

THIRD DIVISION

[G.R. NO. 168694, November 27, 2006]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SAIDAMIN
MACABALANG Y MALAMAMA, APPELLANT.**

DECISION

TINGA, J.:

Saidamin Macabalang y Malamama (appellant) was charged before the Regional Trial Court (RTC) for violation of Section 15, Republic Act (RA) No. 6425, in an Information which reads:

That on July 21, 1999 at or about 8:00 o'clock in the evening in Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there knowingly, willfully, unlawfully and feloniously distribute, sell and deliver to a poseur buyer about One Thousand Nine Hundred Seventy-Two point Six (1,972.6) grams of METHYLAMPHETAMINE HYDROCHLORIDE, otherwise known as "Shabu," a regulated drug.

CONTRARY TO LAW.^[1]

Upon arraignment, appellant pleaded not guilty. Trial ensued. On 7 August 2001, the RTC rendered a Decision^[2] finding appellant guilty beyond reasonable doubt for the crime of selling shabu, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay a fine of P500,000.00.

The facts, establishing the case against the appellant, was testified to by the following: PO1 Christopher Guste (PO1 Guste), the poseur-buyer; PO1 Ronnie Fabia (PO1 Fabia), member of the buy-bust operation team; Chief Inspector Leonardo Suan (Inspector Suan), head of the buy-bust team; and Senior Inspector Sonia S. Lodovico, a Forensic Chemist.

On 21 July 1999, at around 9:00 o'clock in the morning, Inspector Suan, Deputy Chief of the Intelligence Division of Narcotics Command, received a report from a confidential informant that a certain Amin was looking for a buyer of shabu. Inspector Suan instructed his informant to contract with Amin for two (2) kilos of shabu.^[3]

Two (2) hours later, a fourteen-man buy-bust team was formed by Inspector Suan, with PO1 Guste acting as poseur-buyer.^[4]

After the briefing, Inspector Suan gave PO1 Guste two (2) genuine P1,000.00 bills, marked with letters "CG" and boodle money amounting to P1,000,000.00.^[5]

At 6:00 o'clock in the evening of the same day, the team proceeded to the fourth level parking lot of SM City, North Avenue, Quezon City, the meeting place designated by appellant. They observed the area for two (2) hours and positioned themselves within the vicinity. PO1 Guste stayed outside the car with the informant while the others were inside their separate vehicles.^[6]

Two hours thereafter, a Mitsubishi Lancer car, with Plate No. UTD 147, approached the parking lot. Appellant alighted from the car. PO1 Guste and the informant approached him and appropriate introductions were made. Appellant then went to a green Toyota Corolla car, parked next to his car, bearing Plate No. WBH 491. He opened the rear compartment, took out a yellow box, and gave it to PO1 Guste. When appellant asked for the money, PO1 Guste invited the latter over into his own car, which was parked about ten (10) meters away. Upon reaching his car, PO1 Guste checked the contents of the box and found two (2) plastic bags containing white crystalline substance. He immediately gave the money to appellant and stepped out of the car. As a pre-arranged signal to his police companions to close in, PO1 Guste removed his cap. The rest of the team members converged to where PO1 Guste, the informant and appellant were situated, introduced themselves as policemen, and apprehended appellant.^[7]

Appellant was brought to the Narcotics Command (Narcom) office at Camp Crame, Quezon City for investigation. PO1 Guste executed an affidavit narrating the incident. The carton containing shabu and the boodle money were turned over to the investigator. On the following day, the confiscated carton containing two (2) plastic bags was brought to the PNP Crime Laboratory, where they were examined by Forensic Chemist Sonia S. Lodovico. The test results confirmed that the white crystalline substance sold by appellant was shabu, weighing a total of 1,972.6 grams.^[8]

In his defense, appellant presented a different version of the incident.

At around 8:00 o'clock in the evening of 21 July 1999, appellant, accompanied by Mamerto Duetes (Duetes), were at the parking lot of SM North Avenue, Quezon City to meet up with Mr. Lee Ong (Ong). Earlier that day, Ong borrowed Saidamin's vehicle, a Mitsubishi Lancer. Ong promised appellant to provide him with a woman to date with. Upon receiving a call from Ong, appellant and his companion proceeded to the fourth floor level of the SM Parking Area on board a Toyota Corolla car. Appellant parked beside the Mitsubishi Lancer driven by Ong. He got out of his car and went inside the Mitsubishi Lancer. Duetes, on the other hand, went to buy a cigarette. Appellant then asked Ong about the women they were going to date. Ong replied that he is going to get them and hurriedly left.^[9]

Soon thereafter, a white Sedan car was speeding towards appellant. It suddenly stopped in front of his car. Five (5) to six (6) armed persons got out from the car. Three (3) other cars followed and its occupants also stepped out of the car. Guns were poked at appellant and he was forcibly taken out of his car and made to board one of the vehicles of the Narcom operatives. Appellant was blindfolded, handcuffed, and brought to Camp Crame. Upon arrival, his cellular phone, wedding ring, checkbook, and wallet containing P2,000.00 and \$35.00 were taken from him by the Narcom operatives. He was then brought inside a room and a certain Captain Mendoza entered the room and offered him freedom in exchange for P2,000,000.00

and two (2) signed deeds of absolute sale over the vehicles confiscated from him. When appellant failed to produce the amount on the following day, he was presented to the press people and photographed with the shabu displayed beside him.^[10]

Duetes testified for the defense that on 21 July 1999, he was asked by appellant to accompany him to meet some women that they are going to date. They went to the SM City carpark in Quezon City. He left appellant in the car to buy a cigarette. When he returned to the parking lot, he saw four (4) or five (5) armed men forcibly taking appellant from his car. Duetes got scared and hid behind the staircase. When he got home, he reported the incident to the cashier of the store where he works and asked the latter to inform the sister of appellant.^[11]

The defense also presented Jovito Abad Mostrales (Mostrales) , a security guard assigned at the SM Carpark Building, who witnessed the forcible taking of appellant. Mostrales told the court that he noticed a white car running against traffic and saw several armed men getting out of the said car. Three other cars followed and their occupants likewise alighted from these cars. They pointed their firearms on the appellant, took him out of his car, and brought him into one of their vehicles.^[12]

Upon evaluation of the evidence presented, the RTC rejected the version of the defense. The trial court found the testimony of Duetes as fabricated and proceeded to disprove each and every point raised:

x x x x

(a) he [Duetes] testified that Saidamin asked him to accompany the former to SM City, Quezon City because "magchi-chick daw kami." Saidamin is married with his wife and kids living in Quiapo, Manila; while Mr. Duetes is a worker in Saidamin's sister's stall in Quiapo. It thus seems rather odd that Saidamin would invite a mere worker of his sister to join him in a romantic escapade for that would mean Saidamin would have to supply Duetes with and defray expenses for the chick that Duetes will be given and risk his extra-marital adventures being known to Saidamin's wife, children, sisters, and the like;

(b) Duetes' demeanor and appearance in court do not appear to be of one capable of engaging in extra martial adventures, together with Saidamin and businessman Lee Ong. Duetes speaks in a very soft-spoken, almost effeminate manner, not well-kempt in court in contrast to the accused, and his words in defense of Saidamin were not spoken with determination, as one would hear of a witness whose employer's brother has been kidnapped before the witness' very eyes.

(c) According to Mr. Duetes, he asked permission at 8:00 p.m. from Saidamin to leave him for a while in their car to buy cigarettes; he asked a guard at the carpark where he could buy cigarettes and when he was told it is far away, Mr. Duetes decided to return to Saidamin in their car. In that SM carpark, as testified to by the defense witness[,], SM security guard Jovito Mostrales, there are plenty of security guards and indeed, that is correct. Yet, despite the fact that the brother of his *amo* was "kidnapped" by armed men before his very eyes, Mr. Duetes made no

attempt to talk to any of the security guards there who are equipped with the means to communicate with the authorities, or to report the "kidnapping" of Saidamin, who was his only companion in going to SM City, Quezon City, to anybody having to do with operations in that mall. This is rather odd.

What adds further oddity in Duetes' case is he never even attempted to call his employer or anyone in his employer's stall about the abduction of Saidamin. There are a lot of public and private telephones at SM City, Quezon City.

To top it all, Mr. Duetes was in no hurry to go home to Port Area, Manila where he lives and work. He went back to the Port Area in an unhurried way and instead of personally contacting his employer (Saidamin's sister) about the alleged kidnapping he witnessed, Mr. Duetes talked only to the cashier so the cashier can in turn report to Saidamin's sister about the alleged incident. Mr. Duetes' behaviour was contrary to what one would naturally expect under the circumstances;

(d) When asked by the State Prosecutor (Cielitolindo Luyun) who asked him to testify, Mr. Duetes' slow almost swallowed up answer was: "*My boss because ako daw po ang nakakita.*" From this limped and limping answer, one can readily see that Mr. Duetes was instructed to testify and, as he does not perhaps at that point want to do further lying, or perhaps by way of a Freudian slip, he mentioned: "*ako daw*" which in Tagalog, and Mr. Duetes by his voice does not appear a Mindanaoan denizen, definitely connotes that he was merely instructed to testify.^[13]

The trial court justified the security guard's testimony as pertaining only to "drama whose prior occurrence he failed to witness."^[14] The court explained:

(e) While according to Mr. Duetes he never saw any vehicle following the white car where Saidamin was placed by the armed men, the other defense witness, SM guard Mostrales, testified that not one but several vehicles followed the white car with the armed men shouting: "*Security guards!!! Tabi! Tabi!*" and their vehicles were running with engines blaring like so many hollering metal trinkets.

x x x x

The court finds no incompatibility with his testimony and that of the police witnesses. It is admitted by the police that after the contraband exchange between Saidamin and PO1 Guste, another police officer (PO1 Fabia), on signal, swooped down on Saidamin and collared him while Saidamin was there inside the car used by PO1 Guste and then he was forcibly taken to a white car, with other policemen inside, which came in full rev.

The fact that the armed men in several cars kept on shouting to the SM guards "*Tabi! Tabi!*" in full hearing and full view, not only of those guards, but also of car drivers and car owners or drivers who were in the carpark level shows that there was no kidnapping that was made for,

otherwise, a general alarm would have been raised, SM City, being full of trained security guards who can be expected to know how to deal with a crime taking place right in their commercial establishment.^[15]

The trial court found incredible appellant's alibi that he went to the SM Carpark to meet with Ong, who was supposed to bring the pick-up girls for the following reasons:

- a. x x x x Indeed, how and where those pick-up girls or chicks will be obtained by Lee Ong, matters that are normally expected to be part of the topic conversation between philandering men if there [are] any such planned rendezvous as Saidamin projected, are sadly lacking in record.
- b. Saidamin's claim that he had a date with Lee Ong is not corroborated x x x x Lee Ong, who should be very interested in assisting Saidamin never appeared before the PNP, DOJ, or this court all these years.
- c. x x x x Saidamin testified that Lee Ong left but asked him to wait promising that he will just pick up the girls they were supposed to date with.

The court finds it abnormal that at such hour of the night, Lee Ong[,], who had a car with him[,], would not still have with him the girls he promised to Saidamin x x x x^[16]

Appellant's counter-accusation of kidnapping was likewise rejected by the trial court. The court explained that if the Narcom agents merely wanted money, they would have instead sold the two (2) kilos of shabu for P2 million instead of kidnapping Saidamin.

Affirming the findings of the trial court, the Court of Appeals promulgated the assailed Decision^[17] on 14 February 2005. The appellate court gave more weight to the evidence presented by the prosecution to establish the commission of the crime:

To dispose of the first argument, we reiterate the rule that in crimes involving sale of prohibited or regulated drugs such as shabu, what is only essential is for the prosecution to establish with moral certainty the existence of the following elements, viz: (1) the identity of the buyer and the seller, the object and the consideration[;] and (2) the delivery of the thing sold and the payment therefore. Here, the identity of the seller accused and buyer PO1 Guste, were established. Regarding the object and consideration of the crime, while the box and the plastic bags allegedly containing the drugs, and the boodle money which was to serve as consideration, were not subjected to fingerprint examination, the same would be of no moment. The illegal drugs (shabu) was duly presented before the trial court and the prosecution[;] through the testimonies of the Narcom agents, was able to present in a clear and convincing manner how the sale transaction took place. Thus, the failure to submit to the crime laboratory for fingerprinting purposes the seized box containing the shabu and the plastic bag containing the boodle money did not create a hiatus in the evidence for the prosecution. So