

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO HOBLE Y LEONARDO, ACCUSED-APPELLANT.***G.R. No. 96091. July 22, 1992*

Ponente: BELLOSILLO, J.

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ALFONSO HOBLE Y LEONARDO is before Us on appeal from a judgment of the court a quo finding him guilty of violation of Sec. 15, Art. III, of the Dangerous Drugs Act of 1972,[1] as amended, and imposing upon him a life imprisonment and a fine of P20,000.00, and to pay the costs of suit.

Appellant Hoble was charged in the court below and accordingly sentenced for having possessed, sold and delivered (to another) on May 21, 1989, four (4) grams of methamphetamine (“shabu”) in San Fernando, Pampanga, in concert with one Victor Javier y Tobias, without having been licensed, authorized and/or permitted to do so. After trial however the court a quo acquitted Javier on reasonable doubt. Hence, Sec. 21, Art. IV, which refers to attempt or conspiracy to commit the crime, is no longer relevant in this appeal of Hoble.

On May 21, 1989, a confidential informer reported to the Commanding Officer of the 3rd Narcotics Regional Command at Camp Olivas, San Fernando, Pampanga, that a certain “Sixto” of Las Piñas, Metro Manila, was to deliver five (5)[2] grams of “shabu” to Barangay Dolores on board a white Toyota Corolla with Plate No. NFT-917.

Acting on the report, the Commanding Officer, Capt. Fernando L. Bustamante, alerted his agents and organized a team to entrap the “pusher”. Tapped for the operation was Sgt. Buenaventura Lopez, who was designated as poseur-buyer and “friend” of the confidential informer, together with Sgt. Bienvenido Andulan and Pat. Edwin Cariño, who composed the back-up team.

The informer also told the NARCOM agents that he had a prior arrangement with the accused that a buyer would stand by at the “target place” in Barangay Dolores near the small bridge and would make a “thumb's up” signal once the Toyota car would arrive.

Conformably with the planned operation, Sgt. Lopez, Sgt. Andulan and Pat. Cariño, together with the unnamed informer, boarded a passenger jeepney to Barangay Dolores. Some twenty (20) meters before reaching the designated place, Sgt. Andulan and Pat. Cariño alighted from the jeepney and stayed behind at the waiting shed along the road, while Sgt. Lopez and the informer proceeded to the “target place”. Then the informer “disengaged” from Sgt. Lopez and disappeared.[3]

At about 12:30 o'clock that noon, the awaited car appeared. As planned, Sgt. Lopez made the “thumb's up” sign and flagged the car down. The car stopped and Sgt. Lopez hopped in per their prior arrangement with the informer who, incidentally, was also the contact man of the “pushers”. As soon as Sgt. Lopez entered the car, “Sixto”, who turned out to be the accused Alfredo Hoble, showed him the stuff that was taken from the glove compartment of his car and handed it to him. Sgt. Lopez immediately recognized the merchandise as “shabu” because of his prior

training on dangerous drugs at Camp Crame. He then lighted a cigarette to signal to his back-up team to pounce on the accused, thus confirming the delivery of the forbidden stuff. Sgt. Andulan and Pat. Cariño then arrested the accused who was at the time in the company of Victor Javier. The NARCOM agents brought the accused Alfredo Hoble and Victor Javier to their office for proper disposition.[4] Accordingly, both Hoble and Javier were charged although the latter was acquitted on reasonable doubt.

At the trial, Sgt. Lopez and Pat. Cariño testified on their respective participations in the buy-bust operation, while Maj. Marlyn Salangad, Forensic Chemist Officer of the PC Crime Laboratory, told the trial court that the physical, chemical and confirmatory tests of the specimens[5] taken from the accused were positive of methamphetamine hydrochloride or “shabu”.

On the other hand, both accused Hoble and Javier denied having sold “shabu” in Barangay Dolores on May 21, 1989. According to them, they were on their way to the house of a certain Armie Guiao to request her to buy duty-free imported goods for them. However, near the crossing of Barangay Dolores armed men also riding in a car suddenly blocked them and there was another car with armed men bearing long arms parked not far from the crossing. The armed men alighted from their car and searched them, after which they were shown something by the armed men who said the stuff was “shabu”.[6]

After trial, the court a quo sustained the version of the prosecution as regards accused-appellant Alfredo Hoble and adjudged him guilty beyond reasonable doubt of the crime charged and sentenced him to life imprisonment and to pay a fine of P20,000.00, without subsidiary imprisonment in case of insolvency, plus the costs of suit.[7] As earlier intimated, accused Victor Javier was acquitted on reasonable doubt.

Accused Hoble now appeals his conviction imputing to the trial court ERROR in (a) admitting in evidence the decision of the Regional Trial Court of Pasay City (Exhs. “L”, “L-1” and “L-2”) which influenced and affected the judgment of the court a quo; (b) admitting in evidence the “Certificate Re-Good Conduct of Search” (Exhs. “F” and “F-1”) despite having been obtained in violation of his constitutional right to counsel during custodial investigation; (c) giving full credence to the testimonies of the prosecution witnesses despite glaring inconsistencies; and, (d) admitting the aluminum foil (Exhs. “J” and “J-1”) despite the same having been obtained through warrantless search of his vehicle.

Turning to the first error assigned, appellant claims that the objectivity of the trial court was unduly undermined when it admitted in evidence the decision of the Regional Trial Court of Pasay City in Crim. Case No. 88--0785-P[8] wherein he was also found guilty of selling and delivering “shabu” for which he was sentenced to reclusion perpetua.[9] He argues that the decision should not have been admitted because it was still under reconsideration, and that the information against him did not allege recidivism nor habituality.

This is no error. Obviously, appellant read out of context the portion of the decision of the court a quo which makes reference to that of the Regional Trial Court of Pasay City in said Crim. Case No. 88-0785-P, to wit:

“It is not therefore true that the accused Hoble did not receive any notice of hearing of the aforesaid case that was the reason why he did not go to the said court anymore after his arraignment, the truth is that he jumped bail in the aforesaid case x x x x”

From the foregoing, it is clear that the court a quo merely cited Exh. “L” in order to refute the claim of appellant that he did not know if there were hearings held in the aforesaid case. The appealed decision itself shows that it treats lengthily of the entrapment operation leading to his arrest in flagrante delicto while delivering or transporting “shabu” and based his conviction on the evidence leading to his entrapment and consequent arrest.

As regards the second assigned error, appellant contends that the “Certification Re-Good Conduct of Search”

(Exh. “F”) which he signed should not have been admitted in evidence as it was procured during custodial investigation in violation of his constitutional right to counsel. It is his position that this exhibit amounts to a confession that the search made was in order and that he indeed committed the offense charged.

It must be stressed that the records do not disclose that appellant was ever subjected to custodial investigation, thus no extrajudicial confession was obtained from him. All that the records show is that appellant and his co-accused were booked in Camp Olivas as shown by the Booking Sheet (Exh. “D”), and the Arrest Report (Exh. “E”). With respect to Exh. “F”, it appears that it was merely executed for the purpose of showing that the NARCOM officers arrested appellant and his co-accused in an orderly manner and in no way signified admission of the commission of the offense. As correctly observed by the trial court:

“One thing very significant to note is that the accused did not give any confession or extrajudicial statement of admission. The evidence for the prosecution consists mainly of the testimonies of the witnesses presented and documents and not a confession of the accused made during the investigation.”[10]

For his third assigned error, appellant argues that the trial court ignored material inconsistencies in the testimonies of prosecution witnesses which, if considered, would have established their lack of credibility. He avers that one prosecution witness testified that there was no marked money used,[11] while another testified that there was marked money but it was not given to the suspects.[12] He insists that the absence of marked money indicates indubitably the incredibility of the prosecution witnesses, but more importantly the error in charging the proper offense, for, if at all, it could just have been possession under Sec. 8, Art. II, and not pushing under Sec. 21, Art. IV,[13] of the Dangerous Drugs Act of 1972, as amended. Appellant also points out that prosecution witnesses differed as to the exact time when the apprehension of the witnesses was effected.

The argument is without merit. It is well settled that minor inconsistencies in statements given during the testimony will not affect the credibility of the prosecution witnesses.[14]

In *People v. Claudio*,[15] We ruled:

“Credence is accorded to the prosecution's evidence, more so as it consisted mainly of testimonies of policemen. Law enforcers are presumed to have regularly performed their duty in the absence of proof to the contrary (*People v. de Jesus*, 145 SCRA 521). We also find no reason from the records why the prosecution witnesses should fabricate their testimonies and implicate appellant of such a serious crime (see *People v. Bautista*, 147 SCRA 500).”

In the case before Us, the testimonies of the prosecution witnesses clearly point to a negotiation or agreement between appellant and Sgt. Lopez to consummate the sale of “shabu”. This is evident from the testimony of Sgt. Lopez who said that upon his “thumb's up” signal, which was pre-arranged through the confidential informer, he (Sgt. Lopez) was allowed inside the car of appellant where he stayed for some 3 to 5 minutes.[16] The signal of Sgt. Lopez indicated that he was the companion of appellant's contact in that place, who also happened to be the NARCOM confidential informer.[17]

Patrolman Cariño corroborated the testimony of Sgt. Lopez that he spent some 3 to 5 minutes inside the car before he lighted his cigarette, also as pre-arranged, indicating that the “transaction” was already on and that his back-up team should now, as they did, pounce on the pushers. The relatively short period of time spent by Sgt. Lopez in the car of appellant further indicates that a brief negotiation preceded the delivery by the appellant of the “shabu”.

The minor discrepancies in the testimonies of the prosecution witnesses do not impair the credibility and substance of the evidence for the government, more so, as in the instant case, where there is direct proof that the NARCOM agents through Sgt. Lopez actually and directly received the “shabu” from appellant.[18]

As regards the marked money, it is likewise settled that its absence does not create a hiatus in the evidence for the prosecution so long as the prohibited or regulated drug given or delivered by the appellant was presented before the court and that the appellant was clearly identified as the offender.[19] In fact, in the instant case, the evidence clearly shows that appellant himself handed to Sgt. Lopez the “shabu” inside the former's car.[20]

It has been held that possession of prohibited drugs coupled with the fact that the possessor is not a user thereof cannot indicate anything else but the intention to sell, distribute or deliver the prohibited stuff.[21] Moreover, the provision under which appellant is charged provides that it is not only the sale which is penalized by law but also the administration, dispensation, delivery, transportation and distribution of regulated drugs. Sec. 15, Art. III, of the Dangerous Drugs Act of 1972, as amended, provides:

“Sec. 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs. - The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver and transport or distribute any regulated drug x x x x”

In *People v. de la Cruz*,[22] We held:

“Suffice it to say that even if the money given to De la Cruz was not presented in court, the same would not militate against the People's case. In fact, there was even no need to prove that the marked money was handed to the appellants in payment of the goods. The crime could have been consummated by the mere delivery of the prohibited drugs. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering. In the latter case, the act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration, consummates the offense.”

Thus, assuming for the sake of argument that no transaction of sale occurred, appellant was nevertheless caught transporting and delivering 4 grams of “shabu” to Sgt. Lopez without license or lawful authority. There was therefore no error on the part of the trial court in finding accused Alfredo Hoble guilty of violating Sec. 15, Art. III, of the Dangerous Drugs Act of 1972, as amended.

As regards his contention that the evidence consisting of “shabu” crystals (Exhs. “J” and “J-1”) is inadmissible in evidence because unlawfully procured through warrantless search, it must be stressed anew that he was caught transporting and delivering a regulated drug in flagrante delicto. Consequently, a peace officer or any private person for that matter may, without warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit, an offense;[23] and, that a person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.[24] Consequently, the warrantless search being an incident to a lawful arrest, is in itself lawful.[25]

In fine, on the basis of the facts as reported by the trial court, which We find sufficiently supported by the evidence, We hold that the guilt of the accused-appellant has been established beyond reasonable doubt.

WHEREFORE, the judgment of the court a quo convicting the accused Alfredo Hoble y Leonardo of violation of Sec. 15, Art III, of the Dangerous Drugs Act of 1972, as amended, is hereby **AFFIRMED**. Costs against accused-appellant.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] R.A. 6425.

- [2] Note that the Information alleges only four (4) grams.
- [3] Tsn, August 30, 1989, pp. 7-15; tsn, October 13, 1989, pp. 6-16.
- [4] Tsn, August 30, 1989, pp. 16-34.
- [5] Exhs. "J" and "J-1".
- [6] Tsn, July 24, 1990, pp. 10-15.
- [7] Records, p. 385.
- [8] Exh. "L", Records, pp. 118-120.
- [9] The correct penalty as provided in Sec. 15, Art. III, of the Dangerous Drugs Act of 1972, as amended, is life imprisonment. Reclusion perpetua is not synonymous with life imprisonment as the former carries accessory penalties (see *People v. Baguio*, 196 SCRA 459 [1991]).
- [10] Decision, p. 383, Records.
- [11] Tsn, September 13, 1989, pp. 7-8.
- [12] Tsn, October 19, 1989, pp. 4-5.
- [13] It is believed that appellant meant Sec. 15, Art. III, and not Sec. 21, Art IV, which refers to attempt and conspiracy to commit the offense.
- [14] *People v. Cina*, G.R. No. 88220, October 1, 1990, 190 SCRA 199; *People v. Tunhawan*, G.R. No. 81470, October 27, 1988, 166 SCRA 638; *People v. Netipravat*, G.R. No. 69876, November 13, 1986, 145 SCRA 483.
- [15] G.R. No. 72564, April 15, 1988; 160 SCRA 646.
- [16] Tsn, September 13, 1989, p. 52.
- [17] Tsn, August 3, 1989, p. 12.
- [18] See *People v. Tunhawan*, *supra*.
- [19] *People v. Tejada*, G.R. No. 81520, February 21, 1989; 170 SCRA 497.
- [20] Tsn, August 30, 1989, pp. 22-23.
- [21] *People v. Toledo*, G.R. No. 67609, November 22, 1985; 140 SCRA 259.
- [22] G.R. No. 83260, April 18, 1990; 184 SCRA 416.
- [23] Sec. 5 (a), Rule 113, Rules of Court.
- [24] Sec. 12, Rule 126, Rules of Court.
- [25] *People v. Claudio*, *supra*, and *Nolasco v. Paño*, G.R. No. 69803, January 30, 1987; 147 SCRA 509.

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