NORGIE CRUZ Y CASTRO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 164580. February 06, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review filed by petitioner Norgie Cruz y Castro (petitioner) seeking to set aside the Decision[1] dated 31 March 2004 of the Court of Appeals in CA-G.R. CR No. 26300 which affirmed with modification the Joint Decision[2] dated 10 May 2001 of the Regional Trial Court, Branch 72, Malabon City, Metro Manila (RTC-Branch 72) in Criminal Cases Nos. 22086-MN to 22087-MN.

The Facts

On 16 November 1999, a confidential informant went to the office of the Drug Enforcement Group (DEG) of the Malabon Police Station and informed the DEG operatives that he might be able to set up a sale of shabu with a drug pusher residing at Barangay Potrero, Malabon City. A surveillance team, composed of SPO1 Alberto Nepomuceno (SPO1 Nepomuceno), SPO1 Mario Saddoy (SPO1 Saddoy), PO1 Rodolfo Cruz (PO1 Cruz), and PO1 Allan Fernandez,[3] was formed to validate and confirm the informant's claim. The following day, the informant reported that he was able to arrange the sale of shabu with the drug pusher at the Dunkin' Donuts establishment along MacArthur Highway near the Bonifacio Monument in Kalookan City. A buy-bust team, with SPO1 Nepomuceno designated as poseur-buyer, was formed to entrap the drug pusher. SPO1 Nepomuceno was issued P8,400 worth of marked money. The informant accompanied SPO1 Nepomuceno to the Dunkin' Donuts establishment and the rest of the team followed and took strategic positions to observe the transaction. Team member PO1 Cruz saw a person, later identified as petitioner, who talked to the informant and SPO1 Nepomuceno. Petitioner, the informant, and SPO1 Nepomuceno boarded the latter's vehicle and they proceeded to Reparo Street, Malabon City. The rest of the team followed.[4] Along Reparo Street, PO1 Cruz saw petitioner meet a teenager carrying a child, then petitioner pulled out two sachets from the child's diaper and handed the sachets to SPO1 Nepomuceno. SPO1 Nepomuceno handed to petitioner the marked money. Thereafter, the buy-bust team approached and arrested petitioner and retrieved the two sachets which turned out to be shabu.[5] SPO1 Saddoy recovered the marked money from petitioner.[6] The police officers informed petitioner of his constitutional rights and proceeded to question him. Later, petitioner led the police officers to his residence at No. 1, MacArthur Highway, Malabon City. Petitioner retrieved a large package containing shabu from a hole dug into the stairway of his house which was turned over to PO1 Cruz.[7]

On 22 November 1999, petitioner was charged with Illegal Sale of shabu and Illegal Possession of shabu in Criminal Cases Nos. 22086-MN and 22087-MN before the RTC-Branch 72. Petitioner posted bail in both cases and was provisionally released from detention on 29 November 1999. Upon arraignment, petitioner pleaded not guilty to both charges. Trial ensued.

Trial Court's Ruling

The RTC-Branch 72 rendered judgment on 10 May 2001 convicting petitioner of both charges. He was sentenced to suffer imprisonment ranging from six months of arresto mayor as minimum to four years, two months and one day of prision correccional as maximum in Criminal Case No. 22086-MN (illegal sale), and six years of prision correccional as minimum to ten years of prision mayor as maximum in Criminal Case No. 22087-MN (illegal possession).

The trial court ruled that the totality of the evidence adduced by the prosecution strongly established that petitioner was neither licensed nor authorized to possess and sell shabu.

Ruling of the Court of Appeals

On appeal docketed as CA-G.R. CR No. 26300, the Court of Appeals rendered judgment on 31 March 2004 affirming petitioner's conviction in Criminal Case No. 22086-MN but acquitting him in Criminal Case No. 22087-MN. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the Joint Decision dated May 10, 2001 of the RTC, Branch 72, Malabon, Metro Manila in Criminal Cases Nos. 22086-MN to 22087-MN is partly AFFIRMED with MODIFICATION.
>
> In Criminal Case No. 22087-MN, for violation of Section 16, Article III, RA 6425 as amended by RA 7659, for illegal possession of regulated drugs, accused-appellant is hereby ACQUITTED.
>
> In Criminal Case No. 22086-MN, for violation of Section 15, Article III, RA 6425 as amended by RA 7659, for illegal sale of regulated drugs, accused-appellant's conviction is hereby AFFIRMED with MODIFICATION in that the penalty should be 6 months of arresto mayor to 4 years and 2 months of prision correccional.[8]

The Court of Appeals ruled that the commission of the offense of illegal sale of prohibited drugs required merely the consummation of the sale which happens the moment the buyer received the drugs from the seller. What is material is the proof that the sale actually took place, coupled with the presentation in court of the corpus delicti as evidence. And since the quantity of drugs confiscated from petitioner was only 3.39 grams and 4.09 grams, and there was no aggravating or mitigating circumstance, the Court of Appeals modified the penalty imposed by the trial court to "six months of arresto mayor to four years and two months of prision correccional."

The Court of Appeals, however, reversed the finding of the trial court convicting petitioner of illegal possession of shabu. The Court of Appeals ruled that while the warrantless arrest, being the consequence of a successful buy-bust operation, was valid and legal in all respects, the ensuing search and seizure in petitioner's house was already illegal as the same was effected without a warrant. A search as an incident to a lawful arrest is allowed provided that the search is made contemporaneous to the arrest and within a permissible area of search. However, the search here was conducted at the point where the arrest was already terminated. It was only after petitioner volunteered information that the police officers proceeded to petitioner's house. Consequently, the shabu obtained from petitioner's house is excluded as evidence and the charge of illegal possession had no leg to stand on.

The Court's Ruling

This Court will delve only on the criminal case which convicted petitioner of illegal sale of shabu since he was acquitted in Criminal Case No. 22087-MN for illegal possession of shabu.

In the present petition, petitioner contends that the assailed Court of Appeals' decision was not in accord with law and jurisprudence. He argues that the prosecution failed to rebut his allegations that the failure to present the

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poseur-buyer, as the prosecution's best witness, constitutes a fatal flaw in the prosecution's evidence. He insists that the testimony of the poseur-buyer is material and indispensable when the accused denies having committed the prohibited act. Petitioner claims that no competent witness was presented to establish that he sold and delivered a prohibited drug to another and that he knew that what he had sold and delivered was a dangerous drug. Petitioner further points out that the buy-bust money that was used in the buy-bust operation was not presented.

We disagree.

A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. For the successful prosecution of the illegal sale of shabu, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[9] Thus, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

The failure of the poseur-buyer to testify on the actual purchase is not fatal to the prosecution's cause.[10] SPO1 Nepomuceno, the poseur-buyer, was already assigned in Iloilo City, Region VIII, when the cases were being tried. However, SPO1 Saddoy and PO1 Cruz saw the illicit transaction as both of them positioned themselves at the barber shop opposite the Dunkin' Donuts establishment.[11] PO1 Cruz witnessed the whole transaction where the marked money was exchanged for two sachets of shabu. He was positioned at Reparo Street where he saw the exchange of shabu and the marked money along Reparo Street.[12] SPO1 Saddoy, on the other hand, was the one who recovered the marked money from petitioner.[13] As long as there is proof that the sale actually took place, coupled with the presentation in court of the corpus delicti as evidence, a conviction for illegal sale of shabu can be sustained.[14]

Petitioner was arrested in flagrante delicto during the buy-bust operation. Unless there is clear and convincing evidence that SPO1 Saddoy and PO1 Cruz were inspired by any improper motive or were not properly performing their duty, and none has been adduced by the defense, their testimonies with respect to the buy-bust operation deserve full faith and credit. The identity of petitioner cannot be doubted having been caught in flagrante delicto in an entrapment operation conducted by the police.[15]

The failure to present the buy-bust money is likewise not fatal. The marked money used in the buy-bust operation is not indispensable but merely corroborative in nature. In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[16] The prosecution duly established both in this case.

Petitioner argues that SPO1 Saddoy was not part of the team that conducted the surveillance operation and the surveillance was conducted only for the purpose of identifying the residence of petitioner without verifying if indeed he was engaged in illegal drugs. Petitioner further contends that the police officers or law enforcement agents violated the Constitution casting doubt on the presumption of regularity of the apprehension made upon petitioner. Petitioner also claims that the accounts of the police officers were full of material contradictions and inconsistencies. Petitioner was allegedly made to confess without the assistance of a competent counsel in violation of his constitutional right. He did not undergo the regular procedure of being fingerprinted. And since

the search of his house was declared unconstitutional by the lower court, petitioner argues, the presumption of regularity has been rebutted.

The contention is untenable.

Settled is the rule that prior surveillance is not a prerequisite for the validity of an entrapment operation especially so if the buy-bust team is accompanied by the informant, as in this case. The police officers may decide that time is of the essence and dispense with the need of prior surveillance.[17]

The absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. Furthermore, if a police operation requires immediate implementation, time is of the essence and only hasty preparations are sometimes possible. What is important is whether the speed of preparation compromised the rights of the accused.[18]

Moreover, when a person is apprehended in flagrante delicto, the police is not only authorized, but duty-bound, to arrest him even without a warrant.[19] Petitioner was caught in flagrante delicto when SPO1 Nepomuceno gave him the marked money in exchange for two sachets of shabu. Petitioner's arrest, as correctly found by the trial court and the appellate court, was valid and legal.

Petitioner is harping on the declaration of the Court of Appeals that the search of his house was unconstitutional and thus the presumption of regularity has been rebutted. This is likewise untenable. There is no connection between the prior entrapment of petitioner, which the Court of Appeals and this Court found to be regular, legal and valid, and the subsequent search of his house, which the Court of Appeals found to be irregular. In the prior entrapment, petitioner was charged with and convicted of illegal sale of shabu, an offense separate and distinct from the offense of illegal possession of shabu for which he was acquitted.

Petitioner further points to certain inconsistencies in the testimonies of the prosecution witnesses. It should be emphasized that inconsistencies regarding prior surveillance and subsequent investigation relate to the credibility of witnesses. It involves a question of fact which cannot be raised and is not proper for consideration in the present petition for review. This Court will not disturb the findings of the trial court in assessing the credibility of the witnesses, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court. This is because the trial judge has the unique opportunity to observe the witnesses and to note their demeanor, conduct and attitude during direct and cross-examination.[20] After a careful review of the entire records of this case, we do not find any such oversight by the trial court.

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 31 March 2004 of the Court of Appeals in CA-G.R. CR No. 26300. Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Leonardo-De Castro, JJ., concur.

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[1] Rollo, pp. 20-30. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Eubulo G. Verzola and Edgardo F. Sundiam, concurring.

[2] Id. at 69-79. Penned by Judge Benjamin M. Aquino, Jr.

[3] TSN, 1 February 2001, pp. 3-6; TSN, 11 December 2000, pp. 3-7.

[4] TSN, 11 December 2000, pp. 8-10.

[5] TSN, 26 January 2001, pp. 3-4.

[6] TSN, 20 November 2000, p. 2; TSN, 11 December 2000, p. 12.

[7] TSN, 26 January 2001, pp. 7-8.

[8] Rollo, pp. 29-30.

[9] People v. Macabalang, G.R. No. 168694, 27 November 2006, 508 SCRA 282.

[10] People v. Lacbanes, 336 Phil. 933 (1997).

[11] TSN, 1 February 2001, p. 11.

[12] Id. at 13-15.

[13] TSN, 20 November 2000, p. 2; TSN, 11 December 2000, p. 12.

[14] People v. Domingcil, G.R. No. 140679, 14 January 2004, 419 SCRA 291.

[15] People v. De Vera, 341 Phil. 89 (1997).

[16] People v. Alfredo Concepcion y Clemente and Henry Concepcion y Clemente, G.R. No. 178876, 27 June 2008; People v. Macabalang, G.R. No. 168694, 27 November 2006, 508 SCRA 282; People v. Astudillo, 440 Phil. 203 (2002); People v. Chen Tiz Chang, 382 Phil. 669 (2000).

[17] Supra, note 10.

[18] People v. Li Yin Chu, 467 Phil. 582 (2004).

[19] People v. Doria, 361 Phil. 595 (1999).

[20] People v. Astudillo, 440 Phil. 203 (2002).

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