

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROMEO DEL MUNDO Y STA. MARIA, APPELLANT.

G.R. NO. 169141 (Formerly 159854-56). December 06, 2006

Ponente: TINGA, J.

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TINGA, J.:

Romeo del Mundo y Sta. Maria (appellant) was charged before the Regional Trial Court (RTC) of Makati, Branch 135, for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 in two (2) Informations that read:

CRIMINAL CASE No. 02-3038

That on or about the 18[th] of October 2002, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, give away, distribute and transport Methylamphetamine Hydrochloride (shabu), a regulated drug, weighing ZERO POINT ZERO THREE GRAM (0.03 gram) contained in one heat-sealed transparent plastic sachet.

CONTRARY TO LAW.[1]

CRIMINAL CASE NO. 02-3039

That on or about the 18[th] day of October 2002, in the City of Makati, Philippines and within the jurisdiction of this honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control zero point zero three (0.03) gram of Methylamphetamine hydrochloride (shabu), which is a dangerous drug in violation of the above cited law.

CONTRARY TO LAW.[2]

Upon arraignment, appellant pleaded not guilty to the charges.[3] Trial ensued. After trial, his co-accused Susan Pugal was acquitted from a separate charge for violation of Section 11, Article II, R.A. No. 9165. However, in a Decision[4] dated 8 September 2003, the RTC found appellant guilty beyond reasonable doubt of the crime charged. The RTC disposed as follows:

WHEREFORE, it appearing that the guilt of the accused ROMEO DEL MUNDO y STA. MARIA was proven beyond reasonable doubt for violation of Sections 5 and 11, Article II of R.A. [No.] 9165, as principal, with no mitigating or aggravating circumstances, accused is hereby sentenced:

- In Criminal Case No. 02-3038, to suffer life imprisonment and to pay a fine of P500,000.00;
- In Criminal Case No. 02-3039, to suffer imprisonment for a period of twelve [12] years and one [1] day, as minimum, to twenty [20] years and a fine of P300,000.00; and
- To pay the costs.

It appearing that the guilt of accused SUSAN PUGAL y PINGOL in Criminal Case No. 02-3040 was not proven beyond reasonable doubt, she is hereby acquitted of the crime of violation of Section 11 of RA [No.] 9165.

Let the zero point zero nine [0.09] gram of Methylamphetamine Hydrochloride be turned over to the PDEA for proper disposition.

SO ORDERED.[5]

Culled from the records and decisions of the courts below, the antecedents follow.

The office of Cluster 2 of the Makati Anti-Drug Abuse Council (MADAC) received a report from a confidential informant that a certain Romy, later identified as appellant, was engaged in the selling of prohibited drugs, particularly shabu. Proceeding from this information, the head of MADAC Cluster 2 formed a team to conduct a buy-bust operation and designated MADAC agent Norman A. Bilason (Bilason) as the poseur-buyer, to be provided with two (2) marked P100 bills.[6] [7]

On 18 October 2002, at around 5:00 o'clock in the afternoon, the informant accompanied Bilason to the place where appellant was reported to be plying his trade. Meantime, the rest of the MADAC and Drug Enforcement Unit (DEU) operatives positioned themselves at a strategic place to monitor the transaction.[8]

Bilason and the informant approached appellant who was then standing at the corner of Pasong Tirad and Ponte Streets in Tejeros, Makati and talking to his female companion, later identified as Pugal and allegedly a "scorer" according to the informant. The informant introduced Bilason to appellant as a buyer of shabu. Appellant asked Bilason how much he intended to buy. Bilason replied, "Dos lang, panggamit lang." Then, appellant received the P200.00 marked money from Bilason while handing the latter one (1) plastic sachet[9] of shabu which came from the left pocket of his pants. Next, Bilason gave the pre-arranged signal. The rest of the team closed in. Bilason introduced himself as a member of MADAC and, with the team, placed appellant and Pugal under arrest. Two (2) plastic sachets[10] and the marked money were recovered from appellant while one (1) plastic sachet[11] was confiscated from Pugal. Appellant and Pugal were duly apprised of the nature of their arrest and their constitutional rights.[12]

Afterwards, appellant and Pugal were brought to the DEU office for proper disposition. Tests conducted on the plastic sachet yielded positive results for Methylamphetamine Hydrochloride.[13]

The parties stipulated that the physical science report[14] was duly accomplished after the specimens of shabu had been subjected to laboratory tests. Hence, the prosecution dispensed with the presentation of the Forensic Chemist. The parties likewise stipulated that: (1) MADAC agent Diomedes Camporaso confiscated from Pugal one [1] plastic sachet suspected to contain shabu; and (2) SPO2 Wilmer Antonio was the team leader of the buy-bust operation wherein he assisted in the arrest of appellant.[15]

Appellant, a 63-year old jobless resident of Tejeros, Makati, interposed the defense of denial. He claimed that there was never a time in his life that he sold shabu. He alleged that in the afternoon of 18 October 2002, he was inside his house lying down with his grandchild. He was awakened from sleep when police officers kicked the door open and entered the house. The police officers forced him to reveal the whereabouts of the shabu and the money. Appellant replied that he does not sell shabu. Then, the police officers searched the house but were not able to find anything. Subsequently, appellant was asked to go out of the house and board the police officers' service vehicle for allegedly selling shabu. Appellant entrusted his grandchild to his wife's sibling.[16]

At the DEU office, appellant was told to escape but he did not as he claimed not to have done anything wrong. Ten (10) minutes after, Pugal arrived. Appellant came to know of the charges against him on the day he was

arrested. Allegedly, these are false charges but appellant failed to file any complaint against the arresting officer for lack of money.[17]

Appellant was found guilty as charged and the judgment of conviction was elevated to the Court for automatic review. In a Resolution[18] dated 6 September 2004 of the Court in G.R. Nos. 159854-56,[19]the cases were transferred to the Court of Appeals pursuant to the Court's ruling in *People v. Mateo*.[20]

Before the Court of Appeals, appellant argued that the trial court erred in: (1) according greater weight to the evidence adduced by the prosecution and disregarding the defense of denial interposed by appellant; and (2) finding appellant guilty beyond reasonable doubt of the offenses charged.[21]

The Court of Appeals in a Decision[22] dated 27 June 2005, in CA-G.R. CR No. 00232, affirmed with modifications the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. Appellant Romeo del Mundo y Sta. Maria is hereby ACQUITTED in Crim. Case No. 02-3039. His conviction in Crim. Case No. 02-3038 for violation of Section 5, Article II of RA No. 9165 and all other aspects of the Decision are maintained.

SO ORDERED.[23]

The Court of Appeals held that in Criminal Case No. 02-3038, the details of the sale of shabu between appellant and the MADAC operatives have been clearly and sufficiently shown.[24] However, the appellate court entertained doubts with respect to appellant's culpability in Criminal Case No. 02-3039 resulting to his acquittal therein. The appellate court observed that the prosecution did not produce evidence to show that appellant was actually in possession of the second sachet supposedly containing 'shabu.'[25]

Appellant is now before the Court submitting for resolution the same matters argued before the Court of Appeals, though this time he questions only his conviction in Criminal Case No. 02-3038, for the illegal sale of shabu, as he was acquitted of the charge in Criminal Case No. 02-3039 by the appellate court. Through his Manifestation (In Lieu of Supplemental Brief)[26] dated 14 November 2005, appellant stated that will not file a Supplemental Brief and in lieu thereof, he will adopt the Appellant's Brief he had filed before the appellate court. The Office of the Solicitor General likewise manifested that it is no longer filing a supplemental brief.[27]

Appellant principally contends that the non-presentation before the trial court of the informant and witnesses other than MADAC agents Bilason and Camporaso militates against the trustworthiness of the prosecution's theory.[28]

The Court is not persuaded.

The pertinent provision of Article II of R.A. 9165[29] reads as follows:

SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.- The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten Million Pesos (P10,000,000.000) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The elements necessary in every prosecution for the illegal sale of 'shabu' are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[30] What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the corpus delicti. Corpus delicti is the body or substance of the crime, and establishes the fact that a crime has been actually committed. It has two elements, namely: (1) proof of the occurrence of a certain event; and (2) some person's

criminal responsibility for the act.[31]

MADAC agent Bilason, the poseur-buyer, clearly established that an illegal sale of shabu actually took place and that appellant was the author thereof. He testified as follows:

Fiscal Moreno to witness:

Q:

How did you come to know the accused in this case?

A:

On October 18, 2002, we arrested both accused Romeo del Mundo and Susan Pugal.

Q:

For what particular offense?

A:

For violation of Sections 5 and 11.

Q:

Did you conduct a buy-bust operation against said accused?

A:

Yes, sir.

Q:

Was the buy bust operation successful?

A:

Yes, sir.

Q:

In connection with the buy-bust operation that you conducted against the accused, do you recall having executed a Joint Affidavit of Arrest?

A:

Yes, sir.

Q:

If that affidavit will be shown to you, will you be able to identify the same?

A:

Yes, sir.

Q:

I am showing to you a Pinagsanib Na Sinumpaang Salaysay. Please go over this and tell the Court if this is the same affidavit that you executed?

A:

Yes, sir.

Fiscal Moreno:

This was previously marked as Exhibits A and A-1.

x x x x

Fiscal Moreno:

For purposes of expediency and to save the material time of the Honorable Court, we propose for stipulation with the defense that this Pinagsanib na Sinumpaang Salaylay (sic) will form part as the direct testimony of the witness.

Atty. Quiambao:

We agree, your Honor.

x x x x[32]

In the Pinagsanib na Sinumpaang Salaysay,[33] Bilason together with SPO2 Wilmer Antonio and MADAC Agent Camporaso narrated in detail the sale of shabu made by appellant to Bilason. Based on a tip from a confidential informant, a team composed of MADAC and DEU agents was formed to conduct a buy-bust operation. The team proceeded to the place wherein, according to the confidential informant, appellant allegedly conducted his transactions. After introductions were made, Bilason handed the marked money to appellant while the latter in turn handed him one (1) plastic sachet containing shabu. Appellant was thereafter immediately arrested.[34]

The result of the laboratory examination conducted on the white crystalline substance confiscated from appellant and forwarded to the crime laboratory of the Philippine National Police confirms the testimony that indeed, what was sold by appellant was shabu. The results of the examination states:

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of Methylamphetamine hydrochloride, a dangerous drugs. x x x x

CONCLUSION:

Specimens A to C contains Methylamphetamine hydrochloride, a dangerous drugs. x x x x[35]

Moreover, Bilason was able to present and identify in court the confiscated drugs and the marked money, which are corroborating pieces of evidence of the corpus delicti, thus:

Fiscal Moreno to witness:

Q:

You likewise stated in your Affidavit that you were able to buy shabu from the accused and confiscated another plastic sachets (sic) containing shabu. If those items will be shown to you, will you be able to identify the same?

A:

Yes, sir.

Q:

I am showing to you a white envelope, do you know the contents of this envelope?

A:

Yes, sir. Three plastic sachets.

Q:

Will you go over these plastic sachets and tell us which of these plastic sachets you were able to buy from accused Del Mundo?

A:

This one with marking "RDMS."

Fiscal Moreno:

We request that this white envelope be marked as Exhibit "E" and this plastic sachet with marking "RDMS" be marked as E[x]hibit "E-1." [36]

x x x x

Fiscal Moreno:

Q:

You said in your Pinagsanib na Sinumpaang Salaysay that in conducting the buy bust operation against the accused, you used buy bust money consisting of two pieces of One Hundred Peso bills. If that two pieces of One Hundred Peso bills will be shown to you, will you be able to identify the same?

A:

Yes, sir.

I am showing to you two pieces of One Hundred Peso bills, will you please tell us if these are the same buy bust money which you used in conducting the buy bust operation against the accused?

A:

This is the photocopy of the buy bust money we used in the operation.

x x x x [37]

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.[38] The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummates the buy-bust transaction between the entrapping officers and the accused.[39] Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserves full faith and credit.[40]

It is very clear from the testimony of Bilason and the other members of the team bear that their narration of events was positive, probable and in accord with human experience. It bears the badges of truth, such that it is difficult for a rational mind not to find it credible. Thus, we find no reason to deviate from the findings of the trial court and the appellate court.

In addition, the presumption of regularity in the performance of official duties has not been controverted; hence, the Court is bound to uphold it. Appellant failed to prove that in testifying against him, Bilason and the other

members of the team were motivated by reasons other than the duty to curb the sale of dangerous drugs. There is no proof of any ill motive or odious intent on the part of the police authorities to impute falsely such a serious crime to appellant.[41]

On the non-presentation of the informant, the rule is that his presentation in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would merely be corroborative and cumulative. Informants are generally not presented in court because of the need to hide their identity and preserve their invaluable service to the police. Here, the agents directly testified regarding the entrapment, and the testimony of the informant would merely have been corroborative.

Appellant's defenses of denial and alibi are unavailing. It bears emphasis that appellant was caught in flagrante delicto in a legitimate entrapment operation conducted by the MADAC and DEU agents. Hence, his identity as the person who sold the dangerous drug to Bilason cannot be doubted anymore. Such positive identification prevails over his weak defenses of denial and alibi.

In *People v. Isnani*,[42] we ruled that:

The defenses of denial and alibi have been invariably viewed by us with disfavor for it can easily be concocted but difficult to prove, and they are common and standard defense ploys in most prosecutions arising from violations of the Dangerous Drugs Act.[43]

Appellant's contention that the police authorities intruded his house and that he only failed to file charges against them due to lack of money could neither be believed. Appellant did not bother to present any evidence to support this contention. It likewise bears stressing that the police authorities are presumed to have performed their duty in a regular manner.[44]

In fine, the trial court and the appellate court correctly held that appellant is guilty of the crime of illegal sale of shabu.½

WHEREFORE, the Decision dated 27 June 2005 of the Eighth Division of the Court of Appeals in CA G.R. CR No. 00232 finding appellant Romeo del Mundo y Sta. Maria guilty beyond reasonable doubt of the crime charged in Criminal Case No. 02-3038 for violation of Section 5, Article II of R.A. No. 9165 is AFFIRMED.

SO ORDERED.

Quisumbing, Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1]Records, p. 3; Dated 22 October 2002.

[2]Id. at 5.

[3] Id. at 21.

[4] Id. at 63-69; Penned by Honorable Francisco B. Ibay.

[5] Id. at 69.

[6] Id. at 54; Exhibits F and F-1.

[7]Id. at 49; Exhibit A.

[8] Id.

- [9] Exhibit E-1.
- [10]Exhibit E-2.
- [11] Exhibit E-3.
- [12] Records, pp. 49-50.
- [13] Id. at 65.
- [14] Exhibit C; Id. at 52.
- [15] Id. at 64.
- [16] TSN, 25 July 2003, pp. 2-4.
- [17] Id. at 4-6.
- [18] CA rollo, p. 51.
- [19] The docket numbers of the cases when first elevated to the Court.
- [20] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [21] CA rollo, p. 29.
- [22] Id. at 76-84; Penned by Associate Justice Magdangal M. de Leon with the concurrence of Associate Justices Salvador J. Valdez, Jr. and Mariano C. del Castillo.
- [23]Id. at 83.
- [24] Id. at 81.
- [25] Id. at 82.
- [26]Rollo, pp. 13-14.
- [27]In its Manifestation dated 24 November 2005; id. at 15.
- [28]CA rollo, pp. 33-34.
- [29]Known as the "Comprehensive Dangerous Drugs Act of 2002."
- [30]People v. Isnani, G.R. No. 133006, 9 June 2004, 431 SCRA 439, 449.
- [31] People v. Monte, G.R. No. 144317, 5 August 2003, 408 SCRA 305, 309-310.
- [32] TSN, 5 March 2003, pp. 3 and 5.
- [33] Records, p. 49; Exhibit A.
- [34] Id.
- [35] Id. at 52.
- [36] TSN, 5 March 2003, pp. 5-6.
- [37] Id. at 5-6.
- [38]People v. Valencia, 439 Phil. 561, 567 (2002).

[39] *People v. Razul*, 441 Phil. 62, 75 (2002); *People v. Uy*, 392 Phil. 773, 787-788 (2000).

[40] *People v. Valencia*, *supra*.

[41] *People v. Razul*, *supra* note 39 at 89-90.

[42] G.R. No. 133006, 9 June 2004, 431 SCRA 439.

[43] *Id.* at 454 citing *People v. Eleonor Julian Fernandez*, G.R. Nos. 148850-53, 18 December 2001, 372 SCRA 608, 624.

[44] *People v. Bongalon*, 425 Phil. 96, 120-121 (2002).

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