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[G.R. No. 127157, July 10, 1998]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JAIME MEDINA Y BANAG AND VIRGILIO CARLOS, ACCUSED. JAIME MEDINA Y BANAG, ACCUSED-APPELLANT.

D E C I S I O N

REGALADO, J.:

Accused-appellant Jaime B. Medina and accused Virgilio Carlos were apprehended on October 3, 1996 by members of the Narcotics Intelligence and Suppression Unit (NISU) under the Philippine National Police Narcotics Command (PNP-NARCOM) for selling metamphetamine hydrochloride without authority of law.

Based on a complaint[1] filed by the NARCOM, the two were brought before Assistant City Prosecutor Lillian H. Ramiro for inquest. In their counter-affidavits submitted to said prosecutor, accused Carlos[2] denied any involvement in the transaction by claiming that he merely accompanied appellant to the place of the sale, while appellant[3] stated that he was only supposed to buy the regulated drug at the agreed price of P250,000.00 when the policemen arrived and arrested them. Appellant added that, at his request, Carlos merely drove the car used by them.

Relying on these affidavits, Prosecutor Ramiro recommended the filing of an information against appellant and the dismissal of the charge against accused Carlos.[4] The appropriate information[5] was therefore filed and docketed as Criminal Case No. Q-9563471 against appellant alone for violating Section 15 of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act.

However, after a reinvestigation was authorized by the trial court and conducted by Prosecutor Rogelio A. Velasco, accused Carlos was found to be likewise probably guilty of the same violation.[6] Hence an amended information was filed before the Regional Trial Court of Quezon City, Branch 78, against accused-appellant and accused Carlos alleging:

> That on or about the 3rd day of October, 1995 in Quezon City, Philippines, the said accused, conspiring, confederating together and mutually helping each other not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully and unlawfully sell or offer for sale 306.71 grams of white crystalline substance known as "SHABU" containing methamphetamine hydrochloride, which is a regulated drug.[7]

It is important to note that during the reinvestigation, appellant executed another counter-affidavit[8] wherein he affirmed and adopted the contents of his first

counter-affidavit submitted at the inquest proceedings.

Only appellant was present at the reading of the amended information on February 26, 1996 as Carlos remained at large after the dismissal of the complaint against him. Appellant pleaded not guilty to the accusation[9] and stood alone in his defense for the entire trial wherein he presented his wife, Zenaida Medina, as his only other witness, in addition to some documentary evidence.

The prosecution tried to establish the events leading to the arrest in *flagrante delicto* of appellant and accused Carlos through the affidavits and testimonies of SPO1 Edwin Anaviso[10] and PO3 Rolando Azurin.[11] Both police officers were members of the NISU.

The People's version begins with a confidential informant (CI) of the NARCOM approaching PO3 Azurin and telling him that he knew of two men engaged in the sale and distribution of metamphetamine hydrochloride, or shabu in common parlance. PO3 Azurin relayed this information to his superiors and was instructed to arrange a possible entrapment for the arrest of the two men. A deal, through the intercession of the CI, was thereafter arranged for the sale and delivery of 300 grams of *shabu* at the price of P300,000.00. The actual sale was set on October 3, 1995 at 8:00 P.M. in front of the GQ Club and Restaurant located along Quezon Avenue, Quezon City.

A team of NARCOM agents was formed for the high-level anti-narcotics buy-bust operation. PO3 Azurin was designated as the poseur-buyer and was provided with a personal beeper[12] and an envelope[13] containing twelve pieces of five hundred-peso bills dusted with ultraviolet powder and interspersed with "boodle" money consisting of bond paper cut to size. SPO1 Anaviso was assigned to the group which would provide security and backup to PO3 Azurin.

While PO3 Azurin and the CI were waiting in the parking lot of the restaurant, a black car bearing plate No. TJM 468 arrived and stopped at some distance from them. Afterwards, the driver of the car, later identified by PO3 Azurin and SPO1 Anaviso as herein appellant, approached the two and asked if they brought the money ("*Dala ninyo ang pera?"*). After Azurin answered in the affirmative, appellant turned the car and made a thumbs-up signal. Appellant then led PO3 Azurin and the CI to the car. PO3 Azurin proceeded to the backseat of the car while the CI remained outside. Appellant sat down on the driver's seat.

PO3 Azurin found accused Carlos waiting at the backseat of the car. After Carlos asked PO3 Azurin for the money, the latter opened the envelope he was carrying and showed its contents to Carlos. Satisfied with what he saw, Carlos passed over to Azurin a plastic bag containing three bluish transparent sachets.[14] Azurin noticed that the packets contained white crystalline substances.

When Carlos started counting the money handed to him, Azurin covertly pressed his personal beeper to give the signal to his colleagues that the first phase of the operation had been completed. Within seconds, Azurin's teammates, who had pre-positioned themselves around the parking area, immediately blocked the car of the accused and effected the arrest of both suspected drug dealers.

Chemical and confirmatory examinations conducted by Leslie C. Maala,[15] a forensic chemist of the PNP Crime Laboratory Service, on the contents of the three sachets yielded positive results for methamphetamine hydrochloride.[16] When the plastic bag was brought to Maala for examination, the total weight of the contents of the three packets was 306.71 grams. However, after representative samples were taken from the confiscated substances for purposes of examination, the total weight was reduced to 279.01 grams.

Appellant[17] denied the charge against him and claimed that he had no knowledge of and participation in that sale of shabu by Carlos on October 3, 1995. While he admitted that he went with Carlos to GQ Restaurant on the night of October 3, 1995, he insisted that he did not leave the car contrary to what the prosecution witnesses said. He explained to the trial court that he was with Carlos at the time of their arrest because Carlos, a childhood friend, invited him to the restaurant. According to appellant, they had just parked in front of that restaurant when the policemen suddenly pounced upon them.

Appellant also tried to retract in court the statements he made in his two counter-affidavits, contending that they do not reflect the truth. He explained that he signed his first counter-affidavit without reading it, under the assurance of the lawyer of Carlos that he would take care of him. Regarding the second counter-affidavit, he said that he read only some parts thereof, hence he understood only some of its contents.

Appellant's wife, Zenaida Medina,[18] corroborated appellant's explanation regarding the circumstances surrounding the execution of the two affidavits.

After evaluating the stories of the parties, the court below rendered judgment holding that appellant conspired with accused Carlos in the illegal sale of 306.71 grams of *shabu*. As the trial court appreciated the presence of craft, fraud or disguise as aggravating circumstances against herein appellant, he was sentenced to suffer the supreme penalty of death. In the same decision, an alias warrant of arrest was issued by the court for the arrest of accused Virgilio Carlos.[19]

Appellant is now before us in this automatic review of the lower court's judgment, seeking its reversal and ascribing the following errors to the said court, viz., (1) that it erred in finding a conspiracy between him and Virgilio Carlos; (2) that it erred in maintaining the regularity of the buy-bust operation; and (3) that it erred in convicting appellant despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

Under the second assignment of error, appellant claims that the trial court should not have completely accepted the statements of the police officers implicating him in the crime, but that it should have believed instead his claim of innocence. While this contention essentially raises a question of credibility of witnesses, we have deemed it necessary to meticulously and thoroughly review the lower court's findings of fact due to the capital punishment involved in this case.

After a painstaking scrutiny of the records and a conscientious calibration of the evidence, we find no reason to doubt the veracity and the accuracy of the evidence and the version of the case presented by the prosecution.

The testimonies of PO3 Azurin and SPO1 Anaviso, not to mention their respective affidavits, conform with each other, revealing a logically coherent and sufficiently detailed account of what actually happened on the night of October 3, 1995. They were unwavering throughout their separate testimonies and narrated the incident in a forthright and convincing manner. Such frank and consistent manner of testifying bears the mark of a credible witness.[20]

Appellant cannot blame the court below for disbelieving his version. His defense of being an innocent bystander does not impress us. In contrast to the prosecution witnesses, appellant does not pass the test of consistency to qualify him as a credible witness. His extrajudicial statements[21] regarding the circumstances of his arrest drastically vary from his recitals thereof in court. Such variance between his sworn statements and his testimony renders him an unreliable witness.[22]

Since the counter-affidavits were precisely submitted for the purpose of presenting his defense during the preliminary investigation, it was thus unnatural for him not to have presented therein the same defense he invoked in court, if such was the fact. With the vacillating stance evident in his contradictory submissions, it is not possible to grant probative value to either his affidavits or to his testimony in court.

Although minor discrepancies between the statements of an affiant in his affidavit and those made by him on the witness stand would not necessarily discredit him, it is different where the omission in the affidavit refers to a very important detail such that the affiant would not have failed to mention it, and which omission could affect affiant's credibility.[23]

Appellant's frail excuses cannot prevail over the categorical and unshaken testimonies of the apprehending officers who caught him and Carlos red-handed. There was no claim, much less any proof, that appellant was threatened or coerced by the police into executing his affidavits. To top it all, appellant even had the temerity to admit his liability for perjury on the witness stand.[24] With such demonstrated propensity for lying, the story he presented to the trial court is riven with doubts of his own making.

While appellant reminds us in his brief that courts should be wary of buy-bust operations, he does not advance any reason why the lower courts should not have believed PO3 Azurin and SPO1 Anaviso. Appellant does not impute any ill motive to these law officers who arrested him. Absent any persuasive evidence showing why these officers would testify falsely, the logical conclusion is that no such improper motive existed and that their testimonies are worthy of full faith and credit.[25]

On such evaluation and analysis, we hold that the trial court committed no error in according greater weight to the positive identification and forthright declarations of the prosecution witnesses over the lame denials of appellant. This brings us then to the issue posed by appellant's first and third assignment of errors as to whether or not the facts established by the prosecution justify a finding of conspiracy between appellant and accused Carlos. The query has to be answered affirmatively.

Conspiracy is always predominantly mental in composition because it consists primarily of a meeting of minds and intent. By its nature, conspiracy is planned in

utmost secrecy.[26] Hence, for collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime as only rarely would such agreement be demonstrable since, in the nature of things, criminal undertakings are rarely documented by agreements in writing.[27]

But the courts are not without resort in the determination of its presence. The existence of conspiracy may be inferred and proved through the acts of the accused, whose conduct before, during and after the commission of the crime point to a common purpose, concert of action, and community of interest.[28] In short, conduct may establish conspiracy.[29]

An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part and another performing another so as to complete it with a view to the attainment of the same object, and their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[30]

There is nothing new in our adoption of this principle in crimes involving narcotics. In three cases involving the illegal sale of dangerous drugs,[31] we approved the lower courts' findings of conspiracy based on the coordinated actuations and movements of the accused therein.

In the case at bar, appellant was not merely present in a passive manner at the scene of the crime as he contends. He definitely took an active participation in the sale of the shabu. He was positively identified as the driver of the car carrying accused Carlos and the regulated drugs. When the duo arrived at the agreed place, appellant went down to check if the buyer brought the money while Carlos waited inside the car. Then, upon learning that the poseur-buyer had the money, appellant signaled to his companion indicating such fact.

No other conclusion could follow from appellant's actions except that he had a prior understanding and community of interest with Carlos. His preceding inquiry about the money and the succeeding signal to communicate its availability reveal a standing agreement between appellant and his co-accused under which it was the role of appellant to verify such fact from the supposed buyer before Carlos would hand over the shabu. Without such participation of appellant, the sale could not have gone through as Carlos could have withdrawn from the deal had he not received that signal from appellant. It is undeniable, therefore, that appellant and his co-accused acted in unison and, moreover, that appellant knew the true purpose of Carlos in going to the restaurant.

We accordingly reject appellant's pretension that he was left in the dark until the last moment by Carlos as to the latter's criminal intention. In fact, when PO3 Azurin and Carlos were talking to each other at the backseat, appellant was intently listening at the front seat,[32] thus indicating his interest in the outcome of their transaction.

Taking another tack, appellant now insists that he should not be convicted because he was not the one who actually dealt with the buyer. He maintains that it was not