PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NENITA LEGASPI Y LUCAS, ACCUSED-APPELLANT.

G.R. No. 173485. November 23, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Challenged in this appeal is the January 16, 2006 Decision[1] promulgated by the Court of Appeals in CA-G.R. CR.-H.C. No. 01209, which affirmed in toto the Judgment[2] of conviction for violation of Section 5, Article II of Republic Act No. 9165 rendered by the Pasig City Regional Trial Court (RTC), Branch 164, in Criminal Case No. 12351-D.

On April 23, 2003, accused-appellant Nenita Legaspi y Lucas (Legaspi), also known as "Nita," was charged before the RTC for violating Section 5, Article II of Republic Act No. 9165. The accusatory portion of the Information reads:

> The Prosecution, through the undersigned Public Prosecutor, charges Nenita Legaspi y Lucas a.k.a. "Nita" with the crime of violation of Section 5, Art. II of R.A. No. 9165, committed as follows:
>
> On or about April 22, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to sell, possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to Police Officer Arturo San Andres, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing sixteen (16) decigrams (0.16 grams), which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of said law.[3]

Upon arraignment[4] on July 14, 2003, Legaspi pleaded not guilty to the charge against her. After the pre-trial conference[5] held on the same day, trial on the merits ensued.

The prosecution evidence, upon which the RTC anchored its finding of guilt, consisted of the testimonies of two of the operatives involved in the buy-bust operation, Police Officer (PO) 2 Arturo San Andres and PO1 Janet A. Sabo.[6] Their version of the incident leading to Legaspi's arrest is summarized as follows:

San Andres and Sabo were assigned to the Mayor Special Action Team (MSAT), Pasig City Police Station. On April 22, 2003, at around 4:00 p.m., a certain informant, whose identity remained confidential, approached San Andres to report about the rampant incidence of drug abuse at Centennial Village, Pinagbuhatan, Pasig City and about the drug pusher who was identified as Legaspi. After gathering all the necessary details, San Andres immediately informed his superior, Police Inspector Villaruel, who instructed him, Sabo, PO1 Aldrin Mariano, and PO1 Roland Panis to conduct a buy-bust operation. Villaruel designated San Andres to act as the poseur-buyer and gave him two pieces of one hundred-peso (P100.00) bills to be used as buy-bust money. Mariano was tasked to be the team leader, and he, along with the rest of the team, served as San Andres's backup. At around 5:15 p.m., the team reached Centennial Village, where after a briefing on their operations, San Andres, together with the informant, proceeded to Legaspi's house, while the others strategically placed themselves in the

entrapment area, keeping San Andres within their view. Upon seeing Legaspi, who was just outside her house, the informant introduced San Andres to her as a "scorer."[7] Legaspi asked them how much they wanted to "score," to which San Andres replied "P200.00 panggamit lang."[8] After San Andres gave Legaspi the buy-bust money, which he had previously marked with his initials "ABS," Legaspi reached into her pocket and gave him one heat-sealed plastic sachet containing the suspected shabu. As soon as San Andres got the sachet, he scratched his head, to signal to his team that the transaction was over. He thereafter introduced himself as a police officer, informed Legaspi of her rights, and marked the sachet he had received from her with his initials. The team then brought Legaspi to Rizal Medical Center for a check-up, and then to the police station wherein they filed the appropriate charges against her. Meanwhile, San Andres sent the sachet to the Philippine National Police (PNP) Crime Laboratory and requested for an examination to determine the nature of its contents.[9]

Annalee R. Forro, a PNP forensic chemist at the Eastern Police District Crime Laboratory, examined the "heat-sealed transparent plastic sachet with markings 'EXH A ABS 04/22/03' containing 0.16 gram white crystalline substance"[10] on the same day. In her Chemistry Report No. D-727-03E, she stated the following:

> FINDINGS:
>
> Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug.
>
> x x x x
>
> CONCLUSION:
>
> Specimen A contains Methamphetamine Hydrochloride, a dangerous drug.[11]

This report, along with the plastic sachet with white crystalline substance bought from Legaspi, and the two ?100.00 bills used as marked money,[12] were presented in court.

After the prosecution had rested its case, Legaspi was called to the witness stand to relay her version of the events. Legaspi primarily denied the charges against her. She testified that on April 22, 2003, while she was inside her house taking care of her grandson, San Andres and Mariano peeked through her window and asked her if she was "Nita." Legaspi alleged that after she answered in the affirmative, the two police officers pushed the door open and told her to go with them. She claimed that because of the shock the events had caused her, she was not able to ask the police officers why they were taking her with them. Legaspi said that she was brought to the police precinct in Pasig City where she was asked about her shabu source. Legaspi averred that she told the police officers that she did not know what they were talking about. She asseverated that she had never been arrested before and that she had never been involved in any illegal drugs case.[13]

On December 12, 2003, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, the court finds accused NENITA LEGASPI Y LUCAS a.k.a. "Nita" GUILTY beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 and hereby imposes upon her the penalty of life imprisonment and a fine of five hundred thousand pesos (P500,000.00), with the accessory penalties provided under Section 35 thereof.
>
> Moreover, the heat-sealed transparent plastic sachet containing 0.16 gram of methamphetamine hydrochloride or shabu (Exhibit "E-1") is hereby confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction in accordance with law.
>
> With Costs.[14]

In convicting Legaspi, the RTC stated that it was more convinced with the version of the prosecution. The RTC

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held that the positive testimonies of the two police officers were stronger than Legaspi's negative testimony. The RTC added that aside from the presumption that the two police officers performed their duties in a regular manner, there was no showing that they had any ill motive in arresting Legaspi.

Aggrieved, Legaspi appealed[15] her case to this Court. However, conformably with this Court's Decision in People v. Mateo,[16] which modified certain rules on direct appeals from the RTC to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua, or life imprisonment, Legaspi's case was transferred to the Court of Appeals for appropriate action and disposition.[17]

Legaspi anchored her appeal on the lone error as follows:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE POLICE INSTIGATED THE ALLEGED BUY-BUST TRANSACTION.[18]

On January 16, 2005, the Court of Appeals promulgated its Decision, affirming the RTC's judgment of conviction, to wit:

> WHEREFORE, the Decision dated December 12, 2003 of the Regional Trial Court of Pasig City, Branch 164 finding accused-appellant guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 is AFFIRMED en toto.[19]

In its Decision, the Court of Appeals explained the difference between instigation, which is deemed contrary to public policy, and entrapment, a valid means of arresting violators of the Dangerous Drugs Law. It then held that the buy-bust operation that led to Legaspi's arrest was an entrapment, and that Legaspi miserably failed to substantiate her allegation of instigation, which must be supported by clear and convincing evidence. The Court of Appeals also said that contrary to Legaspi's assertions, neither prior surveillance nor the presentation of the informant in court was an indispensable requirement to the successful prosecution of a drug case.[20]

Undaunted, Legaspi is once again before this Court, assigning the same error she assigned before the Court of Appeals.[21]

The Ruling of this Court

Legaspi was charged and convicted for selling methamphetamine hydrochloride, more popularly known as shabu, in violation of Section 5, Article II of Republic Act No. 9165 or the Dangerous Drugs Law, which provides:

> Section 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.
>
> The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.
>
> If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school,

> the maximum penalty shall be imposed in every case.
>
> For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.
>
> If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.
>
> The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.
>
> The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

Defense of Instigation

Legaspi contends that she was instigated to commit the crime, as she was not the one who sought out San Andres to sell him shabu. She avers that San Andres's own testimony clearly shows that he had suggested the commission of the crime by offering her P200.00 for the purchase of shabu. Legaspi claims that this is supported by her testimony wherein she denied selling shabu to San Andres or to anyone for that matter. This, she says, is confirmed by the fact that she has no police or criminal record.[22]

Taking a cue from the Court of Appeals, we shall first distinguish between entrapment and instigation. Entrapment is sanctioned by the law as a legitimate method of apprehending criminals. Its purpose is to trap and capture lawbreakers in the execution of their criminal plan. Instigation, on the other hand, involves the inducement of the would-be accused into the commission of the offense. In such a case, the instigators become co-principals themselves.[23]

Where the criminal intent originates in the mind of the instigating person and the accused is lured into the commission of the offense charged in order to prosecute him, there is instigation and no conviction may be had. Where, however, the criminal intent originates in the mind of the accused and the criminal offense is completed, even after a person acted as a decoy for the state, or public officials furnished the accused an opportunity for the commission of the offense, or the accused was aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is no instigation and the accused must be convicted. The law in fact tolerates the use of decoys and other artifices to catch a criminal.[24]

The distinction between entrapment and instigation has proven to be very relevant in anti-narcotics operations. It has become common practice for law enforcement officers and agents to engage in buy-bust operations and other entrapment procedures in apprehending drug offenders.[25] This Court, elaborating on the concept of a buy-bust operation within the context of entrapment and instigation, has said:

> A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid means of arresting violators of the Dangerous Drugs Law. It is commonly employed by police officers as an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. Its opposite is instigation or inducement, wherein the police or its agent lures the accused into committing the offense in order to prosecute him. Instigation is deemed contrary to public policy and considered an absolutory cause. x x x.[26]

Instigation is recognized as a valid defense that can be raised by an accused. To use this as a defense, however, the accused must prove with sufficient evidence that the government induced him to commit the offense.[27] Legaspi claims that she was induced into committing the crime as charged, as she was the one approached by San Andres, who was then looking to buy shabu.

We find, however, that Legaspi's defense of instigation must fail. It is an established rule that when an accused is charged with the sale of illicit drugs, the following defenses cannot be set up:

> (1) that facilities for the commission of the crime were intentionally placed in his way; or
>
> (2) that the criminal act was done at the solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or
>
> (3) that police authorities feigning complicity in the act were present and apparently assisted in its commission. [28]

The foregoing are especially true in that class of cases where the offense is the kind that is habitually committed, and the solicitation merely furnished evidence of a course of conduct. Mere deception by the police officer will not shield the perpetrator, if the offense was committed by him free from the influence or the instigation of the police officer.[29]

In the case at bar, the police officers, after receiving a report of drug trafficking from their confidential informant, immediately set-up a buy-bust operation to test the veracity of the report and to arrest the malefactor if the report proved to be true. The prosecution evidence positively showed that Legaspi agreed to sell ?200.00 worth of shabu to San Andres, who was then posing as a buyer. Legaspi was never forced, coerced, or induced to source the prohibited drug for San Andres. In fact, San Andres did not even have to ask her if she could sell him shabu. Legaspi was merely informed that he was also a "scorer"; and as soon as she learned that he was looking to buy, she immediately asked him how much he needed. Under the circumstances, the police officers were not only authorized but were under an obligation to arrest Legaspi even without an arrest warrant as the crime was committed in their presence.[30]

The RTC was correct in upholding the testimonies of the prosecution witnesses and in applying the presumption of regularity in the performance of duty by the police officers, especially since Legaspi failed to impute on them any motive to falsely testify against her.[31] Unless there is clear and convincing evidence that the members of the buy-bust operation team were inspired by improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit.[32]

Furthermore, when Legaspi testified in court, her defense was one of denial and not instigation. While instigation is a positive defense, it partakes of the nature of a confession and avoidance.[33] In instigation, the crime is actually performed by the accused, except that the intent originates from the mind of the inducer.[34] Thus, it is incompatible with the defense of denial, where the theory is that the accused did not commit the offense at all. Instigation and denial, therefore, cannot be present concurrently. Besides, this Court has consistently held that:

> [B]are denials are weak forms of defenses, especially in this case where the accused-appellant's testimony was not substantiated by clear and convincing evidence. The uncorroborated denial by the accused-appellant cannot prevail over the testimonies of the arresting officer and the poseur-buyer, who both testified on affirmative matters.
>
> Furthermore, there is no indication that the arresting team and the other prosecution witnesses were actuated by improper motives, prevaricating just to cause damnation to him. Thus, their affirmative statements proving accused-appellant's culpability must be respected and must perforce prevail.[35]

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No Prior Surveillance

Legaspi also argues that the veracity of the buy-bust operation is suspect as it was conducted without prior surveillance.[36]

This Court has many times discussed the dispensability of prior surveillance in buy-bust operations, as it is not a pre-requisite for the validity of an entrapment or such buy-bust operation. In People v. Eugenio,[37] we held that the conduct of surveillance prior to a buy-bust operation is not required especially when the police officers are accompanied to the scene by their civilian informant. This is so because there is no rigid or textbook method in conducting buy-bust operations. Flexibility is a trait of good police work, and the need for prior surveillance may be dispensed with when time is of the essence.[38] In People v. Gonzales,[39] we said:

> The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. Thus, we have refused to establish on a priori basis what detailed acts the police authorities might credibly undertake in their entrapment operations.[40]

Non-presentation of Informant

Legaspi further contends that the failure to present the informant as a witness in court is very material and relevant in the case at bar, inasmuch as she had denied having sold shabu to anyone. She also claims that since the identity of the informant was known to her from the beginning, there was no reason for the prosecution to not present him in court as a witness, especially since he is in the best position to establish that she had indeed been engaged in the sale of shabu prior to the buy-bust operation against her.[41]

We do not agree. The presentation of an informant is not a requisite for the successful prosecution of drug cases. Informants are almost always never presented in court because of the need to preserve their invaluable service to the police. [42] In People v. Ho Chua,[43] we held:

> [P]olice authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret. In any event, the testimony of the informant would be merely corroborative.[44]

Legaspi argues that it was the civilian informant who reported on her alleged drug-pushing; hence, only he had personal knowledge of such activities, subject of this case. Contrary to Legaspi's claims, the subject matter of this case is her sale of shabu to San Andres on April 22, 2003. She was not charged and convicted for her activities prior to such sale. Since San Andres, who was the poseur-buyer himself, already testified to the events, which he had personal knowledge of, the testimony of the informant would be merely corroborative, and can thus be dispensed with. [45]

Only two elements are to be proven for the prosecution of illegal sale of regulated or prohibited drugs:

> (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.
>
> The prosecution had presented evidence that established both elements by the required quantum of proof, i.e., guilt beyond reasonable doubt.[46]

Legaspi was positively identified by the prosecution's eyewitnesses as the person who sold to the poseur-buyer a heat-sealed plastic sachet containing a white crystalline substance. Her identity as the culprit cannot be doubted, having been caught in flagrante delicto in an entrapment operation conducted by the MSAT of Pasig City. Such

positive identification prevails over Legaspi's uncorroborated and weak defense of denial, and unsubstantiated and contradictory defense of instigation.[47]

The prosecution also succeeded in establishing with certainty and conclusiveness the corpus delicti of the crime. After Legaspi received the P200.00 from San Andres, the poseur-buyer, she reached into her pocket and handed him one heat-sealed plastic sachet containing shabu. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction between the entrapping officers and Legaspi.[48]

As the prosecution ably established Legaspi's guilt beyond reasonable doubt, both the RTC and the Court of Appeals did not err in convicting her for violation of Section 5, Article II of Republic Act No. 9165.

WHEREFORE, premises considered, the Court hereby AFFIRMS the January 16, 2006 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01209.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

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[1] Rollo, pp. 3-13; penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Ruben T. Reyes and Rebecca De Guia-Salvador, concurring.

[2] CA rollo, pp. 44-48.

[3] Records, p. 1.

[4] Id. at 32.

[5] Id. at 34-35.

[6] TSN, September 8, 2003.

[7] A "scorer" of drugs is a "buyer" of drugs (People v. Alejandro, G.R. No. 176350, August 10, 2011).

[8] TSN, September 4, 2003, p. 8-A.

[9] TSN, September 1, 2003, pp. 3-15.

[10] Records, p. 53.

[11] Id.

[12] Id. at 9.

[13] TSN, December 8, 2003, pp. 2-8.

[14] CA rollo, pp. 47-48.

[15] Records, p. 70.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[17] CA rollo, p. 54.

[18] Id. at 33.

[19] Rollo, p. 13.

[20] Id. at 8-12.

[21] Id. at 20.

[22] CA rollo, pp. 38-39.

[23] People v. Pacis, 434 Phil. 148, 157-158 (2002).

[24] People v. Doria, 361 Phil. 595, 610 (1999).

[25] Id.

[26] People v. Valencia, 439 Phil. 561, 574 (2002).

[27] People v. Doria, supra note 24 at 612-613.

[28] People v. Gonzales, 430 Phil. 504, 513 (2002).

[29] People v. Zheng Bai Hui, 393 Phil. 68, 134-135 (2000).

[30] People v. Gonzales, supra note 28.

[31] People v. Valencia, supra note 26 at 568.

[32] Id.

[33] People v. Doria, supra note 24.

[34] People v. Boco, 368 Phil. 341, 367 (1999).

[35] People v. Beriarmente, 418 Phil. 229, 239-240 (2001).

[36] CA rollo, p. 39.

[37] People v. Eugenio, 443 Phil. 411, 422-433 (2003).

[38] People v. Lacbanes, 336 Phil. 933, 941 (1997).

[39] Supra note 28.

[40] Id. at 514.

[41] CA rollo, p. 40.

[42] People v. Domingcil, 464 Phil. 342, 358 (2004).

[43] 364 Phil. 497 (1999).

[44] Id. at 513-514.

[45] People v. Domingcil, supra note 42.

[46] People v. Tiu, 469 Phil. 163, 173 (2004).

[47] People v. De Vera, 341 Phil. 89, 95 (1997).

[48] Id.

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