

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MERLIE DUMANGAY Y SALE, APPELLANT.

G.R. No. 173483. September 23, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the Decision [1] dated April 28, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01700. The appellate court affirmed the Decision [2] dated October 29, 2003 of the Regional Trial Court of Makati City, Branch 135 in Criminal Case Nos. 02-3568 and 02-3569. The trial court had convicted appellant Merlie Dumangay y Sale of violation of Sections 5 and 11 of Article II of Republic Act No. 9165 [3] and sentenced her to suffer the penalty of life imprisonment and pay the fine of P500,000 in Criminal Case No. 02-3568, and imprisonment of twelve (12) years and one (1) day to twenty (20) years and to pay the fine of P300,000 in Criminal Case No. 02-3569; and pay the cost of suit.

The Informations [4] both dated December 2, 2002 that led to Merlie's convictions are as follows:

Criminal Case No. 02-3568

x x x x

That on or about the 29[th] day of November 2002, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero one (0.01) gram of [Methamphetamine] hydrochloride (shabu) which is a dangerous drug in consideration of two hundred (Php 200.00) pesos.

CONTRARY TO LAW.

x x x x

Criminal Case No. 02-3569

x x x x

That on or about the 29[th] day of November 2002, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in [her] possession zero point zero two (0.02) gram of [Methamphetamine] hydrochloride of a dangerous drug.

CONTRARY TO LAW.

x x x x

Upon arraignment on February 21, 2003, appellant pleaded not guilty. Thereafter, trial ensued.

The prosecution presented only one witness, a member of the Makati Anti-Drug Abuse Council (MADAC), Francisco Barbosa. He testified as follows:

At 7 o'clock in the evening of November 29, 2002, an informant reported to the office of MADAC Cluster 3 that a certain Merlie, later identified as appellant, was engaged in selling shabu at the corner of Don Pedro and Enriquez Sts., Barangay Poblacion, Makati City. Acting on the report, MADAC Cluster Head, Barangay Chairman Vic Del Prado, formed a team to conduct a buy-bust operation with Barbosa as the poseur-buyer. Del Prado also coordinated with the Drug Enforcement Unit (DEU) of the Makati City Police Station. [5]

Thereafter, Del Prado, DEU operative PO1 Jaime Laura, and other MADAC members proceeded to the place where Merlie was reportedly selling shabu. They found Merlie in front of her house at 5649 Don Pedro corner Enriquez St., Barangay Poblacion, Makati City; and with the informant, Barbosa approached Merlie. The informant introduced Barbosa as a buyer of shabu, while the other members of the team watched from strategic positions. Merlie then asked Barbosa how much he would buy. Barbosa said, "dalawang daang piso lang," then handed Merlie the two 100-peso marked money. In exchange, Merlie gave him a small plastic sachet of a white crystalline substance. After Barbosa pretended to examine it, he gave the pre-arranged signal to the other members of the team and they arrested Merlie. Barbosa found the marked money and two more plastic sachets containing white crystalline substance in Merlie's possession and informed Merlie the cause of her arrest and apprised her of her constitutional rights. [6]

Thereafter, Merlie was brought to the DEU of the Makati City Police Station. The three plastic sachets were sent to the Philippine National Police Crime Laboratory for examination. The laboratory report confirmed that the sachets contained methamphetamine hydrochloride or shabu. Each sachet weighed 0.01 gram. [7]

The testimony of the Forensic Chemist who examined the substance and prepared the report was dispensed with, considering the parties had stipulated that the report was duly accomplished after the substance examined by the crime laboratory yielded positive of methamphetamine hydrochloride. [8]

The defense presented Merlie as its sole witness. Merlie denied the allegations of the prosecution. She testified that at the time of the alleged buy-bust operation, she was already sleeping at home with her daughter when a man awakened her. She said that there were two men who searched the house. According to her, although no illegal item was found, she was still forced to board a vehicle and was taken to the Sta. Cruz Barangay Hall. There, a certain Minyang had taken her to a comfort room and told her to strip, but nothing illegal was found on her person. She also said that no uniformed policemen accompanied the arresting team and that Barbosa was not among the men who arrested her. She did not file any complaint against the people who arrested her because she had no relative to help her. [9]

On October 29, 2003, the trial court found the evidence of the prosecution sufficient to prove Merlie's guilt beyond reasonable doubt and rendered a decision of conviction in Criminal Case Nos. 02-3568 and 02-3569.

The dispositive portion of the trial court's decision reads:

WHEREFORE, it appearing that the guilt of the accused MERLIE DUMANGAY y SALE was proven beyond reasonable doubt for violation of Sections 5 and 11, Article II of R.A. 9165, as principal, with no mitigating or aggravating circumstances, accused is hereby sentenced:

- In Criminal Case No. 02-3568, to suffer life imprisonment and to pay a fine of P500,000.00;
- In Criminal Case No. 02-3569, to suffer imprisonment for a term of twelve [12] years and one [1] day to twenty [20] years and to pay a fine of P300,000.00; and

- To pay the costs.

Let the three [3] plastic sachets each containing zero point zero one [0.01] gram of [Methamphetamine] Hydrochloride be turned over to the PDEA for proper disposition.

SO ORDERED. [10]

Merlie appealed. In view of our ruling in *People v. Mateo*, [11] this case was referred to the Court of Appeals. [12]

Upon review, the Court of Appeals concluded in the Decision dated April 28, 2006 that the trial court did not err in finding Merlie guilty beyond reasonable doubt.

The appellant and the Office of the Solicitor General (OSG) opted not to file their supplemental briefs. But, we find on record their briefs filed with this Court before the case was transferred to the Court of Appeals. Appellant raised in her brief a single issue:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED FOR VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF RA 9165 DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT. [13]

Simply stated, the issue in this case is whether appellant is guilty beyond reasonable doubt of violating Rep. Act No. 9165.

Appellant challenges the testimony of Barbosa and claims that it was incredible and inconsistent in regard to her identity. She avers that since there was no surveillance conducted before the buy-bust operation and the informant was not present at the time, there was no certainty as to the "Merlie" who was selling the prohibited drugs, named by the informant. [14] According to appellant, although the testimony of Barbosa presented the elements of the crime that would convince the trial court, it should be taken with caution, since, Barbosa, as a MADAC agent, could make it appear that there was entrapment when there was none. [15] She further argues that the reason for her conviction shall not be the weakness of her defense but the strength of the evidence of the prosecution. [16]

For the State, the OSG maintains that the prosecution had proved the elements of the crime charged: (1) the presence of the appellant at the scene of the crime; (2) the act of selling one plastic sachet of shabu; and (3) the recovery of two plastic sachets of shabu at the time of the entrapment. It also argues that the credibility of Barbosa, whose testimony established the elements of the crime, was never impeached by the defense.[17] The OSG avers that Barbosa positively identified appellant as the seller of shabu, and such positive identification prevails over her feeble defense that she was sleeping at their house when the entrapment took place.[18] Moreover, the OSG maintains that the trial court imposed the proper penalty for the crime charged.[19]

The pertinent provisions of Article II of Rep. Act No. 9165 provide:

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 (P10,000,000.00) 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.

x x x x

SEC. 11. Possession of Dangerous Drugs.--The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any

person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of methamphetamine hydrochloride....

x x x x

We are convinced that appellant is guilty beyond reasonable doubt.

The elements of 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. 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. [20]

The straightforward testimony of Barbosa, the poseur-buyer, clearly established that an illegal sale of shabu actually took place and that appellant was the seller, thus:

FISCAL MORENO:

Q:

Mr. Witness, how did you come to know the accused in this particular case, Merlie Dumangay?

A:

Through our informant.

Q:

And when did that informant go to your office?

A:

November 29, 2002 at 7:00 p.m.

Q:

[A]nd what was the information given to your office by the informant?

A:

That [a] certain Merlie was engaged in selling prohibited drugs.

Q:

And after receiving such information Mr. Witness, do you recall if your office did [anything] to the information?

A:

Yes sir.

Q:

What Mr. Witness?

A:

Our office called up ... the DEU, Makati police.

Q:

Do you know the reason Mr. [W]itness why your office has to call up the DEU office?

A:

[Y]es sir.

Q:

For what particular purpose Mr. Witness? Why is there a need to call DEU Mr. Witness?

A:

[S]o that we can participate in our operation sir.

Q:

And what participation did the [DEU] office make in connection with the buy bust operation?

A:

He [led] our operation sir.

Q:

After the coordination has been made with the [DEU], what happened next?

A:

We conducted a briefing sir.

x x x x

Q:

After the briefing was conducted Mr. Witness do you recall if ever a buy bust operation was conducted?

A:

There was sir.

Q:

Against whom was the buy bust operation Mr. Witness?

A:

I could not recall sir.

Q:

Do you know if [a] buy bust operation was in fact conducted on November 29, 2002?

A:

Yes sir, there was.

Q:

Do you recall if somebody was arrested as a result of the buy bust operation Mr. Witness?

A:

A: Yes sir.

Q:

Who is that particular person?

A:

Merlie Dumangay sir.

Q:

Where is that Merlie Dumangay now? Will you kindly point her out?

INTERPRETER:

Witness pointing to a woman inside the courtroom [who], when asked, identified herself as Merlie Dumangay.

FISCAL MORENO:

Q:

In connection with the arrest, which you have conducted against the person of Merlie Dumangay, do you recall if you ever executed a Pinagsanib na Salaysay ng Pag-aresto?

A:

Yes sir.

Q:

If that Pinagsanib na Salaysay ng Pag-aresto will be shown to you, will you be able to identify the same?

A:

Yes sir.

Q:

I am showing to you Mr. Witness this Pinagsanib na Salaysay ng pag-aresto consisting of two pages. Will you kindly go over this document and tell us if that is the same Pinagsanib na Salaysay ng Pag-aresto which you said you executed?

A:

Yes sir.

x x x x

FISCAL MORENO:

Q:

Have you read the contents of this Pinagsanib na Salaysay ng Pag-aresto written in Tagalog?

A:

Yes sir.

Q:

[D]o you affirm and confirm as to the truthfulness of the allegations contained in this Pinagsanib na Salaysay ng Pag-aresto?

A:

Yes sir.

FISCAL MORENO:

For purposes of expediency your Honor and to save the material time of the Honorable Court, we would like to stipulate with the defense that the allegations contained in this Pinagsanib na Salaysay ng Pag-aresto will form part of his direct testimony your Honor.

ATTY. QUIAMBAO:

We agree your Honor.[21] (Emphasis supplied.)

Barbosa, PO1 Jaime Laura, MADAC members Romeo Lazaro and Marvin Cruz, in the sworn Pinagsanib na Salaysay ng Pag-aresto,[22] recounted the details of the buy-bust operation. They stated therein that acting on confidential information, a team composed of MADAC and DEU agents proceeded to the place where Merlie was allegedly selling shabu. The informant made the introductions and the transaction took place. Barbosa handed the marked money to Merlie while the latter handed him one plastic sachet of shabu. Thereafter, Merlie was immediately arrested and upon her arrest, Barbosa found two plastic sachets in her right hand.

The laboratory examination of the crystalline substance confiscated from Merlie and forwarded to the Philippine National Police Crime Laboratory yielded positive of methamphetamine hydrochloride.

In short, the prosecution clearly and positively established that Merlie agreed to sell shabu to the poseur-buyer and that the sale was consummated. Moreover, Barbosa identified the three plastic sachets of shabu and the marked money in court.[23]

We disagree with appellant's contention that inconsistencies in Barbosa's testimony are adequate to demolish the credibility of Barbosa. The inconsistencies alluded to by the appellant in the testimony of Barbosa are inconsequential and minor to adversely affect his credibility.[24] The inconsistencies do not detract from the fact that Barbosa positively identified her in open court.[25] What is essential is that the prosecution witness positively identified the appellant as the one who sold the shabu to the poseur-buyer. There is also nothing on record that sufficiently casts doubt on the credibility of the prosecution witness.[26] More so, the lack of prior surveillance does not cast doubt on Barbosa's credibility. We have held that a prior surveillance is not necessary especially where the police operatives are accompanied by their informant during entrapment, as in this case.[27] Contrary

to appellant's contention, the informant was present during the entrapment.[28]

Note that a buy-bust operation is a form of entrapment legally employed by peace officers as an effective way of apprehending drug dealers in the act of committing an offense. Such police operation has judicial sanction as long as it is carried out with due regard to constitutional and legal safeguards.[29] The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction between the entrapping officers and the accused. 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 faith and credit.[30]

In light of the clear and convincing evidence of the prosecution, we find no reason to deviate from the findings of the trial court and the appellate court. More so, appellant failed to present evidence that Barbosa and the other members of the team had any ill motive to falsely accuse her of a serious crime. Absent any proof of such motive, the presumption of regularity in the performance of official duty as well as the findings of the trial court on the credibility of witnesses shall prevail over appellant's self-serving and uncorroborated defenses.[31]

Lastly, considering that the buy-bust operation in this case is legitimate, the subsequent warrantless arrest and the warrantless search and seizure are equally valid. In *People v. Julian-Fernandez*,[32] we held that the interdiction against warrantless searches and seizures is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in instances such as the search incidental to a lawful arrest. This includes a valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize an arrest in flagrante delicto as a permissible warrantless arrest.[33] In this case, we find that the appellant, having failed to controvert the evidence that the other two plastic sachets of shabu were found in her possession, is also guilty beyond reasonable doubt of illegal possession of shabu.

In sum, we find no reversible error in the decisions of the trial court and the appellate court in holding appellant guilty beyond reasonable doubt of the offenses charged.

WHEREFORE, the Decision dated April 28, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01700 finding appellant Merlie Dumangay y Sale guilty beyond reasonable doubt of the crimes charged in Criminal Case Nos. 02-3568 and 02-3569 for violation of Sections 5 and 11 of Rep. Act No. 9165 is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[*] "Merle" in some parts of the records.

[1] CA rollo, pp. 105-113. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza concurring.

[2] Id. at 11-15. Penned by Judge Francisco B. Ibay.

[3] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Also known as the "Comprehensive Drugs Act of 2002." Approved on June 7, 2002.

- [4] Records, pp. 2 and 4.
- [5] TSN, June 11, 2003, pp. 3-4; Records, p. 53.
- [6] Id. at 7-10; id.
- [7] Records, p. 56.
- [8] TSN, June 11, 2003, p. 14; CA rollo, pp. 11-12.
- [9] TSN, September 19, 2003, pp. 3-9; CA rollo, pp. 12-13.
- [10] CA rollo, p. 15.
- [11] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [12] Rollo, p. 2.
- [13] CA rollo, p. 32.
- [14] Id. at 36.
- [15] Id. at 40.
- [16] Id.
- [17] Id. at 73.
- [18] Id. at 80-81.
- [19] Id. at 82.
- [20] *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554, 562, citing *People v. Isnani*, G.R. No. 133006, June 9, 2004, 431 SCRA 439, 449 and *People v. Monte*, G.R. No. 144317, August 5, 2003, 408 SCRA 305, 309-310.
- [21] TSN, June 11, 2003, pp. 3-7.
- [22] Records, p. 53.
- [23] TSN, June 11, 2003, pp. 7-9.
- [24] See *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689, 698.
- [25] TSN, June 11, 2003, pp. 4-5.
- [26] *People v. Gonzales*, supra at 698.
- [27] Id.
- [28] TSN, June 11, 2003, p. 11; Records, p. 53.
- [29] *People v. Chua*, G.R. No. 133789, August 23, 2001, 363 SCRA 562, 583.
- [30] *People v. Del Mundo*, supra note 20 at 565-566.
- [31] *People v. Isnani*, supra note 20 at 455.
- [32] 423 Phil. 895, 912 (2001).

[33] People v. Julian-Fernandez, id. at 912-913.

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