

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLANDO ALMEIDA Y CALVIN @ TATA ROLLY, APPELLANT.

G.R. Nos. 146107-09. December 11, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

On August 13, 1999, three separate informations were filed against appellant Rolando Almeida y Calvin @ Tata Rolly, before the Regional Trial Court of San Pedro, Laguna,[1] as follows:

Criminal Case No. 1233

That on or about July 1, 1999, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, said accused without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession custody and control one (1) transparent plastic bag of methamphetamine hydrochloride "shabu" weighing 200.203 grams.

Criminal Case No. 1234-SPL

That on or about July 1, 1999, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, said accused, without first securing license/permit from the proper authority did then and there willfully, unlawfully and feloniously have in his possession, custody and control the following items.

- (1) ammunitions for .38 caliber gun (8 pieces)
- (2) ammunitions for .45 caliber gun (3 pieces)
- (3) ammunitions for .38 caliber gun (3 pieces)
- (4) ammunitions for .22 caliber gun (5 pieces)

Criminal Case No. 1235-SPL

That on or about July 1, 1999, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said accused without any lawful authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to a poseur-buyer in exchange for P4,500.00 bills methamphetamine hydrochloride "shabu" in one (1) heat-sealed transparent plastic bag weighing 4.810 grams.

The Prosecution's Evidence

SPO4 Carlito Candelaria (Carlito)[2] is a member of the San Pedro Police Station Intelligence Unit. On July 1, 1999, at about 10:50 p.m., he and four other policemen, SPO4 Teofilo Royena (Teofilo), PO3 Ricardo Umayan (Ricardo), PO3 Victor Vivero (Vivero) and SPO4 Bonifacio Derocha (Derocha) were in Pulong Kendi, San Pedro, Laguna to conduct a buy-bust operation against appellant, who was reportedly peddling shabu. Accompanying them was a civilian asset who was to act as the poseur-buyer and was given P4,500 for that purpose.

The alleged sale transpired outside the house of Vanessa Padua (Vanessa), by the steel gate of the house. Vanessa was reportedly appellant's live-in partner. From a distance of 4 meters, Carlito claimed to have seen the exchange

of the shabu and money between appellant and the civilian asset. Upon seeing the consummation of the sale, he and the civilian asset executed their respective prearranged signals, which were for Carlito to put his hand inside his back pocket and the civilian asset to scratch his back.

Police officers Teofilo, Ricardo, Vivero and Derocha then arrived and "stealthily rushed" into the house as appellant had already entered the house and went upstairs. Carlito stayed by the steel gate to make sure that no one leaves or escapes.

After the lapse of about 25 minutes, the police returned and brought out a stainless steel canister, some cash, a plastic bag containing shabu and ammunitions for .38, .45 and .22 caliber firearms. Inside the canister were more cash and shabu, a weighing scale, a brown envelope and some unused plastic ice bags.

Teofilo,[3] Chief of the Intelligence Section/Unit, testified that he received information that appellant, who was already arrested twice for drug pushing, had again resumed his operations. Thus, Teofilo decided to form a buy-bust team, composed of himself, Ricardo, Vivero, Derocha and Carlito, to entrap appellant. He also utilized the services of a civilian asset to act as the poseur-buyer.

On July 1, 1999, at around 10:50 p.m. the buy-bust team went to the house of Vanessa, where appellant was reportedly staying. The civilian asset and Carlito went to the front of the house, while Ricardo, Vivero, Derocha took their positions some 7 meters away from them. The civilian asset then called to appellant who promptly came out. Thereafter, from his position, Teofilo witnessed the civilian asset and appellant engage in a brief conversation and then subsequently exchange shabu and money.

Immediately after the sale took place, appellant went inside and proceeded to the second floor of the house. Thereafter, Teofilo and the other policemen approached Carlito and the civilian asset. Teofilo first took from the civilian asset the shabu received from appellant before he and Ricardo went inside the house.

Upon reaching the second floor, Teofilo saw appellant repacking shabu while seated on the floor. The police also found another person, who was later identified as Gilbert Chico (Gilbert), sniffing shabu. Vanessa was also there. On the second floor, the police found 34 small plastic sachets containing shabu, one big plastic bag containing more shabu, a canister, several ammunitions of different calibers, cash worth P2,800 in different denominations and 3 plastic bags containing shabu residue. The police also recovered the P4,500 bills used in the buy-bust operation. Appellant was then arrested and brought to the police station.

Lorna Tria (Tria),[4] Philippine National Police forensic chemical officer, testified that she received a request for a laboratory examination on 157.332 grams of white crystalline substance contained in 34 heat-sealed transparent sachets, 42.871 grams of white crystalline substance contained in one plastic bag and three plastic bags containing traces of white crystalline substance. She also received a second request for a laboratory examination of one heat-sealed transparent plastic bag with white crystalline substance weighing 4.810 grams.

After conducting the necessary tests, all the substances came out positive for methamphetamine hydrochloride.

Ricardo,[5] testified that prior to the alleged buy-bust, he already knew appellant whom they arrested twice in September and October 1998 for violation of the Dangerous Drugs Law. Having received information that appellant was again engaged in the sale of shabu, he, Teofilo, Carlito, Derocha, Vivero and a civilian asset, went to Barangay Cuyab on July 1, 1999 to conduct a buy-bust operation against appellant.

Upon reaching Barangay Cuyab, Carlito and the civilian asset separated from the group and went to the front of the house where appellant was staying. The rest of the team members positioned themselves some 7 meters away. Ricardo claimed he saw the civilian asset hand money over to appellant who, in turn, gave a plastic sachet.

Ricardo then saw Carlito execute the prearranged signal and the team moved towards Carlito and the civilian asset. The police failed to apprehend appellant who, after the transaction, immediately went inside the house and ascended to the second floor.

Ricardo, Teofilo, Vivero and Derocha entered the house and followed appellant upstairs where they found him sitting on the floor. Beside appellant were plastic sachets packed with shabu, and a canister storing different kinds of ammunition, money, plastic bag containing shabu and a spoon, weighing scale and several unused plastic sachets. Also in the room were Gilbert, sniffing shabu, and Vanessa. Vanessa would later telephone a certain lawyer who spoke to Ricardo. The police collected the items on the floor and brought appellant and Gilbert to the police station.

The Defense's Evidence

Appellant[6] testified that in the evening of July 1, 1999, he was visiting his girlfriend, Vanessa, at her house on 34 V. Veragra St., Cuyab, San Pedro, Laguna. Also with them was Gilbert. All three were on the second floor when they heard a loud sound coming from downstairs. As Vanessa was going down to have a look, she was met by two armed men in civilian attire. The men were later identified as policemen Teofilo and Ricardo. Immediately, Vanessa confronted Teofilo and Ricardo, and asked them what they wanted. The police ignored her and began to search the premises.

Vanessa's father, Cesar Padua (Cesar), who was just downstairs, went up and demanded that the police leave. The policemen, nevertheless, continued their search. Eventually, the policemen got hold of a foot-long brown paper bag and a stainless steel box from a cabinet. Appellant saw that Cesar attempted to get back the envelope, however Ricardo pointed a gun at him. Appellant, Vanessa and Gilbert were then brought to the police station.

Vanessa[7] declared that on July 1, 1999, at 10:50 p.m., she was in her house at the second floor, talking to appellant and Gilbert, while her parents were downstairs watching television. Everything was normal until she heard a loud sound coming from their iron gate. This prompted her to go down to have a look. As she was about to go down, she was met by Teofilo and Ricardo who were wearing caps and armed with guns.

Teofilo and Ricardo introduced themselves as police officers and began to search the area. Vanessa asked to see a search warrant but the police failed to produce any. When her father, Cesar, went up and protested their search, Ricardo poked a gun at him. Vanessa then called her lawyer, Atty. Macapagal, through the telephone. Atty. Macapagal was able to talk to Ricardo but nothing came out of it. Teofilo and Ricardo confiscated a brown paper bag containing her father's money in the amount of P130,000 and a stainless steel box from her cabinet. Vanessa, appellant and Gilbert were then brought to the police station. There, appellant and Gilbert were detained while Vanessa was released.

Cesar Padua[8] testified that he is the father of Vanessa and he knows appellant to be his daughter's suitor. On July 1, 1999, at 10:30 p.m. he was in his house watching television with his wife in the sala at the ground floor when he heard Vanessa talking loudly upstairs. He went up to see what was happening and saw Teofilo and Ricardo searching the area. He demanded that a search warrant be produced but none was shown to him. During the search, the police took a brown paper bag containing P130,000 and a stainless steel box. When he protested, the police poked their guns at him. Vanessa, appellant and Gilbert were then brought to the police station.

As a consequence of the illegal search and the taking of his money, Cesar filed complaints against Teofilo and Ricardo before the National Police Commission and the Office of the Ombudsman. He also denied that there was shabu inside his house and that appellant was a live-in partner of his daughter.

On rebuttal, Teofilo[9] testified that he does not know Cesar Padua nor was the latter present when his group

conducted the buy-bust operation. He also denied having taken P130,000 from Vanessa's room.

After considering all the evidence presented, the trial court found appellant guilty of all three charges under a decision that has the following dispositive portion:[10]

IN VIEW THEREOF, the court finds that the prosecution has duly established the guilt of accused beyond reasonable doubt of the crimes of a Violation of a) Section 16, Article III of RA 6425, as amended, in Criminal Case No. 1233, b) PD 1866, as amended, in Criminal Case No. 123[4], and c) Section 15, Article III of RA 6425, as amended, in Criminal Case No. 1235 without having been permitted by law.

WHEREFORE judgment is hereby rendered sentencing accused Rolando Almeida y Calvin @ Tata Rolly as follows:

In Criminal Case No. 1233

- to suffer the penalty of reclusion perpetua;
- pay a fine of P500,000; and
- to pay costs of suit.

In Criminal Case No. 1234

- to suffer an indeterminate penalty of imprisonment of from four (4) years, two (2) months and one (1) day of prision correctional as minimum to six (6) years of prision correctional as maximum; and
- to pay costs of suit.

In Criminal Case No. 1235

- to suffer an indeterminate penalty of imprisonment of from six (6) months of arresto mayor as minimum to four (4) years of prision correctional as maximum; and
- to pay costs of suit.

The Court's Ruling

The Court will first review appellant's conviction for the illegal sale of dangerous drugs.

In all prosecutions for illegal sale of dangerous drugs, the following elements must first be established: 1) proof that the transaction or sale took place; and 2) the presentation in court of the corpus delicti or the illicit drug as evidence.[11] A review of the records of the case reveals the absence of the second element as the prosecution failed convincingly to prove that the shabu that was marked and presented in court is the very same item that was taken from the poseur-buyer.

The identification of the buy-bust drug was made by Ricardo, who provided the following testimony:[12]

q.

How about the items that w[ere] supposed to be the result of the buy-bust?

a.

It was marked RA-B, sir.

q.

What does B represent?

a.

Buy-bust, sir.

x x x x x

q.

Which among the plastic sachet[s] was marked as B?

a.

It is not here, sir.

q.

Not all those [items were] laid in the table. I'm extracting a document inside the bigger plastic bag and this document consists of a Chemistry Report marked as Exhibit J, request for laboratory examination and another Chemistry Report. Attached to Exhibit J is a plastic sachet containing white crystalline substance, among the items which are now laid on the table. Which is now the item marked as letter B?

a.

This one, sir (pointed to a plastic sachet attached to Exhibit J and marked as Exhibit J-1).

Atty. Sarmiento:

May I make it of record that the exhibit was put in front of the witness before he testified.

Apparently, Ricardo never actually identified the shabu that was taken during the buy-bust operation. He merely declared that the drug was supposed to be marked as "RA-B" and then pointed to an exhibit bearing that marking. He never explicitly declared that the item marked "RA-B" contained the shabu bought from appellant.

In any event, it must be noted that Ricardo is incompetent to identify the shabu sold as he was never in possession of it. Aside from the poseur-buyer, the only other person who could have identified the drug is Teofilo as it was allegedly turned over to him. However, Teofilo did not identify the shabu but merely stated that he personally took the shabu from the poseur-buyer right after the exchange.[13] The records are silent as to what he did with

the drug thereafter.

Teofilo's failure to testify on what he did with the shabu resulted in a break in the chain of custody of the drug. There is a missing link from the point when the drug was in the hands of Teofilo to the point when the same was placed in the custody of SPO1 dela Pena, the investigator who did the markings. The prosecution needs to establish that Teofilo gave the drug to dela Pena and informed the latter that such particular drug was sold by appellant and that it was marked accordingly. Without such proof, the marking of "RA-B" testified upon by Ricardo is rendered meaningless.

The existence of the dangerous drug is a condition sine qua non for conviction for the illegal sale of dangerous drugs, it being the very corpus delicti of the crime.[14] Failure to establish the chain of custody cannot but inure to the detriment of the prosecution's case.[15]

As for the charge of illegal possession of dangerous drugs, the Court sustains appellant's conviction.

The defense claims that the shabu was not seized or confiscated from the body of the appellant. The records, however, show that when the police reached the second floor of the house, appellant was caught in flagrante delicto as he was in the midst of repacking the shabu.

It was not necessary for the prosecution to prove that appellant was in actual possession of all the 200.203 grams of shabu. In criminal law, possession necessary for conviction of the offense of possession of dangerous drugs may be constructive as well as actual. It is only necessary that the accused must have dominion and control over the contraband.[16] In this case, appellant's dominion and control over the drugs found on the second floor is established by the fact that he was the person who was handling said items.

Appellant nevertheless claims that the items found on the second floor were products of an illegal search. Suffice it to say that the items were found while the police were in the process of arresting appellant and these confiscated items were just lying on the floor, in plain view of the arresting officers.[17]

The Court, however, cannot sustain appellant's conviction for illegal possession of ammunition. The ammunition was not found in the person of appellant. They were among the items seen lying on the floor and Vanessa and Gilbert were in that same room with appellant. Clearly, the evidence is insufficient to establish that said ammunition belongs to appellant as it could have belonged to the other two persons.

Furthermore, in any event, the Court has ruled in previous cases that in view of the enactment of Republic Act No. 8294, there can be no separate offense of illegal possession of firearms and ammunition if there is another crime committed such as, in this case, that of illegal possession of dangerous drugs.[18]

Appellant should, therefore, be acquitted of the charges of illegal sale of dangerous drugs and illegal possession of ammunition, but his conviction for illegal possession of dangerous drugs should be sustained.

WHEREFORE, the assailed decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, in Criminal Cases Nos. 1234-SPL and 1235-SPL, is hereby REVERSED and SET ASIDE and appellant, Rolando Almeida y Calvin @ Tata Rolly, is ACQUITTED of the charges thereunder. His conviction in Criminal Case No. 1233, however, is hereby AFFIRMED. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Carpio, JJ., concur.

[1] Branch 31.

- [2] TSN, October 20, 1999, pp. 4-13.
- [3] TSN, January 20, 2000, pp. 3-21.
- [4] TSN, February 4, 2000, pp. 9-21.
- [5] TSN, April 10, 2000, pp. 3-10; TSN, April 11, 2000, pp. 2-7.
- [6] TSN, May 15, 2000, pp. 3-10.
- [7] TSN, June 22, 2000, pp. 3-10.
- [8] TSN, July 19, 2000, pp. 3-10.
- [9] TSN, August 7, 2000, pp. 2-8.
- [10] Rollo, pp. 50-51.
- [11] *People v. Hajili*, G.R. Nos. 149872-73, March 14, 2003.
- [12] *Supra*, note 5, April 11, 2000, pp. 4-7.
- [13] TSN, January 20, 2000, p. 14.
- [14] *People v. Mendiola*, 235 SCRA 116 (1994).
- [15] *People v. Simbahon*, G.R. No. 132371, April 9, 2003, citing *People v. Dismuke*, 234 SCRA 51 (1994).
- [16] *People v. Ramos*, 186 SCRA 184 (1990).
- [17] *People v. Musa*, 217 SCRA 597 (1993).
- [18] *People v. Bernal*, 388 SCRA 211 (2002); *People v. Garcia*, G.R. Nos. 133489 & 143970 (2002); and *People v. Ladjaalam*, 340 SCRA 617 (2000).

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