

FIRST DIVISION

[G.R. No. 178065, February 20, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARNOLD TAPERE Y POLPOL, ACCUSED-APPELLANT.**

DECISION

BERSAMIN, J.:

An accused arrested during a valid entrapment operation is not entitled to an acquittal on the ground that his arrest resulted from instigation.

Arnold P. Tapere was charged with, tried for and found guilty of illegally selling *shabu* in violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) by the Regional Trial Court (RTC), Branch 6, in Iligan City, which sentenced him to suffer life imprisonment and to pay a fine of P500,000.00.

On appeal, the Court of Appeals (CA) affirmed the conviction and the prescribed penalty through the decision promulgated on February 27, 2007.^[1]

Hence, this appeal.

Antecedents

The information dated September 3, 2002 charged Tapere with illegally selling *shabu* in violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*), as follows:

That on or about September 2, 2002, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver one (1) plastic sachet containing Methamphetamine Hydrochloride, a dangerous drug commonly known as Shabu.

Contrary to and in violation of R.A. 9165, x x x.^[2]

The evidence for the State showed the following.

At around 7:30 p.m. on September 2, 2002, elements of the Philippine Drug Enforcement Agency (PDEA) arrested Tapere for selling *shabu* to a poseur buyer during a buy-bust operation conducted against him in Purok San Antonio, Iligan City. Prior to the buy-bust operation, Tapere was already included in the PDEA's drug

watch list as a drug pusher based on the frequent complaints made against him by residents of Purok San Antonio, Iligan City. It appears that SPO2 Diosdado Cabahug of the PDEA, a neighbor, had warned Tapere to stop his illegal activities, but he apparently ignored the warning and continued to sell *shabu* in that locality. Such continuing activity on the part of Tapere was the subject of the report of PDEA informant Gabriel Salgado.

In order to determine the veracity of the report of Salgado, PDEA agents conducted an investigation and surveillance of the activities of Tapere on August 30, August 31, and September 1, 2002, during which a test buy confirmed the veracity of the report. With the positive result of the test buy, the agents decided to conduct a buy-bust operation against Tapere on September 2, 2002. Consonant with their standard procedure, the agents first secured a certification from the Office of the City Prosecutor regarding the buy-bust money to be used during the buy-bust operation. They presented to City Prosecutor II Roberto Z. Albulario, Jr. of Iligan City the P100.00 bill bearing serial number YU859011 (Exhibit E-1) for that purpose,^[3] and said public prosecutor then issued the certification (Exhibit E) to the effect that the bill (Exhibit E-1) was identical to the xerox copy previously made of the bill (Exhibit A). Armed with the certification, the agents went back to their office and held a pre-operation briefing. In attendance at that briefing were Team Leader SPO2 Edgardo Englatiera, SPO3 Jaime Bastatas, SPO2 George Salo, SPO2 Cabahug, PO1 Amado Margaja and Salgado. The team instructed Salgado to act as the poseur buyer, and gave to him the P100.00 bill (Exhibit E-1) earlier certified by the public prosecutor.

At 7:10 p.m. of September 2, 2002, the team proceeded on board the jeep of SPO2 Cabahug to Alcuizar Avenue in San Antonio, Iligan City where Tapere engaged in drug pushing. They stopped at some distance from the target area, and walked the rest of the way. They posted themselves within view of the target place, which was on the left side of the road going towards Tipanoy, Iligan City and a few meters from the Tubod Bridge. The first structure nearest the bridge on the left side of the road going towards Tipanoy was a blacksmith shop, and next to the shop was a row of stalls where fish, meat and other commodities were sold. The agents spotted Tapere vending *lanzones* along that side of the road to Tipanoy, outside the row of stalls.^[4]

With each agent being strategically posted, Salgado was signalled to approach Tapere according to the plan. Salgado went towards Tapere. The agents saw the two conversing for a brief while before Salgado handed money to Tapere. In turn, Tapere took a small heat-sealed plastic sachet from his pocket and gave it to Salgado. After accepting the sachet, Salgado made the pre-arranged signal of scratching his head to signify the consummation of the transaction. The agents rushed towards Tapere, introduced themselves as PDEA agents, and placed him in custody. They searched him and recovered the P100.00 bill (Exhibit E-1) from his right pocket.^[5] At that point, he voluntarily produced three more sachets of *shabu* from his pocket and handed them to SPO2 Bastatas.^[6] The agents brought Tapere to the PDEA headquarters in Camp Cabili, Tipanoy, Iligan City.

In Camp Cabili, SPO2 Englatiera immediately prepared and signed a request for laboratory examination (Exhibit B),^[7] addressed to the PNP Crime Laboratory in Iligan City to determine whether the confiscated substances contained in the four sachets marked "AT-1" to "AT-4" contained dangerous drugs.^[8] On the following day, PO1 Margaja delivered to the PNP Crime Laboratory the request and the

confiscated articles in four sachets marked "AT-1" to "AT-4".

The request for laboratory examination and the confiscated articles were received in due course at the PNP Crime Laboratory, and turned over by the receiving personnel to Sr. Police Insp. Mary Leony M. Jabonillo, the Chief of the Crime Laboratory, who conducted the laboratory examination. She issued Chemistry Report No. D-083-02 on September 4, 2002 (Exhibit C),^[9] whereby she confirmed the presence of methamphetamine hydrochloride or *shabu* in the four heat-sealed transparent plastic sachets, giving the weight and marking as follows: "AT-1" – 0.09 gram; "AT-2" – 0.51 gram; "AT-3" – 0.03 gram; and "AT-4" – 0.10 gram.^[10] The chemistry report was duly approved by Police Supt. Liza Madeja Sabong, Chief of the PNP Regional Crime Laboratory Service.

On the other hand, Tapere denied the accusation. He and his wife rendered their own version of the incident that led to his arrest.

On September 2, 2002, at around 6:30 p.m. to 7:00 p.m., Tapere went to his usual place in Tubod to vend *lanzones* near the fish stalls. His wife followed him there to ask what she would prepare for their lunch. While he was there, Salgado, his neighbor of four years^[11] whom he knew to be a drug user currently under probation,^[12] and with whom in the past he had sniffed *shabu* in Salgado's house, approached and requested him to buy *shabu* for Salgado's use.^[13] They talked beyond the hearing distance of his wife. At first, he refused Salgado's request, but he ultimately agreed to do the errand, explaining: *I don't want him to be angry at me, I don't want trouble and besides he is my neighbor so whenever he requested me to buy shabu I do it.*^[14] With Salgado giving him the money, he asked his wife's permission to go downtown to do something. He rode on a jeepney to go to Saray, also in Iligan City, where he bought a sachet of *shabu*.^[15] In the meantime, the wife was left to tend to the sale of the *lanzones*. Salgado, whose name the wife did not then know, went to a nearby small store.

When he returned after an hour, Tapere did not find Salgado in the stall but in a nearby small store. He handed the *shabu* there. Salgado then immediately left. Tapere went back to his stall after buying a bottle of Coca Cola at the store. Upon returning to his stall, a multi-cab vehicle came to stop there and five men alighted, two of whom he immediately recognized as "Sir Englatierra and Cabahug." The men, all armed, surrounded him, pointing their .45 caliber pistols at him. They frisked him, put handcuffs on him, and took him to the PDEA office. There, they produced a bill, noted its serial number and confirmed that it was the bill used in the transaction. They next brought him to the PNP Central Office in Iligan City where he was detained.^[16] At about 10:00 p.m. that same night, his wife visited him in the jail and gave him fresh clothes to replace his clothes wet from the rain. On the next day, he was taken to the Office of the City Prosecutor and from there to the City Jail.

Decision of the RTC

After trial, on April 15, 2003, the RTC rendered judgment convicting Tapere as charged,^[17] to wit:

WHEREFORE, the court finds the accused Arnold Tapere y Polpol GUILTY beyond reasonable doubt for violation of Section 5, Article II of Rep. Act No. 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (P500,000.00) PESOS without subsidiary imprisonment in case of solvency.

Having been under preventive detention since September 3, 2002 until the present, the period of such imprisonment shall be credited in full in favor of the accused in the service of his sentence.

The four (4) sachets of shabu are ordered confiscated in favor of the government to be disposed of pursuant to the provisions of Section 21, Article II, R.A. No. 9165.

SO ORDERED.

The RTC pointed out that the PDEA agents had arrested Tapere following a legitimate buy-bust operation conducted in a methodical manner; that on the other hand, Tapere did not plausibly explain why he had agreed to run the errand to buy *shabu* for Salgado, because he did not show that he had owed Salgado any great personal debt of gratitude that led him to ignore his personal risk and that put him in no position to refuse Salgado's request; and because he did not also show that Salgado exercised an overpowering influence by intimidation or otherwise that rendered him incapable of refusing Salgado's bidding.

Ruling of the CA

On intermediate review, Tapere assailed his conviction, stating that the RTC gravely erred in not ruling that instigation, not entrapment, had led to his apprehension.^[18]

On February 27, 2007, however, the CA affirmed the conviction of Tapere,^[19] declaring that the Prosecution competently established the details of the illegal sale of *shabu* between Tapere, as the seller, and Salgado, as the poseur buyer; that the PDEA agents were not shown to have harbored any malicious motives for arresting Tapere; and that the non-presentation of Salgado as the poseur buyer did not weaken the case against Tapere considering that the members of the buy-bust team who testified against Tapere had witnessed the consummation of the illegal sale of *shabu*.

Hence, Tapere appeals to the Court.

Issue

Tapere reiterates to us that his apprehension was the product of an instigation, not entrapment; and that he should consequently be acquitted because instigation was an absolatory cause.

Ruling of the Court

The appeal has no merit.