

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLANDO DE LAS MARINAS Y IBBOOS, ACCUSED-APPELLANT.

G.R. No. 87215. April 30, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the November 4, 1988 decision[*] of the Regional Trial Court of Pasay City, Branch 115, in Criminal Case No. 87-12590, finding accused-appellant guilty beyond reasonable doubt of violating Section 15, Article III of Republic Act 6425, as amended, and sentencing him to suffer the penalty of life imprisonment.

In an Information dated October 26, 1987, herein accused-appellant Orlando de las Marinas and one Angel Torres were charged with violating Section 15, Article III of Republic Act 6425, as amended, allegedly committed as follows:

"That on or about the 22[nd] day of October, 1978, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to another one (1) aluminum foil containing more or less one-eight (1/8) gram shabu, (Methamphetamine) a regulated drug."

Prior to the arraignment, accused Angel Torres escaped and he remains at-large. On arraignment on November 16, 1987, accused-appellant Orlando de las Marinas pleaded not guilty.

At the trial, the prosecution presented three (3) witnesses who testified as follows:

1. P/Cpl. Adolfo S. Arcoy, a member of the 13[th] Narcotics Intelligence Unit, testified that at about 9:30 p.m. of October 22, 1987, the 13th Narcotics Unit, thru T/Sgt. Jaime Raposas, received an information from a confidential informant who arrived at their office, that a certain Lando and one Boy of Cabrera Street, were actively engaged in selling shabu to prospective buyers at the said place. A team composed of T/Sgt. Jaime Raposas, Sgt. Armando Isidro, Sgt. Vicente Jimenez, Pat. Deogracias Gorgonio and himself was formed to conduct a buy-bust operation. They proceeded to the area along Cabrera Street, Pasay City, and arrived there at about 12:00 o'clock midnight. He was instructed by team leader T/Sgt. Raposas to act as the poseur buyer. He was given marked money consisting of one (1) one hundred-peso bill and one (1) fifty-peso bill. Together with the confidential informant, Cpl. Arcoy proceeded to the place where Lando and Boy were standing. The confidential informant introduced him to Lando and Boy who were at the time in front of a Variety Store or sari-sari store at Cabrera Street. Lando asked him how much shabu did he need and he replied that he needed shabu worth P150.00. Lando asked for the money, gave it to Boy who left and returned after about 5 to 10 minutes and handed a small aluminum foil to Lando, who in turn, gave it to him. After opening the foil and finding out that it contained shabu, he made the pre-arranged signal by scratching his head. At this juncture, his teammates arrived and they arrested Lando and Boy whom they later knew to be Orlando de las Marinas and Angel Torres, respectively. Their team leader T/Sgt. Jaime Raposas conducted a body search on the suspects which resulted in the recovery of the marked money from

the front pocket of Angel Torres. None was recovered from Orlando de las Marinas (TSN, pp. 2-8; Hearing of March 16, 1988). Then they brought the two (2) accused to the 13[th] Narcotics Unit for further investigation. They also executed an affidavit of arrest. Then he prepared the evidence (the shabu and the marked money) and turned them over to the Narcotics Unit. He likewise prepared the Receipt for Property Seized and asked the accused to sign it which they did (TSN, pp. 15-18; Hearing of March 16, 1988).

2. S/Sgt. Armando Isidro, a sergeant of the PC NARCOM, corroborated the testimony of Cpl. Arcoy on all material points and in addition, he stated that he and other members of the team were about 30 to 35 meters away from the poseur buyer, Cpl. Arcoy. He also stated that he jotted down the serial numbers of the marked money on a piece of paper as a precaution if the same is recovered (TSN, pp. 2-13; Hearing of April 21, 1987).

3. Nelly A. Cariaga, the Forensic Chemist of the PC/INP Crime Laboratory, Camp Crame, Quezon City, identified the Chemistry Report No. D-1058-87, which was the report on the laboratory examination she conducted on the subject shabu. She testified that when she examined the specimen, it gave positive result for Methamphetamine and Hydrochloride which is a regulated drug (TSN, pp. 9-14; Hearing of March 16, 1988).

On the other hand, the defense presented two (2) witnesses, including accused-appellant, who testified as follows:

1. Accused-appellant Orlando de las Marinas testified that he is a tricycle driver during the day and does some extra job at night as Barangay Tanod. At around 9:00 p.m. of October 22, 1987, while he was on duty as Tanod and making a "ronda", his friend Boy Lopez arrived. Boy Lopez was in the custody of the two NARCOM men. Boy Lopez asked him if he could help him (Boy) point to the source of the shabu for which he (Boy) was arrested. At first, he was reluctant for fear of being involved but later yielded and helped when he was assured that he could not be involved and that his friend Boy Lopez will be released. After he pointed to the house of Angel Torres and the latter was placed under arrest, he was also made to board the car bearing Angel Torres and Boy Lopez and taken to the NARCOM Office in Camp Crame instead of having him alight at EDSA as promised by the NARCOM men. Accused-appellant further stated what he saw and heard when the NARCOM men took down the statement of his friend Boy Lopez who admitted that the shabu came from Angel Torres and that the latter also admitted that the shabu came from him. The three of them were made to sleep in the NARCOM Office until the following morning. Then he and Angel Torres were put inside the cell while Boy Lopez was left behind in the NARCOM Office. At about 5:00 o'clock in the afternoon, the NARCOM men brought out Angel Torres from the cell while he was left behind. Angel Torres was supposed to point to the source of the shabu so they went to Pasay. At around 9:00 o'clock in the evening, the NARCOM men brought back Angel Torres to the cell. The following morning, Angel Torres was again brought out from the cell. The source of shabu would allegedly be arrested so they would be released. Angel Torres, however, did not come back anymore and the NARCOM men were very mad at him for the alleged escape of Angel Torres. Accused-appellant, in addition, denied having received the amount of P150.00 for the purchase of shabu, and likewise denied having contacted Angel Torres to get the shabu for the NARCOM men. Further, he testified that he signed a statement admitting that the shabu came from him because he could not bear the torture that the NARCOM men were doing to him and they were threatening that they would salvage him (TSN, pp. 1-7; Hearing of July 18, 1988).

2. Samuel Sagudang, a house painter, testified that he knows accused-appellant Orlando de las Marinas because the latter is his friend and one of his co-tanods. That at around 9:00 o'clock in the evening of October 22, 1987, while he was on duty as Barangay Tanod, two men approached accused-appellant, asked something from him, and later, accused asked permission from him. He did not know anymore where they went; and when asked whether he knew if accused-appellant was acting as a buyer of prohibited drugs, he answered that he did not know anything about it (TSN, pp. 2-4; Hearing of September 5, 1988).

The trial court, in its decision of November 4, 1988, found accused-appellant guilty of the crime charged. The dispositive portion of the said decision reads:

"All the premises considered, and it appearing that the evidence of the prosecution is sufficient, the Court finds the accused ORLANDO DE LAS MARINAS y ABBOOS guilty beyond reasonable doubt of the crime charged and sentences him to suffer the penalty of life imprisonment, to pay a fine of P20,000.00 without subsidiary imprisonment in the case of insolvency and to pay the costs of the suit.

"Pending the arrest of Angel Torres alias Boy who has not been arraigned yet and against whom warrant of arrest or alias bench warrant is ordered issued, let the case against him be placed in the archives.

"The subject shabu (metamphetamine) is confiscated and ordered forfeited to the Government and the Branch Clerk/OIC of this Court is directed to turn it over to the Dangerous Drug Board for disposition.

"SO ORDERED." (Rollo, pp. 20-21).

Hence, this appeal.

The accused-appellant raised the following assignments of error:

I

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE EXHIBITS "F" AND "F-1" DESPITE THE FACT THAT THEY WERE INADMISSIBLE FOR HAVING BEEN TAKEN IN VIOLATION OF THE CONSTITUTION.

II

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND UNBELIEVABLE TESTIMONIES OF P/CPL. ADOLFO ARCOY AND S/SGT. ARMANDO ISIDRO AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

III

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Under the first assigned error, appellant claims that Exhibits "F" and "F-1" which refer to a Receipt for Property Seized, signed by appellant and Angel Torres acknowledging that they are the owners of the seized listed properties, is inadmissible in evidence for having been taken in violation of the Constitution.

Obviously, accused-appellant was the victim of a clever ruse to make him sign the Receipt for Property Seized which, in effect, is an extra-judicial confession of the commission of the offense. Indeed, it is unusual for appellant to be made to sign said receipt for what were allegedly taken from him. It is the police officers who confiscated the same who should have signed said receipt. No doubt this is a violation of the constitutional right of appellant to remain silent. He was made to admit the commission of the offense without informing him of his constitutional rights. Such a confession obtained in violation of the Constitution is inadmissible in evidence (People v. Policarpio, 158 SCRA 85 [1988]). However, the trial court relied not merely on the strength of the property seized in its findings of guilt, but more importantly on the testimonial and documentary evidence of the prosecution.

The second and third assigned errors are factual in nature wherein the appellant raises the question of credibility of the witnesses and reiterates his defense denying that he had been apprehended in the act of selling shabu.

Accused-appellant argues that the only act he did, if any, was to point to the residence of the suspect Boy Torres (Rollo, p. 43). Moreover, among the police officers who composed the buy-bust team, only P/Cpl. Adolfo Arcoy and S/Sgt. Armando Isidro were presented as witnesses. S/Sgt. Isidro's testimony that at a distance of 35 meters, he saw very clearly the transaction between the two suspects and the poseur-buyer P/Cpl. Arcoy who was then with the confidential informant and that it was the suspect Boy who got the shabu and gave it to Lando, is incredible. At such a distance, and considering that it was 12:00 o'clock midnight, one could not clearly see what was transpiring between the accused and the poseur-buyer even assuming that the place was well lighted.

But the findings of fact of the court a quo who had the chance to observe the demeanor of the witnesses when they were called to testify, are as follows:

"The Court gives full credit to the evidence of the prosecution. It has found nothing in the record to disbelieve the testimonies of the Government. That the accused was arrested in the buy-bust operation merits faith. The NARCOM officers involved in the operation and made the arrest of the accused have no motive against him (sic).

On the other hand, the Court finds it hard to believe the theory of the defense. The accused failed to substantiate his defense of alibi. For being a tricycle driver and while engaged in Tanod duties at night, the accused exposed himself to good advantage of meeting people engaged in shabu deals. He became acquainted and even established friendship with Boy Lopez and Boy Torres, known drug traffickers. The claim that he was merely asked to point to the source of the drug recovered from alias Boy Lopez while allegedly performing the duties of the Tanod is incredible. On the other hand, his knowledge of the whereabouts and residence of Boy Torres, the source of the drug with which Boy Lopez was arrested for, indicate connection and not merely casual knowledge of the drug pusher. Neither Boy Acelos nor Boy Joey presented if the claim is true that accused was then only on duty as Tanod." (Rollo, p. 20; Decision, p. 3).

It is well established that the evaluation of testimony is the primary task of the trial court where there are conflicting versions (*Berguilla v. Court of Appeals*, 147 SCRA 9 [1987]) and that the findings of the trial court on the credibility of witnesses are generally accorded great respect (*People v. Corecar*, 159 SCRA 84 [1988]; *Tejones v. Gironella*, 159 SCRA 100 [1988]; *Vda. de Portugal v. IAC*, 159 SCRA 178 [1988]).

Be it noted that while the appellant attempts to discredit the testimony of said police officers, he has not shown any improper motive why they should testify in the manner that they did. Thus, their testimonies are entitled to full faith and credence. As a matter of fact, courts give credence to entrapping police officers, as in this case, as they are presumed to be in the regular performance of official duties (*People v. Policarpio*, 158 SCRA 85 [1988]).

From the foregoing, there is no cogent reason to disturb the findings and conclusion of the trial court.

PREMISES CONSIDERED, the appealed decision is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Judge Sergio I. Amonoy.

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