

SECOND DIVISION

[G.R. NO. 162052, January 13, 2005]

**ALVIN JOSE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 22289 affirming with modification the Decision^[2] of the Regional Trial Court of Calamba, Laguna, Branch 36, convicting the accused therein of violation of Section 21(b), Article IV in relation to Section 29, Article IV of Republic Act No. 6425, as amended.

The records show that Alvin Jose and Sonny Zarraga were charged with the said crime in an Information, the accusatory portion of which reads:

That on or about November 14, 1995, in the municipality of Calamba, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, not being licensed or authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to other person METHAMPHETAMINE HYDROCHLORIDE (or shabu) weighing 98.40 grams, a regulated drug, and in violation of the aforestated law.

CONTRARY TO LAW.^[3]

The accused, assisted by counsel, pleaded not guilty to the charge.

As culled by the trial court, the evidence of the prosecution established the following:

... [O]n November 14, 1995, P/Supt. Joseph R. Castro of the Fourth Regional Narcotics Unit received an information from an unnamed informant. Said unnamed informant was introduced to him by former Narcom P/Senior Inspector Recomo. The information was that a big time group of drug pushers from Greenhills will deliver 100 grams of shabu at Chowking Restaurant located at Brgy. Real, Calamba, Laguna.

Acting on such report, SPO1 Bonifacio Guevarra was assigned to act as the poseur-buyer. SPO2 William Manglo and SPO2 Wilfredo Luna were the other members of the team. SPO1 Guevarra was provided with marked money consisting of a P1,000.00 bill on top of a bundle of make-believe "money bills" supposedly amounting to P100,000.00. P/Supt. Joseph R. Castro, SPO2 William Manglo and Wilfredo Luna went to the place on a Mitsubishi Lancer while SPO1 Guevarra and the informant

boarded an L-300 van. They arrived at the Chowking Restaurant at about 11:00 in the morning. They positioned their cars at the parking area where they had a commanding view of people going in and out (TSN, October 3, 1996, pp. 2-8 and TSN, July 11, 1996, pp. 4-7).

It was about 4 o'clock in the afternoon when a Toyota Corolla with Plate No. UBV-389 arrived. Sonny Zarraga was the driver with Alvin Jose. The unnamed informant approached and talked to Sonny Zarraga. Then, the informant called SPO1 Bonifacio Guevarra and informed the latter that Sonny Zarraga had with him 100 grams of *shabu*. SPO1 Bonifacio Guevarra offered to buy the *shabu*. Sonny Zarraga asked SPO1 Bonifacio Guevarra if he had the money to buy 100 grams of *shabu*. Guevarra responded in the affirmative. He showed the aforesaid bundle of "money bills." Sonny Zarraga then asked Alvin Jose to bring out the *shabu* and handover (sic) to Bonifacio Guevarra. SPO1 Bonifacio Guevarra, in turn, handed the bundle of "money bills."

Guevarra scratched his head, the pre-arranged signal to signify that the transaction was consummated (TSN, July 30, 1996, pp. 3-8). Immediately thereafter, William Manglo and Wilfredo Luna approached and introduced themselves as Narcom Operatives. They arrested Sonny Zarraga and Alvin Jose. The buy-bust bundle of "money bills" and the *shabu* were recovered. The two were brought to Camp Vicente Lim for investigation. Edgar Groyon conducted the investigation. The *shabu* was brought to the PNP Crime Laboratory for examination (TSN, July 30, 1996, pp. 9-10 and TSN, October 3, 1996, pp. 9-13). P/Senior Inspector Mary Jean Geronimo examined the *shabu*. She reported and testified that the specimen, indeed, was a second or low grade methamphetamine hydrochloride (TSN, July 30, 1996, pp. 31-36).^[4]

On the other hand, the accused therein were able to establish the following facts:

Sonny Zarraga and Alvin Jose claimed that, on November 13, 1995, they were at SM Mega Mall (sic), Mandaluyong, Metro Manila, to change money. Suddenly, a person with a hand bag appeared and ordered them to handcuff themselves. They were later able to identify three of these people as Police Supt. Joseph Roxas Castro, SPO3 Noel Seno and a certain Corpuz. They were all in civilian clothes.

They proceeded to where Sonny Zarraga's car was parked. Sonny Zarraga was forced to board another car while another person drove Sonny Zarraga's car with Alvin Jose as passenger. They drove towards Greenhills. They were eventually blindfolded. On the way to Greenhills, one of the men opened the gloves compartment of Sonny Zarraga's car. One of the men saw a substance inside the said compartment. He tasted it. Said person asked Sonny Zarraga if he could come up with P1.5 Million peso (sic). Col. Castro even showed the picture of Sonny Zarraga's mother-in-law who was supposed to be a rich drug pusher.

They ended up inside a room with a lavatory. While inside the said room, Sonny Zarraga's cellular phone rung. It was a call from Sonny Zarraga's wife. Col. Castro talked to Pinky Zarraga and asked her if she could pay

P1.5 Million as ransom for the release of Sonny Zarraga. Sonny Zarraga instead offered to withdraw money from the bank in the amount of P75,000.00. The agreement was that in the bank, Pinky Zarraga would withdraw the money and deliver it to Col. Castro in exchange for Sonny Zarraga's release. The agreement did not materialize. Col. Castro and Pinky Zarraga met inside the bank but Pinky Zarraga refused to withdraw the money as Sonny Zarraga was nowhere to be seen. There was a commotion inside the bank which prompted the bank manager to call the police.

Col. Castro left the bank in a hurry, passed by for Alvin Jose who was left at the room and brought them to Camp Vicente Lim. There, they were investigated.

The defense claimed that SPO3 Noel Seno got Sonny Zarraga's jewelry, P85,000.00 in cash and Sonny Zarraga's car spare tire, jack and accessories. Noel Seno was even able to withdraw the P2,000.00 using Sonny Zarraga's ATM card.^[5]

On June 10, 1998, the trial court rendered judgment convicting both accused of the crime charged and sentencing each of them to an indeterminate penalty. The *fallo* of the decision reads:

WHEREFORE, this Court finds both the accused Sonny Zarraga and Alvin Jose guilty beyond reasonable doubt, for violation of R.A. 6425, as amended, and is hereby sentenced to suffer the penalty of imprisonment of, after applying the Indeterminate Sentence Law, six (6) years and one (1) day to ten (10) years.

Both accused are hereby ordered to pay the fine of P2 million each and to pay the cost of suit.

In the service of sentence, the preventive imprisonment undergone both by the accused shall be credited in their favor.

Atty. Christopher R. Serrano, Branch Clerk of Court, is hereby ordered to deliver and surrender the confiscated Methamphetamine Hydrochloride to the Dangerous Drugs Board.

SO ORDERED.^[6]

On appeal to the CA, the accused-appellants averred that the trial court erred as follows:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE EVIDENCE PRESENTED BY THE PROSECUTION.

II

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THAT THE MERE PRESENTATION OF THE *SHABU* IN COURT IS NOT SUFFICIENT TO

FIND, WITH ABSOLUTE CERTAINTY, THAT THE APPELLANTS COMMITTED THE CRIME OF SELLING PROHIBITED DRUGS, ESPECIALLY WHEN THE IDENTITY OF THE DRUG WAS NOT PARTICULARLY SET OUT IN THE TESTIMONY OF THE PROSECUTION WITNESSES.

III

EVEN GRANTING THAT THE TRIAL COURT CORRECTLY FOUND THE APPELLANTS GUILTY OF THE CRIME CHARGED AGAINST THEM:

(a) THE TRIAL COURT DID NOT IMPOSE THE PROPER PENALTY AGAINST THEM.

(b) EACH OF THE APPELLANTS CANNOT BE MADE TO PAY A FINE IN THE AMOUNT OF P2 MILLION PESOS (SIC) AND THE COST OF THE SUIT.^[7]

The CA rendered judgment affirming the decision appealed from with modification. The appellate court reduced the penalty imposed on appellant Alvin Jose, on its finding that he was only thirteen (13) years old when he committed the crime; hence, he was entitled to the privileged mitigating circumstance of minority and to a reduction of the penalty by two degrees. The appellant filed a motion for reconsideration, alleging that since the Information failed to allege that he acted with discernment when the crime was committed and that the prosecution failed to prove the same, he should be acquitted. The appellate court denied the motion.

Appellant Jose, now the petitioner, filed his petition for review on certiorari, alleging that –

THE COURT OF APPEALS GRAVELY ERRED IN NOT ACQUITTING PETITIONER DESPITE (1) THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT PETITIONER, WHO WAS ONLY 13 YEARS OLD WHEN THE CRIME WAS ALLEGEDLY COMMITTED BY HIM IN CONSPIRACY WITH CO-ACCUSED SONNY ZARRAGA, ACTED WITH DISCERNMENT, AND (2) THE ABSENCE OF A DECLARATION BY THE TRIAL COURT THAT PETITIONER SO ACTED WITH DISCERNMENT, PURSUANT TO THE APPLICABLE PROVISIONS OF THE REVISED PENAL CODE AND THE ESTABLISHED JURISPRUDENCE.^[8]

The petitioner asserts that, under paragraph 3, Article 12 of the Revised Penal Code, a minor over nine (9) and under fifteen (15) years of age at the time of the commission of the crime is exempt from criminal liability unless he acted with discernment, in which case he shall be proceeded against in accordance with Article 192 of Presidential Decree (P.D.) No. 603, as amended by P.D. No. 1179, as provided for in Article 68 of the Revised Penal Code. He avers that the prosecution was burdened to allege in the Information and prove beyond reasonable doubt that he acted with discernment, but that the prosecution failed to do so. The petitioner insists that the court is mandated to make a finding that he acted with discernment under paragraph 1, Article 68 of the Revised Penal Code and since the CA made no such finding, he is entitled to an acquittal.

For its part, the Office of the Solicitor General (OSG) asserts that the allegation in the Information that the petitioner and his co-accused conspired and confederated

to sell the *shabu* subject of the Information sufficiently avers that the petitioner acted with discernment; hence, there was no need for the public prosecutor to allege specifically in the Information that the petitioner so acted. It contends that it is not necessary for the trial and appellate courts to make an express finding that the petitioner acted with discernment. It is enough that the very acts of the petitioner show that he acted knowingly and was sufficiently possessed with judgment to know that the acts he committed were wrong.

The petition is meritorious.

Under Article 12(3) of the Revised Penal Code, a minor over nine years of age and under fifteen is exempt from criminal liability if charged with a felony. The law applies even if such minor is charged with a crime defined and penalized by a special penal law. In such case, it is the burden of the minor to prove his age in order for him to be exempt from criminal liability. The reason for the exemption is that a minor of such age is presumed lacking the mental element of a crime – the capacity to know what is wrong as distinguished from what is right or to determine the morality of human acts; wrong in the sense in which the term is used in moral wrong.^[9] However, such presumption is rebuttable.^[10] For a minor at such an age to be criminally liable, the prosecution is burdened^[11] to prove beyond reasonable doubt, by direct or circumstantial evidence, that he acted with discernment, meaning that he knew what he was doing and that it was wrong.^[12] Such circumstantial evidence may include the utterances of the minor; his overt acts before, during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or his hiding the corpus delicti.

In the present case, the prosecution failed to prove beyond reasonable doubt that the petitioner, who was thirteen (13) years of age when the crime charged was committed, acted with discernment relative to the sale of *shabu* to the poseur-buyer. The only evidence of the prosecution against the petitioner is that he was in a car with his cousin, co-accused Sonny Zarraga, when the latter inquired from the poseur-buyer, SPO1 Bonifacio Guevarra, if he could afford to buy *shabu*. SPO1 Guevarra replied in the affirmative, after which the accused Zarraga called the petitioner to bring out and hand over the *shabu* wrapped in plastic and white soft paper. The petitioner handed over the plastic containing the *shabu* to accused Zarraga, who handed the same to the poseur-buyer:

Q Whom did you approach to buy the *shabu*?

A The two of them, Sir.

Q While the two of them was (*sic*) sitting inside the car, what did you tell them?

A They asked me if I can afford to buy the 100 grams, Sir.

Q And what was your response?

A I answer in (*sic*) affirmative, Sir.

Q And what happened next?

A After that I showed my money, Sir.