

**PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS.
ALEXANDER MARTINEZ ALIAS ABELARDO MARTINEZ Y MONTESOR,
ACCUSED/APPELLANT.**

G.R. Nos. 105376-77. August 05, 1994

Ponente: BIDIN, J.

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BIDIN, J.:

On November 22, 1989, accused-appellant Alexander Martinez, alias Abelardo Martinez y Montesor, was charged with (1) violation of Section 4, Article II of Republic Act 6425 otherwise known as the Dangerous Drugs Act (Criminal Case No. 9618) and (2) violation of Section 1 of Presidential Decree No. 1866 for illegal possession of firearms (Criminal Case No. 9626), before the Regional Trial Court of Zamboanga City.

The information in Criminal case No. 9618 charges accused-appellant and Dolores Cabatuan Martinez with violation of the Dangerous Drugs Act (Republic Act No. 6425), as follows:

"That on or about the 6th day of November, 1989, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, conspiring and confederating together, mutually aiding and assisting with one another, did then and there willfully, unlawfully and feloniously, sell and deliver to one EDGAR PELIN y FERNANDEZ who pose (sic) as buyer, one (1) deck of Metamphetamine Hydrochloride popularly known as "SHABU", knowing the same to be a prohibited drug.

"CONTRARY TO LAW." (Rollo, p. 9)

In Criminal Case No. 9626 appellant was charged as follows:

"That on or about the 6th day of November, 1989, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause or reason, did then and there willfully, unlawfully and feloniously, have in his possession and under his custody and control, one (1) .38 caliber "paltik" revolver with Serial No. 50284 and eight (8) rounds of live .38 ammunition, without first having obtained the necessary license and/or permit therefore, in flagrant violation of the aforementioned law.

"CONTRARY TO LAW." (Rollo, p.10)

Appellant with the assistance of counsel, pleaded not guilty upon arraignment on the above charges. Thereafter, the two cases were jointly tried on the merits upon agreement of the parties.

The facts of the case as summarized in the People's brief are as follows:

"The factual findings of the court a quo are not disputed by appellant x x x. This notwithstanding, they are hereunder briefly summarized x x x.

"On October 27, 1989, after receiving information that appellant was engaged in the sale of shabu at his residence at the Bureau of Air Transportation (BAT) Compound, Baliwasan Moret, Zamboanga City, National

Bureau of Investigation (NBI) Agent Bienvenido Salvo of the NBI Regional Office in Zamboanga City directed his 'asset' or confidential informer Edgar Pelin to purchase from appellant P200.00 worth of prohibited drug. Pelin succeeded in purchasing from appellant a specimen which Agent Salvo sent the next day to the NBI chemist in Cebu who, after a laboratory examination, determined that it was indeed shabu or metamphetamine hydrochloride. Immediately thereafter, Agent Salvo returned to Zamboanga City to map out a 'buy-bust' operation against appellant (TSN, April 19, 1990, pp. 5-6).

"On November 6, 1989, the 'buy-bust' operation was set up by the NBI Regional Office with the assistance of the Zamboanga City Police. A raid party composed of four separate teams was formed for the 'buy-bust' operation. One of the teams (the search team) was headed by Agent Salvo, with Captain Isniraji Maruji of the Zamboanga City Police and a custodian, a photographer and an administrative officer from the NBI as members. For his part, Pelin would act as poseur-buyer in the 'buy-bust' operation. Agent Salvo likewise obtained a search warrant (Exhibit "C") for this operation (TSN, April 18, 1990, pp. 6-10; TSN, April 19, 1990, p. 12).

"The group arrived at the BAT Compound at around 2:00 o'clock in the afternoon of said date. Agent Salvo gave Pelin P200.00 in marked money for the purchase of the shabu. As Pelin approached appellant's house, the rest of the party positioned themselves about twenty to thirty meters from where the transaction took place (TSN, April 18, 1990, p. 5; TSN, April 19, 1990, pp. 9-10).

"Pelin knocked at the appellant's door and was allowed entry by the latter's guard. Inside the house, Pelin gave the marked P200.00 to appellant who in turn gave him a 'deck' of shabu (Exhibit "J") which was wrapped in aluminum foil (Exhibits "J-1" to "J-2"). The transaction concluded, Pelin signalled to his companions by going out of appellant's house (TSN, April 18, 1990, pp. 6-7).

"The search team led by Agent Salvo then rushed forward and entered appellant's house while the rest of the raid party secured the area. Pelin turned over the 'deck' of shabu to the NBI custodian who marked the aluminum foil wrapper with the initials "AMM". Simultaneously, Agent Salvo presented a copy of the search warrant to appellant and thereafter the search team conducted a search of the premises (TSN, April 18, 1990, p. 8; TSN, April 19, 1990, p. 10; TSN, May 8, 1990, pp. 10--11).

"The search team recovered drug paraphernalia from various places in appellant's house. However, only P100.00 of the marked money was recovered by the team. Captain Maruji and Agent Salvo also recovered a .38 caliber "paltik" revolver (Exhibit "F") with serial number 50248 containing five live ammunition inside a pillowcase in appellant's bedroom (TSN, April 18, 1990, p. 30, 36-39; TSN, April 19, 1990, p. 10-12).

"The search team made a three-page inventory (Exhibits "D" to "D-8") of the things seized at the appellant's house. Said inventory was signed by appellant and a copy thereof was furnished him. Further, several photographs (Exhibits "E" to "E--6") were taken relative to the search (TSN, April 19, 1990, pp. 13-17).

"Edgar Pelin executed an affidavit (Exhibits "A" to "A-3") wherein he recounted in detail his participation in the 'buy-bust' operation. Likewise, Agent Salvo and Captain Maruji executed a joint affidavit (Exhibit "B") wherein they set forth the procedure they adopted and the details on how they were able to arrest appellant and search his house. The aforementioned affidavits were introduced and admitted in evidence and they fully confirmed the testimony of the above-named witnesses (TSN, April 18, 1990, p. 10-11; TSN, April 19, 1990, p. 23).

"Immediately upon receipt of the 'deck' of shabu, the NBI custodian submitted it to NBI chemist Cesar Cagalawan right inside appellant's residence for examination. Chemist Cagalawan made a preliminary investigation of the specimen known as the Marquis Test at the NBI Regional Office in Zamboanga City and the presence of metamphetamine was confirmed. Later, he conducted a Thin Layer Chromatography examination at the NBI Regional Office in Cebu City which conclusively determined that the substance sold by appellant to poseur-buyer Pelin was indeed metamphetamine hydrochloride or shabu. He formalized the

results of his examination in Chemistry Report No. 89-DD-4411, which was offered and admitted in evidence as Exhibits "K" to "K-3" (TSN, May 8, 1990, pp. 4--15)."

(Rollo, p.72; See People's Brief at pp. 3-8)

The defense presented accused-appellant, his wife Dolores Martinez, Angelina Martinez and Bonifacio Leyte. Said witnesses presented a totally different version of the circumstances surrounding the arrest of appellant and the consequent charges against him.

Appellant's version purports to show that at about 1:00 P.M. of November 6, 1989 he was at home watching television, and slept at about 1:20 pm. He claims to have been awakened by two persons kicking him whom he identified as prosecution witnesses Salvo and Pelin. All told, appellant denies having sold shabu to Pelin nor owning the .38 caliber revolver allegedly found in his room.

At the NBI Office, appellant was allegedly forced to sign an inventory of the seized articles under the threat of summary execution. The testimonies of the other defense witnesses, on the other hand, generally corroborated appellant's testimony.

After trial, the court a quo rendered its decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, this court finds the accused Alexander Martinez 'alias' Abelardo Martinez y Montesor guilty beyond reasonable doubt for violation of Section 4, Article II of Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972 and for Illegal Possession of Firearm defined and penalized under P.D. No. 1866 and pursuant thereto hereby sentences him as follows:

"1. In Criminal Case No. 9618, accused is sentenced to suffer life imprisonment and to pay a fine in the amount of Twenty Thousand (P20,000.00) Pesos, and to pay the costs.

x x x

"2. In Criminal Case No. 9626, accused is sentenced to suffer imprisonment from Seventeen (17) to Twenty (20) Years and to pay the costs. The accused who is a detention prisoner is credited to the full extent of his preventive imprisonment.

x x x

"3. In Criminal Case No. 9618, this Court, on ground of insufficiency of evidence, hereby ACQUITS the accused Dolores Cabatuan Martinez, with costs de oficio. The accused who is a detention prisoner is ordered released immediately unless there exists an order in other case/s directing her continued detention.

"SO ORDERED." (Rollo, pp. 26-27)

In this appeal, accused-appellant raises the following assignment of errors:

"1.1 The Trial Court erred in not acquitting the Accused-Appellant for failure of the prosecution to prove beyond reasonable doubt his guilt in Criminal Case No. 9618 (for violation of Sec. 4, Art. 11 of Rep. Act No. 6425, "Dangerous Drugs Act of 1972), considering that:

"a) The 'shabu' (Exhibit 'J' and submarkings) was not identified by the prosecution's sole eyewitness to the alleged "buy-bust" operation, in the person of Edgar Pelin who acted as 'poseur-buyer'; in other words, there is no proof beyond reasonable doubt that the alleged 'shabu' (prosecution's Exhibit 'J' and submarkings) was ever purchased by Edgar Pelin (the alleged 'poseur-buyer') from the Accused-Appellant, or that the alleged 'shabu' (Exhibit 'J' and submarkings) is the very same dangerous drug allegedly purchased by the poseur-buyer, precisely because Exhibit 'J' and submarkings were not identified by the poseur-buyer (Edgar Pelin);

"(b) The marked money which was allegedly used in the buy-bust operation, was EXCLUDED as evidence by the Trial Court ('Order' dated May 15, 1990); moreover, said marked money was not identified by the poseur-buyer himself (Edgar Pelin); hence, there could legally be NO buy-bust operation, because the element of 'marked money' (sic) was not proven beyond reasonable doubt; and

"(c) Any and all items particularly the 'shabu' (Exhibit 'J' and submarkings), the firearm (Exhibit 'F') and five live ammos (Exhibit 'F-1' to 'F--5', which were seized by virtue of the Search Warrant (Exhibit 'C') issued against a certain ALEXANDER MARTINEZ alias ALEX", are inadmissible against Accused-Appellant, who is ABELARDO MARTINEZ y MONTESOR with the nickname 'LARD'; in short, they are two different persons, as there is no proof beyond reasonable doubt that 'ALEXANDER MARTINEZ' and appellant ABELARDO MARTINEZ are one and the same person.

"1.2 The Trial Court erred in not acquitting the Accused-Appellant for failure of the prosecution to prove beyond reasonable doubt his guilt in Criminal Case No. 9626 (for illegal possession of firearm defined and penalized under Sec. 1 of PD No. 1866), considering that:

"(a) The six shooter .38 caliber revolver in question, which was allegedly found in the room of Accused-Appellant by prosecution witness Capt. Maruji was not presented in evidence; also, the 'eight (8) rounds of live .38 caliber ammunition' (five of which were found inside the chamber and three of which were outside the chamber of the five-shooter .38 revolver (Prosecution's Exhibit 'F') are DIFFERENT from those allegedly found by prosecution witness Capt. Maruji, because those found by Capt. Maruji were allegedly found in reference to a six-shooter .38 revolver (sic) (six inside the chamber and two outside); moreover, the gray lady purse (Prosecution's Exhibit 'H-6' in which three (3) live ammos were allegedly found, was excluded by the Trial Court ('Order' dated May 15, 1990);

"(b) The evidence presented by the prosecution is DIFFERENT from the revolver and ammunition allegedly found by prosecution-witness Capt. Maruji; and

"(c) The alleged revolver and ammos in question were not found in the actual possession of the Accused-Appellant, as they were allegedly found inside the Accused-Appellant's room wherein they (revolver and ammos) could have easily been planted."

(Rollo, pp. 36-38)

Indispensable in every prosecution for the illegal sale of prohibited drugs is the submission of proof that such a sale took place between the poseur-buyer and the seller thereof, and the presentation further of said prohibited drug as evidence in court (People vs. Pacleb, 217 SCRA 92 [1993]). What is important is the fact that the poseur-buyer received the shabu from appellant and that the contents thereof were duly presented in court.

Records show that the seized shabu was duly presented in court is exhibit "J" and was competently identified by prosecution witness Cesar Cagalawan, an NBI chemist. Pelin's testimony was likewise consistent and compatible on its material points. He categorically pinpointed accused-appellant as the one who handed him the tinfoil containing the shabu. When asked to testify on what had transpired on November 6, 1989, Pelin gave the following straightforward statements:

"FISCAL

"Q Now, you said awhile ago that you went to the house of the accused in order to buy a deck of Shabu. Tell the Court how were you able to enter the house of the accused?

"A I was able to get inside the house of the accused because I know the accused already that they are selling Shabu (sic).

"Q In other words, before that date November 6, 1989, you have gone to the house of the accused already?

"A Yes sir.

"Q For how many times?

"A I cannot remember, but I remembered October 27, 1989.

x x x

"Q Now, will you please tell this Honorable Court how the transaction of buy and sell (sic) took place.

x x x

"A I went to the house of the accused and their guard opened the door and I got inside and once inside, I gave the money to them and they gave me the Shabu.

"Q You said that you gave the money to them, who are you referring to?

"A Abelardo Martinez." (TSN, April 18, 1990, pp. 5-7)

Pelin's statements were furthermore corroborated by the testimonies of the other witnesses for the prosecution who were law enforcers, and, the absence of proof to the contrary are presumed to have regularly performed their duties (People vs. Yap, 185 SCRA 222 [1990]).

As correctly stated by the Solicitor-General, Pelin testified:

"x x x that he turned over the shabu to the NBI custodian as soon as the 'buy-bust' operation ended (TSN, April 18, 1990, p. 8). For his part, NBI Chemist Cesar Cagalawan testified that the NBI custodian submitted said drug to him inside appellant's residence for examination (TSN, May 8, 1990, pp. 4-7). These assertions were in turn fully corroborated by Agent Bienvenido Salvo in his direct examination testimony (TSN, April 19, 1990, pp. 12-13)." (Rollo, p. 76; See People's Brief, pp. 12-13)

Needless to say, even if the poseur-buyer was not made to identify the seized shabu, the same would not have worked against the People's case. Proof of the transaction suffices.

The allegation of the appellant that the marked money was not properly identified by the poseur-buyer does not deserve even a passing consideration. As long as the prohibited or regulated drug given or delivered by the appellant was presented before the court and the appellant was clearly identified as the offender, conviction is proper. In fact, the absence of the marked money or its non-presentation in court would not create a hiatus in the prosecution's evidence (People vs. Hoble, 211 SCRA 675 [1992]; People vs. Tandoy, 192 SCRA 28 [1990]).

Appellant reproves the prosecution for the variance between the testimony of Captain Maruji as to the firearm seized and that actually presented during the trial. It should be remembered, however, that what the law punishes is the mere possession of an unlicensed firearm regardless of make, model, or kind. That an unlicensed firearm was seized from the house of appellant is undisputed, and this is more than adequate for appellant's conviction.

Finally, accused-appellant argues that he is not the person named in the search warrant issued in connection with the buy-bust operation, his name being Abelardo Martinez and not Alexander Martinez. That being the case, all things seized by virtue of the said warrant are inadmissible in evidence.

The argument is devoid of merit.

The discrepancy regarding the name of accused-appellant and that stated in the search warrant cannot militate against his positive identification by the poseur-buyer. It has been consistently held that "greater weight is given

to the positive identification of the accused by the prosecution witnesses than accused's denial concerning the commission of the crime (People vs. Serdan, 213 SCRA 329 [1992]).

And as correctly pointed out by the trial court:

"The claim of the accused that his true and correct name is not Alexander Martinez but Abelardo Martinez does not deviate from the fact of his identity being established as a peddler of shabu. Even granting arguendo that his (accused) claim is correct that he is not Alexander but Abelardo, that alone does not warrant dismissal or absolving the accused of criminal liability. Sec. 7, Rule 110 of the 1985 (should read 1988) Rules on Criminal procedure, as amended, provides:

'A complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known, or if his name cannot be discovered he must be described under a fictitious name with a statement that his true name is unknown.

'If in the course of the proceeding the true name of the accused is disclosed by him, or appears in some other manner to the court, the true name of the accused shall be inserted in the complaint or information and record.'" (Rollo, p. 23)

Granting arguendo that the search warrant issued against accused-appellant was invalid, because his true name is Abelardo Martinez and not Alexander Martinez as stated in the search warrant, the same cannot render the articles seized inadmissible as evidence in court. As a matter of fact the information filed identify him as "Alexander Martinez alias Abelardo Martinez y Montesor, accused."

The accused-appellant was arrested as a result of a "buy-bust" operation and the ensuing search of the premises was made as an incident to a lawful arrest (Section 12, Rule 116 Rules of Court; People vs. Musa, 217 SCRA 597 [1993], People vs. Fernandez, 209 SCRA 1 [1992], People vs. Liquen, 212 SCRA 288 [1992], People vs. Li Wai Cheung, 214 SCRA 504 [1992], People vs. Eligino, 216 SCRA 370, [1992]). It is therefore clear that regardless of the alleged defect of the search warrant in erroneously designating his first name, the seized articles may still be used as evidence against accused-appellant, having been obtained from him and as such, fruits of a lawful search incidental to a valid arrest.

Furthermore, appellant was arraigned under the name of Alexander Martinez and when arraigned under said name he entered his plea of "not guilty". Appellant should have raised the question of his identity either at the time of arraignment or by filing a demurrer based on the court's lack of jurisdiction over his person, inasmuch as he was then considered as Alexander Martinez alias Abelardo Martinez. Having failed to do so, he is estopped from later raising the same question (People vs. Narvaes, 59 Phil. 738 [1934]). His identity had been sufficiently established.

Finally, as We have held in People v. Reception, (198 SCRA 670 [1991]), "the identification of a person is not established solely through knowledge of the name of that person". It is clear from the records that appellant was the same person who sold the prohibited drug to Pelin on two instances. The claim therefore that his true and correct name is Abelardo Martinez and not Alexander Martinez cannot overturn the fact of his identity being established as the peddler of shabu, a prohibited drug.

Premises considered, the Court believes and so holds that the prosecution has fully discharged its duty of proving the guilt of the accused beyond reasonable doubt.

In Criminal Case No. 9618, appellant was convicted for selling one (1) deck of "shabu" and was accordingly sentenced to suffer life imprisonment and to pay P20,000.00 fine.

In the case of People v. Simon (GR No. 93028, July 29, 1994), this Court gave retroactive application to the

provisions of R.A. 6425 which was further amended by R.A. 7659 as follows:

"Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds of Instruments 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:

x x x

"3. 200 grams or more of shabu or methylamphetamine hydrochloride;

x x x

"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."

Given the fact that what is involved is less than 200 grams of shabu and there being no mitigating or aggravating circumstances, the proper imposable penalty to be imposed upon appellant is prison correccional in its medium period without fine. Applying the Indeterminate Sentence Law in consonance with *People v. Simon* (supra), appellant is hereby sentenced to suffer imprisonment from six (6) months of arresto mayor, as minimum, to two (2) years and four (4) months of prison correccional as maximum. The fine of P20,000.00 is deleted.

Further, the proper penalty to be imposed upon accused-appellant in Criminal Case No. 9626 for violation of P.D. 1866 should be 17 years 4 months and 1 day of reclusion temporal as minimum to reclusion perpetua as maximum and not 17 years to reclusion perpetua as erroneously applied by the trial court.

WHEREFORE, the appealed decisions, except as herein modified, are hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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