

SONNY ZARRAGA PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 162064. March 14, 2006

Ponente: TINGA, J.

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TINGA, J.:

This Petition for Review on Certiorari [1] seeks the reversal of the Decision [2] of the Court of Appeals in CA-G.R. CR No. 22289 which affirmed with modification the Decision [3] of the Regional Trial Court of Calamba, Laguna, Branch 36, convicting the accused of violation of Republic Act No. 6425 (RA 6425), as amended.

The facts are as follows:

On December 28, 1995, Sonny Zarraga (Zarraga) and Alvin Jose (Jose) [4] were charged with violation of Sec. 21(b), Art. IV in relation to Sec. 29, Art. III of RA 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended, in an Information [5] which reads:

That on or about November 14, 1995, in the municipality of [C]alamba, [P]rovince of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, not being licensed or authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to other person METHAMPHETAMINE HYDROCHLORIDE (or Shabu) weighing 98.40 grams, a regulated drug, and in violation of the aforestated law.

CONTRARY TO LAW.

The two accused were arraigned on March 28, 1996. Both pleaded not guilty. Trial forthwith proceeded.

The prosecution sought to establish that at around 9:30 in the morning of November 14, 1995, an informant known as Noy Canlas, together with former Narcom officer, P/Sr. Inspector Recomono, informed P/Supt. Joseph R. Castro (Castro) of the 4th Narcotics Regional Field Unit that a group of big time drug pushers from Greenhills will deliver and sell 100 grams of shabu at a price of P1,000.00 per gram or a total of P100,000.00 at the Chowking Restaurant located in Brgy. Real, Calamba, Laguna. The delivery would be made before lunchtime.

Castro formed a team composed of himself as team leader, SPO1 Bonifacio Guevarra (Guevarra) as poseur buyer, and SPO2 William Manglo (Manglo) and SPO2 Wilfredo Luna (Luna) as back-up to carry out a buy-bust operation. Guevarra was provided with marked money consisting of a P1,000.00-bill and 99 pieces of boodle money (money bundle).

Castro, Manglo and Luna proceeded to the restaurant on board a Mitsubishi Lancer, while Guevarra and the informant rode an L-300 van. They arrived at Chowking at 11:00 o'clock in the morning, parked their vehicles facing each other, and ensured that their positions gave them a commanding view of the people going in and out of the restaurant.

At around 4:00 o'clock in the afternoon, a silver gray Toyota Corolla with Plate No. UBV-389 arrived. The informant waived at the car's driver, Zarraga, to park near Guevarra's van. Zarraga obliged, parking about three (3) meters from the van. The informant then moved towards Zarraga and called Guevarra. When Guevarra approached, Zarraga asked him if he could afford to buy 100 grams of shabu. Guevarra replied in the affirmative. Zarraga then asked his companion, Jose, to bring out the shabu. Jose brought out the shabu, wrapped in plastic and white paper, and handed it over to Zarraga who gave it to Guevarra. The latter, in turn, gave the money bundle to Zarraga.

Guevarra then scratched his head, a pre-arranged signal that the transaction has been consummated. Immediately, Manglo and Luna approached and introduced themselves as Narcom operatives and arrested Zarraga and Jose. The money bundle was recovered from Zarraga. Guevarra handed the shabu to Manglo who, in turn, gave it to Luna. Castro brought Zarraga and Jose to Camp Vicente Lim for investigation. [6]

The shabu was brought to the PNP Crime Laboratory by SPO3 Edgar Groyon for examination. P/Sr. Inspector Mary Jean Geronimo, a forensic chemist, examined the specimen and issued a Chemistry Report [7] confirming that metamphetamine hydrochloride is present in the specimen. She further testified that the specimen is second or low grade methamphetamine hydrochloride, i.e., that the specimen contains more or less 80% of the substance. [8]

The evidence for the defense, on the other hand, showed that in the afternoon of November 13, 1995, Zarraga and Jose went to Manuela Complex to exchange Japanese currency for Philippine Pesos. They afterwards went to Megamall to buy hangers upon the request of Zarraga's wife, Pinky. At the basement of the mall, Zarraga was accosted by two men, one of whom [later identified as SPO3 Noel Seno (Seno)] poked a gun at and handcuffed him. The man also took Zarraga's cash amounting to P85,000.00. Jose was also handcuffed.

They went to the third floor where Zarraga's car was parked and were met by other men whom they later identified as Castro and a certain Corpuz. A man in sando, shorts and slippers took the wheel, while Seno seated himself on the passenger's seat. Another man accompanied Zarraga and Jose at the back seat. Zarraga claimed that Seno took his jewelry, P85,000.00 cash, a spare tire, jack, and other car accessories.

The men communicated with some other persons through a hand-held radio. Later, one of the men opened the dashboard compartment and brought out something that looked like sand. He tasted it and claimed that the substance is shabu. [9]

The group then drove towards Greenhills and stopped in front of Tropical Hut. Zarraga's blindfold was removed and he was asked by one of the men about his mother-in-law, Elizabeth Española, a suspected drug pusher.

Zarraga had a chance to tell his wife through his cellular phone that they had been kidnapped when the abductors went out to eat. Upon their return, Zarraga and Jose were boarded on different cars. They were later taken to a room with a lavatory. Zarraga was asked to step out and was shown a picture of his mother-in-law. He was asked whether Española would pay P1.5 million for their release.

Castro negotiated with Zarraga's wife who offered to withdraw P75,000.00 from a bank. The following day, Seno met Pinky at the bank, supposedly for the latter to deliver the ransom money. However, Pinky refused to withdraw the money because Zarraga was nowhere to be seen. She became hysterical, prompting Seno to hurriedly leave the bank.

Zarraga and Jose were then taken to Camp Vicente Lim in Laguna for investigation. [10]

The trial court, giving full faith and credence to the prosecution's evidence, convicted the accused. The Court of

Appeals affirmed the conviction but modified the penalty of imprisonment and deleted the penalty of fine imposed by the trial court. The appellate court disposed as follows:

WHEREFORE, premises considered, the assailed Decision is hereby MODIFIED. Appellant Sonny Zarraga is hereby sentenced to suffer the penalty of imprisonment from 6 years of prision correccional as minimum, to 8 years and 1 day of prision mayor as maximum. Appellant Alvin Jose is hereby sentenced to suffer an imprisonment of 2 months and 1 day of arresto mayor.

The period of preventive imprisonment appellants have undergone shall be credited in their favor pursuant to Article 29 of the Revised Penal Code, as amended by RA 6127 and as further amended by Executive Order No. 214 dated July 10, 1997.

The penalty of fine amounting to P2 Million is hereby deleted.

SO ORDERED.

Jose, a minor at the time of the alleged commission of the offense, filed a petition for review on certiorari of the Court of Appeals' judgment of conviction. In a Decision [11] dated January 13, 2005, this Court acquitted him for failure of the prosecution to prove his complicity in the alleged crime.

In the instant petition, Zarraga claims that the prosecution was not able to sufficiently establish the corpus delicti and that the prosecution witnesses presented conflicting testimonies on material points sufficient to engender doubt as to his guilt.

The Solicitor General, on the other hand, maintains that there was a legitimate buy-bust operation resulting in the lawful arrest, prosecution and conviction of Zarraga; that the prosecution has sufficiently identified the corpus delicti; and that Zarraga's defense of frame-up cannot be given credence. [12]

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proved. This basic constitutional principle is fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. However, an appeal throws the whole case open for review [13] such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.

Indispensable in all prosecutions for violation of RA 6245, such as the instant case, is the submission of proof that the sale of the illegal drug took place between the poseur-buyer and the seller. The element of sale must be unequivocally established in order to sustain a conviction. [14] Further, the corpus delicti must be presented as evidence in court. The corpus delicti should be identified with unwavering exactitude.[15]

After a thorough examination of the evidence presented by both parties, we find that the prosecution failed to establish the identity of the prohibited drug which constitutes the corpus delicti.

In *People v. Laxa*, [16] the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the accused-appellant. One policeman even admitted that he marked the seized items only after seeing them for the first time in the police headquarters. The Court held that the deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana and concluded that the prosecution failed to establish the identity of the corpus delicti.

Similarly, in *People v. Kimura*, *supra*, the Narcom operatives failed to place markings on the alleged seized marijuana on the night the accused were arrested and to observe the procedure in the seizure and taking custody of the drug. Consequently, we held that the prosecution failed to establish the identity of the corpus delicti.

In this case, there are material inconsistencies in the testimonies of Guevarra and Luna particularly with regard to when and where the markings on the shabu were made. Guevarra testified that he handed the shabu to Manglo and that he put markings on the substance. He said:

Q Earlier you said that the shabu was handed to you. What did you do with the shabu?

A While we were at the area, I handed it to SPO1 William Manglo, sir.

Q Tell us, when this shabu was handed to you by the accused in what container was it contained?

A When it was handed to me by Sonny Zarraga it was wrapped in a plastic and white soft paper, sir.

Q If that shabu which was handed to you will be shown to you, can you identify the same?

A Yes, sir.

Q Tell us, do you have any identifying marks?

A I put markings on the plastic and on the paper, sir.

Q What kind of marking did you place in there?

A My initial, sir.

Q I am showing to you here a substance which is wrapped in white tissue paper and wrapped likewise in a plastic bag. Tell us what relation has this substance to the shabu you said was handed to you by the accused during the buy bust operation?

A This is the same shabu that was handed to me, sir.

Q You said earlier that you place your initial in the plastic. Which container you said you place your initial?

A (witness pointing to the handwriting in black on the plastic).

FISCAL

We request, your honor that this plastic bag containing the shabu be marked as Exhibit B and the signature of the witness which he identified as Exhibit B-1.

COURT

Mark it.

Q You also said you placed an identifying marks on the white soft paper. Where in particular did you place your marking.

A (witness pointing to the handwriting in black appearing on the tissue paper).

FISCAL

We request, your honor that it be marked as Exhibit B-2.

COURT

Mark it. [17] (emphasis supplied.)

Guevarra's account leaves a gap as regards when the shabu was marked, i.e., whether it was marked before or after it was handed over to Manglo. He also did not say specifically in what place he put the identifying marks. Luna's testimony on this score fills the gap and, more, it creates reasonable doubt as to the identity of the corpus delicti. Luna said:

Q

How about Manglo. Did you come to know what Manglo did after he alighted from the car?

A SPO1 Guevarra handed to Manglo the shabu afterwards SPO1 Manglo handed it to me.

Q In effect, what you are saying is that you took the money from Zarraga and then Manglo later handed to you the shabu which Guevarra handed to him?

A Yes, sir.

Q So after that, what did you do with this shabu and this money which you recovered from Sonny Zarraga?

A After that, the shabu was wrapped in a tissue then it was brought to Camp Vicente Lim. It was handed to SPO2 Groyon in order that a request can be made.

Q How about the money, what did you do with the money?

A I handed it to SPO2 Groyon.

Q Will you kindly describe to us the appearance of that Metamphetamine Hydrochloride. How was it packaged?

A The shabu was placed in a plastic wrapped in a tissue and then we put a markings on it.

Q You said it was wrapped in a tissue in what particular place was it wrapped? Where was it wrapped?

A In the office, sir.

Q And who wrapped it with the tissue?

A The two of us SPO1 Bonifacio Guevarra.

Q Now, you said there was a marking placed on the tissue and likewise on the plastic cellophane which contained the shabu. Who placed those markings?

A SPO1 Guevarra, sir.

Q Now, if that shabu which was contained at the plastic and wrapped in a tissue paper will be shown to you can you identify the same?

A Yes, sir.

Q I am showing to you these evidence as Exhibit B, B-1 and B-2. Tell us what relation has that piece of evidence of shabu which you said was handed to Guevarra and which was handed to Manglo and which Manglo handed to you?

A This is the one, sir. [18] (Emphasis supplied.)

Luna unequivocally declared that he and Guevarra wrapped the shabu in tissue only at the office and that the latter put markings on the tissue and plastic wrapper, suggesting that Guevarra did not follow the standard procedure of marking the confiscated items immediately after the accused were apprehended.

Furthermore, nowhere in the records is there any evidence that the buy-bust team prepared an inventory of the seized drugs and had Zarraga and Jose sign such inventory as required by Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7 Series of 1974. [19]

We also find bothersome the differing descriptions of the shabu given by Guevarra and Luna. According to Guevarra, the shabu was wrapped in plastic and white soft paper when it was handed to him by Zarraga. Luna, on the other hand, testified that he and Guevarra wrapped the shabu in tissue at the office. While "white soft paper" may also refer to "tissue" as, in fact, the latter is defined as "a piece of soft, absorbent paper, used as a disposable handkerchief, as toilet paper, etc.," [20] the differing accounts of the witnesses with regard to whether the shabu was already wrapped in tissue at the time it was handed by Zarraga to Guevarra, or wrapped in tissue by Guevarra and Luna only at the office, engender serious doubts as to the existence of the seized prohibited drug. In fine, the prosecution has not positively and convincingly shown that what was submitted for laboratory examination and presented in court was actually taken from Zarraga.

In view of these findings, we no longer deem it necessary to discuss the other issues raised by Zarraga, except to say that although his defense of frame-up, like alibi, is generally viewed with disfavor, we have consistently held that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. [21] Having failed to indubitably show the identity of the shabu which was allegedly seized from Zarraga, the prosecution's case should be dismissed.

WHEREFORE, the Decision of the Court of Appeals is REVERSED and SET ASIDE. Sonny Zarraga is ACQUITTED of the crime charged against him and is ordered immediately released unless he is being held for some other valid or lawful cause. The Director of Prisons is DIRECTED to inform this Court of the action taken hereon within five (5) days from receipt hereof.

Let the Director-General of the Philippine National Police (PNP) be furnished a copy of herein decision for the proper information and guidance of his police operatives.

Costs de oficio.

SO ORDERED.

Quisumbing, (Chairman), Carpio, and Carpio Morales, JJ., concur.

[1] Rollo, pp. 8-31.

[2] Id. at 40-50; Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam.

[3] Id. at 32-38. The dispositive portion of the Decision reads:

WHEREFORE, this Court finds both the accused Sonny Zarraga and Alvin Jose guilty, beyond reasonable doubt, for Violation of RA 6425, as amended, and is hereby sentence [sic] to suffer the penalty of imprisonment of, after applying the Indeterminate Sentence Law, Six (6) years and one (1) day to Ten (10) years.

Both accused are hereby ordered to pay the fine of P2 million each and to pay the cost of suit.

In the service of sentence, the preventive imprisonment undergone both by the accused shall be credited in their favor.

Atty. Christopher R. Serrano, Branch Clerk of Court is hereby ordered to deliver and surrender the confiscated Metamphetamine Hydrochloride to the Dangerous Drugs Board.

SO ORDERED.

[4] Jose was only 13 years old at the time of the alleged commission of the offense.

[5]CA rollo, p. 20.

[6]TSN, October 3, 1996, pp. 4-13.

[7] Records, p. 17. Chemistry Report No. D-419-95.

[8]TSN, July 30, 1996, p. 36.

[9] TSN, September 23, 1997, p. 9.

[10] TSN, August 11, 1997, pp. 3-20.

[11] Jose v. People, G.R. No. 162052, January 13, 2005, 448 SCRA 116.

[12]Rollo, pp. 82-92; Comment dated August 13, 2004.

[13] Eusebio-Calderon v. People, G.R. No. 158495, October 21, 2004, 441 SCRA 137.

[14] People v. Salazar, 334 Phil. 556 (1997); People v. Chua Uy, 384 Phil. 70 (2000).

[15]People v. Kimura, G.R. No. 130805, April 27, 2004, 428 SCRA 51; People v. Simbahon, 449 Phil. 74 (2003); People v. Mendiola, G.R. No. 110778, August 4, 1994, 235 SCRA 116.

[16]414 Phil. 156 (2001).

[17] TSN, July 30, 1996, pp. 10-12.

[18] TSN, August 7, 1997, pp. 7-8.

[19] Cited in *People v. Kimura*, supra note 15.

Board Regulation No. 3, S. 1979 as amended by Board Regulation No. 2, S. 1990

Subject: Amendment of Board Regulation No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.

SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation. (Board Regulation No. 2, S. 1990).

[20]Webster's New World Dictionary, Third College Edition.

[21]*People v. Kimura*, supra note 15.

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