

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANTE JOSE DIVINA, APPELLANT.

G.R. No. 174067. August 29, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Dante Jose Divina alias "Ponggay" (appellant) was, by Information dated March 11, 2003 which was filed on March 13, 2003, indicted before the Regional Trial Court (RTC) of Pasig for violation of Section 5, Article II of Republic Act No. 9165, the accusatory portion of which reads:

On or about March 10, 2003 in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Alan Mapula, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing two (2) centigrams (0.02 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.[1] (Underscoring supplied)

From the evidence for the prosecution, the following version is culled:

On account of a series of reports received as early as February 2003 about appellant being engaged in peddling shabu, which reports were validated by a confidential informant and a surveillance operation, a team of policemen of the Pasig City Drug Enforcement Unit, together with the informant, repaired to Dr. Sixto Avenue, Barangay Rosario, Pasig City on March 10, 2003 to conduct a buy-bust operation. On reaching the place at about 10:00 p.m., the informant at once spotted appellant across the street.

PO1 Allan V. Mapula (PO1 Mapula), who was tasked to be the poseur-buyer, and the informant approached appellant who inquired if they would buy from him. The informant replied that PO1 Mapula wanted to buy for his own consumption. Appellant asked how much, to which PO1 Mapula replied "piso lang," meaning P100 worth of shabu.

PO1 Mapula readily gave the buy-bust P100.00 bill previously marked with "AVM," his initials, to appellant who brought out from his pocket a plastic sachet containing suspected shabu and handed it to PO1 Mapula.

PO1 Mapula immediately grabbed appellant, introduced himself as a police officer, informed him his constitutional rights, frisked him and recovered the P100 bill buy-bust money. The other members of the buy-bust team rushed in and helped apprehend appellant. When subjected to laboratory examination, the substance in the plastic sachet â€œ Exhibit "D" on which PO1 Mapula marked his initials "AVM," appellant's initials "DJD," and "03-01-03" (the date of appellant's apprehension) â€œ was found positive for methamphetamine hydrochloride.[2]

Appellant gave his side of the case as follows:[3]

While he was standing at an alley in his compound "trying to wear [his] polo shirt and about to cross the street," a car stopped from which two men, who introduced themselves as policemen, alighted. He was brought to the police station where the policemen demanded P15,000.00 in exchange for his release. He thus contacted by

telephone one Linda Mateo,[4] who is a kumare of a police officer, from whom he sought to borrow P2,000. The amount of P2,000 was not acceptable to the policemen, however, hence, he was detained and subjected to inquest proceedings on or about March 12, 2003.

On cross-examination, when questioned if he asked for his wife from his son Rodante Divina (Rodante) who allegedly witnessed his arrest, appellant replied that she was abroad in Egypt.

In an attempt to corroborate appellant's testimony, appellant's son Rodante gave the following account at the witness stand:

While he was at Dr. Sixto Avenue at around 8:00 p.m. conversing with his friends, he saw his father go out of their house "when suddenly a blue car stopped." From the car alighted three persons who grabbed his father "who was just sitting in front of their house." He thus approached his father and asked the policemen what was the violation. One replied "nakabili kami ng shabu sa kanya" and showed the shabu to him.[5]

Rodante went on to relate that the three men asked his father to stand up and frisked him and "they were able to see a watch and a P20.00 from my father which they also returned." After his father was accosted, they boarded him (appellant) into the car and asked him (Rodante) to follow them. He did not, however; instead, his uncle Daniel Divina followed appellant and the policemen at the "Pariancillo" precinct. When he later inquired from his uncle following the latter's return from the police station what happened to his father, his uncle replied "nagpa-drug test . . . siya." [6]

When Rodante was asked what the reaction of his mother was on learning his father's arrest, he answered, "she was at the Pineda at my grandfather's house at that time."

Branch 154 of the Pasig RTC found appellant guilty beyond reasonable doubt as charged and sentenced him to life imprisonment and to pay a fine of P500,000.[7]

On appellant's appeal to this Court,[8] the case was referred for appropriate action to the Court of Appeals following the ruling in *People v. Mateo*[9] which calls for intermediate review of cases imposing the penalty of death, life imprisonment, or reclusion perpetua.[10]

In his Brief filed before the appellate court, appellant questioned the legality of his arrest, given that when he was arrested, he was standing in front of his house without acting in a manner suggesting that he was violating the law.[11] And he contended that his guilt had not been proven beyond reasonable doubt.[12]

By Decision[13] dated April 25, 2006, the Court of Appeals affirmed the trial court's decision.

The case is now before this Court for final review.[14] Both parties to the case manifested that they are no longer filing supplemental briefs.[15]

The appeal fails.

Appellant's belated questioning of the legality of his arrest does not lie.

x x x [A]n accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person must be made before he enters his plea, otherwise, the objection is deemed waived. Even in instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived when a person arrested submits to arraignment without objection. The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention.[16] (Underscoring supplied)

The records of the case show appellant was subjected to an inquest proceeding after his arrest.[17] And upon arraignment, appellant entered his plea without raising any objection to the manner of his arrest.[18]

In any event, it bears stressing that the prosecution established that appellant was arrested in flagrante delicto during a buy-bust operation.

Unless there is clear and convincing evidence that PO1 Mapula was inspired by any improper motive or was not properly performing his duty, and none has been adduced by the defense, his testimony with respect to the buy-bust operation deserves full faith and credit.[19]

What is crucial to a prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of the object evidence. In the case at bar, the testimony of poseur-buyer PO1 Mapula proves beyond reasonable doubt that the transaction took place.

[FISCAL:]

Q: And after you approached Pong[g]ay, what happened?

[PO1 MAPULA]

A: When the accused saw our informant while we were approaching him, the accused asked our informant if he will get from us.

Q: What was the reply given by the informant if there is any?

A: My companion wanted to buy for his use.

Q: And after the informant told that to the accused, what was the reply of the accused?

A: He asked how much.

Q: And what was your reply?

A: I said "piso lang."

Q: When you said "piso lang" what do you mean?

A: I mean P100 worth of shabu, sir.

Q: After that, what happened?

A: He got the buy-bust money and then he got from his pocket one plastic sachet containing suspected shabu and he gave it to me.

Q: At that time, what [was] the accused xxx wearing?

A: T-shirt and maong pants, sir.

Q: Where is this alias Ponggay if here is here in this courtroom?

A: He is here, sir. (Witness pointing to a man wearing a yellow t-shirt who when asked answered by the name "Dante Divina").[20]

The testimony of PO1 Mapula has not been dented by the defense. The object evidence " sachet of shabu was presented.[21] Appellant's son Rodante who testified that one of the policemen told him at the site of the buy-bust operation that "nakabili kami ng shabu sa kanya" even admitted having been shown the shabu.

As for the version of the defense, appellant's and Rodante's testimonies are even conflicting as the earlier underlined portions of their respective accounts show. And, under the proven facts and circumstances attendant to the case, appellant's defense of frame-up does not inspire belief. That no complaint was filed against the police officers, whose arrest of appellant admittedly created a commotion and who allegedly attempted to extort money from appellant,[22] runs counter to the normal conduct and behavior of one who feels truly aggrieved by the act

complained of.[23]

WHEREFORE, the challenged decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Records, p. 1.

[2] Id. at 7.

[3] TSN, October 2, 2003, pp. 2-5.

[4] Id. at 5.

[5] TSN, January 8, 2004, p. 3.

[6] Id. at 6.

[7] Records, p. 61.

[8] Id. at 66-67.

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

[10] Id. at 656-658.

[11] CA rollo, p. 59.

[12] Id. at 58-59.

[13] Penned by Court of Appeals Associate Justice Vicente Q. Roxas, with the concurrence of Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr. Id. at 115-124.

[14] Id. at 125-126.

[15] Rollo, pp. 14-16, 18-19.

[16] *People v. Bongalon*, 425 Phil. 96, 119-120 (2002).

[17] Records, p. 4.

[18] Id. at 11-13.

[19] *People v. Saludes*, 451 Phil. 719, 726 (2003).

[20] TSN, July 17, 2003, p. 8.

[21] Id. at 9-12, 17-18; Records, pp. 6-7.

[22] TSN, October 2, 2003, pp. 7-10.

[23] *Vide People v. Sy*, 438 Phil. 383, 405-406 (2002).

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