

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERMAN AGOJO Y LUNA, APPELLANT.

G.R. No. 181318. April 16, 2009

Ponente: TINGA, J.

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TINGA, J.:

Subject of this appeal is the March 30, 2007 decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00946, affirming the November 11, 2002 judgment[2] of the Regional Trial Court (RTC) of Tanauan, Batangas, finding appellant German Agojo y Luna guilty of violation of Section 15, Article III of Republic Act (R.A.) No. 6425.

Appellant was charged with illegal sale of shabu in an Information dated October 14, 1999, the accusatory portion of which reads:

That on or about the 27[th] day of August 1999 at about 11:30 o'clock in the evening at Poblacion, Municipality of Tanauan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, and deliver (4) plastic bags of methamphetamine hydrochloride commonly known as "shabu," weighing 51.00, 51.10, 52.67 and 51.55 grams, with a total weight of 206.32 grams, a regulated dangerous drug.

Contrary to law.[3]

Appellant was also charged with violation of Presidential Decree No. 1866 (P.D. No. 1866) as amended by Republic Act No. 8294 in an Information, the accusatory portion of which reads:

That on or about the 27[th] day of August 1999 at about 11:30 o'clock in the evening at Poblacion, Municipality of Tanauan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) caliber .45 pistol Ithaca with defaced serial number, one (1) magazine and seven (7) rounds of live ammunitions for caliber .45, without having secured the necessary license and/or permit from the proper authorities to possess the same.

Contrary to law. [4]

Appellant entered a not guilty plea upon arraignment.[5] Thereafter, trial ensued. As culled from the record, the evidence for the prosecution is as follows:

On August 23, 1999, Rodolfo Alonzo, a civilian informant, reported the drug trading activities of appellant to Police Chief Inspector Ablang.[6] Alonzo narrated that appellant agreed to sell him 200 grams of shabu for P70,000.00 on a 50% cash and 50% credit basis. The sale was to take place in front of the Mercado Hospital in Tanauan, Batangas, on August 27, 1999 at 11:30 p.m. Ablang formed a team to conduct the buy-bust operation.[7]

On August 27, 1999, the team proceeded to Mercado Hospital. Ablang then entrusted Alonzo with P71,000.00

each marked "JUA." Alonzo was instructed to remove his hat to signal the team that the sale had been consummated. The buy-bust team arrived at Mercado Hospital at 11:00 p.m. The team members immediately took strategic positions. Alonzo stayed in an eatery in front of the hospital.[8]

Agojo arrived at 11:30 p.m. aboard a white Mitsubishi Lancer (Lancer) with plate number DRW-392. Appellant then approached Alonzo to ask if the latter had the money. Alonzo handed appellant the marked money. Appellant took a VHS box from his car and handed it to Alonzo. Appellant and Alonzo then walked along the hospital gate near the emergency room. Appellant then entered the hospital.

Alonzo examined the VHS box then took off his cap to signal the buy-bust team. The buy-bust team immediately proceeded to the scene. Alonzo told the team that appellant had entered the hospital. Alonzo handed the VHS box to Ablang. Upon examination, the box was found to contain four (4) plastic bags of a crystalline substance which the team suspected was shabu. Ablang instructed Salazar to inform the appellant that his car had been bumped.

Appellant then exited from the hospital via the emergency room door. Salazar introduced himself as a policeman and attempted to arrest HIM.[9] Appellant resisted, but the other team members handcuffed appellant. The team recovered P10,000.00 of the buy-bust money. Ablang opened appellant's Lancer and recovered a .45 caliber pistol containing seven (7) bullets and a Panasonic cellular phone from the passenger seat.

Arsenio Ricero, the Chief of the PNP Batangas Intelligence and Investigation Section, later requested a laboratory examination of the contents of the four (4) plastic sachets confiscated from appellant.[10] Lorna Tria, a chemist at the Philippine National Police (PNP) crime laboratory in Camp Vicente Lim conducted an examination of the four (4) plastic sachets. The examination revealed that the sachets contained methamphetamine hydrochloride with a total weight of 206.32 grams.

Appellant presented a different version of the facts, in support of the defenses of denial and frame up. He said that on August 27, 1999, appellant arrived at Mercado Hospital at 8:25 p.m. Thereafter, he stayed in the room of a certain Imelda Papasin. At this time, his wife, Precilla was also confined in the hospital. She had asked him to bring money to settle her bills, so she could be discharged the next day. Upon being informed by a security guard that his car had been sideswiped, he went down. The police later arrested him when he reached the ground floor. The police later opened his car. He was made to board a police vehicle. While aboard, the police confiscated P6,000.00 in cash, a wrist watch and a necklace from him. He was brought to the police headquarters in Kumintang Ilaya, Batangas City.

In a Decision[11] dated November 11, 2002, the RTC found appellant guilty beyond reasonable doubt of the charge against him for violation of Section 15[12] of R.A. No. 6425 and acquitted him of the charge of violation of P.D. No. 1866 for lack of sufficient evidence. The case was brought on automatic review before the Supreme Court, since appellant was sentenced to death by the trial court.[13]

In his brief dated July 30, 2003,[14] appellant imputed three (3) errors to the trial court, namely: (1) the trial court convicted him despite failure of the prosecution to overcome the presumption of innocence and to prove his guilt beyond reasonable doubt; (2) the trial court erred in relying on the weakness of the defense rather than on the strength of the prosecution evidence; and (3) the trial court erred in considering the aggravating circumstances of nighttime and use of a motor vehicle.

On September 28, 2003, Agojo moved for new trial ad cautelam.[15] Appellant claimed to have secured the statistical data list from the cash department of Bangko Sentral ng Pilipinas that seven (7) of the P71,000.00 peso bills used in the buy-bust operation on September 4, 2003 were bogus. Appellant claimed that Ablang must have merely copied the serial numbers of bills of other denominations when he ran out of serial numbers of one

thousand peso bills.

In his brief dated January 30, 2004, for the People, the Solicitor General asserted that the positive declarations of Alonzo and the buy-bust team should prevail over Agojo's self-serving denial and allegations of having been framed up.[16] However, he urged the court to lower Agojo's penalty to reclusion perpetua, as the trial court erred in ruling that nighttime and the use of a motor vehicle had attended the offense.

On March 2, 2004, the Solicitor General filed its comment on Agojo's motion for new trial,[17] averring that the motion lacked merit since, during the trial, appellant could have secured during the trial the BSP's certification which was relied upon for the new trial sought.

In a resolution dated August 31, 2004, this Court transferred the case to the appellate court for intermediate review, following the ruling in *People v. Mateo*. [18] An exchange of pleadings before the appellate court followed, wherein the parties reiterated their earlier stances.

On March 30, 2007, the appellate court addressed both the errors raised in the appellant's brief and the appellant's motion for new trial. It affirmed with modification the decision of the trial court, but reduced the penalty to reclusion perpetua in line with Republic Act No. 9346, "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," and because of the finding that aggravating circumstances were not present.[19]

The case was again elevated to this Court. In a resolution dated March 19, 2008, this Court required the parties to file their supplemental briefs.[20]

The Solicitor General demurred, averring that the brief earlier filed with the Court was sufficient.[21]

Appellant filed a supplemental memorandum, reiterating that the appellate court had erred.[22] Appellant maintains that the prosecution was not able to prove his guilt beyond reasonable doubt.[23] He also claims that the evidence proves that he was in fact framed-up by the buy-bust team.

The appeal lacks merit.

The errors raised by the appellant boil down to the issue of whether appellant's guilt was proven beyond reasonable doubt, as well as to the question whether appellant was framed-up by the buy-bust team.

A thorough review of the records clearly shows that the prosecution proved beyond reasonable doubt that appellant sold the shabu to the poseur-buyer. The testimony of Alonzo on the sale of illegal drugs and the identification of appellant as the seller is clear and straightforward, thus:[24]

x x x

Q:

And after you were informed by German Agojo that he has only 200 grams available, what else did you tell him, if any?

A:

We talked about the price and we agreed that ½ will be in cash and ½ will be on consignment which is P70,000.00 per 100 grams, sir.[25]

x x x x

Q:

Did you call up German Agojo on the date you agreed?

A:

Yes, sir.

Q:

When was that?

A:

In the evening of August of 27, 1999 at about 7:00 o'clock in the evening, sir.

Q:

And what was the subject of your conversation?

A:

We agreed that we will meet at the Mercado Hospital, sir.[26]

x x x x

Q:

After you talked with German Agojo about the deal to be performed at the Mercado Hospital at 11:00 o'clock in the evening of August 27, 1999, what happen next?

A:

Major Ablang organized a team who will be proceeding to Mercado Hospital, sir.[27]

x x x x

Q:

What else did Major Ablang do, if any, aside from organizing a team to proceed to Mercado Hospital, Tanauan, Batangas?

A:

Major Ablang gave me the money, P70,000.00, supposed to be paid for the 100 grams of shabu, sir.[28]

x x x x

Q:

Did he give instruction to you on that night when to proceed to Tanauan, Batangas?

A:

Yes, sir.

Q:

What was the instruction?

A:

He told me that whatever is my agreement with German Agojo, I have to do it and he even instructed me to give signal to his men, sir.[29]

x x x x

Q:

What was then that signal you agreed with SPO4 Calapati?

A:

To remove my hat or cap, sir.

Q:

And after that instruction was made by Major Ablang, what else happened?

A:

We waited for a while and after [sic] few hours, we proceeded to Tanauan, Batangas, sir.[30]

x x x x

Q:

Was there a time that German Agojo arrived?

A:

Yes, sir.

Q:

How many minutes interval from your arrival up to the time German Agojo arrived?

A:

Around thirty minutes, sir.

Q:

When he arrived, were you inside your vehicle or outside?

A:

Outside, sir.

Q:

When he arrived, what happened?

A:

He approached me and asked me if I brought the money.

Q:

And what was your answer?

A:

I told him that I have the money and gave it to him, sir.

Q:

You gave the P70,000.00 to German Agojo?

A:

Yes, sir.

Q:

After you gave the money to him, what happened?

A:

After that he returned to his car and took something, sir, and when he came back he presented to me a cassette tape case saying "it is there," sir.

Q:

After you received the cassette tape case, what did you do?

A: After that he placed his hand on my shoulder. We went to the emergency room near the gate and he entered the hospital, sir.

Q:

What did you do with the cassette tape case?

A:

After examining the cassette tape case and [sic] I found that there was shabu inside and I gave a signal to SPO4 Calapati, sir.

Q: What else happened after you made that signal?

A: SPO4 Calapati and PO3 Salazar approached me and inquired if it is shabu and I told them that it is shabu then they informed Major Ablang, sir.[31]

x x x

Q:

After that, what else happened?

A:

Major Ablang approached me and I handed to him the cassette tape case, sir.

Q:

How about the suspected shabu which according to you was placed inside the cassette tape case?

A:

I handed it also to Major Ablang, sir.

Q:

After you handed the same to Major Ablang, what else happened?

A:

They requested the security guard of Mercado Hospital to inform German Agojo that his car was bumped for

him to get out of the hospital, sir.

Q:

Did the security guard inform(ed) German Agojo?

A:

Yes, sir.

Q:

What happened after that?

A:

He went down, sir.

Q:

In what particular place of Mercado Hospital did he go when you said he went down?

A:

At the lobby of the hospital, sir, near the emergency room.

Q:

After he went down the hospital, what happened?

A:

PO3 Salazar introduced himself as a policeman to German Agojo and informed him that he is arresting him, sir, and there was a scuffle because German Agojo resisted, arrest, sir.[32]

The testimony of Alonzo was corroborated by members of the buy-bust team, particularly Calapati[33] and Salazar,[34] who both testified that they saw appellant hand Alonzo the VHS tape containing the shabu despite only partial payment for the shabu.

Appellant's assertion that he was framed-up has no merit. In almost every case involving a buy-bust operation, the accused puts up the defense of frame-up. This court has repeatedly emphasized that the defense of "frame-up" is viewed with disfavor,[35] since the defense is easily concocted and is a common ploy of the accused.[36] Therefore, clear and convincing evidence of the frame-up must be shown for such a defense to be given merit.[37]

In this case, appellant points to the arrest not being in flagrante delicto, the existence of discrepancies in the serial numbers of the buy-bust money and a prior attempt to frame him up as proofs of the frame-up. However, the fact that the arrest was not in flagrante delicto is of no consequence. The arrest was validly executed pursuant to Section 5, paragraph (b) of Rule 113 of the Rules of Court, which states:

Sec. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has in fact been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and, (c) When the person to be arrested is a prisoner who has escaped from penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied)

The second instance of lawful warrantless arrest covered by paragraph (b) cited above necessitates two stringent requirements before a warrantless arrest can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it.[38] A review of the records shows that both requirements were met in this case.

From the spot where the buy-bust team was, they definitely witnessed the sale of shabu took place. So, too, there was a large measure of immediacy between the time of commission of the offense and the time of the arrest.[39] After Alonzo had signaled the buy-bust team when he received the VHS tape from appellant, Ablang approached Alonzo and immediately examined the tape.[40] Soon thereafter, he executed the ruse to make appellant to go down, as the latter had in the meantime gone up. The ruse succeeded when appellant went down, and he was arrested right then and there.

There is similarly little weight in the claim of appellant that the inconsistencies revealed by the Bangko Sentral ng Pilipinas (BSP) certification in the serial numbers of the marked money, as well as the fact that only a fraction of the money was recovered, should exonerate him. The marked money used in the buy-bust operation is not indispensable in drug cases.[41] Otherwise stated, the absence of marked money does not create a hiatus in the evidences provided that the prosecution adequately proves the sale.[42] Only appellant would know what happened to the rest of the marked money since only P10,000.00 out of the P70,000.00 was recovered from him. In any event, the partial recovery of the marked money from appellant would indicate that the buy-bust operation did take place.

Questions have been raised in connection with the admitted peculiar business sense of the appellant-selling 200 grams of shabu for P70,000.00 and accepting payment by installments for the contraband. This aspect of the tale may strike as incredulous, but the evidence is plain that it did happen. Truth may sometimes be stranger than fiction, and as long as such truth is corroborated by evidence, the Court is bound by the facts.[43]

This Court has also taken judicial notice that drug pushers sell their wares to any prospective customer, stranger or not, in both public or private places, with no regard for time as they have become increasingly daring and blatantly defiant of the law.[44] It is therefore not surprising that drug pushers will even accept partial payment for their wares with the balance payable on installment.

Appellant's assertion that the chain of custody over the drugs was not preserved also lacks merit. A thorough review of the records of this case reveals that the chain of custody of the seized substance was not broken, and that the prosecution properly identified the drugs seized in this case. Appellant sold the drugs to Alonzo in a legitimate buy-bust operation.[45] Alonzo then handed the VHS tape containing the drugs to Major Ablang,[46] who kept the drugs during appellant's detention, and then turned them over to Ricero, so that the packets could be marked when the buy-bust team returned with Agojo to the Police Provincial Office in Kumintang Ilaya, Batangas.[47] The drugs, along with a letter request, were then sent by Ricero to the PNP crime laboratory in Camp Vicente Lim, Canlubang, Laguna for examination. Lorna Tria, a PNP chemist working at Camp Vicente Lim, examined the marked packets, which had tested positive for shabu.[48] These same marked packets were identified in open court by Major Ablang,[49] Ricero[50] and Tria.[51] Thus, the unbroken chain of custody of the shabu, from their seizure from appellant until their presentation in court, was clearly established.

Finally, the assertion that the buy-bust team had the habit of framing him up is similarly misleading. The appellate court acquitted appellant of a previous charge of possession of shabu, because he was charged with illegal sale rather than mere possession of shabu.[52] Hence, there was no attempt to frame him up in a prior case, nor was there any evidence that such an attempt to frame him up was made in this case.

WHEREFORE, the appeal is DISMISSED, the decision dated March 30, 2007 of the Court of Appeals in

CA-G.R. CR-H.C. No. 00946 is AFFIRMED.

SO ORDERED.

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

[1] Rollo, pp. 3-17; Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Rebecca de Guia-Salvador and Ricardo R. Rosario.

[2] CA rollo, pp. 42-50; Presided by Judge Voltaire Y. Rosales.

[3] Id. at 15-16.

[4] Id. at 13-14.

[5] Id. at 18-20.

[6] Id. at 49.

[7] Id.

[8] Id.

[9] Id.

[10] Id. at 50.

[11] Supra note 2. The dispositive portion reads as follows:

WHEREFORE, in Criminal Case No. P-891 for Violation of Presidential Decree No. 1866, as amended by Republic Act No. 8294, or for Illegal Possession of Firearm and Ammunitions, accused German Agojo y Luna is hereby acquitted for lack of evidence.

In Criminal Case No. P-892, this Court finds the accused German Agojo y Luna GUILTY beyond reasonable doubt of Violation of Section 15 of Article III of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659 and sentences accused to DEATH and to pay a fine of five Hundred Thousand (P500,000.00) Pesos.

The City Warden of Tanauan City, Batangas is hereby directed to effect within twenty-four hours the transfer of detention German Agojo y Luna to the National Penitentiary in Muntinlupa, Metro Manila.

Let the records of this case be elevated to the Supreme Court for automatic review on appeal.

[12] Section 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs. — The penalty of reclusion perpetua 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, dispense, deliver, transport or distribute any regulated drug.

x x x x

[13] CA rollo, p. 54.

[14] Id. at 100-129.

[15] Id. at 137-161.

- [16] Id. at 191- 220.
- [17] Id. at 224-235.
- [18] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [19] Supra note 1.
- [20] Rollo, p. 23.
- [21] Id. at 24-26.
- [22] Id. at 34-79 with annexes.
- [23] Id. at 35-36.
- [24] TSN, March 12, 2001.
- [25] Id. at 7.
- [26] Id. at 8.
- [27] Id. at 9.
- [28] Id.
- [29] Id. at 11.
- [30] Id. at 11-12.
- [31] Id. at 13-15.
- [32] Id. at 15-16.
- [33] TSN, May 4, 2000, p. 10.
- [34] TSN, September 5, 2000, pp. 13-14.
- [35] *People v. Barita*, 325 SCRA 22 (2000) cited in *People v. Patayek*, 447 Phil. 626, 640 (2003).
- [36] Id.
- [37] *People v. Huang Zhen Hua*, G.R. No. 139301, September 29, 2004, 439 SCRA 350; *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570.
- [38] *People v. Del Rosario*, 365 Phil. 292, 312 (1999).
- [39] Id.
- [40] TSN, September 5, 2000, pp. 14-15.
- [41] *People v. Domingcil*, 464 Phil. 342, 358 (2004); *People v. Cueno*, 359 Phil. 151, 162 (1998).
- [42] *People v. Saludes*, 451 Phil. 719, 726 (2003); *People v. Gireng*, 311 Phil. 12, 21 (1995).
- [43] See *People v. Francisco*, 78 Phil. 694 (1947); *People v. Buyco*, 80 Phil. 58 (1948); *People v. de Pascual*, No. L-32512, 31 March 1980, 96 SCRA 722.
- [44] *People v. Beriamente*, G.R. No. 137612, September 25, 2001; *People v. Requiz*, 318 SCRA 635, 644 (1999).

[45] Supra note 37, 39 & 40.

[46] Id. TSN, August 6, 2001, pp. 21-22.

[47] TSN, August 23, 2001, pp. 17-20; TSN, August 6, 2001, pp. 21-22.

[48] TSN, April 3, 2000, pp 4-6.

[49] TSN, August 6, 2001, pp. 11-12.

[50] TSN, August 20, 2001, pp. 6-7.

[51] TSN, April 3, 2000 pp. 8.

[52] Records (Vol. I), pp. 254-264, C.A.-G.R. 23837, July 18, 2001.

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