

## THIRD DIVISION

[ G.R. No. 179150, June 17, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELIA BAYANI Y BOTANES, ACCUSED-APPELLANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Appellant Delia Bayani y Botanes assails the Decision<sup>[1]</sup> of the Court of Appeals dated 20 December 2005 in CA-G.R. CR-H.C. No. 00310, affirming the Decision<sup>[2]</sup> dated 16 July 2004 of Branch 103 of the Regional Trial Court (RTC) of Quezon City, in Criminal Case No. Q-03-115598. The RTC found appellant guilty beyond reasonable doubt of drug pushing, in violation of Section 5, Article II of Republic Act No. 9165,<sup>[3]</sup> also known as the Comprehensive Dangerous Drugs Act of 2002, and sentenced her to suffer life imprisonment and a fine of five hundred thousand pesos.

On 7 March 2003, an Information<sup>[4]</sup> was filed before the RTC charging appellant with Violation of Section 5 of Republic Act No. 9165, which reads:

That on or about the 3<sup>rd</sup> day of March 2003, in the Quezon City, Philippines, the above-named accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, **six point forty one (6.41) grams of Methylamphetamine Hydrochloride**, a dangerous drug.

On 9 September 2003, appellant, with the assistance of counsel *de officio*, was arraigned and she pleaded "Not guilty." Thereafter, a pre-trial conference was held, and trial ensued accordingly.<sup>[5]</sup>

Evidence for the prosecution consisted of the testimony of PO3 Virgilio Bernardo, who testified that on 3 March 2003, a confidential informant arrived at Police Station 3, Quirino Highway, Barangay Talipapa, Quezon City, where he was on duty, and reported to the Drug Enforcement Unit that appellant was illegally trading drugs along Trinidad Street, Barangay Gulod, Novaliches, Quezon City. Chief Superintendent Gerardo Ratuira formed a team composed of PO3 Bernardo, SPO4 Brigido An, SPO2 Levi Sevilla, PO2 Manny Panlilio, and PO2 Cecil Collado to conduct a buy-bust operation. The team took with them "boodle" money with two (2) pieces of genuine one-hundred-peso bills on top as buy-bust money.<sup>[6]</sup>

At around 10:30 in the morning of the same day, PO3 Bernardo and the informant went in front of the appellant's house located at No. 22 Barangay Gulod, Trinidad Street, Novaliches, Quezon City, while the other police officers positioned

themselves within viewing distance. The appellant was standing in front of her house. As they approached her, the informant introduced Bernardo to her as a *shabu* buyer. Witness testified that he told appellant that he wanted to buy ten thousand pesos (P10,000.00) worth of *shabu*, and the appellant nodded her head. Thereafter, she handed him two sachets containing a crystalline substance which was suspected to be *shabu*. Witness, in turn, gave the boodle money, after which he grabbed the appellant's right hand, apprehended her, and identified himself as a police officer.<sup>[7]</sup>

After the apprehension of the appellant, the team brought her before the Police Station investigator, while the drugs and the buy-bust money were turned over to the crime laboratory. Appellant was apprised of her constitutional rights.<sup>[8]</sup>

During his testimony, PO3 Bernardo identified the accused, the boodle money with his initials "VB," as well as two (2) sachets of crystalline substance (also with the same initials) which was positive of methylamphetamine hydrochloride after laboratory examination.<sup>[9]</sup>

Denying the charge filed against her, appellant testified that at around 7:00 in the morning of 3 March 2003, she was inside her house with her children and her sister-in-law. While changing her clothes inside her room at the third floor, seven men barged inside her house. When she asked them what they were doing inside her house, they refused to answer. Although they continued to search her house, they did not find drugs therein. Thereafter, they introduced themselves as police officers and commanded her to show them the *shabu*. When she denied possession of any *shabu*, the police officers got angry and forced her to go with them to the Police Station. She also testified that she could not cry to her neighbors for help because she was locked inside her room while her sister-in-law and her five children were all afraid of the police.<sup>[10]</sup>

When they arrived at the Police Station, she was asked if she knew a certain "Allan." She answered in the negative. After a day of detention, she was brought to the office of the inquest fiscal where she was informed that she was being charged with drug pushing.<sup>[11]</sup>

Appellant's seventeen-year-old son, Dan Jefferson, corroborated his mother's testimony. He recounted that he was about to leave their house when five men barged into their house and went straight to his mother's room at the third floor. He testified that he did not know what happened on the third floor since, at that time, he stayed in their *sala* at the second floor of the house. Thereafter, the rest of the police officers and his mother left the house, while he stayed put.<sup>[12]</sup>

In a Decision dated 16 July 2004, the RTC decreed that the accused was guilty without reasonable doubt since the fact of the illegal sale of a dangerous drug, methylamphetamine hydrochloride, was sufficiently and indisputably established by the prosecution. PO3 Bernardo, as the poseur-buyer, positively identified the appellant as the person who handed him two sachets containing 6.41 grams of *shabu* in exchange for P10,000.00. The boodle money was marked as Exhibit "B" for the prosecution.<sup>[13]</sup> The two sachets of *shabu* were likewise presented and marked in court as Exhibits "G" and "H."<sup>[14]</sup> The RTC gave full credence to PO3 Bernardo's

testimony, given the presumption of regularity in the performance of his functions as a police officer, especially since no ill motive was attributed to him for the appellant's apprehension. On the other hand, the RTC found the testimony of appellant's son, Dan, on what transpired on the third floor to be unreliable, since at that time he was supposedly staying in the *sala*, which was located at another floor.  
[15]

According to the dispositive part of the Decision dated 16 July 2004:

**ACCORDINGLY**, judgment is hereby rendered finding the accused **GUILTY** beyond reasonable doubt for (sic) violation of Section 5, Article II, R.A. 9165 for drug pushing of six point forty one (6.41) grams of crystalline substance containing Methylamphetamine hydrochloride and is hereby sentenced to suffer **LIFE IMPRISONMENT** and to pay a fine of Five Hundred Thousand Pesos.

The drug involved in this case is hereby ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) through the Dangerous Drugs Board for proper disposition.  
[16]

The appellant filed an appeal before the Court of Appeals docketed as CA-G.R. CR-H.C. No. 00310. Raising only one assignment of error, appellant faulted the RTC's finding of guilt for being based on a buy-bust transaction instigated by the arresting officers. In affirming the RTC Decision, the appellate court declared that the police officers did not induce the appellant to sell the prohibited drugs. By pointing out the fact that appellant had the *shabu* in her possession, ready for selling, before the police officer approached her, it adjudged that the appellant's criminal resolve was evident; no inducement to sell the prohibited drugs had led to the commission of the offense. It maintained that the fact that the police officers did not conduct a prior surveillance does not affect the validity of an entrapment operation. It further held that presentation by the prosecution of the informant and other police officers who had witnessed the buy-bust operations was not required to prove the appellant's guilt, where their testimonies would merely repeat the testimony of the poseur-buyer.  
[17] In the Decision dated 20 December 2005, the *fallo* reads:

**WHEREFORE**, the foregoing considered, the appeal is hereby **DISMISSED** and the assailed Decision **AFFIRMED** *in toto*. Without pronouncement as to costs.  
[18]

Hence, the present petition in which the appellant reiterates the sole assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE POLICE INSTIGATED THE ALLEGED BUY-BUST TRANSACTION.

This petition must fail, since the argument raised by appellant is specious. Appellant argues that PO3 Bernardo's act of approaching the appellant to buy *shabu* during a buy-bust operation amounted to instigation. Such contention lacks basis and is contrary to jurisprudence.

Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the

employment of such ways and means for the purpose of trapping or capturing a lawbreaker.<sup>[19]</sup> Thus, in instigation, officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he or she would otherwise not commit and has no intention of committing. But in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused, and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes; thus, the accused cannot justify his or her conduct. In instigation, where law enforcers act as co-principals, the accused will have to be acquitted. But entrapment cannot bar prosecution and conviction. As has been said, instigation is a "trap for the unwary innocent," while entrapment is a "trap for the unwary criminal."<sup>[20]</sup>

As a general rule, a buy-bust operation, considered as a form of entrapment, is a valid means of arresting violators of Republic Act No. 9165. It is an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.

A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render invalid the buy-bust operations. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct.<sup>[21]</sup> In *People v. Sta. Maria*, the Court clarified that a "decoy solicitation" is not tantamount to inducement or instigation:

It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the offense is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.

As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant induced the appellant to sell illegal drugs to him.<sup>[22]</sup>

Conversely, the law deprecates instigation or inducement, which occurs when the police or its agent devises the idea of committing the crime and lures the accused into executing the offense. Instigation absolves the accused of any guilt, given the spontaneous moral revulsion from using the powers of government to beguile innocent but ductile persons into lapses that they might otherwise resist.<sup>[23]</sup>

*People v. Doria* enumerated the instances when this Court recognized instigation as a valid defense, and an instance when it was not applicable:

In *United Sates v. Phelps*, we acquitted the accused from the offense of smoking opium after finding that the government employee, a BIR personnel, actually induced him to commit the crime in order to