



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff-Appellee,

G.R. No. 188707

Present:

- versus -

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

**MANUELITA AMPATUAN y
GONZALES, ET AL.,**

Accused,

**MASTOR SARIP y
MARUHOM and WARREN
TUMOG y SAMPARADO,**
Accused-Appellants.

Promulgated:

JUL 30 2014

x -----x

DECISION

PEREZ, J.:

Under review is the conviction of the accused-appellants for illegal sale of *shabu*, illegal possession of *shabu* and *shabu* paraphernalia, punishable under Sections 5, 11 (3), and 12, Article II of Republic Act No. 9165 (R.A. No. 9165), otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”. The challenged decision is the Decision¹ of the Court of Appeals (CA), dated 9 October 2007 in CA-G.R. CR HC No. 00356 MIN,

¹ Penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez concurring, Court of Appeals-Mindanao Station, Twenty-Second Division, CA-G.R. CR-HC No. 00356-MIN; CA *rollo*, pp. 350-410.

which affirmed with modifications the Decision of the Regional Trial Court (RTC) dated 18 August 2003, in Criminal Case No. 51,765-2003, 51,766-2003, 51,767-2003 and 51,768-2003.²

The present case involves four (4) separate Amended Information charging accused-appellants Manuelita Ampatuan (Manuelita), Warren Tumog (Warren) and Mastor Maruhom (Mastor), with violation of R.A. No. 9165. The first Information, docketed as Criminal Case No. 51,765-2003, charged accused-appellants Manuelita, Warren and Mastor with violation of Section 5, Article II of R.A. No. 9165 or illegal sale of *shabu*.

The second Information, docketed as Criminal Case No. 51,766-2003, charged accused-appellant Warren with violation of Section 12, Article II of R.A. No. 9165 or illegal possession of drug paraphernalia.

The third Information, docketed as Criminal Case No. 51,767-2003, charged accused-appellant Manuelita also with violation of Section 12, Article II of R.A. No. 9165 or illegal possession of drug paraphernalia.

The last Information, docketed as Criminal Case No. 51,768-2003, charged accused-appellant Manuelita with violation of Section 11 (3), Article II of R.A. No. 9165 or illegal possession of prohibited drugs.

These four cases were tried jointly.

The facts as culled from the records are as follows:

Version of the Prosecution

On 29 January 2003, police officers apprehended Edward Dujon (Dujon) for violation of R.A. No. 9165, which resulted to his detention at the Philippine Drug Enforcement Authority (PDEA) in Davao City pending prosecution of his case.

While in detention, on 8 February 2003, Dujon approached Police Chief Inspector Wilkins Villanueva (Chief P/Insp. Villanueva), Regional Director of the PDEA to give information on the alleged drug activity of

² Penned by Judge Adoracion Cruz Avisado, RTC, Branch 9, Davao City, Crim. Case No. 51765-2003; *id.* at 31-72.

accused-appellant Manuelita and her group who are based in Cotabato City, as one of his suppliers of *shabu*,.

To verify Dujon's claim, Chief P/Insp. Villanueva ordered Dujon to contact Manuelita. When Dujon was able to talk to Manuelita, he ordered three (3) jumbo packs of *shabu*, consisting of 50 grams per packet, and asked that it be delivered the following day. Manuelita agreed.

The following day, 9 February 2003, Manuelita called Dujon, informing him that she could not deliver the three (3) jumbo packs of *shabu* due to lack of supply and that she only had one (1) jumbo sachet in her possession. Manuelita asked Dujon to postpone the delivery for another day.

When Manuelita again failed to deliver on 10 February 2003, Dujon called Manuelita and asked that she deliver the one jumbo sachet of *shabu*, worth ₱70,000.00, in Davao City. Manuelita agreed.

At around six o'clock in the morning of 11 February 2003, Manuelita texted Dujon that she and her men, accused-appellants Mastor and Warren, were already waiting for him inside a white pick-up truck with plate number LBP 648 near Dimsum Diner on Guerrero Street, Davao City.

Dujon informed the PDEA about the arrival of Manuelita and her group. They immediately commenced the entrapment operation. Dujon, driving his own car, proceeded to the Dimsum Diner, discreetly followed by the PDEA operatives.

At the Dimsum Diner, Dujon and Manuelita's group agreed to conduct the delivery at Jogue's Apartelle ("Jogue's") in Juna Subd., Matina, Davao. The PDEA operatives went ahead to Jogue's to secure the area.

At around nine o'clock in the morning, Dujon and Manuelita's convoy arrived at Jogue's. Dujon, after getting a room, went to Room No. 3 together with Manuelita's group. After a few minutes in Room No. 3, they were informed to move to Room No. 2 as Room No. 3 had already been reserved.

In Room No. 2, the group tasted the sample *shabu* to test its quality. Satisfied with the quality, Dujon asked Manuelita to wait for his assistant, who was already on his way to withdraw his money from the bank.

Manuelita then took out the headscarf she was clasping, opened it, and handed the jumbo sachet with crystalline substance over to Dujon.

Meanwhile, when Dujon failed to update the PDEA as previously planned, PO1 Anthony Alpiz (PO1 Alpiz) peered through a window of Room No. 2. According to PO1 Alpiz, he clearly saw Manuelita hand Dujon the jumbo sachet with crystalline substance. Upon seeing that the jumbo sachet with crystalline substance was in Dujon's possession, PO1 Alpiz, followed by other PDEA operatives, rushed into Room No. 2.

After reading accused-appellants their constitutional rights, the PDEA operatives handcuffed them. PO1 Alpiz confiscated the jumbo sachet with crystalline substance then proceeded to frisk accused-appellants and saw a black canister with kettle tube inside hanging from Warren's neck, which upon examination, turned out to be a drug paraphernalia for sniffing *shabu*. On top of the table was Manuelita's headscarf. Upon inspection, PO1 Alpiz discovered four pieces of aluminum foil, a lighter, and a small sachet containing a crystalline substance, which later tested positive for *shabu*. After seizure of the illegal drugs and paraphernalia, the PDEA operatives brought the accused-appellants to the PDEA headquarters for investigation.

According to the Forensic Report³ executed by Chief P/Insp. Noemi Austero, Head of the Chemistry Section:

SPECIMEN SUBMITTED:

"A"- White crystalline substance weighing 46.4490 grams contained in a transparent plastic.

"B"- White crystalline substance weighing 0.2284 gram[s] contained in a plastic sachet.

"C"- Three (3) pieces aluminum foil marked "C1" to "C3", each suspected to contain shabu residue.

"D"- One (1) black keyholder with test tube inside suspected to contain shabu residue. xxxx

FINDINGS:

Qualitative examination conducted on the above-mentioned specimens have POSITIVE result to the test for Methamphetamine hydrochloride (shabu).

CONCLUSION

³ Exhibit "C", RTC records, Criminal Case No. 51,765-03, p. 233.

Specimens “A”, “B”, “C1” to “C3” and “D” contain Methamphetamine hydrochloride (shabu), a dangerous drug.

Version of the Defense

Accused-appellants deny the charges against them. They narrate as facts the following:

At around one o'clock in the morning of 11 February 2003, Warren and Mastor set out for Davao City, on board the pick-up truck of Warren's mother, to get the cellular phone of Warren's uncle. While in Cotabato City, they passed by Manuelita, who was waiting for a ride to go to the bus terminal going to Davao City for a medical check-up. Manuelita flagged down Warren and Mastor and requested if she could ride with them to Davao City, to which the two acceded.

When they arrived in Davao City at around six o'clock in the morning, Manuelita invited Warren and Mastor to have breakfast at Chowking near Victoria Plaza Mall.

After having breakfast, they proceeded to see Warren's brother-in-law on Malvar Street to get his uncle's cellular phone. However, upon arrival, Warren discovered that the cellular phone has already been sent to Cotabato City. Warren and Mastor then decided to go back to Cotabato City. When they were about to drop-off Manuelita, Manuelita received a call from Dujon. Manuelita then asked Warren and Mastor if they could drive her to Dimsum Diner to meet Dujon.

At the Dimsum Diner, Dujon invited the accused-appellants to his place at Jogue's Apartelle to get rest. When they arrived, they stayed in Room No. 3. Dujon told them to rest while he went outside to get drinks. While they were making themselves comfortable, Warren noticed cigarettes, plastic sachets and aluminum foils on top of the table and inquired about it. Manuelita informed Warren that Dujon was a big time drug pusher in Davao City. When Dujon arrived, he placed the drinks on top of the table and called somebody in his phone. After making a call, Dujon told the accused-appellants to transfer to Room No. 2 because Room No. 3 was already reserved. Dujon then borrowed Manuelita's headscarf, wrapped it over the *shabu* and drug paraphernalia, brought the headscarf to Room No. 2, and placed it on top of the table.

Inside Room No. 2, Dujon asked accused-appellants to taste the *shabu*, boasting its fine quality. The accused-appellants initially declined, but Dujon was very insistent. Because of '*pakikisama*', the accused-appellants all sniffed the *shabu*. Feeling nervous, Warren and Mastor decided to go out of the room. However, before opening the door, somebody knocked. When Dujon opened the door, the police barged inside and arrested them.

Upon entering a not guilty plea to all the four sets of Information and after trial, the trial court ruled in the following:

Wherefore, the Court finds and so rules that:

(1) In Criminal Case No. 51,765-2003, the three (3) accused Manuelita Gonzales y Ampatuan, 47 years old, married, Filipino, a resident of 111 Sinsuat Avenue, Cotabato City, Warren Samparado Tumog, 30 years old, married, Filipino, a resident of 18 Salisa Street, Cotabato City, and Mastor Sarip Maruhom, 36 years old, married, Filipino, a resident of Macapagal Street, Cotabato City, are hereby all found GUILTY beyond reasonable doubt, and are CONVICTED of the crime for Violation of Section 5, Article II of Republic Act No. 9165. Each of them is hereby imposed a penalty of DEATH and a fine of SEVEN MILLION PESOS (₱7,000,000.00) EACH with all the accessory penalties corresponding thereto including absolute perpetual disqualification from any public office for Mastor Sarip Maruhom and Warren Samparado Tumog;

(2) In Criminal Case No. 51,766-2003 Warren Samparado y Tumog, 30 years old, married, Filipino, a resident of 18 Salisa Street, Cotabato City, is hereby found GUILTY beyond reasonable doubt, and is CONVICTED for the crime of Violation of Section 12, Paragraph (3), Article II of Republic Act No. 9165. He is hereby imposed a sentence of IMPRISONMENT of FOUR (4) YEARS and a fine of FIFTY Thousand Pesos (₱50,000.00) with all the accessory penalties corresponding thereto including absolute perpetual disqualification from any public office;

(3) In Criminal Case No. 51,765-2003, Manuelita Gonzales y Ampatuan, 47 years old, married, Filipino, a resident of 111 Sinsuat Street, Cotabato City, is hereby found GUILTY beyond reasonable doubt, and CONVICTED of the crime for Violation of Section 12, Paragraph (3), Article II of Republic Act No. 9165. She is hereby imposed a sentence of IMPRISONMENT of FOUR (4) YEARS and a fine of FIFTY THOUSAND PESOS (₱50,000.00) with all the accessory penalties corresponding thereto and;

(4) In Criminal Case No. 51,768-2003, Manuelita Gonzales y Ampatuan, 47 years old, married, Filipino, a resident of 111 Sinsuat Avenue, Cotabato City, is hereby found GUILTY beyond reasonable doubt, and CONVICTED of the crime for Violation of Section 11,

Paragraph (3), Article II of Republic Act No. 9165. She is hereby imposed a sentence of IMPRISONMENT of TWENTY (20) YEARS and a fine of FOUR HUNDRED THOUSAND PESOS (₱400,000.00) with all the accessory penalties corresponding thereto.

SO ORDERED.⁴

On appeal to the CA, the CA affirmed with modifications the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 9 in Davao City finding appellants Manuelita Ampatuan, Mastor Sarip and Warren Tumog for Violation of Republic Act No. 9165 is AFFIRMED WITH MODIFICATIONS that [a] in Criminal Case No. 51,765-2003, appellants are sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 each; [b] in Criminal Case No. 51,766-2003, appellant Warren Tumog is sentenced to suffer the indeterminate penalty of imprisonment ranging from six (6) months and one (1) day, as minimum, to two (2) years, as maximum and to pay a fine of ₱50,000.00; [c] in Criminal Case No. 51,767-2003, appellant Manuelita Ampatuan is sentenced to suffer the indeterminate penalty of imprisonment ranging from six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and to pay a fine of ₱50,000.00; and [d] in Criminal Case No. 51,768-2003, appellant Manuelita Ampatuan is sentenced to suffer an indeterminate penalty of imprisonment ranging from twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of ₱400,000.00.

SO ORDERED.⁵

We deny the appeal.

Elements of Illegal Sale of *Shabu* Duly Established

The elements necessary for the prosecution of the illegal sale of drugs are as follows: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and payment therefor.⁶ The prosecution, to prove guilt beyond reasonable doubt, must present in evidence the *corpus delicti* of the case. The *corpus delicti* is the seized illegal drugs.

⁴ CA rollo, pp. 70-71.

⁵ Rollo, pp. 63-64.

⁶ *People v. Lorenzo*, G.R. No. 184760, 23 April 2010, 619 SCRA 389, 400.

The duty of the prosecution is not merely to present in evidence the seized illegal drugs. It is essential that the illegal drugs seized from the suspect is the very same substance offered in evidence in court as the identity of the drug must be established with the same unwavering exactitude as that required to make a finding of guilt.⁷

This Court is convinced that the prosecution has sufficiently discharged its burden to establish the elements in the illegal sale of *shabu*. The prosecution was able to establish the (1) identity of accused-appellants as the sellers, and the buyer, Dujon; and (2) the object of the transaction, which is the jumbo sachet of *shabu*, weighing 46.4490 grams; and the delivery of the sold illegal *shabu* to Dujon, the poseur-buyer.

The absence of marked money does not run counter to the presented proof of illegal sale of *shabu*. Lack of marked money is not an element to the crime of illegal sale of *shabu*.⁸ The marked money used in the buy-bust operation, although having evidentiary value, is not vital to the prosecution of the case. It is merely corroborative in nature. What is material to the prosecution of illegal sale of dangerous drugs is the proof that the illegal sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.⁹ In the case at bar, the prosecution duly established both.

Relative to the required proof of an unbroken chain of custody of the seized illegal *shabu* and *shabu* paraphernalia, the parties agreed to stipulate on the relevant testimony of the witnesses, the request for laboratory examination, machine copy blotter, inventory, photographs, and affidavits, all attesting to the fulfillment of the requirement.¹⁰ Indeed, the defense never raised as defense any break in the chain of custody of the seized *shabu* and drug paraphernalia.

The accused-appellants accuse the PDEA operatives of instigation. They submit that Dujon, as the principal witness for the prosecution and poseur-buyer, lacks credibility, because he is engaged in the illegal sale of *shabu*.

⁷ *Sales v. People*, 602 Phil. 1047, 1056 (2009).

⁸ *Cruz v. People*, 597 Phil. 722, 729 (2009).

⁹ *People v. Concepcion et al.*, 578 Phil. 957, 976 (2008); *People v. Macabalang*, 538 Phil. 136, 148 (2006); *People v. Astudillo*, 440 Phil. 203, 224 (2002); *People v. Chang*, 382 Phil. 669, 684 (2000).

¹⁰ Pre-Trial Order, Joint Affidavit of PO1 Ferlindo N. Foncardaz and PO1 Anthony Alpiz dated 12 February 2003; Records, Criminal Case No. 51,765-03, p. 67.

It is elementary that entrapment and instigation are different. In instigation, the instigator induces the would-be-defendant into committing the offense, and himself becomes a co-principal. In entrapment, the means originates from the mind of the criminal. Otherwise stated, the idea and the resolve to commit the crime come from the criminal. While in instigation, the law enforcer conceives the commission of the crime and suggests the same to the accused who adopts the idea and carries it into execution.¹¹

While it is true that it was Dujon, who initiated the illegal sale, it does not disprove the fact of illegal sale and habitual activity of illegal sale of *shabu* of accused-appellants: the accused-appellants brought the illegal *shabu* all the way from Cotabato to Davao, and handed the same to Dujon. Evidently, the accused-appellants voluntarily resolved to commit the crimes as charged. Indeed, what transpired in the instant case was a legitimate buy-bust operation and not instigation.

Furthermore, the defense's mere denial of the charges and allegations of instigation and frame-up cannot prevail over the clear and unequivocal pieces of evidence presented by the prosecution. We are not unaware of the common defenses of frame-up or instigation by police officers in illegal drugs cases. However, because instigation and frame-up as a defense can easily be concocted and fabricated, they are given little evidentiary value.¹²

Accused-appellants were arrested during a buy-bust operation, in *flagrante delicto*. Thus, unless there is clear and convincing evidence that the arresting officers have ill-motive, the presumption of regularity shall prevail. The defense has not adduced any such evidence.

The qualification and credibility of Dujon as a principal witness cannot be assailed. The law has specifically provided for the immunity of informants from prosecution and punishment. Section 33, Article II of R.A. No. 9165 provides:

Section 33. Immunity from Prosecution and Punishment. – Notwithstanding the provisions of Section 17, Rule 119 of the Revised Rules of Criminal Procedure and the provisions of Republic Act No. 6981 or the Witness Protection, Security and Benefit Act of 1991, any person who has violated Sections 7, 11, 12, 14, 15, and 19, Article II of this Act, who voluntarily gives information about any violation of Sections 4, 5, 6, 8, 10, 13, and 16, Article II of this Act as well as any violation of the offenses mentioned if committed by a drug syndicate, or any information

¹¹ *People v. Sta. Maria*, 545 Phil. 520, 528 (2007).

¹² *Quinicot v. People*, 608 Phil. 259, 279 (2009).

leading to the whereabouts, identities and arrest of all or any of the members thereof; and who willingly testifies against such persons as described above, shall be exempted from prosecution or punishment for the offense with reference to which his/her information or testimony were given, and may plead or prove the giving of such information and testimony in bar of such prosecution: *Provided*, That the following conditions concur:

(1) The information and testimony are necessary for the conviction of the persons described above;

(2) Such information and testimony are not yet in the possession of the State;

(3) Such information and testimony can be corroborated on its material points;

(4) the informant or witness has not been previously convicted of a crime involving moral turpitude, except when there is no other direct evidence available for the State other than the information and testimony of said informant or witness; and

(5) The informant or witness shall strictly and faithfully comply without delay, any condition or undertaking, reduced into writing, lawfully imposed by the State as further consideration for the grant of immunity from prosecution and punishment.

Provided, further, That this immunity may be enjoyed by such informant or witness who does not appear to be most guilty for the offense with reference to which his/her information or testimony were given: *Provided, finally*, That there is no direct evidence available for the State except for the information and testimony of the said informant or witness.

The allegation that Dujon is engaged in illegal sale, indeed even the fact that Dujon is a detainee charged with violation of the law is not a disqualification from immunity since such is not equivalent to a previous “conviction of a crime involving moral turpitude.”

Dujon, having all the qualifications and none of the disqualifications under the law, is eligible for immunity from prosecution. While Dujon was part of the entrapment, the sale and possession of dangerous drugs were proven solely by Dujon’s testimony but largely and importantly by the testimony of the apprehending authorities and by the admitted documents.

WHEREFORE, We **AFFIRM** the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00356-MIN dated 9 October 2007 as to the imposable penalty. Thus:

1. Criminal Case No. 51,765-2003, accused-appellants, Warren Tumog and Mastor Maruhom are sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 each;
2. Criminal Case No. 51,766-2003, accused-appellant Warren Tumog is sentenced to suffer the indeterminate penalty of imprisonment ranging from six (6) months and one (1) day, as minimum, to two (2) years, as maximum and to pay a fine of ₱50,000.00;

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice



ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

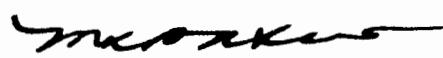
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice