

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO SANTIAGO Y IBAY, ACCUSED-APPELLANT.

G.R. No. 94472. March 03, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Accused-appellant Fernando Santiago y Ibay was charged with violation of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972 for the sale and possession of prohibited drugs in Criminal Cases Nos. 89-2515 and 89-2516, respectively. The appellant was also indicted for illegal possession of live ammunitions in Criminal Case Nos. 822517. The three (3) informations read as follows:

Criminal Case No. 89-2515

“That on or about the 6th day of May, 1989, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Fernando Santiago y Ibay @ Pandong, without authority of law, did then and there wilfully, unlawfully, and feloniously have in his possession, custody and control marijuana leaves, a prohibited drug.

x x x x x x x x

Criminal Case No. 89-2516

That on or about the 6th day of May, 1989, in Pasay Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Fernando Santiago y Ibay @ Pandong, did then and there wilfully, unlawfully and feloniously, without authority of law, sell and deliver to a third person Japanese Synthetic Cocaine, otherwise known as ‘Shabu’ a regulated drug, for the amount of P150.00.

x x x x x x x x

Criminal Case No. 89-2517

That on or about the 6th day of May, 1989, in Pasay, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Fernando Santiago y Ibay @ Pandong, without authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control twenty (20) pieces of live ammunitions for M-16 rifle, without first securing the necessary license and/or permit to possess the same.” (Rollo, p. 5)

Upon arraignment, the appellant pleaded not guilty.

The trial court summarized the prosecution’s evidence as follows:

“x x x [D]uring the hearing the prosecution presented witnesses Emilia Rosaldez, Pat. George Baculinao, Pat. Ernesto Ancayan and Pat. Luisito Silvano. They alleged that on May 6, 1989 a team of policemen conducted a buy bust operation against one alias Pandong who had been the subject of numerous complaints from concerned residents, for drug pushing. The team directed by Capt. Gaudencio Cordora, the ISOG and

Narcotics Unit Chief of the Pasay City Police Station, was formed after surveillance (sic) alias Pandong was identified with the help of a Confidential Informant (CI). The team was composed of Pat. Ancayan, who acted as poseur buyer with Pat. Baculinao, Pat. Silvano, Pat. Taytay and others (sic) were back-ups and perimeter guards. They proceeded to the vicinity of Leveriza near the corner of Fresno St., in Pasay City at around 1 pm. There, Pat. Ancayan, saw the suspect who was identified later as Fernando Santiago standing alone in front of his house near the door. He then approached the suspect and told him that he will buy shabu worth P150.00. The accused responded and he immediately left and went inside the house and after a while he returned. Pat. Ancayan then handed to the accused the buy bust money consisting of 1 pc/P100 and 1 pc. 50 peso bills. After he received the money, the accused handed to Pat. Ancayan an aluminum foil and seeing that it contained the shabu, Pat. Ancayan immediately took hold of the accused. At that instance Pat. Baculinao who was just a few meters away rushed to the accused helped (sic) in placing under control. He then searched the accused and recovered the buy bust money from his left front pant pocket. Also recovered from the accused in his wallet was a small T-bag of suspected dried marijuana leaves, and 20 live M-16 Armalite Rifle bullets placed in a box was (sic) recovered in the house on top of a table (TSN., June 5/89).

The suspected shabu (Exh. F-1) and marijuana leaves (Exh. E-1) were taken to the office of the NBI for laboratory analysis, and Emilia Rosaldez the Forensic Chemist who conducted the examination certified, after the usual qualitative chemical, physical and chromatographic or confirmation states that the suspected shabu was positive for methamphetamine hydrochloride, a regulated drug and the dried leaves positive for marijuana (TSN., June 5/89; Exh. D. C.)” (Rollo, p. 6)

The appellant countered the prosecution’s version of the incident of May 6, 1989 by presenting his own version, to wit:

“x x x That between the hours of 1 and 1:30 p. m., on May 6, 1989 two (2) policemen whom he identified as Patrolmen Bruno and Baculinao picked him from his house and brought him to the Pasay City Police Station. That in the house before the policemen came a certain Boy Morris whom he had known for 2 weeks and talked to him (accused); that he was then resting having just been sick of flu and told to come down; that he refused and it was when (sic) the policemen came up the house; they searched first the place, then they find (sic) nothing they asked him to bring out shabu and when he could not produce anything as there was none in the house they hit him on the chest with fist blow. He denied that he was keeping and selling shabu; that the ammunitions recovered in his house belonged to Reynaldo Disposado, a member of the military (navy) who has stayed with him; that at the police headquarters a policeman showed him shabu and marijuana; that he was being made to sign a document and when he refused that (sic) he denied having sold shabu to Pat. Ancayan and having received P150.00 from him (TSN., Aug. 2/89).” (Rollo, pp. 6-7)

After joint trial of the three (3) cases, the Regional Trial Court of Pasay City, Branch 115 found the appellant guilty as charged in Criminal Case No. 89-2516. He was, however, acquitted in the two (2) other cases. The dispositive portion of the joint decision reads:

“All the premises considered, judgment is rendered finding the accused guilty beyond reasonable doubt of the crime of selling or delivering to another, Japanese synthetic cocaine or shabu, a regulated drug, defined and penalized under Section 15, Republic Act 6425, as amended, and sentences him to suffer the penalty of reclusion perpetua and to pay the fine of P20,000.00 with subsidiary imprisonment in case of insolvency and the cost of this proceedings.

For insufficiency of the evidence the charges of illegal possession of 20 rounds of M-16 live bullets and of illegal possession of dried marijuana leaves in small quantity are ordered dismissed.

The subject shabu and dried marijuana leaves and the live M-16 bullets are confiscated and forfeited and the Branch Clerk is directed to turn them to the Dangerous Drugs Board/Firearms and Explosive Unit for disposition.” (Rollo, p. 8)

The appellant now contends:

I

THE LOWER COURT ERRED IN NOT HOLDING THAT THE PROSECUTION MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

II

ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANT IS GUILTY AS CHARGED, THE TRIAL COURT GRAVELY ERRED IN SENTENCING HIM TO UNDERGO SUBSIDIARY IMPRISONMENT IN CASE OF INSOLVENCY.

As in most criminal cases of the same nature, the main issue raised hinges on credibility of witnesses.

The appellant submits that the testimonies of the prosecution witnesses are inconsistent, contradictory, doubtful, incredible and not sufficient to sustain conviction. He specifically mentions the testimonies of Pat. George Baculinao and Pat. Silvano. According to him, the testimonies of the two police officers were presented to corroborate the testimony of Patrolman Ancayan and to establish the veracity of the buy bust operation. However, the two (2) officers testified that they did not actually see the sale of the shabu between the poseur-buyer who was Patrolman Ancayan and the appellant.

The well-entrenched principle is that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale transaction is established. (People v. Macuto, 176 SCRA 762 [1989]; People v. Dekingco, 189 SCRA 512 [1990]; People v. Enrique, Jr., G. R. No. 90738, December 8, 1991) In the instant case, Patrolman Ancayan, the poseur-buyer testified as regards the sale transaction of shabu between him and the appellant.

Patrolman Ancayan categorically stated that after conducting a surveillance wherein the identity of the accused as a drug pusher was established, he, together with Cpl. Racquion, Pat. Silvano, Pat. Baculinao and Pat. Monsod conducted a buy bust operation. He acted as the poseur-buyer while the other members of the operation positioned themselves not far from the appellant's residence. Pat. Ancayan, then proceeded to the residence of the appellant and saw the latter standing in front of his residence. He then approached the appellant and told him that he wanted to buy shabu in the amount of P150.00. The appellant then went inside his house and after more or less five (5) minutes, the appellant came out. After giving the appellant the buy bust money the appellant handed him an aluminum foil containing the shabu. The money and the shabu were identified in court by Pat. Ancayan.

These facts, alone, unequivocally prove the consummation of the crime of illegal sale of prohibited drug. We ruled in People v. Fabian G.R. No. 83329, December 10, 1991, citing People v. de la Cruz (191 SCRA 160 [1990]) "that when a police officer went through the motions of buying prohibited drugs and his offer to buy was accepted by the accused-seller, the crime was consummated by mere delivery of the drug purchased".

Hence, the fact that Pat. George Baculinao and Pat. Silvano were not close enough to witness the sale transaction between the appellant and Pat. Ancayan is immaterial. Moreover, these police officers had satisfactorily explained why they did not witness the sale transaction. Thus, Patrolman Baculinao testified that he did not see the appellant delivering the aluminum foil containing shabu since he was about five (5) meters away from the appellant while Pat. Silvano was about fifty (50) meters away from the appellant and Pat. Ancayan.

The appellant's theory that "it is unlikely and hard to believe that the appellant, if indeed a pusher, would readily sell shabu to a buyer he does not know" deserves scant consideration. We have consistently ruled in the past that "retail drug pushers sell their prohibited wares to customers, be, they strangers or not, in private as well as in

public places.” (People v. Fabian supra citing People v. Sanchez, 173 SCRA 305 [1989]; People v. Paco, 170 SCRA 681 [1989]).

Moreover, the fact that the police team which conducted the buy bust operation did not personally know the identity of the appellant at the time of the sale transaction and the appellant questions the veracity of the operation against him does not erode the credibility of the team. What matters is the fact that the appellant sold and delivered shabu, a prohibited drug to Patrolman Ancayan who acted as poseur buyer. The prosecution witnesses are police officers and are presumed to have regularly performed their duties in the absence of evidence to the contrary. (People v. Mariano, 191 SCRA 136 [1990]; People v. Catan, G.R. No. 92928, January 21, 1992.

The penalty imposed by the trial court is reclusion perpetua. This should be life imprisonment. Applying, therefore, the rule that when the penalty imposed is higher than prision coreccional no subsidiary imprisonment shall be imposed upon the culprit (Article 39 (3) Revised Penal Code; People v. Andiza, 164 SCRA 642 [1988]; People v. Bati, 189 SCRA 97 [1990]) we agree with the appellant that the trial court committed an error in sentencing him to undergo subsidiary imprisonment in case of insolvency.

WHEREFORE, the judgment of conviction appealed from is AFFIRMED. The penalty imposed should, however, be life imprisonment instead of reclusion perpetua and it is further ordered that there shall be no subsidiary imprisonment in case of insolvency. Costs against the appellant.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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