

THIRD DIVISION

[G.R. No. 184957, October 27, 2009]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GRACE VENTURA Y NATIVIDAD, ACCUSED-APPELLANT.

DECISION

CHICO-NAZARIO, J.:

For Review under Rule 45 of the Revised Rules of Court is the Decision^[1] dated 30 June 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02127, entitled *People of the Philippines v. Grace Ventura y Natividad* affirming the Decision^[2] rendered by the Regional Trial Court (RTC), Branch 78, Malolos, Bulacan, dated 20 January 2006 in Criminal Case No. 3244-M-2003, convicting Grace Ventura y Natividad (accused-appellant) of violation of Section 5, in relation to Section 26, Article II of Republic Act No. 9165.^[3] Accused-appellant was meted the penalty of life imprisonment and a fine of P500,000.00.

In an Information dated 12 August 2003, accused-appellant Grace Ventura y Natividad and Danilo Ventura y Laloza were charged before the RTC of Malolos, Bulacan with illegal sale of *shabu* in violation of Section 5, in relation to Section 26, Article II of Republic Act No. 9165. The case was docketed as Criminal Case No. 3244-M-2003 and raffled to Branch 78 of the RTC of Malolos, Bulacan. The Information contained the following allegations:

The undersigned Asst. Provincial Prosecutor accuses Grace Ventura y Natividad and Danilo Ventura y Laloza @ Danny of Violation of Sec. 5, in relation to Sec. 26, Art. II of R.A. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," committed as follows:

That on or about the 10th day of August 2003, in the City of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, in conspiracy with each other, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride weighing 0.124 gram.^[4]

During arraignment, both accused entered "NOT GUILTY" pleas. Trial on the merits ensued.

The prosecution presented as witnesses Police Officer (PO) 2 Lorenzo Sarmiento (Sarmiento) and PO3 Leonardo Magsakay (Magsakay). Accused-appellant Grace

Ventura and Bernard Ventura were witnesses for the defense.

PO2 Sarmiento, 37 years old, married, police officer and a resident of Sagrada Familia, Hagonoy, Bulacan, and PO3 Magsakay, 40 years old, married, police officer, and a resident of Sikatuna St., San Gabriel, Malolos, Bulacan, testified to receiving information from concerned citizens of Sto. Rosario, Malolos, Bulacan, and reports received by Department of Interior and Local Government (DILG) Secretary Joey Lina on the alleged involvement of Danilo alias "Danny" (father of accused-appellant) and accused-appellant in illegal drugs trade. On the strength of this confidential information, a surveillance operation was conducted by operatives of the Malolos Police Station in Malolos, Bulacan, two days before the buy-bust operation. Results of the surveillance operation were relayed to the chief of police, who thereafter instructed them to conduct a buy-bust operation against accused-appellant and Danilo. The team was composed of PO2 Sarmiento, PO1 Michael Silla, PO3 Magsakay, and a police asset.

On 10 August 2003, a briefing was conducted among the members of the buy-bust team. During said briefing, PO2 Sarmiento placed the markings "LCS," which correspond to his initials, on the buy-bust money. The marked money consisted of three P100.00 bills and one P50.00 bill. A police asset was also designated as poseur-buyer. Both the buy-bust operation and serial numbers of the bills to be used as buy-bust money were recorded in the police blotter. Prior to proceeding with the operation, the buy-bust team coordinated with the Philippine Drug Enforcement Agency (PDEA) and was assigned a control number for the operation, with its pre-operational sheet signed by Hashim Maung of PDEA.

After being briefed on the operation, the buy-bust team proceeded to the target site. While the members of the team positioned themselves at the alley leading towards the house of accused-appellant, the police asset went directly to the gate of Danilo and accused-appellant. The gate was approximately ten meters away from them.

From where they were standing, the police officers saw the police asset knocking at the gate. Thereupon, Danilo stepped out. The police asset handed the marked money to Danilo. Danilo closed the gate and went inside the house. Moments later, Grace (accused-appellant) went out and handed something to the police asset. Indicating the sale was consummated, the police asset then executed his pre-arranged signal by touching his hair with his right hand. The police officers rushed towards the gate but accused-appellant noticed them and closed the gate. PO2 Sarmiento pushed open the gate. As PO2 Sarmiento was entering the compound, he saw a man holding a "*gulok*." It turned out that the man holding the "*gulok*" or bolo was one of Danilo's sons, Vergel Ventura, who attempted to hack PO2 Sarmiento. PO2 Sarmiento informed him that he was a police officer, but Vergel still tried to hack him with the bolo causing him to seek cover outside the gate while parrying the attack. PO3 Magsakay drew his gun and poked it at Vergel, who ran inside the house. PO2 Sarmiento entered the gate and arrested Danilo, while PO2 Magsakay arrested accused-appellant. PO1 Silla arrested Vergel. After frisking Danilo, PO2 Sarmiento recovered from him the marked money used for the buy-bust operation. The police asset handed to PO2 Sarmiento the *shabu* he bought from accused-appellant. The Venturas were apprised of their rights and informed of the offense committed. Thereafter, the suspects were brought to the police station for further investigation.

The testimony of forensic chemist Nellson Cruz Sta. Maria was dispensed with due to the admission of the defense as to the existence and due execution of the Request for Laboratory Examination, Chemistry Report No. D-606-2003, and the specimens subject of the examination.

The laboratory examination conducted by Police Inspector (P/Insp.) and Forensic Chemical Officer Nellson Cruz Sta. Maria on the confiscated specimen yielded the following results:

SPECIMEN SUBMITTED:

A- One (1) heat-sealed transparent plastic sachet with markings "LCS BB" containing 0.124 gram of white crystalline substance.

PURPOSE OF THE LABORATORY EXAMINATION:

To determine the presence of dangerous drug. x x x.

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for the presence of Methylamphetamine hydrochloride, a dangerous drug. x x x.

CONCLUSION:

Specimen A contains Methylamphetamine hydrochloride, a dangerous drug.^[5]

The defense denied all material allegations of the prosecution. Grace Ventura, 28 years old, single and a resident of Sabitan, Sto. Rosario, Malolos, Bulacan testified that she was at her house along Sabitan on 10 August 2003 when she saw her brother Bernard Ventura, alias "Bening," having an argument with "Badong," a tricycle driver. As Badong was leaving, accused-appellant heard him threatening his brother, saying he would exact vengeance on him. Thereafter, at about 3 to 4 o'clock in the afternoon of the same day, a group of policemen in civilian clothes barged into their house by kicking the door. The group was apparently looking for his brother alias "Bening." The group searched the house. Not satisfied, the policemen took their money and told her to point to them her brother's house. She informed them that his house was at the crossing. The policemen took her. As she was being taken by the police, she managed to tell her father, who was at the other house, to follow her because the policemen were taking her. The policemen took her to the municipal hall, where she was followed by one of her brothers an hour later and by her father half an hour later. She then saw her father talking to the policemen. Later on, both she and her father were placed inside the detention cell.

On cross-examination, accused-appellant testified that she was with her father at their house in Sabitan at the time of arrest. She denied that her brother Vergel was at their house at the time, but admitted there was a pending direct assault case

against him, for interfering in her and her father's arrest. Accused-appellant admitted that it was only at the time of their arrest that she came to know of the police officers who arrested them, and that she and her father had no personal quarrel with the policemen. Accused-appellant maintained that the drugs allegedly taken from her possession were only planted by the police officers. She admitted to not filing any charges against them for the planting of evidence.

On redirect, accused-appellant reiterated her testimony on direct examination that she was merely taken by the police authorities so she could show them her brother's house. She again stated that it was Bening, her brother, who had a misunderstanding with a certain Badong for the latter's failure to remit the boundary for the tricycle he was driving.

Bernard Ventura, alias "Bening," 31 years old, married, a tricycle driver, and a resident of Sumapang Matanda, Malolos, Bulacan, testified that he was the brother of accused-appellant. On 10 August 2003, he was at his house along Sumapang Matanda watching television, when a group of police officers went inside his house asking if he had *shabu*. They were accompanied by Badong, the same man he had an argument with earlier that day. The policemen informed him that his father Danilo and sister, accused-appellant, had been arrested for selling prohibited drugs. He was taken to the Malolos municipal hall and charged with violation of Section 5, Article II of Republic Act No. 9165. The case was dismissed by Branch 20 of the RTC of Malolos, Bulacan. He denied all the allegations against him, his father, and his sister, contending that the only reason for their arrest was the quarrel he had with Badong, who was a police asset.

On 9 February 2005, an order was issued by the trial court dismissing the charge against accused Danilo Ventura y Laloza pursuant to Article 89 of the Revised Penal Code, after Ariel B. Santiago, warden of the Bulacan Provincial Jail, informed said court of the untimely demise of said accused in his custody.

According full faith and credence to the testimonies of the prosecution witnesses, the trial court found accused-appellant guilty beyond reasonable doubt in Criminal Case No. 3244-M-2003 for violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165, and sentencing her with the penalty of life imprisonment and a fine of P500,000.00.^[6]

Via a Notice of Appeal,^[7] accused-appellant sought to appeal the RTC ruling with the Court of Appeals. The case was docketed by the appellate court as CA-G.R. CR-H.C. No. 02127.

The Court of Appeals gave more weight to the prosecution's claim that the entrapment operation in fact took place and denied the appeal. Concurring in the factual findings of the trial court, the appellate court resolved the appeal in this wise:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The assailed Decision of the Regional Trial Court, Branch 78 of Malolos, Bulacan dated January 20, 2006 finding the accused-appellant Grace Ventura y Natividad guilty beyond reasonable doubt of the crime of Violation of Section 5 in relation to Section 26, Article II of R.A. No. 9165

and sentencing her to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 is hereby AFFIRMED.^[8]

Electing to seek a final recourse before this Court, accused-appellant filed her Notice of Appeal^[9] on 28 July 2008.

Accused-appellant filed a supplemental brief while the prosecution adopted its appellee's brief earlier submitted to the Court of Appeals.

Accused-appellant seeks her acquittal, praying for the reversal of the judgment of conviction in the illegal drugs case. The defense claims that the appellate court committed serious error in (a) finding the existence of an unbroken chain in the custody of the *shabu* subject of the buy-bust operation as well as its evidentiary value; and (b) ruling that non-compliance with Section 21 of Republic Act No. 9165 is not fatal.

At the heart of the defense argument is that the defense failed to account for the chain of custody of the evidence.

The petition lacks merit.

The presumption of innocence^[10] of an accused in criminal cases is a most fundamental constitutional right that must be upheld at all times. Applying the foregoing principle, it has been established that the burden of proof is a duty borne by the prosecution.^[11] *Ei incumbit probatio qui dicit, non qui negat, i.e., "He who asserts, not he who denies, must prove."* With this in mind, conviction of an accused must stand on the weight and strength of the evidence of the prosecution and cannot rest on the weakness of the defense.^[12]

The straightforward testimonies of the principal witnesses for the prosecution established that at around 3 o'clock in the afternoon of 10 August 2003, a group of police officers composed of PO2 Sarmiento, PO3 Magsakay, Silla, and an asset, acting as poseur-buyer, went to the house of Danilo and accused-appellant Grace Ventura. The team was to conduct a buy-bust operation on instruction of the chief of police. Upon reaching the area, PO2 Sarmiento and PO3 Magsakay positioned themselves near the gate of accused-appellant. While they were stationed in their respective places, the police asset went to accused-appellant's gate. He knocked thereon. They then saw Danilo opening the gate and stepping out. The asset handed the marked money to Danilo, who then went inside and closed the gate. A few minutes later, accused-appellant opened the gate and handed a plastic sachet containing *shabu* to the police asset.

They then saw the police asset execute the pre-arranged signal by scratching his head, indicating that the sale had been consummated. The police officers then ran towards them, but accused-appellant managed to close the gate. PO2 Sarmiento pushed open the gate, but he was met by Vergel, the brother of accused-appellant, who was armed with a bolo and about to hack him. Attempting to parry the attacks on him, PO2 Sarmiento went out of the gate and closed it. PO3 Magsakay drew his firearm and pointed it at accused-appellant's brother, who ran towards the direction of the house, but was accosted by PO1 Silla. PO3 Magsakay arrested accused-