court of Appeals, G.R. No. 116109, 14 September 1999 (314 SCRA 273).

[9] TSN, September 27, 2000, pp.3-4.

[10] People vs. Naguita, G.R. No. 130091, 30 August 1999 (313 SCRA 292); People vs. Hillado, G.R. No. 122838, 24 May 1999 (307 SCRA 535); People vs. Mores, G.R. No. 107746, 28 July 1999 (311 SCRA 342); People vs. Acuno, G.R. No. 130964, 03 September 1999 (313 SCRA 667); People vs. Arlee, G.R. No. 113518, 25 January 2000 (323 SCRA 201); People vs. Suelto, G.R. No. 126097, 08 February 2000 (325 SCRA 41).

[11] People vs. Chen Tiz Chang, G.R. Nos. 131872-73, 17 February 2000 (325 SCRA 776).

[12] People vs. Lacbanes, G.R. No. 88684, 20 March 1997 (270 SCRA 193); People vs. Ganguso, G.R. No. 115430, 23 November 1995 (250 SCRA 268).

[13] People vs. Cheng Ho Chua, G.R. No. 127542, 18 March 1999 (305 SCRA 28); People vs. Boco, G.R. No. 129676, 23 June 1999 (309 SCRA 42).

[14] People vs. Enolva, G.R. Nos. 131633-34, 25 January 2000 (323 SCRA 295).

[15] Ruben E. Agpalo, Handbook on Criminal Procedure, 2001 Edition, p. 54.

[16] People vs. Arrojado, G.R. No. 130492, 31 January 2001 (350 SCRA 679); citing Ocampo vs. Court of Appeals, G.R. No. 79060, 08 December 1989 (180 SCRA 27); Alday vs. Camilon, G.R. No. L-60316, 31 January 1983 (120 SCRA 521); People vs. Sumilang, G.R. No. 49187, 18 December 1946 (77 Phil. 764).

[17] People vs. Atop, G.R. Nos. 124303-05, 10 February 1998 (286 SCRA 157).

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