

THIRD DIVISION

[G.R. No. 185011, December 23, 2009]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO3 SANGKI ARA Y MIRASOL, MIKE TALIB Y MAMA, AND JORDAN MUSA Y BAYAN, ACCUSED-APPELLANTS.

D E C I S I O N

VELASCO JR., J.:

This is an appeal from the December 13, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00025B entitled *People of the Philippines v. SPO3 Sangki Ara y Mirasol, Mike Talib y Mama, Jordan Musa y Bayan*, which affirmed the Decision of the Regional Trial Court (RTC), Branch 9 in Davao City, convicting accused-appellants of violation of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Three Informations charged accused-appellants Sangki Ara, Mike Talib, and Jordan Musa, as follows:

Criminal Case No. 51,471-2002 against Ara

That on or about December 20, 2002, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and consciously traded, transported and delivered 26.6563 grams of Methamphetamine Hydrochloride or "shabu," which is a dangerous drug, with the aggravating circumstance of trading, transporting and delivering said 26.6563 grams of "shabu" within 100 meters from [the] school St. Peter's College of Toril, Davao City.

CONTRARY TO LAW.^[1]

Criminal Case No. 51,472-2002 against Talib

That on or about December 20, 2002, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and consciously had in his possession and control one (1) plastic sachet of Methamphetamine Hydrochloride or "shabu," weighing 0.3559 gram, which is a dangerous drug.

CONTRARY TO LAW.^[2]

Criminal Case No. 51,473-2002 against Musa

That on or about December 20, 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously had in his possession and control five (5) big plastic sachet[s] of Methamphetamine Hydrochloride or "shabu" weighing 14.2936 grams, which is a dangerous drug.

CONTRARY TO LAW.^[3]

During their arraignment, accused-appellants all gave a "not guilty" plea.

Version of the Prosecution

At the trial, the prosecution presented the following witnesses: Forensic Chemist Noemi Austero, PO2 Ronald Lao, SPO1 Bienvenido Furog, PO1 Enrique Ayao, Jr., SPO4 Rodrigo Mallorca, and PO2 Jacy Jay Francia.

In the morning of December 20, 2002, a confidential informant (CI) came to the Heinous Crime Investigation Section (HCIS) of the Davao City Police Department and reported that three (3) suspected drug pushers had contacted him for a deal involving six (6) plastic sachets of *shabu*. He was instructed to go that same morning to St. Peter's College at Toril, Davao City and look for an orange Nissan Sentra car.^[4]

Police Chief Inspector Fulgencio Pavo, Sr. immediately formed a buy-bust team composed of SPO3 Reynaldo Capute, SPO4 Mario Galendez, SPO3 Antonio Balolong, SPO2 Arturo Lascaños, SPO2 Jim Tan, SPO1 Rizalino Aquino, SPO1 Bienvenido Furog, PO2 Vivencio Jumawan, Jr., PO2 Ronald Lao, and PO1 Enrique Ayao, Jr., who would act as poseur-buyer.^[5]

The team proceeded to the school where PO1 Ayao and the CI waited by the gate. At around 8:45 a.m., an orange Nissan Sentra bearing plate number UGR 510 stopped in front of them. The two men approached the vehicle and the CI talked briefly with an old man in the front seat. PO1 Ayao was then told to get in the back seat as accused-appellant Mike Talib opened the door. The old man, later identified as accused-appellant SPO3 Ara, asked PO1 Ayao if he had the money and the latter replied in the positive. Ara took out several sachets with crystalline granules from his pocket and handed them to PO1 Ayao, who thereupon gave the pre-arranged signal of opening the car door. The driver of the car, later identified as accused-appellant Jordan Musa, tried to drive away but PO1 Ayao was able to switch off the car engine in time. The back-up team appeared and SPO1 Furog held on to Musa while PO2 Lao restrained Talib. PO1 Ayao then asked Ara to get out of the vehicle.^[6]

Recovered from the group were plastic sachets of white crystalline substance: six

(6) big sachets, weighing 26.6563 grams, from Ara by PO1 Ayao; five (5) big sachets, weighing 14.2936 grams, from Musa by SPO1 Furog; and a small sachet, weighing 0.3559 gram, from Talib by PO2 Lao.^[7]

The three suspects were brought to the HCIS and the seized items indorsed to the Philippine National Police (PNP) Crime Laboratory for examination. Forensic Chemist Austero, who conducted the examination, found that the confiscated sachets all tested positive for *shabu*.^[8]

Version of the Defense

The defense offered the sole testimony of Ara, who said that he had been a member of the PNP for 32 years, with a spotless record. On December 20, 2002, SPO3 Ara was in Cotabato City, at the house of his daughter Marilyn, wife of his co-accused Musa. He was set to go that day to the Ombudsman's Davao City office for some paperwork in preparation for his retirement on July 8, 2003. He recounted expecting at least PhP 1.6 million in retirement benefits.^[9] Early that morning, past three o'clock, he and Musa headed for Davao City on board the latter's car. As he was feeling weak, Ara slept in the back seat.

Upon reaching Davao City, he was surprised to see another man, Mike Talib, in the front seat of the car when he woke up. Musa explained that Talib had hitched a ride on a bridge they had passed.^[10]

When they arrived in Toril, Ara noticed the car to be overheating, so they stopped. Ara did not know that they were near St. Peter's College since he was not familiar with the area. Talib alighted from the car and Ara transferred to the front seat. While Talib was getting into the back seat, PO1 Ayao came out of nowhere, pointed his .45 caliber pistol at Ara even if he was not doing anything, and ordered him to get off the vehicle. He saw that guns were also pointed at his companions. As the group were being arrested, he told PO1 Ayao that he was also a police officer. Ara insisted that he was not holding anything and that the *shabu* taken from him was planted. He asserted that the only time he saw *shabu* was on television.^[11]

The Ruling of the Trial Court

The RTC pronounced accused-appellants guilty of the crimes charged. In its Decision dated March 1, 2003, the trial court held that the prosecution was able to establish the quantum of proof showing the guilt of accused-appellants beyond reasonable doubt. It further ruled that the "intercept operation" conducted by the buy-bust team was valid.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premised on the foregoing the Court finds the following:

In Criminal Case No. 51,471-2002, the accused herein SANGKI ARA Y MASOL, Filipino, 55 years old, widower, a resident of Kabuntalan, Cotabato City, is hereby found GUILTY beyond reasonable doubt, and is CONVICTED of the crime of violation of Sec. 5, 1st paragraph of Republic

Act 9165. He is hereby imposed the DEATH PENALTY and FINE of TEN MILLION PESOS (PhP 10,000,000) with all the accessory penalties corresponding thereto, including absolute perpetual disqualification from any public office, in view of the provision of section 28 of RA 9165 quoted above.

Since the prosecution proved beyond reasonable doubt that the crime was committed in the area which is only five (5) to six (6) meters away from the school, the provision of section 5 paragraph 3 Article II of RA 9165 was applied in the imposition of the maximum penalty against the herein accused.

In Criminal Case No. 51,472-2002, the accused herein MIKE TALIB y MAMA, Filipino, of legal age, single and a resident of Parang, Cotabato, is found GUILTY beyond reasonable doubt, and is CONVICTED of the crime of violation of Sec. 11, 3rd paragraph, Article II of Republic Act 9165. He is hereby imposed a penalty of Imprisonment of SIXTEEN (16) YEARS and a fine of THREE HUNDRED THOUSAND PESOS (PhP 300,000) with all the accessory penalties corresponding thereto.

In Criminal Case No. 51,473-2002 the accused herein JORDAN MUSA Y BAYAN, Filipino, 30 years old, married and a resident of Cotabato City, is hereby found GUILTY beyond reasonable doubt and is CONVICTED of the crime for Violation of Sec. 11, 1st paragraph, Article II of Republic Act No. 9165. He is hereby sentenced to suffer a penalty of LIFE IMPRISONMENT and FINE of FOUR HUNDRED THOUSAND PESOS (PhP 400,000) with all the accessory penalties corresponding thereto.

SO ORDERED.^[12]

As the death penalty was imposed on Ara, the case went on automatic review before this Court. Conformably with *People v. Mateo*,^[13] we, however, ordered the transfer of the case to the CA.

The Ruling of the Appellate Court

Contesting the RTC Decision, accused-appellants filed separate appeals before the CA. Talib claimed that it was erroneous for the trial court to have used the complaining witnesses' affidavits as basis for ruling that their arrest was valid. He also cited as erroneous the trial court's refusal to rule that the prosecution's evidence was inadmissible. Lastly, he questioned the failure of the buy-bust team to follow the requirements of RA 9165 on proper inventory of seized drugs.

Ara and Musa filed a joint brief, alleging the following: (1) the trial court erred in denying the Motion to Suppress and/or exclude illegally obtained evidence; (2) the trial court erred in denying the Demurrer to Evidence; (3) the trial court failed to consider that the criminal informations did not allege conspiracy among the accused; and (4) the trial court erred in ruling that the "intercept operation" was valid.

The CA affirmed the trial court's decision with some modifications on the penalty

imposed. It ruled that a majority of the errors raised in the appeal referred to technicalities in the conduct of buy-bust operations that did not invalidate the police officers' actions. On the issue of the evidence presented, the CA held that the presumption that police officers performed their duties in a regular manner was not overturned.

The appellate court resolved the issue of the validity of the buy-bust operation by stating that the law requires no specific method of conducting such an operation. It ruled that to require a warrant of arrest would not accomplish the goal of apprehending drug pushers *in flagrante delicto*. The CA's Decision emphasized that all the elements necessary for the prosecution of illegal sale of drugs were established.

The *fallo* of the December 13, 2007 CA Decision reads:

WHEREFORE, premises foregoing, the appeal is hereby DISMISSED and the appealed March 1, 2003 Decision is hereby AFFIRMED subject to the modification insofar as the death penalty imposed upon accused SPO3 Sangki Ara is concerned. Accordingly, his penalty is hereby reduced to life imprisonment pursuant to Republic Act No. 9346.

SO ORDERED.^[14]

On December 17, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties, save for Musa, manifested their willingness to forego the filing of additional briefs.

The Issues

Reiterating the matters raised before the CA, accused-appellants alleged the following:

I

Whether the Court of Appeals erred in holding that the arrest of the accused-appellants was valid based on the affidavits of the complaining witnesses

II

Whether the Court of Appeals erred in disregarding the apparent defects and inconsistencies in the affidavits of the complaining witnesses

III

Whether the Court of Appeals erred in refusing to consider the suppression or exclusion of evidence

IV