

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL CLARITE Y SALAZAR, ACCUSED-APPELLANT.

G.R. No. 187157. February 15, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00932 dated May 9, 2008, affirming with modification the conviction of accused-appellant Arnel Clarite y Salazar for violation of Section 5, Article II of Republic Act No. 9165.

The Amended Information, dated July 25, 2002, reads:

That on or about 11 July 2002, in the City of Naga, 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, dispense, deliver and/or distribute four (4) plastic sachets containing white crystalline substance, tested and found out to be Methamphetamine Hydrochloride or ‘shabu’, a regulated drug weighing 45.8712 grams to NBI poseur-buyer, for and in consideration of P50,000, a marked money bill, Philippine currency.[2]

The evidence of the prosecution, which included the testimonies of National Bureau of Investigation (NBI) special investigators Alfredo Romano, Jr. (Romano), Felipe Jessie Jimenez (Jimenez) and Rommel Dizon (Dizon), as well as P/Insp. Josephine Macura Clemen (Clemen) and Alejandro Cedeño (Cedeño), tended to establish the following:

On July 8, 2002, Romano received information from his “asset,” Cedeño, that a certain Arnel, a supplier of illegal drugs from Cavite, is looking for a buyer of shabu.[3] Romano directed Cedeño to negotiate the sale.[4]

Cedeño communicated with accused-appellant, and the latter agreed that he would be arriving in Naga City in the morning of July 11, 2002. Accused-appellant would be carrying 50 grams of shabu, which will be sold to Cedeño’s “financier” for P45,000.00.[5] With the authority of Atty. Jose Doloiras, the immediate superior of Romano, the NBI special investigators devised a plan to entrap said Arnel. Romano and Jimenez prepared what they called “budol [buddle] money,” counterfeit notes made out of photocopied P1000 and P500 bills. The counterfeit bills, representing a total value of P50,000.00, were dusted with fluorescent powder at the Philippine National Police (PNP) Regional Crime Laboratory, Camp Simeon Ola, Legaspi City. On July 10, 2002, Romano was able to confirm with Cedeño that said “Arnel” was definitely arriving the following day at 8:00 a.m. at the Central Business District (CBD) terminal, Naga City.[6]

On July 11, 2002, Romano again confirmed with Cedeño that said “Arnel” would be coming at 8:00 a.m. At around 6:00 a.m., Romano, Jimenez and Dizon were at the NBI Office. It was at this time that Dizon was informed of the operation. Before 8:00 a.m., Romano, Jimenez, Dizon and Cedeño proceeded to the CBD terminal where they posted themselves in strategic locations. Dizon was posted at a parking space, while Romano and Jimenez were near each other, close to a Dunkin Donut shop housed inside the building at the terminal.[7]

While Romano and Cedeño were talking to each other in front of the Dunkin Donut shop, accused-appellant arrived, carrying a small bag.[8] The informant introduced Romano to accused-appellant. Romano asked for the shabu. When said shabu was handed to Romano, accused-appellant asked for the money. This was when accused-appellant noticed that the money was fake. Romano then removed his sunglasses to signal the completion of the transaction to Jimenez and Dizon.[9]

The NBI investigators arrested and handcuffed accused-appellant, and thereafter brought the latter to the NBI Office in Naga City. Therein, accused-appellant was booked, fingerprinted and photographed. Accused-appellant was then brought to the PNP Regional Crime Laboratory at Camp Simeon Ola, Legaspi City. P/Insp. Clemen examined the dorsal and palmar areas of accused-appellant's hands, as well as the plastic sachets handed by him to Romano. Both hands of accused-appellant were found positive for the presence of bright orange ultraviolet fluorescent powder. The plastic sachets, which had a total weight of 45.8712 grams, were positive for methamphetamine hydrochloride or shabu.[10]

Only accused-appellant was able to testify for the defense. He narrated that on July 10, 2002, at around 6:00 p.m., he was sent by Mrs. Fely Gutierrez, his employer, to go to Naga City to deliver 100 grams of shabu to a certain Ching Lo. He was told that Ching Lo lived near the Sky Cable office and the Naga City Civic Center. On that day, he also wanted to fetch his mother-in-law from Ponong, Magarao, Camarines Sur in order that the latter may help her wife in taking care of her two children.[11]

Accused-appellant testified that per his employer's strict instruction, someone would approach him at the Naga City Civic Center. He was supposed to give the shabu to said person in exchange for P110,000.00. He stressed that he was then carrying 100 grams of shabu, not 45.87 grams as reported by the prosecution witnesses.[12]

Accused-appellant denied that the buy-bust operation took place. Instead, he narrated that he was aboard a tricycle at 6:00 a.m. on July 11, 2002, on his way to the Civic Center, when Romano and Jimenez apprehended him, forced him into their car and blindfolded him. While still blindfolded, Romano and Jimenez brought him to a hotel. He was told to contact his employer through a cellular phone and inform her of his arrest and that the arresting officers needed money to pay for their hotel bills. The NBI operatives were extorting money equivalent to the value of 50% of the 100 grams of shabu. After the accused-appellant was able to speak briefly with his employer, the latter turned off her phone and cannot be contacted again. The NBI operatives, showing him the marked money, threatened that a drug case would be filed against him. The NBI operatives told him to hold the marked money, but he refused and was not able to hold it. Accused-appellant was brought to the NBI Office in Naga City, then to Camp Ola in Legaspi City, where he was subjected to a paraffin test. Accused-appellant was later brought back to the NBI Office when someone told him that his employer was sending money to settle his case. Accused-appellant admitted that since October 2001, he accompanied his employer around five or six times to deliver shabu to the aforementioned Ching Lo.[13]

On March 18, 2004, the Regional Trial Court (RTC) of Naga City rendered its Decision[14] finding accused-appellant guilty. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing disquisition, judgment is hereby rendered finding accused, ARNEL CLARITE y Salazar, guilty beyond reasonable doubt of the offense of violation of Sec. 5, Article II of RA 9165, and hereby sentences him to suffer the penalty of life imprisonment.

Considering that the accused has been undergoing preventive detention during the pendency of the trial in this case, let the same be credited in the service of his sentence.[15]

On May 9, 2008, the Court of Appeals rendered its Decision affirming with modification the RTC Decision:

WHEREFORE, the appealed decision of the Regional Trial Court of Naga City (Branch 25) is AFFIRMED with MODIFICATION in that in addition to the penalty of life imprisonment imposed on accused-appellant, he is sentenced to pay a fine in the sum of P500,000.00.[16]

Hence, this appeal, where accused-appellant adopts the same lone assignment of error it raised before the Court of Appeals:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 11, ARTICLE II, R.A. NO. 9165 DESPITE THE INADMISSIBILITY OF THE EVIDENCE OBTAINED THROUGH AN UNLAWFUL SEARCH.[17]

Accused-appellant's main contention is that he was arrested while he was riding a tricycle and not while he was supposedly selling shabu. Thus, since he was not caught in flagrante delicto, he can only be arrested with a warrant. Consequently, according to accused-appellant, the search conducted upon him cannot be deemed to have been incidental to a lawful arrest, thus, making the evidence obtained therefrom inadmissible. In making such argument, accused-appellant challenges the findings of fact of the trial court and the Court of Appeals which both accepted the version of the prosecution.

The present appeal must fail.

Unfortunately for accused-appellant, findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court,[18] save only for certain compelling reasons.[19] We perused the records of the case at bar and found no reason to disturb the findings of the courts a quo.

In cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers on the ground that they are presumed to have performed their duties in a regular manner. The exception is when there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties.[20] In the case at bar, accused-appellant's only evidence of ill motive on the part of the NBI operatives is his own testimony of frame-up and extortion, a very common defense in dangerous drugs cases. We have held that such defense is viewed with disfavor, for it can be easily concocted. To substantiate such a defense, therefore, the evidence must be clear and convincing.[21]

The trial court, which had the opportunity to observe the demeanor and conduct of Romano, Jimenez and Dizon, on one hand, and that of accused-appellant, on the other, was thoroughly convinced of the version of the prosecution in this matter. Furthermore, accused-appellant's admission in open court of being a drug courier for his employer, though not conclusive evidence of the specific act of selling shabu on the date and under the circumstances specified in the complaint, nevertheless constitutes circumstantial evidence of the same. By admitting the previous sales of shabu, accused-appellant in effect attested to his own proclivity to do such an act, as well as the accessibility to him of the object of his alleged illegal trade.

Jurisprudence holds that the elements of the crime of illegal sale of drugs are the following: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and payment therefor.[22]

The testimonies of Romano, corroborated by his fellow NBI investigators Jimenez and Dizon and informant Cedeño established the sale and delivery by accused-appellant Clarite to Romano of what was initially believed to be 50 grams of shabu in four plastic sachets, in exchange for what Clarite thought was P50,000.00. Romano positively identified accused-appellant Clarite as the person who sold the plastic sachets of shabu to him. As for the sale itself, Romano's account was simple and clear:

PROS. SAEZ:

Q

As has been admitted by the defense, you stated in your affidavit that you were able to successfully have a transaction with Arnel Clarite at CBD terminal on July 11, 2002, in the morning, using boodle money in the amount of P50,000.00. Now, can you tell the Court how did you introduce yourself to Mr. Clarite that morning?

A

I was introduced by my informant, sir, my asset.

PROS. SAEZ:

Q

Where?

A

In front of the terminal. I don't know exactly the place. It was in front of the terminal in Dunkin Donuts.

Q

So, when you were introduced by your asset, where was Mr. Clarite then?

A

He was in front of us, sir.

Q

By the way, if Mr. Clarite is in court, can you point to him?

A

Yes, sir, the one wearing yellow t-shirt, sir.

PROS. SAEZ:

Will the defense admit that the one wearing a yellow shirt is Mr. Clarite?

ATTY. BOTOR:

Yes, your honor.

PROS. SAEZ:

Q

Now, when you were introduced by your asset to Mr. Clarite, what transpired next?

A

After the introduction, we went on [with] the transaction. I asked for the shabu and he asked for the money, sir.

Q

Now, which transpired first, who gave first?

A

The shabu, sir.

Q

He gave first the shabu?

A

Then, I gave the money. Upon handing him the money, he noticed that it was boodle. But, it was too late, I already gave the signal to my companions who were still there.

Q

How can you say that Mr. Clarite was able to notice that what you gave him was boodle money?

A

He told me, "What is this?" Because it was obvious by merely looking at the bundle of money, you can detect that it was boodle. But, I admit that since the government has no fund, we used in our buy-bust operations the show money or the money to be used in the purchasing of illegal drugs, we used our initiative to reproduce or use boodle money in every buy-bust operation.[23]

The trial court was very careful in considering the testimony of Romano and even asked very inquisitive questions apparently designed to test his credibility. Romano, however, remained steadfast:

COURT:

The Court has still few questions to ask.

Q

By the way, you testified awhile ago upon question by the Court that it was your team which arrived first at the meeting place, how long did your team wait for the accused?

A

Several minutes, your honor.

Q

Around?

A

Before 8:00 o'clock, sir, around, let's say 15 minutes.

Q

What time did the team go to the CBD for the purpose of waiting?

A

7:30, your honor.

Q

And you waited for around 15 minutes?

A

Yes, sir.

Q

Now, being a poseur-buyer, what did you and the accused talk about after he was introduced to you by the informant?

A

I asked him to show me the sachets of shabu and he asked for the money.

Q

Did you and the accused agree regarding the quantity of the sachets of shabu you were to buy from the accused?

A

Beforehand, your honor, we already agreed that we are going to buy 50 grams of shabu worth P50,000.00.

COURT:

Q

Now, did you ask from the accused whether he already had that 50 grams of shabu?

A

Yes, your honor, I asked him and he showed it to me. He took it from his small bag.

Q

And, did the accused also ask for the money?

A

Yes, your honor, I handed him the boodle money.

Q

You said awhile ago that it was with accused who handed first to you the four sachets of shabu and after which, you also handed to him the boodle money. Now, did the accused not ascertain first for himself to show him first the money before parting away the four sachets?

A

Yes, your honor, after I showed it to him, I knew that he would notice that it was boodle, I already handed it to him.

Q

But that was not the point which this Court would want to get from you, what this Court wants to know from you is whether the accused gave to you the shabu whether he first ascertained from you whether you have already the money with you?

A

He did not, your honor.

Q

Meaning, the accused did not ask from you, “show to me first the money before I give you the shabu?”

A

He did not, your honor, I asked him to show me the shabu because I was introduced by my informant as a good buyer. That is why he gave me first the shabu.[24]

It was likewise clear from the evidence on record that P/Insp. Clemen examined the contents of the plastic sachets sold to Romano, and confirmed that they contained methamphetamine hydrochloride (shabu), even though the total weight was only 45.8712 grams. P/Insp. Clemen was also able to verify that both hands of accused-appellant were positive for the presence of bright orange ultraviolet fluorescent powder, thus, corroborating the testimonies of the NBI investigators that he received the counterfeit money which were dusted with such powder. This also belies the testimony of accused-appellant that he never held the marked money.[25]

As for accused-appellant's argument that he would not have sold shabu in a crowded place, we find the same unconvincing. We have already held in *Ching v. People*[26] that:

This Court observed in many cases that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private as well as in public places, even in the daytime. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. Hence, what matters is not the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.[27]

Accused-appellant also claims that the alleged buy-bust operation was conducted without the authorization of or coordination with the Philippine Drug Enforcement Agency (PDEA), in violation of Section 86 of Republic Act No. 9165, which provides:

Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters. (Emphasis supplied.)

Accused-appellant's assertion has no merit. This Court has already held that the silence of the foregoing provision as to the consequences of the failure on the part of the law enforcers to seek the prior authority of the PDEA cannot be interpreted as a legislative intent to make an arrest without such PDEA participation illegal or evidence obtained pursuant to such an arrest inadmissible.[28]

The trial court imposed the penalty of life imprisonment upon accused-appellant. While this penalty is within the period provided for in Section 5 of Republic Act No. 9165, the same omitted the fine that should likewise be imposed:

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. (Emphasis added.)

Thus, the Court of Appeals correctly modified the penalty by including therein a fine in the sum of P500,000.00.

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00932 dated May 9, 2008 is hereby AFFIRMED.

SO ORDERED.

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

[1] Rollo, pp. 3-13; penned by Associate Justice Edgardo P. Cruz with Associate Justices Rosmari D. Carandang and Apolinario D. Bruselas, Jr., concurring.

[2] Records, p. 23.

[3] TSN, October 1, 2002.

[4] TSN, April 11, 2003, p. 6.

[5] Id. at 5-6.

[6] TSN, October 1, 2002.

[7] TSN, December 10, 2002, pp. 6-8; TSN, November 13, 2002, pp. 8-9; TSN, October 1, 2002, p. 53.

[8] TSN, October 1, 2002, p. 29.

[9] Id. at 16-18.

[10] TSN, January 7, 2003, pp. 2-16.

[11] TSN, January 14, 2004, pp. 4-5.

[12] Id. at 21-22.

[13] Id. at 6-19.

[14] CA rollo, pp. 57-62.

[15] Id. at 62.

[16] Rollo, p. 12.

[17] CA rollo, p. 43.

- [18] *People v. Lolos*, G.R. No. 189092, August 9, 2010, 627 SCRA 509, 516.
- [19] *Espinosa v. People*, G.R. No. 181071, March 15, 2010, 615 SCRA 446, 454.
- [20] *People v. Tion*, G.R. No. 172092, December 16, 2009, 608 SCRA 299, 316-317.
- [21] *Zalameda v. People*, G.R. No. 183656, September 4, 2009, 598 SCRA 537, 556.
- [22] *People v. Araneta*, G.R. No. 191064, October 20, 2010, 634 SCRA 475, 482.
- [23] TSN, October 1, 2002, pp. 15-17.
- [24] *Id.* at 53-55.
- [25] See TSN, January 14, 2004, p. 10.
- [26] G.R. No. 177237, October 17, 2008, 569 SCRA 711.
- [27] *Id.* at 734.
- [28] *People v. Berdadero*, G.R. No. 179710, June 29, 2010, 622 SCRA 196, 207.

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