

SIXTH DIVISION

[CA-G.R. CR.-HC. NO. 06368, November 12, 2014
]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRIMO
"PERRY" PALOMARES Y OCAMPO, ACCUSED-APPELLANT.**

D E C I S I O N

BALTAZAR-PADILLA, J.:

Assailed before US via an appeal^[1] is the Judgment^[2] dated July 25, 2013 of the Regional Trial Court of Naga City, Branch 27 finding accused-appellant guilty in Criminal Case No. 2011-0416 for Violation of Section 5, Article II, R.A. 9165, the decretal portion thereof states, viz –

"WHEREFORE, the Court finds the accused GUILTY beyond reasonable doubt of the crime of illegal sale of methamphetamine hydrochloride or "shabu" as charged. He is hereby sentenced to suffer Life imprisonment, to pay a fine in the amount of Pesos: Five Hundred Thousand (P500,000.00) and to pay the cost of suit.

The subject methamphetamine hydrochloride "shabu" is hereby confiscated for turn-over to the Philippine Drug Enforcement Agency for its proper disposition in accordance with law.

SO ORDERED."

Feeling aggrieved, accused-appellant comes to US challenging the said Decision and assigning the following errors as allegedly committed by the court *a quo*, to wit:

"FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT APPRECIATING THE DEFENSE OF INSTIGATION RAISED BY THE ACCUSED APPELLANT.

SECOND ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT IN SPITE OF THE FAILURE OF THE PROSECUTION TO PROVE THE CORPUS DELICTI OF THE CRIME, TAKING INTO ACCOUNT THE UNRELIABILITY OF THE CHAIN OF CUSTODY OF THE DRUGS."^[3]

The record shows that on October 26, 2011, accused-appellant was arraigned and

pleaded "not guilty"^[4] to an Information for Violation of Section 5, Article II, R.A. 9165^[5] the accusatory portion whereof reads as follows –

"That on or about September 27, 2011, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did, then and there, willfully, unlawfully and criminally sell, dispense, deliver and/or distribute to a poseur-buyer in the person of PO1 Vidal DC Bacolod, one (1) medium size transparent heat-sealed plastic sachet, containing white crystalline substance tested and determined to be Methamphetamine Hydrochloride popularly known as "shabu", a dangerous drug, weighing 4.017 grams, more or less in violation of the above-cited law.

ACTS CONTRARY TO LAW."

To establish the guilt of accused-appellant, the prosecution presented four (4) witnesses namely: P/Insp. Jun Fernandez Malong, Intelligence Officer 1 (IO1) Ken Fontanilla Villafuerte, Andres Panis, Jr. and Intelligence Officer 1 (IO1) Vidal Bacolod.

The prosecution's evidence tends to establish the following facts:

Accused-appellant Primo Palomares was in the PDEA watch list of suspected prohibited drug dealers. Following a routine surveillance, the PDEA was able to confirm his illegal drug dealings.

On September 27, 2011, a buy-bust operation to entrap accused-appellant was planned by the PDEA. Intelligence Officer 1 Vidal DC Bacolod (IO1 Bacolod, for brevity) was designated as the poseur buyer while Intelligence Officer 1 Ken Villafuerte (IO1 Villafuerte, for brevity) acted as back-up arresting officer. The rest of the team was assigned as perimeter security. IO1 Bacolod through their confidential informant arranged a deal between him and accused-appellant for the purchase of P25,000.00 worth of "shabu". Thereafter, the confidential informant told the buy-bust team that accused-appellant wanted to effect the transaction at Zam's Apartelle. At 9:00 o'clock in the evening of even date, accused-appellant arrived at Room No. 5 of Zam's Apartelle and demanded to see the money first. After seeing that the money was ready, he left the apartelle and returned after an hour with the sachet of "shabu" and the transaction proceeded. A "missed call" was made by IO1 Villafuerte to one of the back-up arresting officers to signal that the transaction was already consummated. The rest of the buy-bust team then rushed to the room where the transaction took place and accused-appellant was arrested.

Subsequently, the confiscated item was marked by IO1 Bacolod with "VDB 09/27/11" and was photographed at Room No. 5 of the apartelle. They brought accused-appellant to the police station for inventory of the confiscated item to avoid further trouble. On their way to the police station, the confiscated item was in the possession of IO1 Bacolod. After the inventory, it was placed in the evidence box of the office. Thereafter, the specimen was brought to the Camarines Sur Crime Laboratory for examination. Chemistry Report No. D-132-2011 showed that the subject specimen tested positive for the presence of methamphetamine

hydrochloride. Consequently, a case for Violation of Section 5, Article II of R.A. 9165 was filed against accused-appellant.

The defense, for its part, presented an entirely different version. The testimonies of accused-appellant and his wife, Lani Palomares tend to establish the following:

On September 27, 2011 at around 4:00 o'clock in the afternoon, accused-appellant received a phone call from a confidential agent of the PDEA named Mike. The latter asked him if he knew a certain Rafao Domato and asked him a favor to buy 25 grams of "shabu" from the said person. The plan hatched with the PDEA was to purchase drugs from Domato and bring the latter to the hotel.

At the hotel, he was with Mike in one room while the PDEA agents occupied another room. Since the money was already ready, he left the hotel to negotiate with Domato but the negotiations did not proceed according to plan because the latter hesitated to go with him to the hotel. He informed Mike about Domato's reservation and the former told him to instead purchase 15 grams of "shabu" to be divided into three sachets. After an hour, Mike called him up and asked him to return to Zam's Hotel. When he returned to the hotel, Mike was then sniffing "shabu" and he joined him. Sensing that Mike was already very high on drugs, he told him that if he could bring half of the money to Domato, he might be able to convince the latter to go with him to the hotel. His real plan, however, was to get away from Mike and go home. He went out of the room and while walking towards his motorcycle, he heard a loud sound. Mike went out of the room, pointed his gun at him and ordered him to lie down on the floor. Mike tapped the door of the adjoining room occupied by the PDEA agents. While lying down on the floor, he was handcuffed and pulled inside the room being occupied by the PDEA agents. When they recognized him, they asked about Mike's whereabouts and about what happened to them in the other room. After he was arrested, he was brought to the police station.

Lani Palomares, on the other hand, stated that her husband, accused-appellant, was a friend of the PDEA asset Mike since 2011. At around 5:00 o'clock in the afternoon of September 27, 2011, accused-appellant told her that he had some errands for Mike and he would be home late. Mike prodded her husband to go to Zam's Apartelle and he cooperated with Mike so he would not get the ire of the PDEA since he already had a pending drug case before Branch 19 of RTC Naga City.

Subsequently, a case for Violation of Section 5, Article II of R.A. No 9165 was filed against accused-appellant.

On July 25, 2013, the trial court promulgated its assailed Decision finding accused-appellant guilty as charged, hence, this appeal.

After a careful perusal of the record of this case, WE accord more weight to the prosecution's evidence.

In his brief, accused-appellant maintains that the evidence presented by the prosecution is insufficient to justify his conviction. He claimed that he was a victim of police frame-up because he was instigated by IO1 Bacolod to commit the crime. Accused-appellant points to the following circumstances as evidence which supposedly create reasonable doubt as to the allegation of the prosecution that a buy-bust operation was conducted: 1) the plan to commit the crime emanated from

IO1 Bacolod who instructed the confidential informant to arrange a deal between him and the PDEA for the purchase of P25,000.00 worth of "shabu"; and 2) the police officers have every reason to instigate him to commit the crime for as admitted by IO1 Villafuerte, he was among those who served a search warrant on him at one time, but, he eluded arrest, so they wanted him to be arrested and finally charged in court.

WE are not persuaded by the arguments advanced by accused-appellant.

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.^[6] A buy-bust operation is a form of entrapment that is resorted to for trapping and capturing felons who are pre-disposed to commit crimes. The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.^[7]

In determining the occurrence of entrapment, two tests have been developed: the subjective test and the objective test. Under the "subjective" view of entrapment, the focus is on the intent or predisposition of the accused to commit a crime. Under the "objective" view, on the other hand, the primary focus is on the particular conduct of law enforcement officials or their agents and the accused's predisposition becomes irrelevant. The government agent's act is evaluated in the light of the standard of conduct exercised by reasonable persons generally and whether such conduct falls below the acceptable standard for the fair and honorable administration of justice.^[8]

In order to determine the validity of a buy-bust operation, the "objective" test has been consistently applied by courts in this jurisdiction. In applying the "objective" test, the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, to wit, the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. It further emphasized that the "manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense."^[9]

In the present case, it has been sufficiently established that the police officers used entrapment to nab accused-appellant. The testimony of Intelligence Officer 1 Bacolod categorically shows that a typical buy-bust operation as a form of entrapment was made, viz –

"Q : Can you tell what happened when you were inside that apartelle together with agent Villafuerte and your confidential informant?

A : We have(sic) a transaction between us and Primo Palomares

to buy shabu, sir.

Q : You made mention the word transaction, can you please explain what do you mean by you have a transaction, transaction between you and the accused in this case?

A : It means that we are going to buy shabu from Primo Palomares, that was the transaction, sir.

Q : What was your purpose in supposedly buying shabu from the accused in this case?

A : That was the plan, entrapment against Primo Palomares.

Q : And so what happened with your plan?

A : During the briefing, I pose(sic) as poseur buyer and assigned agent Villafuerte as my back up arresting officer and the rest of the team was the perimeter security and back up arresting officers also sir.

Q : Tell us, how did the plan or how did your plan of entrapment turn out or came about?

A : I instructed the confidential informant to arrange the deal between us and Primo Palomares that we are going to buy shabu worth P25,000.00 and the place was at Sam's Apartelle.

Q : Can you tell us how did this confidential informant communicate with Primo Palomares because you made mention that you were offering to buy P25,000.00 worth of shabu from Primo Palomares?

A : The confidential informant knows Primo Palomares that Primo Palomares is selling illegal shabu sir.

Q : Was your confidential agent able to contact Primo Palomares?

A : Yes sir.

Q : What happened?

A : Then Primo Palomares wanted that the transaction be at Sam's Apartelle.

Q : By the way, have you seen this Primo Palomares?

A : Yes sir.

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Q : How did Primo Palomares communicate his intention to you?