

THIRD DIVISION

[G.R. No. 171487, March 14, 2008]

ERMIN DACLES Y OLEDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision^[1] dated 19 August 2005 of the Court of Appeals in CA-G.R. CR No. 25188 which affirmed the Decision^[2] dated 31 January 2001 of the Regional Trial Court (RTC) of Caloocan City, Branch 120, finding petitioner Ermin O. Dacles guilty of the crime of violation of Section 27, Article IV of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972.

On 14 December 1998, petitioner, together with co-accused Federico Cleofas y Mateo, Virgilio Cardenas y Gercan, Marcelino Dueñas y Yabut and Maria Fe Mendoza y Pascual, was charged before the RTC with violating Section 27, Article IV of Republic Act No. 6425 in Criminal Case No. C-55283. The accusatory portion of the Information reads:

That on or about the 10th day of December, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, grouping themselves together did then and there willfully, unlawfully and feloniously use and sniff and pass to one another METHAMPHETAMINE HYDROCHLORIDE, without the corresponding prescription therefore and knowing the same to be a regulated drug.^[3]

When arraigned, petitioner and co-accused pleaded not guilty. Thereafter, trial ensued.

The prosecution presented three witnesses: PO2 Jessie Caranto, Senior Inspector Juanita D. Siason of the Philippine National Police-Crime Laboratory, and PO3 Romulo Aquino.

Prosecution witness PO2 Jessie Caranto of the District Intelligence Unit (DIU) Northern Police District Office, Larangay Street, Kaunlaran Village, Caloocan City, testified that on 10 December 1998 at around 8:30 in the evening, while he and his two co-police operatives, SPO2 Pascua and PO3 Romulo Aquino, were conducting a surveillance operation along Rubyville Subdivision, Caloocan City, they noticed a Toyota Tamaraw FX utility vehicle bearing Plate No. WDP-587 parked along the side of the street. In order for them not to be noticed, they slowly and cautiously approached the vehicle where they saw five persons engaging in a pot session. The team introduced themselves as police officers and then arrested the suspects. PO2 Caranto gathered the two small transparent plastic sachets containing white

crystalline substance believed to be *shabu*, including drug paraphernalia such as aluminum foil, *tubo* or pipe and a disposable lighter obtained from the suspects. The suspects and the vehicle were brought to the police headquarters at Larangay Street, Kaunlaran Village, Caloocan City. The confiscated items were turned over to SPO1 Rolando Pascua. PO2 Caranto said it was SPO1 Pascua who gave the confiscated items to the police investigator, SPO2 Marlon Orquia, and that the latter was the one who put the markings on the confiscated materials. The recovered crystalline substance was brought to the PNP-Crime Laboratory at Camp Crame, Quezon City for examination. During the investigation conducted by the police officers, the suspects gave their names as Ermin Dacles, Virgilio Cardenas, Marcelino Dueñas, Federico Cleofas and Marie Fe Mendoza.

PO3 Romulo Aquino, a member of the team conducting surveillance operation in Sta. Quiteria, Caloocan City, said he and a certain PO1 Soreta stayed outside the Rubyville Subdivision while SPO1 Rolando Pascua, PO2 Jessie Caranto and some members of the Bantay Bayan were the ones who entered the subdivision. He admitted that he did not see the suspects inside the Tamaraw FX engaging in pot session as he was far from the said vehicle.^[4]

Upon examination by the forensic analyst, Senior Inspector Juanita D. Siason of the Philippine National Police-Crime Laboratory, the contents of the two plastic heat-sealed transparent sachets were positive for methamphetamine hydrochloride or "*shabu*."

The prosecution dispensed with the testimony of SPO2 Marlon Orquia and in lieu thereof, it entered into stipulations with the counsel of the accused the following facts: (1) that SPO2 Marlon Orquia was the investigator of the case; and (2) that SPO2 Orquia was the one who prepared the letter requesting a forensic examination of the contents of the two plastic sachets.^[5]

The defense, on the other hand, presented Federico Cleofas, Virgilio Cardenas and appellant Ermin Dacles. All of them put up a defense of denial and frame-up.

Accused Federico Cleofas (Federico) testified that at around 7:30 in the evening of 10 December 1998, while he was in the store of his nephew located inside Rubyville Subdivision, Caloocan City, drinking a bottle of softdrink and having a chat with his nephew, a Toyota Tamaraw FX which was driven by accused Marcelo Dueñas, arrived.^[6] Accused Virgilio Cardenas and Ermin Dacles were on board the vehicle together with four armed police officers wearing civilian clothes. As the policemen alighted from the vehicle and were going to his direction, Federico, scared of the unfamiliar-looking policemen, ran towards the house of his childhood buddy named *Aboy*, also a police officer, for help. Before the pursuing police officers could arrest Federico, *Aboy* took him under his care. After the police officers and *Aboy* introduced themselves to each other, *Aboy* allowed the arresting officers to take with them his friend with the assurance that Federico would not be hurt.^[7] Federico was then escorted to the Tamaraw FX where he was handcuffed.^[8] The arresting officers thereafter asked him of the exact location of his house, but before they arrived at the site Federico indicated, the police officers punched him in the abdomen, suspecting that he was lying about the exact location of his house. Federico also testified that SPO2 Pascua tried to exact from him Twenty Thousand Pesos (P20,000.00) and Ten Thousand Pesos (P10,000.00) from Ermin Dacles and Virgilio

Cardenas. When Federico told the police officers that he had no money, PO2 Aquino hit him on the head with a *batuta*.^[9] Thereafter, they were brought to Valenzuela, specifically E. De Leon Street, where the vehicle stopped in front of a store. SPO2 Pascua ordered Federico to call up a relative. Thereupon he contacted Natividad Cleofas, his sister, whom he apprised of his situation. SPO2 Pascua then grabbed the telephone and instructed Natividad Cleofas to proceed to the Langaray Police Station and bring with her P20,000.00 in exchange for Federico's liberty.^[10] After the call, they boarded the Tamaraw FX and, while on their way, the police officers picked up accused Ma. Fe Mendoza before finally proceeding to the police station.^[11] When Federico was physically examined by a physician, he did not divulge to the doctor that he had a contusion in the head caused by the *batuta*.

Virgilio Cardenas (Virgilio) also denied the allegations of the prosecution. He testified that on 10 December 1998, at around 7:00 to 8:00 o'clock in the evening, while waiting for a ride home at Sta. Quiteria, Caloocan City, a Tamaraw FX stopped in front of him with its occupants beckoning him inside.^[12] Virgilio boarded and saw Marcelino Dueñas and Ermin Dacles inside the vehicle.^[13] When they passed through the police check-point at the Tullahan Road, the policemen manning the checkpoint flagged them down.^[14] Police officer Pascua, who was in uniform, frisked the three of them. Police officer Pascua informed them that he was actually looking for a certain person and Marcelino Dueñas volunteered that he knew the person the police officer was looking for.^[15] The police officers thus boarded the Tamaraw FX. Upon reaching Rubyville subdivision, he saw the person the policemen were looking for running away from the police officers. The police officers caught him and brought him inside the Tamaraw FX. Thereafter, they proceeded to Valenzuela where the police officers arrested a certain Fe Mendoza. All of the accused were brought to the Langaray Police Headquarters.

Ermin Dacles (Ermin) declared that in the evening of 10 December 1998, he was at Sta. Quiteria Street, Caloocan City, waiting for a tricycle ride.^[16] Marcelino Dueñas gave Ermin a ride in the former's Tamaraw FX. When Ermin boarded the vehicle, he noticed that Marcelino Dueñas was with Virgilio Cardenas. Along the way, three police officers, two of whom Ermin recognized as PO3 Romulo A. Aquino and PO2 Jessie Caranto, stopped and searched the vehicle and then eventually boarded it. The group then proceeded to Rubyville Subdivision where the police officers chased and arrested Federico Cleofas.^[17] The police officers and the arrested individuals thereafter went to Valenzuela. There the police officers picked up Fe Mendoza. The police then brought all of them to the Larangay Police Headquarters, Caloocan City. While on their way to the police station, SPO1 Pascua demanded from Ermin and the rest of the apprehended men inside the vehicle the amount of P50,000.00. For his part, Ermin replied he had no money.^[18]

After weighing the evidence presented by the parties, the RTC was of the belief that the prosecution mustered the requisite quantum of evidence to prove the guilt of the petitioner and other accused of the crime charged. It gave full credence to the version of the prosecution and brushed aside the defenses of denial and frame-up interposed by the appellant and his companions. Thus, it convicted all of them of the offense charged and imposed upon them the indeterminate penalty of 6 months and 1 day as minimum to 6 years as maximum, and to pay the fine of P100.00 each, viz:

WHEREFORE, judgment is hereby rendered finding accused ERMIN DACLES y OLEDO, VIRGILIO CARDENAS y GERCAN, MARCELINO DUEÑAS y YABUT, FEDERICO CLEOFAS y MATEO and MA. FE MENDOZA y PASCUAL GUILTY of the offense charged and sentencing them to suffer a penalty of six (6) months and one (1) day as minimum to six years each as maximum of *prision correccional*.

The Court orders all the accused to pay P100.00 each as fine to OCC, RTC, Caloocan City.^[19]

Only petitioner Ermin Dacles and Federico Cleofas filed a notice of appeal.^[20] The RTC ordered the transmittal of the entire records of the case to the Court of Appeals.

The Court of Appeals, on 19 August 2005, promulgated its Decision affirming the judgment of the RTC convicting appellant and the other accused therein.^[21] It, however, modified the penalty by reducing the same to 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of *prision correccional* as maximum. It deleted the fine of P100.00. The dispositive part of the decision reads:

WHEREFORE, the Decision appealed from is AFFIRMED with MODIFICATION by REDUCING the penalty to six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, and DELETING the fine of P100.00.^[22]

On 9 September 2005, Ermin Dacles and Federico Cleofas filed a motion for reconsideration which was denied by the Court of Appeals in a Resolution dated 7 February 2006.

Hence, the instant petition filed by Ermin Dacles.

In his Memorandum, the petitioner raises a single issue:

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING THE PETITIONER GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 27, ARTICLE IV OF REPUBLIC ACT NO. 6425.^[23]

Petitioner faults the RTC and the Court of Appeals in giving full credence to the testimony of PO2 Caranto who testified that he saw petitioner and his companions engaged in a pot session. Petitioner stresses that PO2 Caranto's testimony should not have been believed since said testimony was not even corroborated by prosecution witness PO2 Romulo Aquino. Petitioner argues that the RTC and the Court of Appeals cannot use the presumption of regularity in the performance of official functions in convicting petitioner since the said principle cannot prevail over the constitutional presumption of innocence of the accused. He insists that although the defense of alibi and denial are weak, it is still the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt to support a judgment of conviction.

He also maintains that he deserves an acquittal since there exists a doubt as to whether the items confiscated from them, assuming *arguendo* that the prosecution's

theory were true, were the same specimens submitted for laboratory examination and which tested positive for methamphetamine hydrochloride. According to petitioner, there is a possibility that switching of evidence could occur and that the specimens seized from them were not the same items subjected to laboratory examination.

The Office of the Solicitor General avers that the questions involving the alleged testimonial veracity or credibility are inappropriate in the instant petition as only questions of law may be raised in a petition for review. It also assails appellant's belated attempt of raising as an issue for the first time the identity of the confiscated items. It states that the identity of the *shabu* should have been questioned at the trial stage to afford the prosecution reasonable opportunity to meet such objection. Since this issue was not raised before the RTC nor before the Court of Appeals, appellant cannot raise the same before this Court.

We deal first with the argument raised by the Office of the Solicitor General that it is too late for petitioner to raise the issue on the identity of the confiscated *shabu*. The long-standing precept is that an appeal in a criminal case throws the whole case wide open for review. [24] The reviewing tribunal can correct errors though unassigned in the appeal, or even reverse the trial court's decision on grounds other than those the parties raised as errors.[25]

In *People v. Dorimon*, [26] appellant was convicted by the trial court of the crime of Illegal Possession of Firearm. On appeal before the Court, appellant failed to raise the issue of failure of the prosecution to prove his non-possession of a license to possess a firearm. Notwithstanding this, the Court took cognizance of the issue. Likewise, in *People v. Galigao*, [27] appellant was found by the trial court guilty of rape on three counts. On automatic review, appellant raised for the first time before the Court the defense of insanity. The Court addressed the issue consistent with the dictum that an appeal in a criminal case throws the whole case open for review and the reviewing court may correct errors even if they have not been assigned. With these cases as guideposts, petitioner is legally allowed to raise an issue which was not raised before the RTC or the Court of Appeals. Despite this ruling, however, the Court finds no compelling reason to acquit petitioner in the instant case.

The bone of contention in this case is the credibility of the parties and their witnesses. This Court will not disturb the judgment of the trial court in assessing the credibility of the witnesses, unless there appears in the records some facts or circumstances of weight and influence which have been overlooked or the significance of which has been misinterpreted by the trial court. This is because the trial judge has the unique opportunity, denied to the appellate court, to observe the witnesses and to note their demeanor, conduct and attitude under direct and cross-examination. In this case, the evidence in the records fully supports the trial court's finding that petitioner violated Section 27, Article IV of Republic Act No. 6425. Petitioner and his companions were sniffing *shabu* inside the Tamaraw FX parked in a street inside Rubyville Subdivision. PO2 Jessie Caranto was able to observe from a distance of two meters what petitioner and his cohorts were doing inside the vehicle, as the vehicle had transparent glass windows and considering that the vehicle was parked within five meters of a lit Meralco post. When PO2 Caranto and his companions took custody of the suspects, they obtained from the latter two