

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROSE YU Y FLORES,
JORGE PALOMA Y DUGAYO @ GEORGE, FERDINAND CASTILLO Y
HIJE @ FERDIE, ACCUSED.**

G.R. No. 155030. May 18, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This is an appeal from the Decision of the Regional Trial Court of Manila, Branch 35[1] finding accused Rose Yu y Flores, Jorge Paloma y Dugayo a.k.a. George, and Ferdinand Castillo y Hije a.k.a. Ferdie guilty beyond reasonable doubt of selling 3,000.8 grams of methylamphetamine hydrochloride in violation of Section 15 of Republic Act No. 6425, as amended, sentencing them to reclusion perpetua, and ordering them to pay the fine of P5,000,000.00 plus the costs in proportionate shares.

On September 25, 2000, appellant Rose Yu, together with accused Jorge Paloma and Ferdinand Castillo, were charged with violation of Section 15 of R.A. 6425 in an Information which reads as follows:

That on or about September 1, 2000, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully, unlawfully, and knowingly sell or offer for sale, dispense, deliver, transport or distribute three (3) heat-sealed transparent plastic bags containing NINE HUNDRED NINETY SEVEN POINT ONE (997.1) grams, ONE THOUSAND FOUR POINT SIX (1004.6) grams and ONE THOUSAND FIVE POINT ONE (1005.1) grams or with a total net weight of THREE THOUSAND SIX POINT EIGHT (3006.8) grams of crystalline substance known as 'SHABU' containing methylamphetamine hydrochloride, which is a regulated drug.

Contrary to law.

On arraignment the three accused pleaded not guilty. Trial on the merits then ensued.

Prosecution witness PO2 Larry Buriel narrated that at around 10:00 in the morning of September 1, 2000, his superior officer, Police Superintendent Eduardo Acierto of the CIDG-Detection and Special Operation's Office (DSOO) at Camp Crame, received a telephone call from a confidential agent informing him that a certain George, later identified as accused Jorge Paloma, was looking for a buyer of shabu worth P1.740 million. After the telephone conversation, Superintendent Acierto called on his men to form a five-man team to conduct a buy-bust operation, with P/Insp. Francisco as team leader, PO2 Buriel as poseur-buyer, and three other members as arresting officers.

Upon instruction by his superior officer, PO2 Buriel met with the confidential agent at about 11:00 a.m. of the same day, and they proceeded to McDonald's Restaurant at B.F. Homes Paranaque where they met George. There, the confidential agent introduced PO2 Buriel to George as the buyer of three kilos of shabu. George told them that the proposed drug deal would take place at around 4:00 in the afternoon of September 1 within the vicinity of Petron Gasoline Station located at Abad Santos Avenue corner Padre Algue Street, Sta. Cruz Manila.

After the meeting ended, PO2 Buriel and the confidential agent proceeded to Camp Crame where they apprised P/Insp. Francisco of their conversation with George.

At around 1:30 in the afternoon of September 1, 2000, the five-man team was dispatched by P/Supt. Acierto to the Petron gasoline station at Sta. Cruz. At the designated area, PO2 Buriel and the confidential agent stood beside their car while the other members of the team positioned themselves strategically within the vicinity. At around 4:00 p.m., a taxi arrived. On board were four passengers including George, his wife Nelsie Pentecotes, the driver and an unnamed individual. George then told PO2 Buriel to wait for a while because the shabu would be delivered by a certain Ferdie and Rose. A few minutes later, a green Honda Accord, with appellant Rose Yu behind the wheel, parked beside the car of PO2 Buriel. Only six inches separated the two vehicles. Rose Yu did not alight from the vehicle. Accused Ferdinand “Ferdie” Castillo thereafter arrived at the scene carrying a plastic bag with Robinsons’ Department Store markings. He went directly to the green Honda Accord and placed the plastic bag inside the vehicle. Thereafter, Ferdie approached PO2 Buriel and the confidential agent to inquire whether they had the money. In response, PO2 Buriel showed him a plastic bag containing 2 pieces of 1 thousand peso bills on top of 16 bundles of boodle money. Ferdie then went back to the Honda Accord where PO2 Buriel overheard him telling Rose Yu that he already saw the money. Ferdie then took the Robinsons’ plastic bag inside the green vehicle and handed it over to PO2 Buriel. After giving Ferdie the money, PO2 Buriel took the Robinsons’ plastic bag which when opened contained three transparent plastic bags with crystalline granules. Satisfied that he already had the incriminating substance, PO2 Buriel flashed the pre-arranged signal and together with the other members of the team arrested Rose, George, Ferdie, Nelsie Pentecotes, and the taxi driver. The charge against Pentecotes and the taxi driver was later dismissed.

In his defense, accused Jorge “George” Palomar testified that several days before September 1, 2000, a certain Emil went to his house a number of times asking whether he knew anybody who sells shabu. Knowing that the proposition was illegal, he ignored Emil, but the latter was very insistent. On August 30, 2000, Emil again went to see him, saying that he had a friend who could give him a job. Since Jorge was jobless at that time, he readily agreed. Emil then brought him to the McDonald’s parking lot at Parañaque where he was introduced to two persons on board a white car. The first one, whom he later identified as Buriel, introduced himself as the driver and the other one as Mang Jerry. He was prevailed upon by Emil to get into the car and, while inside, Buriel and Mang Jerry told him to call up his supplier of shabu. He got afraid especially when the two showed him bundles of money inside a plastic bag. He pretended to contact somebody through his cellphone and afterwards asked permission to leave. Moments later, Mang Jerry decided to cancel the deal and the three parted ways.

In the morning of September 1, 2000, upon the instigation of Emil, he called up somebody who instructed him to go to Pateros. Together with three other companions, including his wife, he went to Pateros where Emil met a man named Dodong standing near a lamppost. A little later, Dodong, who was carrying a plastic bag, boarded their car and instructed the driver to proceed to the Petron gasoline station at Sta. Cruz Manila. When they arrived there, Dodong, with the plastic bag still in hand, alighted from the car and approached a parked vehicle nearby. Not long after, a commotion erupted. Dodong dropped the plastic bag he was carrying when he was chased by police officers. Subsequently, he and his two other companions were arrested by the police.

Accused Rose Yu narrated that between 12:00 to 1:00 in the afternoon of September 1, 2000, she was at the Petron gasoline station in Padre Algue St., Sta. Cruz Manila to fetch her brother, Dennis Binamira, a grade IV pupil at Chiang Kai Shek School. By chance, a compadre of her brother-in-law, accused Ferdinand “Ferdie” Castillo, saw her and they exchanged pleasantries. During the conversation, a commotion ensued and Ferdie was suddenly bumped from behind by a running man. Not long after, several persons ganged up on Ferdie. Since her car window was open, she saw one person signaling to someone who immediately accosted her and ordered her at

gunpoint to alight from the vehicle. The assailants forcibly ordered her to board another car and confiscated her valuables including a Rolex watch and a Nokia 8850 mobile phone. She was brought to the parking lot of Manila Hotel where a man, whom she later identified as Major Francisco, tried to extort P2 Million from her. Despite threats by Major Francisco and his companions to give them money, she adamantly refused to accede to their demands. Eventually she was brought to Camp Crame where she was investigated.

Accused Ferdinand Castillo asserted that he could not have committed the crime imputed against him because he has enough sources of income to lead a decent life. He declared that he earns at least thirty thousand pesos a month coming from rental income, earnings from a small carenderia and a buy and sell business, and the monthly salary of his wife.

On April 24, 2002, the trial court rendered a decision finding the three accused guilty of violating Section 15 in relation to Section 20 of R.A. No. 6425, the dispositive portion of which reads:[2]

WHEREFORE, judgment is rendered pronouncing accused ROSE YU y FLORES, JORGE PALOMA y DUGAYO @ “George” and FERDINAND CASTILLO y HIJE @ “Ferdie” guilty beyond reasonable doubt of selling 3,000.8 grams of methylamphetamine hydrochloride without authority of law, penalized under Section 15 and in relation to Section 20 of Republic Act No. 6425, as amended, and sentencing each of the said three accused to RECLUSION PERPETUA; and to pay a fine of P5,000,000.00 each, plus costs in proportionate shares.

In the service of their sentences in this case, the full time during which the three accused have been under preventive imprisonment should be credited in their favor provided that they have agreed voluntarily in writing to abide by the same disciplinary rules imposed on convicted prisoner. Otherwise, they should be credited with four-fifths (4/5) only of the time they have been under preventive imprisonment.

Exhibits B-1, B-2 and B-3 are ordered confiscated and forfeited in favor of the Government. Within ten (10) days following the promulgation of this judgment, the Branch Clerk of Court is ordered to turn over, under proper receipt, the regulated drug involved in this case to the Dangerous Drugs Custodian, National Bureau of Investigation, as appointed by the Dangerous Drugs Board, for appropriate disposition.

Of the three accused, only appellant Rose Yu filed an appeal, raising the following errors:[3]

I

THE LOWER COURT ERRED WHEN IT RULED THAT THE ACTS OF ACCUSED-APPELLANT ROSE F. YU DEMONSTRATED THE EXISTENCE OF CONSPIRACY.

II

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT ROSE YU OF VIOLATION OF SECTION 15 OF R.A. 6425, AS AMENDED, DESPITE THE INADMISSIBILITY OF THE CORPUS DELICTI AND THE FAILURE OF THE PROSECUTION TO PROVE HER GUILTY BEYOND REASONABLE DOUBT.

In the first assigned error, appellant contends that the trial court’s finding of conspiracy was based on presumptions, not on solid facts indubitably indicating a common design. Specifically, she points out that it was unbelievable for PO2 Buriel to overhear her conversation with accused Castillo in regard to the drug deal since PO2 Buriel not only failed to establish his distance to appellant and accused Castillo but even assuming that the conversation actually took place as alleged by the prosecution, it does not demonstrate concurrence of will or unity of action or purpose that could be a basis for their collective responsibility. Moreover, there is doubt that the drugs came from the appellant since the testimony of PO2 Buriel was ambiguous. She explained that if all the windows of the car were closed, as the trial court clarified, there was no specific detail where the alleged drugs came from.

In the second assigned error, appellant assailed the integrity and identity of the illegal drugs allegedly recovered from the crime scene as the very same drugs submitted for laboratory examination and later presented in court. She draws attention to the testimony of prosecution witness PO2 Buriel who declared that he could not recall the initials he placed on the Robinson's plastic bag containing the illegal substance. Finally, contrary to the statements of PO2 Buriel, the plastic bag did not bear the markings supposedly written by the poseur-buyer or any other member of the arresting team.

The appeal must fail on both counts.

Conspiracy is deemed to arise when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together. However, the evidence therefor must reasonably be strong enough to show a community of criminal design.[4]

In the case at bar, appellant was not a passive spectator who was mistakenly implicated of committing a crime. She definitely took an active participation in the sale of the shabu. She was positively identified as the driver of the Honda Accord who conversed and gave instructions to accused Ferdie regarding the transaction. The act of accused Ferdie in placing the plastic bag, which contained the illegal drugs, and in shuttling back and forth between Rose Yu and the poseur buyer to ask instructions and other details could lead to no other conclusion except that there existed a prior understanding and community of interest between the conspirators. Without doubt, appellant's participation in the criminal activity was not of minor importance but, by all indications, crucial to the consummation of the offense. In unison with accused Jorge Palomar who mediated between the poseur-buyer and his co-accused, setting the time and place where the sale of shabu would take place, and accused Ferdie Castillo who actively and directly took part in the said sale, appellant actively participated in the crime, ever conscious of her role in the scheme of things with the end in view of consummating the same.

An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part and another performing another so as to complete it with a view to the attainment of the same object, and their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[5] The instant case clearly demonstrates this principle.

Appellant clutches at straws in disputing the integrity and identity of the regulated substance. A close scrutiny of the records does not disclose any irregularity in the custody of the recovered drugs and the conduct of the laboratory examination to cast suspicion on its identity. As correctly pointed out by the Solicitor General, the laboratory examination was requested precisely to determine the presence of "shabu" in the recovered white crystalline granules because they were suspected to contain such regulated drug. Hence, the forensic chemist was not biased when he conducted the examination to determine the presence of "shabu". This purported anomaly was sufficiently explained by the court a quo when it observed that:[6]

The corpus delicti in this case is not disputed. It consists of a total of 3000.8 grams of methylamphetamine hydrochloride (Exhibits B-1, B-2 & B-3). The chemical properties of Exhibits B-1, B-2, and B-3 have been duly established by the testimony of P/Insp. And Forensic Chemist Alberto Arturo of the PNP Crime Laboratory, who swore that the qualitative examinations he made on the specimen produced positive results and confirmed that they are methylamphetamine hydrochloride (Exhibit D; TSN, October 26, 2001, pp. 13-14.)

At any rate, it was up to the defense to prove by clear and convincing evidence that the findings of the forensic

chemist were erroneous. In the absence of such evidence, the positive results of the tests conducted by the chemist should be accepted as conclusive. After all, he has in his favor the presumption that he regularly performed his official duty, which was to carry out those tests in accordance with the accepted standard procedure.[7]

It is likewise error for appellant to question the act of the forensic chemist in placing the stamp “original signed” on top of the name of his superior Sonia Sahagun Ludovico on the initial laboratory report. Forensic Chemist Arturo testified that he stamped the initial report despite the absence of his superior in order to facilitate the release of the laboratory examination. More importantly, this supposed procedural irregularity was cured when Ludovico ratified the same by affixing her signature to the said document. Appellant’s hollow arguments notwithstanding, the fact remains that the substance recovered from her and her cohorts was shabu.

All told, we find that the prosecution has established the guilt of appellant beyond reasonable doubt. Section 15 of the Dangerous Drugs Act, as amended, prescribes the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos where the shabu or methylamphetamine hydrochloride sold weighs 200 grams or more. Thus the law prescribes two indivisible penalties, reclusion perpetua and death. In accordance with Article 63 of the Revised Penal Code, since there was neither mitigating nor aggravating circumstances attending appellant’s criminal offense, the lesser penalty of reclusion perpetua is the proper imposable penalty.

WHEREFORE, in view of all the foregoing, the decision dated April 24, 2002 of the court a quo finding appellant Rose Yu, together with accused Jorge Paloma y Dugayo a.k.a. George and Ferdinand Castillo y Hije a.k.a. Ferdie, guilty beyond reasonable doubt of violating Section 15 of Republic Act No. 6425, as amended, sentencing them to reclusion perpetua, and ordering them to pay the fine of P5,000,000.00 plus the costs in proportionate shares, is **AFFIRMED** in toto.

SO ORDERED.

Panganiban, (Working Chairman), Carpio, and Azcuna, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

* On official leave.

** Working Chairman.

[1] Decision penned by Judge Ramon P. Makasiar, RTC-Branch 35, Manila.

[2] Rollo, p. 38.

[3] Rollo, p. 65.

[4] *People v. Gomez, et al.*, G.R. No. 101817, 26 March 1997, 270 SCRA 432.

[5] *People v. Sunpongco, et al.*, G.R. No. L-42665, 30 June 1988, 163 SCRA 222; *People v. Sarino, et al.*, G.R. Nos. 94992-93, 7 April 1993, 221 SCRA 234.

[6] TSN, 26 October 2001, pp. 13-14.

[7] *People v. Che Chun Ting alias “Dick”*, G.R. Nos. 130568-69, 21 March 2000, 328 SCRA 592.

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