

FIRST DIVISION

[G.R. No. 187157, February 15, 2012]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL CLARITE Y SALAZAR, ACCUSED-APPELLANT.

DECISION

LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision^[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00932 dated May 9, 2008, affirming with modification the conviction of accused-appellant Arnel Clarite y Salazar for violation of Section 5, Article II of Republic Act No. 9165.

The Amended Information, dated July 25, 2002, reads:

That on or about 11 July 2002, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and feloniously sell, dispense, deliver and/or distribute four (4) plastic sachets containing white crystalline substance, tested and found out to be Methamphetamine Hydrochloride or 'shabu', a regulated drug weighing 45.8712 grams to NBI poseur-buyer, for and in consideration of P50,000, a marked money bill, Philippine currency.^[2]

The evidence of the prosecution, which included the testimonies of National Bureau of Investigation (NBI) special investigators Alfredo Romano, Jr. (Romano), Felipe Jessie Jimenez (Jimenez) and Rommel Dizon (Dizon), as well as P/Insp. Josephine Macura Clemen (Clemen) and Alejandro Cedeño (Cedeño), tended to establish the following:

On July 8, 2002, Romano received information from his "asset," Cedeño, that a certain Arnel, a supplier of illegal drugs from Cavite, is looking for a buyer of *shabu*.^[3] Romano directed Cedeño to negotiate the sale.^[4]

Cedeño communicated with accused-appellant, and the latter agreed that he would be arriving in Naga City in the morning of July 11, 2002. Accused-appellant would be carrying 50 grams of *shabu*, which will be sold to Cedeño's "financier" for P45,000.00.^[5] With the authority of Atty. Jose Doloiras, the immediate superior of Romano, the NBI special investigators devised a plan to entrap said Arnel. Romano and Jimenez prepared what they called "budol [boodle] money," counterfeit notes made out of photocopied P1000 and P500 bills. The counterfeit bills, representing a total value of P50,000.00, were dusted with fluorescent powder at the Philippine National Police (PNP) Regional Crime Laboratory, Camp Simeon Ola, Legaspi City.

On July 10, 2002, Romano was able to confirm with Cedeño that said "Arnel" was definitely arriving the following day at 8:00 a.m. at the Central Business District (CBD) terminal, Naga City.^[6]

On July 11, 2002, Romano again confirmed with Cedeño that said "Arnel" would be coming at 8:00 a.m. At around 6:00 a.m., Romano, Jimenez and Dizon were at the NBI Office. It was at this time that Dizon was informed of the operation. Before 8:00 a.m., Romano, Jimenez, Dizon and Cedeño proceeded to the CBD terminal where they posted themselves in strategic locations. Dizon was posted at a parking space, while Romano and Jimenez were near each other, close to a Dunkin Donut shop housed inside the building at the terminal.^[7]

While Romano and Cedeño were talking to each other in front of the Dunkin Donut shop, accused-appellant arrived, carrying a small bag.^[8] The informant introduced Romano to accused-appellant. Romano asked for the *shabu*. When said *shabu* was handed to Romano, accused-appellant asked for the money. This was when accused-appellant noticed that the money was fake. Romano then removed his sunglasses to signal the completion of the transaction to Jimenez and Dizon.^[9]

The NBI investigators arrested and handcuffed accused-appellant, and thereafter brought the latter to the NBI Office in Naga City. Therein, accused-appellant was booked, fingerprinted and photographed. Accused-appellant was then brought to the PNP Regional Crime Laboratory at Camp Simeon Ola, Legaspi City. P/Insp. Clemen examined the dorsal and palmar areas of accused-appellant's hands, as well as the plastic sachets handed by him to Romano. Both hands of accused-appellant were found positive for the presence of bright orange ultraviolet fluorescent powder. The plastic sachets, which had a total weight of 45.8712 grams, were positive for methamphetamine hydrochloride or *shabu*.^[10]

Only accused-appellant was able to testify for the defense. He narrated that on July 10, 2002, at around 6:00 p.m., he was sent by Mrs. Fely Gutierrez, his employer, to go to Naga City to deliver 100 grams of *shabu* to a certain Ching Lo. He was told that Ching Lo lived near the Sky Cable office and the Naga City Civic Center. On that day, he also wanted to fetch his mother-in-law from Ponong, Magarao, Camarines Sur in order that the latter may help her wife in taking care of her two children.^[11]

Accused-appellant testified that per his employer's strict instruction, someone would approach him at the Naga City Civic Center. He was supposed to give the *shabu* to said person in exchange for P110,000.00. He stressed that he was then carrying 100 grams of *shabu*, not 45.87 grams as reported by the prosecution witnesses.^[12]

Accused-appellant denied that the buy-bust operation took place. Instead, he narrated that he was aboard a tricycle at 6:00 a.m. on July 11, 2002, on his way to the Civic Center, when Romano and Jimenez apprehended him, forced him into their car and blindfolded him. While still blindfolded, Romano and Jimenez brought him to a hotel. He was told to contact his employer through a cellular phone and inform her of his arrest and that the arresting officers needed money to pay for their hotel bills. The NBI operatives were extorting money equivalent to the value of 50% of the 100 grams of *shabu*. After the accused-appellant was able to speak briefly with

his employer, the latter turned off her phone and cannot be contacted again. The NBI operatives, showing him the marked money, threatened that a drug case would be filed against him. The NBI operatives told him to hold the marked money, but he refused and was not able to hold it. Accused-appellant was brought to the NBI Office in Naga City, then to Camp Ola in Legaspi City, where he was subjected to a paraffin test. Accused-appellant was later brought back to the NBI Office when someone told him that his employer was sending money to settle his case. Accused-appellant admitted that since October 2001, he accompanied his employer around five or six times to deliver *shabu* to the aforementioned Ching Lo.^[13]

On March 18, 2004, the Regional Trial Court (RTC) of Naga City rendered its Decision^[14] finding accused-appellant guilty. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing disquisition, judgment is hereby rendered finding accused, ARNEL CLARITE y Salazar, guilty beyond reasonable doubt of the offense of violation of Sec. 5, Article II of RA 9165, and hereby sentences him to suffer the penalty of life imprisonment.

Considering that the accused has been undergoing preventive detention during the pendency of the trial in this case, let the same be credited in the service of his sentence.^[15]

On May 9, 2008, the Court of Appeals rendered its Decision affirming with modification the RTC Decision:

WHEREFORE, the appealed decision of the Regional Trial Court of Naga City (Branch 25) is AFFIRMED with MODIFICATION in that in addition to the penalty of life imprisonment imposed on accused-appellant, he is sentenced to pay a fine in the sum of P500,000.00.^[16]

Hence, this appeal, where accused-appellant adopts the same lone assignment of error it raised before the Court of Appeals:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 11, ARTICLE II, R.A. NO. 9165 DESPITE THE INADMISSIBILITY OF THE EVIDENCE OBTAINED THROUGH AN UNLAWFUL SEARCH.^[17]

Accused-appellant's main contention is that he was arrested while he was riding a tricycle and not while he was supposedly selling *shabu*. Thus, since he was not caught *in flagrante delicto*, he can only be arrested with a warrant. Consequently, according to accused-appellant, the search conducted upon him cannot be deemed to have been incidental to a lawful arrest, thus, making the evidence obtained therefrom inadmissible. In making such argument, accused-appellant challenges

the findings of fact of the trial court and the Court of Appeals which both accepted the version of the prosecution.

The present appeal must fail.

Unfortunately for accused-appellant, findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court,^[18] save only for certain compelling reasons.^[19] We perused the records of the case at bar and found no reason to disturb the findings of the courts *a quo*.

In cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers on the ground that they are presumed to have performed their duties in a regular manner. The exception is when there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties.^[20] In the case at bar, accused-appellant's only evidence of ill motive on the part of the NBI operatives is his own testimony of frame-up and extortion, a very common defense in dangerous drugs cases. We have held that such defense is viewed with disfavor, for it can be easily concocted. To substantiate such a defense, therefore, the evidence must be clear and convincing.^[21]

The trial court, which had the opportunity to observe the demeanor and conduct of Romano, Jimenez and Dizon, on one hand, and that of accused-appellant, on the other, was thoroughly convinced of the version of the prosecution in this matter. Furthermore, accused-appellant's admission in open court of being a drug courier for his employer, though not conclusive evidence of the specific act of selling *shabu* on the date and under the circumstances specified in the complaint, nevertheless constitutes circumstantial evidence of the same. By admitting the previous sales of *shabu*, accused-appellant in effect attested to his own proclivity to do such an act, as well as the accessibility to him of the object of his alleged illegal trade.

Jurisprudence holds that the elements of the crime of illegal sale of drugs are the following: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and payment therefor.^[22]

The testimonies of Romano, corroborated by his fellow NBI investigators Jimenez and Dizon and informant Cedeño established the sale and delivery by accused-appellant Clarite to Romano of what was initially believed to be 50 grams of *shabu* in four plastic sachets, in exchange for what Clarite thought was P50,000.00. Romano positively identified accused-appellant Clarite as the person who sold the plastic sachets of *shabu* to him. As for the sale itself, Romano's account was simple and clear:

PROS. SAEZ:

Q As has been admitted by the defense, you stated in your affidavit that you were able to successfully have a transaction with Arnel Clarite at CBD terminal on July 11, 2002, in the morning, using boodle money in the amount of P50,000.00. Now, can you tell the Court how did you introduce yourself to Mr. Clarite that morning?