

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS MORENO, JR., ACCUSED-APPELLANT.*G.R. Nos. 97408-09. September 02, 1992*

Ponente: NARVASA, C.J.

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In two (2) criminal actions commenced in the Regional Trial Court of Pasig, Metro Manila,[1] docketed as Cases Numbered 1065-D and 1066-D, Tomas Moreno, Jr. was charged with the offenses, respectively, of illegal possession of marijuana in violation of Section 8, Article II of Republic Act No. 6425, and the unlawful sale delivery, dispensation, transport or distribution to another of methamphetamine hydrochloride (shabu) in violation of Section 15, Article III of the same act. Assisted by counsel de oficio, Moreno entered a plea of not guilty on arraignment. The two cases were thereafter tried jointly, it appearing that they arose from a single incident involving the same persons.

The State's proofs tended to establish that Moreno was apprehended through what has come to be known as a "buy-bust" operation in the act of actually selling and delivering shabu in a small plastic packet to a so-called "poseur-buyer," and a subsequent search of the house into which Moreno had run in an effort to elude arrest yielded a wooden box containing, among other things, what on later examination were found to be dried marijuana leaves.

The "buy-bust" operation was planned by Pat. Joselito Galindo and Pat. Erlito B. Lamayo, members of the Special Operations Group, Criminal Intelligence Division of the Mandaluyong Police Station. They planned the operation on the basis of a confidential report given by an informant named Pedro Gabriel. The police officers and Gabriel went to the house of the suspected drug trafficker, Tomas Moreno, Jr. at San Jose Street, Isla del Como, Mandaluyong, on November 23, 1989. From a short distance, the police officers watched Gabriel approach Moreno and speak to him. They saw Moreno go inside his house, come out immediately afterwards, walk with Gabriel along a small alley towards the place where Galindo and Lamayo had positioned themselves, give Gabriel a small package and receive a bill from the latter. Gabriel thereupon gave a pre-arranged signal and the two police officers began to move in.

When Moreno saw the two men coming towards him, he turned and sprinted back towards his house. Pat. Lamayo pursued him and followed him into the house. While running towards the back of the house, Moreno picked up a small box on top of a small table in the living room. He was however cornered near the back door and taken into custody. The box was taken from him, as also the one-hundred-peso bill paid to him by Gabriel bearing serial number BE 316956, said number having earlier been noted down by the police officers.

The box seized from Moreno was a wooden one, colored brown, and bore the marking, "EL/JG." Inside were two smaller boxes. According to the officers,[2] one of these smaller boxes, made of aluminum and marked "Flying Eagle EL/JG," contained one glass tubing; two pieces of rubber tooters; one black smoke pipe; one needle. The other, a cardboard box labeled "Zippo," contained suspected dried marijuana leaves weighing 0.94 grams; 3

pieces of improvised burner marked "EL/JG;" 32 aluminum foils inside a smaller white box; 1 fan knife; several pieces of used aluminum foil; 1 amber bottle marked "Mercury Drug" containing ethyl alcohol and 2 pieces of empty match boxes.

These items, together with the crystalline white substance in the plastic packet given by Moreno to Gabriel, were turned over to the PC/INP Laboratory Crime Service. Examination and analysis thereof in said laboratory disclosed that the crystalline white substance in the plastic packet handed to Gabriel by Moreno, was shabu; the glass tube inside the box marked "Flying Eagle EL/JB had traces of shabu; and the dried leaves were marijuana, 0.94 grams. The other articles submitted for examination were found negative for either marijuana or shabu.

Moreno denied that any such "buy-bust" operation ever took place. What happened, according to him, was that while he and a friend, Guilberto Marteja, were on their way to buy food at a nearby market at about 10 o'clock in the evening/morning of November 23, 1989, three men, two of whom he later identified is Patrolmen Lamayo and Galindo, accosted him and at the point of a gun began to search his person. He asked why he was being so treated and got the curt answer, "Wala ka nang maraming sinasabi. Nahulog ka rin sa aking mga kamay." (No more talk from you. You have finally fallen into my hands.) Moreno's companion, Marteja, was not searched and was allowed to leave.[3]

Continuing with his tale, Moreno says he was then coerced to board a Ford pick-up and brought to his house. Once there, the men forced themselves into the house and proceeded to search the place although they had no search warrants. The men came out after a while with his father, who pleaded that his son be released since nothing illegal had been found on his person or in the house. The plea went unheeded. Moreno was brought to the Municipal Hall where he claims he was interrogated without first being apprised of his constitutional rights. He was being made to reveal the names of persons selling prohibited drugs, and to admit that the box containing shabu, marijuana and other paraphernalia was his. He refused. He also refused to receive money being given to him whereupon he was punched in the chest and hit on the head with a rattan chair.

After trial, judgment was rendered,[4] convicting Moreno of both the offenses with which he was charged. The dispositive portion of said judgment reads as follows:

"ACCORDINGLY, the Court finds TOMAS MORENO, JR. y PORRAS, the accused herein, GUILTY beyond reasonable doubt of illegal possession of marijuana, a prohibited drug in violation of Section 8, Article II of Republic Act No. 6425, as amended, and hereby imposes upon him the penalty of imprisonment of SIX YEARS and ONE (1) DAY and to pay a fine of SIX THOUSAND PESOS; and that of illegal sale of and/or delivery of methamphetamine hydrochloride (shabu), a regulated drug in violation of Section 15, Article III of the same Dangerous Drugs Act, and therefore, hereby imposes upon him to suffer the penalty of life imprisonment and to pay a fine of TWENTY THOUSAND PESOS; as well as to pay the costs."

Moreno appealed, and in this Court prays for reversal, postulating that the declarations of the prosecution witnesses are replete with serious contradictions and inconsistencies; said witnesses, in particular, failed to identify the one-hundred-peso bill allegedly used in the buy-bust project; that project was in truth entirely fictional and the drugs had been "planted."

The appellant's appeal must fail.

The claim of lack of identification of the money used in the "buy-bust" operation is untenable. The record discloses that while Pat. Lamayo did indeed omit, in his testimony-in-chief, to speak of the money used to pay for the shabu, he was afterwards recalled to the witness stand at which time he did identify the one-hundred-pesos bill he had given to Moreno in exchange for the shabu.[5] In any event, even assuming that there was a complete failure on the prosecution's part to present the money in evidence, that failure is not necessarily fatal to its cause,

there being positive and otherwise credible testimony -- given by two prosecution witnesses, the police informer, Gabriel,[6] and Pat. Lamayo[7] -- proving an actual exchange of money for shabu between the poseur-buyer and the drug dealer.[8]

The contention that the identification of the small plastic bag of shabu allegedly purchased by Lamayo is faulty -- because when asked to identify the bag supposedly received by him from Moreno, Lamayo had pointed to the bag earlier declared by the forensic chemist as being among the contents of the box marked "Flying Eagle EL/JG," which had been seized from Moreno upon his arrest and hence after the shabu had been handed over to Lamayo -- is also untenable. It is clear from the evidence that the plastic bag of shabu was not one of the items found in the box marked "Flying Eagle EL/JG." However, when the Mandaluyong Police made an official request to the PC/INP Crime Laboratory Service to analyze the things seized from Moreno, that plastic packet was erroneously listed as being among the contents of the box marked "Flying Eagle EL/JG." It was thus so identified by the forensic chemist when she deposed about her examination and analysis of the items sent to her by the Mandaluyong Police. And when Lamayo later himself took the witness stand, he of course pointed to that plastic packet -- already testified to by the chemist as among those in the box -- as the one sold by Moreno to the poseur-buyer, Gabriel.

Also not acceptable is the appellant's argument that the drugs had been "planted" on Moreno by the police officers and their informant, and that the latter's story of the "buy-bust" operation is entirely imaginary. There is absolutely no evidence of any plausible reason for the police officers to concoct this tale against Moreno and fabricate such a serious case against him. As observed by the Trial Court:

"There is not a single iota of evidence that the apprehending officers and even the poseur-buyer entertained any ill-feeling or seething anger against the accused so as to fabricate the malicious charges against him. It being so, the time honored legal principle comes into play in that sans any credible evidence to show bias and prejudice, it is presumed that the prosecution witnesses would not have imputed to the accused the crime with which he was charged unless he was guilty thereof.

Moreover, there is also that presumption, in the absence of any convincing proof to the contrary, that official duty has been regularly performed such that it is safe to assume that the various dangerous drugs and other paraphernalia submitted by the police authorities to the PC/INP Crime Laboratory are the very same dangerous drugs and paraphernalia found in the personal possession of the accused therein and in his residence."

Here, as in most cases of this nature, the whole question turns upon the Trial Court's assessment of the probative value of the evidence adduced by the prosecution and the defense. This Court has been cited to no circumstance of weight or substance showing any error or inaccuracy in that assessment of the proofs by the Trial Court, or any fact of importance overlooked or disregarded by it. There is thus no cause to depart from the familiar maxim according great weight and respect to the factual findings of a trial court, it being in the best position to weigh conflicting declarations of witnesses, observing their demeanor and conduct while giving evidence.[9]

WHEREFORE, the challenged judgment of the Regional Trial Court, being in the Court's view in all respects in accord with the evidence and applicable law, is AFFIRMED in toto. No costs.

IT IS SO ORDERED.

Padilla, Regalado, Nocon, and Melo, JJ., concur.

[1] Assigned by regular raffle to Branch 164, Hon. Apolonio R. Chavez, Jr., presiding

[2] E.g., Chemistry Report and Affidavit of Arrest: Original Record, pp. 131,134

[3] Marteja testified at the trial and substantially corroborated Moreno's version of the occurrence.

[4] On October 24, 1990

[5] TSN, July 9, 1990, pp. 2-3

[6] TSN, Sept. 10, 1990, p. 5

[7] TSN, June 25, 1990, p. 15

[8] SEE *Peo. v. Ruedas*, 194 SCRA 553

[9] SEE, e.g., *Peo. v. Bolasa, et al.*, G.R. No. 80436, June 2, 1992

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