

SECOND DIVISION

[G.R. No. 181494, March 17, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MONALYN CERVANTES Y SOLAR, ACCUSED-APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

This is an appeal from the Decision dated July 19, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00476 which affirmed the April 23, 2004 Decision in Criminal Case No. 00-181929 of the Regional Trial Court (RTC), Branch 53 in Manila. The RTC found accused-appellant Monalyn Cervantes guilty beyond reasonable doubt of violation of Section 15, Article III of Republic Act No. (RA) 6425 or the *Dangerous Drugs Act of 1972*, as amended.

The records show the following facts:

In an Information dated April 7, 2000, accused-appellant and three others were charged with violation of Sec. 15, Art. III of RA 6425 (selling or distributing a regulated drug), allegedly committed as follows:

That, on or about April 5, 2000, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused ISIDRO ARGUSON y ARENDELA, @ Tisoy, MONALYN [CERVANTES] y SOLAR @ Mona, WILSON DEL MONTE @ Wilson and RICHARD REQUIZ @ Richard, conspiring, confederating and mutually helping one another, acting in common accord, did then and there, willfully, unlawfully and feloniously, for the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS, Philippine Currency, sell, deliver and give away to a poseur-buyer, FOUR HUNDRED SEVENTY THREE POINT SEVENTY SIX (473.76) GRAMS OF METHAMPHETAMINE [HYDROCHLORIDE], commonly known as shabu, a regulated drug, without authority of law or the corresponding license therefor.

CONTRARY TO LAW.^[1]

Accused-appellant and her co-accused pleaded not guilty to the charge. In the ensuing trial, the prosecution presented in evidence the oral testimonies of William Todavia, PO3 Reynaldo Ramos of the Philippine National Police Regional Office IV (PNP R-IV), and P/Sr. Inspector Lorna Tria, a forensic chemical officer of the same regional office.

The People's version of the incident, as summarized by the CA in the decision now on appeal, is as follows:

On April 5, 2000, the Regional Special Operations Group IV (RSOG-IV), based at

Camp Vicente Lim in Calamba, Laguna, received a tip from a deep penetration agent (DPA) about a group of drug traffickers led by Isidro Arguson operating in Cavite. Acting on this bit of information, a team led by SPO2 Geronimo Pastrana, PO3 Ramos, and PO2 Emerson Balosbalos arranged a buy-bust operation to be conducted at Arguson's rest house in *Barangay* Lambingan, Tanza, Cavite.^[2] Upon arriving at the rest house, PO3 Ramos and PO2 Balosbalos, acting as poseur-buyers, were introduced by the DPA to Arguson as the buyers of PhP 500,000 worth of *shabu*, simultaneously showing him a bundle of money. Since Arguson did not have enough supply of *shabu* in the premises, he instructed the would-be-buyers to follow him to Pasay City. For the purpose, he hired a vehicle owned by Todavia.

At about three o'clock in the afternoon of that day, in front of the McDonald's branch in P. Ocampo St., Pasay City,^[3] Arguson instructed the would-be-buyers to wait for someone who will come out from the nearby Estrella St. Very much later, accused-appellant emerged from Estrella St. and approached PO3 Ramos to check if he still had the money. After being shown the money bundle, accused-appellant left, only to return a few minutes later this time with Arguson, Wilson Del Monte, who was holding a black plastic bag, and Richard Requiz. Arguson then took from Del Monte the bag, later found to contain 473.76 grams of *shabu* packed in six small self-sealing transparent bags, and handed it to PO2 Balosbalos, who in turn gave him the bundle of boodle money. Finally, PO3 Ramos gave the pre-arranged signal to indicate the consummation of the drug deal and introduced himself as policeman. Accused-appellant and her scampering companions were later arrested and brought to and booked at Camp Vicente Lim.

The black plastic bag containing the six small self-sealing bags of white crystalline substance was likewise taken to Camp Vicente Lim where PO3 Ramos prepared the booking sheets and arrest reports and the request for a qualitative analysis of the seized items. Regional Crime Laboratory Office IV Chief Inspector (C/I) Mary Jean Geronimo then conducted the standard physical and chemical examinations on the specimen referred to her.

On April 6, 2000, C/I Geronimo prepared and completed Chemistry Report No. D-115800 on the crystalline substance. Per her report, the substance tested positive for methamphetamine hydrochloride or *shabu*.

Apart from the witnesses' affidavits and other documents, the prosecution, in the hearing of March 4, 2002, offered in evidence the following exhibits,^[4] inclusive of its sub markings, which, as may be expected, were objected to by the defense: (a) **Exhibit "B"** - Chemistry Report No. D-115800 prepared by C/I Geronimo; (b) **Exhibit "C"** - Memorandum of RSOG-IV dated April 5, 2000 to the Chief, Laboratory Service, requesting for qualitative analysis of the contents of the six transparent plastic bags; (c) **Exhibits "D" and "D-1" to "D-6"** - Black plastic bag with markings; and six (6) self-sealing transparent bags allegedly containing the confiscated *shabu*; and (d) **Exhibit "F"** - Receipt of property seized signed by PO2 Balosbalos and by Todavia and PO3 Ramos as witnesses.

The CA decision likewise summarized the defense's account of what purportedly transpired, to wit:

Accused-appellant testified that after she did laundry works at her house in Estrella Street near F.B. Harrison on April 4, 2000, her youngest child asked her to go to [McDonald's], Vito Cruz branch, to buy ice cream. When they arrived thereat at about 4:30 in the afternoon, there was a commotion going on in front of the restaurant. She then saw a woman who alighted from a nearby van and pointed her out to her companions, one of whom [was] an old man boarded her inside the van causing her to lose hold of her child. Thereafter, two (2) younger male persons, whom she later came to know as DEL MONTE and REQUIZ, were also boarded into the same van. They were taken to a cemetery where another vehicle came and took them to Camp Vicente Lim, where she allegedly met ARGUSON for the first time.

On the other hand, accused DEL MONTE testified that he was a parking boy around Vito Cruz and that on the day in question, while he was watching a vehicle near [McDonald's], Vito Cruz branch, a commotion happened near his post. As he moved backward from where he stood, he was suddenly approached by a policeman who arrested him and boarded him inside a vehicle together with CERVANTES and REQUIZ, whom he did not know prior to that incident.

For his part, accused REQUIZ testified that on the date and time in question, he was riding a borrowed bicycle on his way to the Cultural Center, passing by F.B. Harrison St., when he bumped a parked van, wherefrom a man alighted and cursed him, saying "*pulis ako wag kang aalis dyan[!]* " The man left and when he returned, accused CERVANTES was with him. Thereafter, he was boarded into the van together with the other accused.^[5]

While not stated in the CA decision, Del Monte testified, like accused-appellant, that he was taken to a cemetery somewhere in Cavite where the arresting officers lingered for an hour before bringing him to Camp Vicente Lim.^[6] These testimonies remained uncontroverted. Arguson died during the course of the trial resulting in the dismissal of the case against him.^[7]

On April 23, 2004, the RTC rendered judgment acquitting Del Monte and Requiz but finding accused-appellant guilty as charged and meting upon her the penalty of *reclusion perpetua*. The *fallo* of the RTC Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Finding accused MONALYN CERVANTES Y SOLAR GUILTY beyond reasonable doubt of violation of Sec. 15, Article III, of Republic Act No. 6425 as amended, and is sentenced to *Reclusion Perpetua* and to pay a fine in the amount of Php500,000.00; and
2. Finding the prosecution's evidence insufficient to prove the guilt of accused WILSON DEL MONTE and RICHARD REQUIZ beyond reasonable doubt, and who are hereby ACQUITTED.

SO ORDERED.^[8]

On May 18, 2004, accused-appellant filed a Notice of Appeal, pursuant to which the RTC forwarded the records of the case to this Court.

Conformably with *People v. Mateo*,^[9] the Court directed the transfer of the case to the CA where it was docketed as CA-G.R. CR-H.C. No. 00476. Before the appellate court, accused-appellant urged her acquittal on the ground of "insufficiency of evidence," particularly stating that the "forensic chemist who actually conducted the laboratory examination on the specimens allegedly recovered from the accused was not presented in court x x x [and] hence, there was no clear identification of the contents of the confiscated sachets."^[10]

By its Decision^[11] dated July 19, 2007, the CA, finding the elements necessary for the prosecution of illegal sale of drugs^[12] to have sufficiently been satisfied and the identification of accused-appellant having been established, affirmed her conviction.

The CA rejected accused-appellant's lament about one Inspector Tria testifying on the chemistry report she did not prepare. As the appellate court stressed, C/I Geronimo's forensic report "carries the presumption of regularity in the performance of official functions [and] the entries thereon x x x are prima facie evidence of the facts therein stated." The CA added the observation that absent any evidence overturning the presumption of regularity in the performance of official functions, the probative value and admissibility of the forensic report prepared by C/I Geronimo, who had resigned from the service, must be upheld even if she did not personally testify in court.

On August 17, 2007, accused-appellant filed a Notice of Appeal of the CA affirmatory decision.

On March 24, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case on the basis of the records already submitted, thus veritably reiterating their principal arguments raised in the CA, which on the part of accused-appellant would be:

THE [CA] GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSE CHARGED DESPITE THE INSUFFICIENCY OF EVIDENCE FOR THE PROSECUTION.

For its part, the People, thru the Office of the Solicitor General, counters that the prosecution has established that the buy-bust transaction took place, has identified accused-appellant and her complicity in Arguson's illegal trade, and has presented the *corpus delicti*, as evidence.

The Court's Ruling

After a circumspect study, the Court resolves to acquit accused-appellant, considering certain circumstances engendering reasonable doubt as to her guilt.

We start off with the most basic, the testimony of the prosecution's principal witness, PO3 Ramos, who identified accused-appellant and described her role in the conspiracy to sell *shabu*. In the witness box, PO3 testified that, after being told by Arguson to wait for someone who will come out from the street whence Arguson would enter, accused-appellant emerged from said street, checked on the purchase

money, asked the operatives to wait, and later re-appeared. What happened next is captured by the following answers of PO3 Ramos to the prosecutor's questions:

Q: What did you see when Cervantes already returned?
A: When Monalyn return the one holding the plastic bag was Wilson, sir.

Q: Wilson? **A:** Yes, sir, together with Richard, Wilson, Arguson, they were four (4).

Atty. Cruz: Your honor, may we move to strike that out x x x.

Fiscal Formoso: That's part of the answer x x x now, when all these accused here return with Monalyn Cervantes, what happen[ed]?

A: Arguson took the plastic bag from Wilson, sir and handed it to Balosbalos, Balosbalos gave Arguson the boodle money while I flash the signal x x x then we apprehended them.^[13]

As may be noted, PO3 Ramos categorically stated that Del Monte was among the four who emerged with Arguson from a street. Without hesitation, PO3 Ramos pointed to Del Monte as the one holding the plastic bag allegedly containing the prohibited substance until Arguson took it from him and handed it over to PO2 Balosbalos. There is no suggestion that accused-appellant, while at the crime scene, ever handled the merchandise or its container. Yet, the trial court acquitted Requiz and Del Monte, but convicted accused-appellant, stating: "Clearly, accused Monalyn Cervantes' complicity with accused Isidro Arguson in the sale of *shabu* has been established by the testimony of PO3 Ramos."^[14] But two paragraphs later, the RTC went on to write:

x x x While PO3 Ramos testified that the bag was initially held by accused Del Monte and then taken from him by accused Arguson, there is no other evidence which can support the charge of conspiracy with Arguson and Cervantes x x x. The court does not find the evidence sufficient to pass the test of moral certainty to find accused Del Monte liable as charged. Even if PO3 Ramos saw him to have held the bag for Arguson, it could have been possible that he was merely asked by Cervantes or Arguson to carry the bag.^[15]

Before us then is a situation where two persons--**accused-appellant**, a laundry woman; and **Del Monte**, a car park boy, in the company of the ostensible pusher, Arguson, during the actual buy bust--are being indicted, on the basis alone of the testimony of a witness, with confederating with each and several others to sell *shabu*. The overt acts performed by accused-appellant, as indicia of conspiracy, consisted of allegedly verifying whether the poseur-buyer still had the purchase money, disappearing from the scene and then coming back with the principal player. On the other hand, Del Monte came accompanying Arguson carrying the drug-containing plastic bag no less. As between the two acts performed, carrying the bag would relatively have the more serious implication being in itself a punishable act of possession of regulated drugs. Both offered the defenses of denial and instigation,