

FIRST DIVISION

[G.R. Nos. 143850-53, December 18, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELEONOR JULIAN-FERNANDEZ, GAUDENCIO BERREDO, JR. Y
CLET, JOSELITO JIMENEZ Y MORTEL (ACQUITTED), JERIC
JIMENEZ Y MORTEL (ACQUITTED), AND REAMY SORIANO Y
BARRERA, ACCUSED.**

**ELEONOR JULIAN-FERNANDEZ, AND GAUDENCIO BERREDO, JR.
Y CLET, ACCUSED-APPELLANTS.**

DECISION

DAVIDE, JR., C.J.:

This is an appeal from the decision of 13 March 2000 of the Regional Trial Court of Makati City, Branch 143,^[1] convicting accused-appellants Eleonor Julian-Fernandez (ELEONOR) and Gaudencio Berredo y Clet, Jr. (GAUDENCIO) for the violation of the following sections of R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended:

- (1) Section 15, Article III, for illegal sale of Methamphetamine Hydrochloride (shabu), a regulated drug,
- (2) Section 16, Article III for illegal possession of Methamphetamine Hydrochloride, and
- (3) Section 16, Article III in relation to Section 27, Article IV, for engaging in pot session.

Originally, four criminal cases involving the violation of R.A. No. 6425, as amended, allegedly committed on 4 September 1997, were filed against ELEONOR and GAUDENCIO, to wit:

- (1) Criminal Case No. 97-1375 which was filed against ELEONOR only, for violation of Section 16, Article III of R.A. No. 6425,^[2] as amended, based on an information^[3] indicting her for possessing and controlling white crystalline substance contained in six (6) heat-sealed transparent plastic bags with a weight of 281.5 grams and found positive to the test for Methamphetamine Hydrochloride, without the lawful authority to possess or use said regulated drug.
- (2) Criminal Case No. 97-1376 against ELEONOR and GUADENCIO for violation of Section 15, Article III of R.A. 6425, as amended, under an information charging them for conspiring and confederating with one another in the sale, delivery and distribution of Methamphetamine Hydrochloride weighing 0.8 gram approximately in consideration of

P1,000.00 without the necessary license, prescription or authority.^[4]

(3) Criminal Case No. 97-1377 against GAUDENCIO only for violation of Section 16, Article III of R. A. No. 6425, as amended, under an information which is similarly worded as the indictment against ELEONOR for the same offense in Criminal Case No. 97-1375,^[5] which information was later amended to include ELEONOR for having conspired with and aided GAUDENCIO in possessing or using the regulated drug without the authority and license to do so.^[6]

(4) Criminal Case No. 97-1378 against ELEONOR, GAUDENCIO, Joselito Jimenez (Joselito), Jeric Jimenez (Jeric) and Reamy Soriano (Reamy) for violation of Section 16, Article III in relation to Section 27, Article IV^[7] of R.A. 6425, as amended, under an information charging them for mutually aiding and conspiring with one another and together with Rodel Delos Reyes (whose present whereabouts are unknown) in the use of Methamphetamine Hydrochloride in a social gathering (pot session) without the corresponding license or prescription.^[8]

The cases were consolidated and jointly tried. ELEONOR and GAUDENCIO were arraigned on 20 October 1997, while Joselito, Jeric and Reamy were arraigned on 27 October 1997. Each pleaded not guilty.

The first witness for the prosecution was Police Inspector Vicente Raquion. He testified that he was assigned to the Office of the Chief of Police, Makati Police Station. On 3 September 1997, he headed a team of policemen which would conduct a buy-bust operation for the purpose of apprehending ELEONOR *alias Mother Lily* and GAUDENCIO *alias Jun*. The group arrived at about 12:00 midnight of the same date at the Makati Townhouse Hotel located at Gil Puyat, Makati, where ELEONOR and GAUDENCIO were allegedly staying. Since he had already been previously introduced to ELEONOR by his "DPA" (Deep Penetrating Agent), he would pose as the poseur buyer. After arriving at the townhouse, Raquion posted himself at the visitor's lounge of the third floor. A few minutes later, ELEONOR came out of Rm. 4-B. After Eleonor recognized him, she approached him. They talked for a while before he offered to buy a gram of shabu. He handed over to her two (2) P500 bills which his team had earlier marked for identification.^[9] ELEONOR told him to wait for her. She went back to Rm. 4-B. A few minutes later, she returned and handed Raquion a transparent plastic sachet containing the shabu. Raquion thereafter showed her boodle money (cut newspaper with a genuine P1000 on top thereof) saying that he wanted to buy more. She replied that there are more shabu in the possession of *Jun*. She then invited Raquion to join them in the other room for a pot session. He went with her to Rm. 4-B. Then, they proceeded to Rm. 3-B where Raquion saw in plain view five persons engaged in a pot session as four of them, while seated on a bench, were sniffing and passing to each other an improvised tooter or burner. One person was separated from the group but he was attending to several packets of suspected shabu placed on a table.^[10] On the witness stand, Raquion identified and pointed to accused Joselito Jimenez, Jeric Jimenez and Reamy Soriano as the three of the four persons engaged in the shabu session, and accused-appellant GAUDENCIO as the person separated from the group but attending to shabu.^[11]

Raquion further testified that when he observed that what was going on was a pot session, he signaled to his team members, using his badge beeper. His team members then rushed into the room, showed their respective police IDs and effected the arrest. They then brought ELEONOR and the rest to the police station for investigation^[12] and later to Camp Crame for a drug test.^[13]

Raquion also stated that the items confiscated as a result of the operation were listed and then signed by ELEONOR and GAUDENCIO.^[14] Thereafter, a letter requesting for laboratory test of some of the items confiscated was prepared and sent to the PNP Crime Laboratory.^[15]

The letter-request for laboratory test grouped the items confiscated into:

- A) a piece of brown envelop which contained a piece of plastic
 - sachet with suspected Methamphetamine Hydrochloride weighing approximately 1.2 grams (subject evidence of the buy-bust operation);
- B) one (1) blue purse branded "GIANNI VALENTINO" with six (6)
 - pieces of heat-sealed plastic sachets containing suspected Methamphetamine Hydrochloride, approximately weighing a total of 286.1 grams;
- C) a brown envelope with one improvised glass tooter and one
 - (1) piece of aluminum strip both with suspected Methamphetamine Hydrochloride residues; and
- D) a brown envelope with one (1) improvised burner and one (1)
 - disposable lighter.

The second prosecution witness was P/Sr. Insp. Julita de Villa, Forensic Chemist of the PNP Crime Laboratory. She confirmed the letter-request for laboratory test and recounted the physical, chemical and chromatographic examinations she conducted on the items she received. She likewise confirmed the results of her examinations, which were incorporated in her Physical Sciences Report No. D-394-97.^[16] She observed that except for the contents of group D, all the items yielded positive for Methamphetamine Hydrochloride.^[17]

The third witness for the prosecution was SPO2 William B. Masiglat. He declared that at the time the buy-bust operation was conducted, he worked with the Southern District Drug Enforcement Office at Fort Bonifacio, Makati City.^[18] He investigated ELEONOR and her co-accused after they were arrested. He was the one who personally prepared the request for the laboratory testing of and made the markings on the items confiscated from ELEONOR and company.^[19] He was also the one who placed the markings on the two (2) P500 bills used for the buy-bust operation.^[20]

The fourth witness for the Prosecution was P/Supt. Gaudencio Cordora, Jr. He was the project director of *Batong Buhay*, an operation initiated by the Drug Enforcement Station at Fort Bonifacio in August 1997, after receiving reports and information from an informant about the rampant drug activities in the area. Target of this project was the group of Mother Lily. He dispatched Raquion and his team to

conduct the buy-bust operation on 4 September 1997.^[21]

For its part, the defense presented as witnesses accused Jeric Jimenez, Joselito Jimenez, GAUDENCIO, ELEONOR, Police Inspector Ophelia Cruz Sotelo, accused Reamy Soriano and Marilou Carandang.

Jeric testified that on 3 September 1997, at around 11 o'clock in the evening, he was chatting with ELEONOR, GAUDENCIO and one Dennis Bermo at Rm. 4-B of the Makati Townhouse Hotel when they heard a knock at the door followed by a voice "*Ma'am telephone!*" The voice repeated the statement and when Jeric was about to open the door, men whom he later found out as police officers Raquion, Casem, Camacho and Carreon barged into the room. They ransacked the place and searched Jeric's belongings until, to his surprise, they showed him that they found shabu in his things.^[22]

Jeric further testified that he was tested for drug and found negative for it.^[23] He was billeted at Rm. 4-B by ELEONOR and GAUDENCIO to run errands for them.

Joselito testified that on 4 September 1997, he was sleeping at Rm. 4-B of the Makati Townhouse Hotel when police officers Acuin, Cases and Camacho, who were then in civilian clothes, entered the room and thereafter conducted a search for shabu. Acuin poked his gun at him while they were searching but they did not find shabu. With him in the room at the time was Reamy Soriano, the girlfriend of his brother Jeric. Joselito and Reamy were brought by the police to RM. 3-B. In the room, Joselito saw Jeric who was with ELEONOR and GAUDENCIO. They were sitting while the policemen continued their search for shabu.^[24]

Joselito further declared that he was likewise tested for drugs but the results were negative.^[25]

GAUDENCIO testified that he was staying with ELEONOR at Rm. 3-B of the Makati Townhouse Hotel. At 1:00 A.M. of 4 September 1997, Dennis Bermo, their policeman friend from the Pasay Police Station, visited them. They conversed and then Dennis laid down on the bed. Suddenly, they heard somebody knock at the door and announce that they have a telephone call. They answered to wait a minute. After two or three minutes, there was another knock. When ELEONOR unlocked the door to finally see who was knocking, the door was suddenly forcefully opened. GAUDENCIO claimed that they tried to block and stop the person behind the door from pushing it. At this point, Bermo stood up from the bed, pulled out his service firearm and shouted, "*What is that? I am a policeman!*" But several persons already rushed inside the room and took Bermo's firearm. GAUDENCIO ran outside to seek the help of the security guard. However, one person, who turned out to be Raquion, followed him, poked his gun at him and told him not to run or he would shoot him. He was brought by Raquion back to the room where he found their things in complete disarray. He saw Dennis and ELEONOR seated but already handcuffed. ^[26]

GAUDENCIO denied that a buy-bust operation was conducted and that he was attending to several packets with white crystalline substance in them. It was at the police station when the police showed him a blue bag, containing the packets with white crystalline substance. The bag belonged to Bermo. GAUDENCIO claimed that

they were detained at the police station for four days, and on the last day the policemen instructed him to sign a list of the items allegedly confiscated from them. He then observed that Bermo was taken with them to the police station, but that he was released the next day.^[27]

ELEONOR testified that she and GAUDENCIO were live-in partners. They were temporarily billeted at the Makati Townhouse Hotel, at Rm. 3-B in the first week of September 1997 since the house of GAUDENCIO's mother where they were residing was undergoing renovation. Her best friend of seven years, Pasay City police officer Dennis Bermo, suggested the Makati Townhouse Hotel as possible temporary residence. At about 1:00 A.M. of 4 September 1997, Bermo paid them a visit. She noticed that he was carrying a blue bag. They then invited Jeric Jimenez who was staying at Rm. 4-B for some snacks. Her son was also with her at the time. Fifteen minutes later, they heard a knock at the door and a voice saying that there is a telephone call. On the second time they heard the knock and the information about the telephone call, ELEONOR opened the door a little and peeped. She felt the door being pushed wide open. GAUDENCIO and Bermo then helped her push back the door but guns were poked at them. Four men, identifying themselves as policemen, entered the room and told them to sit down on the bed. ELEONOR and her company were handcuffed, despite Bermo's announcement that he was a policeman.^[28]

According to ELEONOR, the policemen searched the room but found only jewelry and money. No document or search warrant was presented to her and her friends. They were thereafter brought to the police station where they were told that the policemen found shabu in their room. They also met for the first time Joselito Jimenez and Reamy Soriano who were brought later to the station. As for Bermo, ELEONOR claimed that while he was brought with them to the station, he was not incarcerated and he never heard of him since then. She admitted to sniffing shabu occasionally but not on the day that she was arrested.^[29]

P/Insp. Ophelia Cruz Sotelo, forensic analyst at the PNP Crime Laboratory, WPD, UN, confirmed her Physical Science Report No. DT-732-97 to DT -736-97,^[30] which shows that Joselito Jimenez and Jeric Jimenez were found negative in the drug test she conducted. Her examinations on the urine samples of ELEONOR, GAUDENCIO and Reamy Soriano revealed that they were positive for Methamphetamine Hydrochloride.^[31]

Accused Reamy Soriano testified that she visited her boyfriend Jeric Jimenez at Rm. 4-B at the Makati Townhouse Hotel on 3 September 1997. At about 1:00 A.M. of 4 September 1997, she was in the room with Joselito. As Jeric promised her that he would bring her home later, she waited for him as he was just at Rm. 3-B. Suddenly, several men who identified themselves as police officers barged into the room, leveled their guns at her and Joselito, and searched and frisked their bodies. They were brought by the policemen to Rm. 3-B where they saw Jeric, ELEONOR, GAUDENCIO and Bermo in handcuffs. Thereafter, they were taken to the police station.^[32]

Marilou Carandang was presented to prove that ELEONOR was financially capable to pay the hotel bills because of the monetary support given to her by her former Japanese husband.^[33]