PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LOURDERICO ORTIZ DARISAN AND PILAR GAYAS GAUANG, APPELLANTS.

G.R. No. 176151. January 30, 2009

Ponente: CORONA, J.

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CORONA, J.:

Before us on appeal is the decision[1] of the Court of Appeals (CA) dated April 25, 2006 affirming the decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 65, in Criminal Case Nos. 02-2125 to 02-2127 finding appellants Lourderico Darisan and Pilar Gauang guilty of violation of Sections 5[3] and 11[4] of RA 9165,[5] as amended.

On July 30, 2002, the Drug Enforcement Unit of the Makati City Police received a tip from an informant that appellants were engaged in drug-pushing activities in Rose Street, Barangay Rizal, Makati City. A team of police officers was formed to conduct a buy-bust operation. A P100 bill was prepared as marked money and the initials "GAR" were written thereon.

Upon commencement of the buy-bust operation, PO2 Vicente Barrameda (the designated poseur-buyer) was introduced by the informant to Darisan. Asked how much shabu he wanted to buy, Barrameda replied, "Isang daan lang, boss." After Barrameda handed Darisan the marked money, Gauang gave him (Barrameda) one transparent plastic sachet containing shabu.

Barrameda gave the pre-arranged signal and introduced himself as a police officer. The members of the buy-bust team arrested appellants. Darisan was frisked. The police found in his possession two sachets of shabu. Two more sachets of shabu were found in the possession of Gauang.

The five sachets of shabu were brought to the Philippine National Police Crime Laboratory and were each found to contain shabu of various weights.[6] Consequently, three Informations for illegal sale and illegal possession of dangerous drugs were filed in the RTC of Makati City against appellants.[7]

Upon arraignment, appellants both pleaded not guilty to the offenses charged. They denied the charges against them and offered an alibi instead. Gauang averred that she was eating with her daughter in a nearby carinderia along Rose Street when four persons arrived and approached Darisan who was also eating there. According to Gauang, Darisan was frisked and handcuffed. Gauang herself was brought to a nearby chapel where a plastic sachet was allegedly shoved into her hand. Darisan corroborated Gauang's testimony.

After trial on the merits, the RTC found appellants guilty beyond reasonable doubt of the offenses charged. The dispositive portion of the decision read:

> THE FOREGOING CONSIDERED, the court is of the opinion and so holds accused Lourderico Darisan y Ortiz and Pilar Gauang y Gayas guilty beyond reasonable doubt of the offenses charged. They are hereby sentenced to life imprisonment and are fined the sum of five hundred thousand pesos (Php 500,000.00) without subsidiary imprisonment in case of insolvency for violation of Section 5 and to a prison term of from twelve

> (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum for violation of Section 11.
>
> The period of detention of both accused should be given full credit.
>
> Let the dangerous drug subject matter of these cases be disposed of in the manner provided by law.
>
> SO ORDERED.

Appellants appealed to the CA. In ruling against them, the CA held that the minor inaccuracies in the testimonies of the witnesses for the prosecution, namely Barrameda and PO2 Virginio Costa (another member of the buy-bust operation team), did not mar their credibility. Moreover, the CA held that the elements of the crimes of illegal sale of regulated or prohibited drugs and of illegal possession of dangerous drugs had been firmly established.

Appellants interposed this appeal. We affirm the findings of the RTC and the CA.

In their brief, appellants raise as lone error the finding by the RTC and the CA of their guilt beyond reasonable doubt. They assail the RTC's heavy reliance on the testimonies of Barrameda and Costa. Appellants allege that the testimonies (of Barrameda and Costa) were inconsistent, an indicia of falsehood.

It is a settled rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[8] In this case, no evidence was adduced showing any irregularity in any material aspect of the conduct of the buy-bust operation. Neither was there any proof that the prosecution witnesses who were members of the buy-bust operation team, particularly those whose testimonies were in question, were impelled by any ill-feeling or improper motive against appellants which would raise a doubt about their credibility.

We agree with the CA's finding that the inconsistencies pointed to by appellants were minor ones. These inaccuracies, namely: (a) the composition of the buy-bust team; (b) the time when the informant came to the Makati Drug Enforcement Unit; (c) whether the buy-bust operation took place on Roxas or Rose Street and (d) the markings on the buy-bust money, were not material to the case. These matters were not necessary to establish the elements of the crimes committed.

The following are the elements of illegal sale and illegal possession of dangerous drugs:

> In a prosecution for illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the corpus delicti or the illicit drug as evidence. In a prosecution for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[9]

The prosecution was able to prove the existence of all the essential elements of the illegal sale and illegal possession of shabu. Appellants were positively identified by the prosecution witnesses as the persons who possessed and sold the shabu presented in court. Barrameda testified that he bought the shabu from appellants. It was duly established that the sale actually took place and that four more sachets were validly discovered in appellants' possession pursuant to a lawful warrantless arrest. The marked money used in the buy-bust operation was duly presented. The shabu seized from appellants was likewise positively and categorically identified in open court.

The RTC, as upheld by the CA, found that the testimonies of Barrameda and Costa were unequivocal, definite and straightforward. More importantly, their testimonies were consistent in material respects with each other and with

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other testimonies and physical evidence.

Trial courts have the distinct advantage of observing the demeanor and conduct of witnesses during trial. Hence, their factual findings are accorded great weight, absent any showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[10] No cogent reason exists for us to deviate from this rule.

Appellants' defense of alibi cannot stand in the face of proof beyond reasonable doubt of the illegal sale and possession of prohibited drugs. The defense of alibi is viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Comprehensive Dangerous Drugs Act.[11] This case is no exception.

With respect to the penalty, the RTC and the CA correctly imposed the penalty for illegal sale of dangerous drugs, punishable under Section 5 of RA 9165. This is not so with respect the penalty imposed for illegal possession of dangerous drugs, punishable under Section 11 of RA 9165. The RTC, as affirmed by the CA, incorrectly imposed only a penalty of imprisonment for 12 years and one day as minimum to 14 years and eight months as maximum. Section 11 provides:

> Sec. 11. Possession of Dangerous Drugs.-- xxx
>
> (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 opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs xxx." (emphasis supplied)

The penalty of fine must therefore also be imposed upon appellants, in addition to the penalty of imprisonment for illegal possession of dangerous drugs.

WHEREFORE, the appeal is hereby DENIED. The April 25, 2006 decision of the Court of Appeals is AFFIRMED with MODIFICATION. Lourderico Darisan y Ortiz and Pilar Gauang y Gayas are hereby found guilty beyond reasonable doubt of illegal sale of shabu punishable under Section 5 of Republic Act No. 9165. They are both hereby sentenced to life imprisonment and fined P500,000 without subsidiary imprisonment in case of insolvency.

Lourderico Darisan y Ortiz and Pilar Gauang y Gayas are likewise both found guilty beyond reasonable doubt of violation of Section 11 of Republic Act No. 9165. They are hereby sentenced to imprisonment for a period of 12 years and one day as minimum to 14 years and eight months as maximum and are fined P300,000 without subsidiary imprisonment in case of insolvency.

The period of detention of both appellants should be given full credit.

Let the shabu subject matter of these cases be disposed of in the manner provided by law.

SO ORDERED.

Carpio, (Acting Chairperson)[*], Austria-Martinez[**], Carpio Morales[**], and Leonardo-De Castro, JJ., concur.

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[*] Per Special Order No. 552-A dated January 15, 2009.

[**] Per Special Order No. 553 dated January 15, 2009.

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[1] Penned by Associate Justice Vicente Q. Roxas (dismissed from the service) and concurred by Associate Justices Godardo A. Jacinto (retired) and Juan Q. Enriquez, Jr., of the Special Seventh Division of the Court of Appeals. Rollo, pp. 2-9.

[2] Penned by Judge Salvador S. Abad Santos. CA rollo, pp. 15-19.

[3] Section 5, Article II of RA 9165 provides: "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. xxx." Methamphetamine Hydrochloride or "Shabu" is one such dangerous drug.

[4]Section 11, Article II of RA 9165 provides: "Sec. 11. Possession of Dangerous Drugs.-- xxx

(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 opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs xxx."

[5] Comprehensive Dangerous Drugs Act of 2002.

[6] Each of the five sachets contained .05 g., .06 g., .04 g., .04 g. and .05 g. of shabu.

[7] CA rollo, pp. 12-14.

[8] People v. Navarro, G.R. No. 173790, 11 October 2007.

[9] People of the Philippines v. Hajili and Unday, 447 Phil. 283, 295 (2003).

[10] People v. Nicolas, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 204.

[11] Suson v. People, G.R. No. 152848, 12 July 2006, 494 SCRA 691, 705.

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