

FIRST DIVISION

[G.R. No. 193388, July 01, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO BOCADI Y APATAN, ACCUSED, ALBERTO BATICOLON Y
RAMIREZ, ACCUSED-APPELLANT.**

D E C I S I O N

PEREZ, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the 29 May 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00709. In that Decision, the CA affirmed the Regional Trial Court's (RTC) 15 February 2007 Decision in Criminal Case No. 17494 finding the accused-appellant Alberto Baticolon y Ramirez (Baticolon), together with Rodolfo Bocadi y Apatan (Bocadi), guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

Accused-appellant Baticolon, together with Bocadi, was charged before RTC, Branch 30, Dumaguete City with violation of Section 5, Article II of R.A. No. 9165 in an information that reads:

That on or about the 1st day of March 2005, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually aiding one another, not being authorized by law, did then and there, wilfully (sic), unlawfully, and feloniously sell and deliver to an NBI poseur buyer one (1) heat sealed transparent plastic sachet containing 0.03 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called *shabu*, a dangerous drug.

Contrary to Section 5, Article II of R.A. 9165.^[2]

Having been found in possession of one (1) heat-sealed transparent plastic sachet containing 0.17 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called *shabu*, Bocadi was separately charged for violation of Section 11, Article II of R.A. No. 9165.

Upon arraignment, the two accused, assisted by counsel, pleaded not guilty to the offenses charged. The two cases were consolidated and thereafter trial on the merits ensued.

Version of the Prosecution

At around 4:30 o'clock in the afternoon of 1 March 2005, Special Investigator Arnaldo Fineza (SI Fineza) and SRA Miguel Dungog (Agent Dungog) of the National Bureau of Investigation (NBI) received information from a confidential asset regarding the open sale of *shabu* in *Barangay* Looc. After verification of the information received, a team was formed to conduct a buy-bust operation wherein SI Fineza was designated as the poseur buyer to handle the marked money.

Before proceeding at the target area, a briefing was conducted and the office of the Philippine Drug Enforcement Agency (PDEA) was informed of the operation.

SI Fineza, together with two informants, went to *Barangay* Looc. As they reached the *locus criminis*, they were met by four men, one of whom was identified by the informant as Baticolon. A man later identified as Bocadi offered them *shabu*. This led to the agreement for the purchase of P300.00 worth of the illicit drug. Bocadi then went inside a house, and when he came back, he gave to SI Fineza one transparent sachet of suspected *shabu*. Simultaneously, SI Fineza handed over the marked bills to Baticolon who was then nearer to him.

Thereafter, the group immediately arrested Bocadi. During this time the other suspects, including Baticolon, were prompted to scatter and escape. SI Fineza and one of the informants pursued and caught up with Baticolon who ran inside a nearby house. Baticolon was apprehended and dragged back to the *locus criminis*. SI Fineza informed the accused of the nature of their arrest and of their constitutional rights. SI Fineza then pre-marked the sachet of suspected *shabu*.

SI Fineza then physically searched Bocadi and discovered from him another sachet of suspected *shabu*. This was also pre-marked by SI Fineza. SI Fineza also recovered the marked money from Baticolon after a search was made on the latter's person.

Subsequently, the suspects, as well as the seized and recovered items, were brought to the NBI Office where these were photographed and inventoried. The inventory was prepared, signed and witnessed by SkyCable media man Juancho Gallarde, *Barangay* Looc Kagawad Rogelio Talavera, Agent Dungog and PDEA representative SPO1 Manuel Sanchez.

The seized items were then brought to the Negros Oriental PNP Provincial Crime Laboratory for laboratory examination. Tests results revealed that the contents of the two confiscated sachets yielded positive for methamphetamine hydrochloride or more commonly known as *shabu*. The urine samples from the two accused also confirmed the presence of *shabu*.^[3]

Version of the Defense

Both accused denied the allegations against them. The defense claimed that on 1 March 2005, Baticolon was merely resting in his house when he heard someone call out his name. When Baticolon responded, a man by the name of Walter Adarna (Walter) barged inside his house and yanked him out. Walter is allegedly a known police asset with whom Baticolon had a previous altercation. While outside, Walter punched Baticolon on the stomach and told the latter that he can finally exact his revenge. Thereafter, Walter bodily searched Baticolon and took his wallet. Baticolon

was thereafter handcuffed and brought to the NBI office together with co-accused Bocadi. Baticolon testified that Bocadi came into the picture only when the latter was asked by Walter to pinpoint his house. Baticolon's version was corroborated by defense witness May-May Artus, a neighbor of Baticolon who allegedly saw the entire incident.^[4]

Ruling of the RTC

On 15 February 2007, the trial court rendered a Decision^[5] finding accused Bocadi and Baticolon guilty beyond reasonable doubt of the offense of illegal sale of *shabu* and sentenced them to suffer the penalty of life imprisonment and to each pay a fine of Five Hundred Thousand Pesos (P500,000.00.). Bocadi was also found guilty beyond reasonable doubt of the offense of illegal possession of 0.17 gram of *shabu* and sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The trial court held that the elements of illegal sale of drugs were clearly established through the evidence presented by the prosecution. It ruled that the prosecution was able to prove the fact that both accused were caught in *flagrante delicto* in a valid buy-bust operation. It noted that the defense of denial offered by the accused cannot overturn the presumption of regularity in the performance of official duties accorded to the apprehending officers.

The trial court likewise held that the acts of the accused demonstrated the presence of conspiracy. It averred that the conduct of the two accused during the entrapment revealed a common design or community of interest between them as they acted in concert in committing the crime.

The Ruling of the Court of Appeals

Only Baticolon appealed the Decision of the RTC. On intermediate appellate review, the CA found no reason to disturb the findings of the RTC and upheld *in toto* its ruling. The appellate court was convinced that the testimonial and object evidence on record amply support the RTC's finding that the guilt of Baticolon has been proven beyond reasonable doubt.^[6] It agreed with the RTC that credence should be accorded to the testimonies of the prosecution witnesses and in holding that the apprehending officers complied with the proper procedure in the custody and disposition of the seized drugs.

Issues

Whether the trial courts erred in upholding the existence and validity of the buy bust operation conducted by the NBI.

Whether the trial courts erred in ruling that conspiracy to sell illegal drugs was established by the prosecution.

Whether the trial courts erred in convicting Baticolon of the crime charged despite the fact that his guilt was not proven beyond reasonable doubt.^[7]

Our Ruling

We find the appeal bereft of merit.

In the prosecution of a case of illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.^[8]

The evidence for the prosecution clearly established all these elements. The prosecution proved that a valid buy-bust operation was conducted with SI Fineza as the buyer and Baticolon, in connivance with Bocadi, as the sellers of the *shabu*. Likewise, the prosecution presented in evidence the plastic sachet containing *shabu* as the object of the sale and proved that P300.00 was received as consideration thereof. Finally, the delivery of the *shabu* sold and its payment were clearly testified to by the prosecution witnesses.

Baticolon's defense which is anchored principally on denial and frame-up cannot be given credence. It does not have more evidentiary weight than the positive assertions of the prosecution witnesses. His defense is unavailing considering that he and his cohort were CEiught in *flagrante delicto* in a legitimate buy-bust operation. This Court has ruled that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.^[9]

We agree with the trial court that the testimony of prosecution witness SI Fineza not only established the fact of sale of *shabu*, but also the fact that Baticolon and Bocadi acted in concert in committing the crime, thus:

Pros. Zerna -

DIRECT EXAMINATION

x x x x

Q: What transpired when you arrived at Barangay Looc?

A: Arriving at the vicinity sir after entering a narrow pathway, a group of men whom one of them was positively identified by the informant as Alberto Baticolon and we approached them and then there was one man who was wearing black sleeveless shirt and shorts who offered us shabu.

Q: Can you still remember how many men were in this group?

A: [There] were four of them.

Q: And what were they doing before you approached them?

A: Maybe they were talking to each other sir.

Q: When you said one of them asked or offered to you a sachet of shabu, what then did you do?

A: We agreed that we were going to buy sachet of shabu worth P300 and this man wearing black T-shirt sir went inside the house leaving the three of them; one of them beside me.

Q: You mean to say, you first gave your money before this man

went into the house?

A: No sir.

Q: You did not give the money first?

A: No sir.

Q: And when you said you would buy P300 worth of *shabu* and this man went into the house, did he come back?

A: Yes sir, he went out and then he handed over to me sachet of shabu and then the money, I gave it to the person standing beside the door wearing white sando and maong shorts.

Q: How many sachets were handed over to you?

A: Only one sachet sir.

x x x x

Q: Now you said after you have received the sachet handed to you by accused Rodolfo Bocadi you gave the money to another person, is that correct?

A: Yes sir.

Q: Do you know this other person to whom you gave the money?

A: The man wearing white sando and maong shorts sir was positively identified by our informant as Alberto Baticolon.

x x x x

Q: You said, Mr. Witness, that you gave to Alberto Baticolon P300?

A: Yes sir.

Q: Is this the same money that was handed to you by Miguel Dungog in your office?

A: Yes, that is the marked money sir.

Q: After you have handed the P300 marked money, what happened next?

A: We immediately made an arrest of Rodolfo Bocadi sir and this Alberto Baticolon, upon seeing the arrest of Rodolfo Bocadi, ran inside the nearby house sir.

x x x x

Q: So, as you said, when you arrested Mr. Bocadi, Mr. Baticolon ran but you were still able to arrest him?

A: Yes sir.

Q: How were you able to arrest Mr. Baticolon?

A: After he entered the house, we were able to catch him sir.

Q: Where did you bring him after you caught Mr. Baticolon?

A: We brought Alberto Baticolon near Rodolfo Bocadi and that time I informed them the reason for their arrest and their Constitutional Rights sir.^[10]

The aforesaid testimony gave a complete picture on how Baticolon and Bocadi connived with each other in the consummation of the offense of illegal sale of a dangerous drug. The trial court found SI Fineza's testimony to be positive, clear and credible, especially during cross-examination where he remained steadfast and unwavering. His testimony, being candid and straightforward, is sufficient for a finding of guilt.

On the other hand, the trial court did not err in not giving much weight on the testimony of May-May Artus, the neighbor of Baticolon who testified for the defense, since she buckled and even admitted on cross-examination that she cannot remember the description of the apprehending officer who accompanied the informant and that she was not very sure of the details of the arrest of Baticolon and Bocadi.^[11]