

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL BAGARES Y MENDOZA AND IMELDA SANTOS Y LOPEZ, DEFENDANTS, RAFAEL BAGARES Y MENDOZA, DEFENDANT-APPELLANT.

G.R. No. 99026. August 04, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the judgment of the Regional Trial Court, Branch 164, Pasig, in Criminal Case No. 1106-D, finding appellant RAFAEL BAGARES y MENDOZA guilty beyond reasonable doubt of violation of Section 15 of the Dangerous Drugs Act (R.A. No. 6425, as amended).

In said criminal case, RAFAEL BAGARES y MENDOZA and IMELDA SANTOS y LOPEZ were accused of violating the Dangerous Drugs Act, committed as follows:

"That on or about the 15th day of January, 1990, in the Municipality of Marikina, Metro Manila, Philippines above-named accused, conspiring and confederating together and they mutually helping and aiding one another, without being authorized by law, did then and there willfully, unlawfully and feloniously sell to poseur buyer 0.06 grams of white crystalline substance wrapped in a piece of aluminum foil; 0.10 grams of white crystalline substance placed in four (4) transparent plastic bags and in consideration of P400.00, positive to the test for methamphetamine hydrochloride (shabu), which are regulated drugs, in violation of the above-cited law" (Records, p. 10).

Both accused pleaded not guilty to the information (Records, p. 24).

On February 7, 1991, the trial court rendered its judgment, acquitting Imelda Santos but convicting Rafael Bagares of the crime charged. The decretal portion of the judgment reads as follows:

"In view of all the foregoing circumstances, the Court finds the accused Rafael Bagares y Mendoza GUILTY beyond reasonable doubt of illegally selling and/or dispensing shabu or methamphetamine hydrochloride, as regulated drugs, in violation of Section 15 of the Dangerous Drugs Act as amended as charged and therefore, hereby imposes upon him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00, as well as to pay the costs.

On the other hand, the Court finds the accused Imelda Santos y Lopez NOT GUILTY of the present charge in conspiracy of (sic) the other accused Rafael Bagares and therefore, hereby acquits her of the same.

The Branch Clerk of this Court is hereby directed to forward the subject shabu as soon as practicable (sic) to the Dangerous Drugs Board for whatever proper disposition that Board may take under the premises" (Rollo, p. 19).

I

On January 12, 1990, a telephone call from an unidentified party was received by P/Sgt. Jimmy Navarro, Officer-in-charge of the Marikina Police Station (TSN, March 28, 1990, p. 14), regarding a shabu pusher operating at Sixto De la Paz St., Sta. Elena, Marikina, Metro Manila (TSN, *ibid.*, p. 3).

At about 9:30 A.M. of said date (TSN, *ibid.*, p. 26), a team, composed of Pvt. Harrison Amanon as team leader, Pvt. Melanio Valeroso, and Pats. Victor Azurin, Ruel Cenesa, and Herminio Caligagan as members, was formed to conduct a surveillance at said place (TSN, *ibid.*, pp. 3, 14-15).

The surveillance on January 12 lasted from 4:00 P.M. until about 10:00 P.M. In this span of time, they discovered the identity of the person selling shabu in that vicinity. The surveillance continued for three days. They observed that appellant regularly came out to do business in the street at about 8:00 P.M. (TSN, *ibid.*, p. 17).

On January 15, at around 9:30 P.M., the police team conducted a buy-bust operation with Pvt. Valeroso acting as poseur-buyer (TSN, *ibid.*, p. 4). He approached appellant and pretended to be a buyer of shabu. At the same time, he handed to appellant the marked four one-hundred-peso bills (TSN, *ibid.*, p. 3). Appellant entered an alley and after a few minutes returned and handed to Pvt. Valeroso two packets of shabu - one wrapped in an aluminum foil and the other one in a plastic bag. After appellant handed over the shabu, Pvt. Valeroso arrested and frisked him. Pvt. Valeroso was able to confiscate the four one-hundred-peso bills from appellant (TSN, *ibid.*, p. 4).

After apprehending appellant, the members of the team brought him to the police headquarters for investigation and in the course thereof, he named accused Imelda Santos y Lopez as his source of the shabu (TSN, *ibid.*, p. 10).

The police team, together with appellant, proceeded to the residence of accused Santos, who surrendered to them four plastic bags of shabu (Exhs. "F", "F-1", "F-2" and "F-3"). They then arrested her (TSN, *ibid.*, pp. 10-11).

The Certification of Laboratory Result (Exh. "D") and the Chemical Report (Exhs. "C", "C-1" to "C-3") prepared by P/Cap. Julita T. De Villa of the PC/INP Crime Laboratory, Camp Crame, Quezon City showed that the specimens submitted for analysis were found positive for methamphetamine hydrochloride or shabu (TSN, February 28, 1990, pp. 3-4).

Appellant denied the charges against him. He claimed that at around 9:00 P.M. of January 15, 1990, he was with friends drinking beer in front of his house (TSN, December 5, 1990, p. 2). Suddenly, two policemen arrived and arrested him. He was brought to the town hall where he was interrogated regarding his source of shabu. He saw the shabu and four one-hundred-peso bills on top of the table. He was asked to shell out P30,000.00 so that the case could be settled but he had no money to comply with the demand. So he was placed behind bars (TSN, December 5, 1990, p. 5). No investigation was conducted by the Marikina Police in connection with his arrest (TSN, December 5, 1990, p. 4).

Appellant denied having sold shabu, claiming that what he delivered for his employer, accused Santos, were ordinary beans (TSN, December 5, 1990, p. 6).

II

In his appeal, appellant claims that the trial court erred: (1) in giving full credence to the testimony of Pvt. Valeroso; (2) in not acquitting him after the court acquitted his co-accused on the same evidence presented against him; and (3) in admitting illegally obtained evidence.

Appellant's defense consisted merely of denials and his claim that the shabu presented by the prosecution as evidence against him was planted by the police.

The issue raised in appellant's first assignment of error is reduced to the credibility of the witnesses. We have no grounds to reverse the findings of fact of the trial court (*People v. Bautista*, 142 SCRA 649 [1986]).

Denials by the accused are as weak as the defense of alibi. They are self-serving evidence and unless substantiated by clear and convincing evidence, cannot be given weight over the positive assertions of credible witnesses (*People v. Guibao*, 217 SCRA 64 [1993]).

As to the claim that appellant was the victim of a "frame-up," we agree with the observation of the trial court that if the police merely concocted trumped-up charges against him, they would not have planted a "comparatively sizeable amount of shabu." Moreover, such defense can easily be fabricated and is commonly used by persons accused of drug pushing (*People v. Agapito*, 154 SCRA 694 [1987]).

There is the presumption that police officers in the performance of their official duties do so in a regular manner and the evidence to overturn such a presumption must be sufficient and convincing (*People v. Marcos*, 185 SCRA 154 [1990]). Appellant has not shown any ill-motive on the part of the lone prosecution witness that may cast doubt on his testimony (*People v. Villa*, 221 SCRA 661 [1993]).

Appellant's claim that he was entertaining several visitors when the police arrived to arrest him was intended to blunt the prosecution's evidence that the "buy-bust" operation took place about ten meters from his house. The thrust of the contention was that appellant never left the place where he was drinking with his friends in order to transact business with the poseur-buyer.

This contention would not prosper. In the first place, appellant never presented any of his numerous guests, who could have testified that appellant never left the party to go out in the street to transact a business deal with the poseur-buyer. In the second place, it was so easy for appellant to slip away from his guests to sell shabu about ten meters from his house without his absence being noticed.

In the second assignment of error, appellant claims that the trial court erred in not acquitting him of the crime charged despite its acquittal of his co-accused Imelda Santos because "the evidence of the prosecution is common against both and is based on the same factual setting, arising from the same single incident." Suffice it to say that appellant and accused Santos were not prosecuted on the basis of the same evidence and that they were arrested under different circumstances. Appellant was prosecuted for selling prohibited drugs while accused Santos was prosecuted for illegal possession of prohibited drugs.

Appellant was arrested when caught selling shabu in flagrante while accused Santos was arrested after a warrantless search on information furnished by appellant himself after his arrest.

The acquittal of accused Santos was based mainly on the grounds of constitutional infirmity and the unreasonableness of the warrantless search and seizure of the evidence against her.

Finally, appellant urges that the court a quo erred in admitting the prosecution evidence against him, particularly Exhibits "D", "D-1", "E-1" and "F" to "F-3", which were seized without any search warrant in violation of his constitutional rights.

Exhibits "D" to "D-1" refer to the shabu contained in the aluminum foil while Exhibits "E" to "E-1", "F" to "F-3" refer to the plastic tea bags. These incriminating evidence were seized as an incident and in connection with the arrest in flagrante of appellant.

Under Section 5(a), Rule 113 of the Code of Criminal Procedure, a police officer may arrest a person even without a warrant, when the person arrested has committed or is actually committing, or is attempting to commit an offense in his presence. Under Section 12, Rule 126 of the same Code, a person lawfully arrested may be

searched for dangerous weapons or anything which may be used as proof of the commission of the offense, without a search warrant.

The provisions on penalties under the Dangerous Drugs Act of 1972, R.A. No. 6425, were amended by R.A. No. 7659 as follows:

"SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds of Instrument of the Crime. The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;
2. 40 grams or more of morphine;
3. 200 grams or more of shabu or methamphetamine hydrochloride;
4. 40 grams or more of heroin;
5. 750 grams or more of indian hemp or marijuana;
6. 50 grams or more of marijuana resin or marijuana resin oil;
7. 40 grams or more of cocaine or cocaine hydrochloride; or
8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultation/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua depending upon the quantity.

Every penalty imposed for the unlawful importation, sale, administration, delivery, transportation or manufacture of dangerous drugs, the cultivation of plants which are sources of dangerous drugs and the possession of any opium pipe and other paraphernalia for dangerous drugs shall carry with it the confiscation and forfeiture, in favor of the Government, of all the proceeds of the crime including but not limited to money and others obtained thereby and the instruments or tools with which it was committed, unless they are property of a third person not liable for the offense, but those which are not of lawful commerce shall be ordered destroyed without delay. Dangerous drugs and plant sources of such drugs as well as the proceeds or instruments of the crime so confiscated and forfeited in favor of the Government shall be turned over to the Board for proper disposal without delay.

Any apprehending or arresting officer who misappropriates or misapplies or fails to account for seized or confiscated dangerous drugs or plant-sources of dangerous drugs or proceeds or instruments of the crime as herein defined shall after conviction be punished by the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos."

The above provision of R.A. No. 7659 can be applied in the instant case, pursuant to the principle in criminal law, *favorabilia sunt amplianda, adiosa restringenda* (Penal laws which are favorable to the accused are given retroactive effect). This principle is embodied in Article 22 of the Revised Penal Code which provides as follows:

"Retroactive effect of penal laws. -- Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

The provisions of Article 22 of the Revised Penal Code are applicable even to special laws (U.S. v. Soliman, 36 Phil. 5 [1917]).

According to the trial court, appellant was caught selling 0.16 grams of shabu. We impose the penalty of prision correccional considering the small quantity of shabu (0.16 grams) confiscated from the accused. Applying the Indeterminate Sentence Law, the minimum penalty shall not be less than the minimum prescribed by Section 1 of R.A. No. 7659.

WHEREFORE, the decision of the Regional Trial Court is **AFFIRMED** in all respects except as to the penalty, which is **MODIFIED** to **SIX (6) months and ONE (1) day of prision correccional to TWO (2) years and ONE (1) day of prision correccional**. No pronouncement as to costs.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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