

THIRD DIVISION

[G.R. No. 199735, October 24, 2012]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AISA MUSA Y PINASILO, ARA MONONGAN Y PAPAO, FAISAH ABAS Y MAMA, AND MIKE SOLALO Y MLOK, ACCUSED-APPELLANTS.

DECISION

VELASCO JR., J.:

This is an appeal seeking to nullify the February 28, 2011 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03758, which affirmed the October 7, 2008 Decision^[2] in Criminal Case No. 13536-D of the Regional Trial Court (RTC), Branch 163 in Taguig City. The RTC convicted accused-appellants of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002* for selling dangerous drugs.

The Facts

An Information charged the accused Aisa Musa y Pinasilo (Musa), Ara Monongan y Papao, Faisah Abas y Mama (Abas), and Mike Solano y Mlok (Solano) with the following:

That, on or about the 1st day of June, 2004 in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another and acting as an organized or syndicated crime group, without being authorized by law, did, then and there willfully, unlawfully and knowingly sell and give away to one PO1 Rey Memoracion one (1) heat sealed transparent plastic sachet containing 4.05 grams of white crystalline substance, which was found positive for Methamphetamine hydrochloride also known as "*shabu*", a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.^[3]

Version of the Prosecution

The prosecution's version of facts was anchored heavily on the testimony of Police Officer 1 Rey Memoracion (PO1 Memoracion). From the findings of the trial and appellate courts, We synthesize his testimony, as follows:

On June 1, 2004, at or about 9:00 p.m., the Station Anti-Illegal Drugs-Special Operating Task Force of the Taguig City Police received a report from an informant about the selling of prohibited drugs by Musa and her cohorts at Maharlika Village,

Taguig City. The police immediately organized a buy-bust operation which included PO1 Danilo Arago (PO1 Arago) and PO1 Memoracion as team members. The police agreed that PO1 Memoracion was the designated poseur-buyer; that five one-thousand peso (PhP 1000) bills with Memoracion's initials were to be used as marked money; and that Memoracion's lighting of the cigarette was the pre-arranged signal to signify the consummation of the transaction. The buy-bust team submitted a pre-operation report to the Philippine Drug Enforcement Agency and entered it in the police blotter. Thereafter, the buy-bust team, along with the informant, proceeded to a nearby shopping mall (Sunshine Mall) where the police had arranged PO1 Memoracion and the informant to meet with the alleged drug dealers.

The buy-bust team arrived at the mall at around 9:45 p.m. The informant and Memoracion alighted from the vehicle while the rest of the buy-bust team waited at the parking lot. The informant then introduced Memoracion, as a potential buyer, to Abas and Solano. PO1 Memoracion then told Abas and Solano that he wanted to score *shabu* worth five-thousand pesos (PhP 5,000) but the two replied that they do not have available stocks on hand. Abas and Solano offered to accompany PO1 Memoracion to Musa who was at a nearby condominium unit at Building II, Maharlika Village. Memoracion agreed and pretended to go to the comfort room in order to inform PO1 Arago regarding the change of venue. PO1 Memoracion also changed the pre-arranged signal from lighting a cigarette to a phone ring or "missed call" and asked the rest of the buy-bust team to follow them.

Thereafter, the informant, Memoracion, Abas and Solano boarded a tricycle to Musa's place. They arrived at the condominium at around 10:30 in the evening and went to the 4th floor of the building while the rest of the buy-bust team remained at the ground floor while waiting for Memoracion's call. The four met Musa at the hallway outside Unit 403. Abas introduced Memoracion to Musa as the buyer. Musa then ordered Ara Monongan (Monongan) to count the money. Afterwards, Musa took from her pocket one (1) heat sealed plastic sachet of *shabu* and gave it to PO1 Memoracion. The latter immediately made the call to PO1 Arago who, together with two (2) other police officers,^[4] proceeded right away to PO1 Memoracion's location, which was about 15 meters away from the ground floor.^[5]

Upon seeing accused-appellants, the police officers made the arrest. PO1 Arago confiscated from Monongan the marked money of five PhP 1000 bills with Memoracion's initials. PO1 Memoracion, on the other hand, marked the seized sachet of *shabu* with "APM" or the initials of accused Aisa Pinasilo Musa. He then delivered the confiscated item to the Philippine National Police (PNP) Crime Laboratory, Fort Bonifacio, Taguig City and requested an examination of the substance. The PNP Crime Lab Report showed that the indicated substance weighing 4.05 grams tested positive for *shabu*.^[6]

The prosecution likewise presented PO1 Arago, who stood as PO1 Memoracion's back-up during the buy-bust operation,^[7] to corroborate the foregoing version of events.

Version of the Defense

In defense, each of accused-appellants denied the accusations against them and

submitted their respective alibis, as follows:

Accused Aiza Musa claimed that on June 1, 2004, she and her husband, Bakar Musa, went to their friend Sonny Sagayno's house, located at Unit 512, Building 2, Maharlika Village, Taguig City, to discuss [their] forthcoming travel to Saudi Arabia and that while they were inside Sonny's house, two police officers barged into the house, while their companions stood outside, and searched for prohibited drugs, but found no *shabu*. Aside from saying that Ara [Monongan] was her neighbor, [she] denied knowing [her] and Faisah [Abas] that well.

Accused Ara Monongan averred that from the morning up to 12:00 noon of June 1, 2004, she was with her aunt Habiba's house at Unit 403, Building 2, Maharlika Village, Taguig City, washing clothes and looking over her aunt's children; that at about 12:00 noon of the same day, a visitor, whose name was Norma, arrived and that at around 1:00 o'clock in the afternoon, Sonny [Sagayno], Faisah [Abas] and the latter's textmate, Angie, arrived; that at about 3:00 or 4:00 o'clock in the afternoon, policemen in civilian clothes barged into the house, searched for illegal drugs, but found none, and arrested her; that she went to stay in her aunt's place only for a vacation; and that it was the first time she saw Faisah and Angie. She testified that Aiza was her neighbor but disclaimed knowing her; that she was 17 years old at the time of the complained incident; and that her real name was Ara Nonongan and not Ara Monongan.

Accused Mike Solano alleged that on June 1, 2004 at around 11:00 o'clock in the morning, his cousin Faisah [Abas] requested him to accompany to Sunshine Mall to meet her textmate, Angie; that while Faisah waited for Angie, Mike went to the 2nd floor of the mall for window shopping; that Angie arrived together with two pregnant women but left at 12:00 o'clock noon to go to a condominium in Maharlika Village; that after he and the two pregnant women had eaten in Jollibee, a big man sat beside him, introduced himself as a policeman and ordered him to come with him peacefully and to just explain in his office. He claimed not knowing Aiza [Musa] and Ara [Monongan] and that he saw them for the first time only when they boarded in the same vehicle.

And, finally, accused Faisah Abas claimed that on that particular day, she and her cousin Mike [Solano] proceeded to Sunshine Mall to meet Angie; that she accompanied Angie to Building 2 of Maharlika Village where they met Angie's cousin, Sonny [Sagayno], at the 5th floor and that they all proceeded to the 4th floor; that when they were inside Sonny's house, she saw Ara [Monongan], another female person and three children; that after they had eaten their lunch, she heard a gunshot and discovered that Sonny was not there anymore; that shortly thereafter, three persons in civilian clothes barged into the house, introduced themselves as policemen, poked a gun at her and frightened and handcuffed her; that two of the operatives went inside the room and ransacked some of Ara's belongings; that the policemen accused her of selling illegal drugs; that no *shabu* was found in her possession.^[8]

Ruling of the RTC

The RTC found all the accused guilty as charged, to wit:

WHEREFORE, accused Aiza *Musa y Pinasilo*, Faisah *Abas y Mama* and Mike *Solano y Mlok*, are found GUILTY beyond reasonable doubt of the crime of Violation of Section 5, 1st paragraph Article II, RA 9165 in relation to Article 62, 2nd paragraph of the Revised Penal Code and are sentenced to suffer the penalty of life imprisonment and a fine of Ten Million Pesos (PhP 10, 000, 000.00) and to pay the costs.

Accused Ara *Monongan y Papao* is likewise found GUILTY beyond reasonable doubt of the crime charged and, there being no mitigating or aggravating circumstance, is sentenced to suffer the indeterminate penalty of from fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as minimum, to sixteen (16) years of reclusion temporal, as maximum, and to pay a fine of PhP 500, 000.00 and to pay the costs. The period of preventive suspension is credited in her favor.^[9]

The RTC gave credence to the testimony of PO1 Memoracion. It found his testimony as "candid, straightforward, firm, unwavering, nay credible," since it was not shown that PO1 Memoracion was "ill-motivated in testifying as he did in Court against all accused."^[10] On the other hand, the RTC rejected accused-appellants' defenses of alibi and denial because they failed to present clear and convincing evidence to establish that it was impossible for them to be at the *locus criminis* at the time of the buy-bust operation.^[11]

As regards the penalty imposed, the RTC declared each of the accused liable as principal because it found the presence of conspiracy among all four accused.^[12] Citing Article 62 of the Revised Penal Code,^[13] it likewise imposed the maximum penalty of life imprisonment and a fine of PhP 10 million because of its finding that the offense was committed by an organized/syndicated crime group. However, it reduced the penalty imposed against Monongan because she was a minor at the time of the commission of the offense.

Ruling of the CA

On appeal, all of the accused assailed their conviction and faulted the RTC in finding them guilty beyond reasonable doubt for the sale of dangerous drugs. In their Brief, accused-appellants raised doubts on the credibility of the testimonies of the prosecution witnesses, and questioned the ruling of RTC for rejecting their alibis. They also averred that the prosecution failed to establish the *corpus delicti* of the offense and that the chain of custody rule under RA 9165 was not complied with since no physical inventory and photograph of the seized items were taken in their presence or in the presence of their counsel, a representative from the media and the Department of Justice and an elective official. Furthermore, they refuted the findings of the RTC that conspiracy existed among them, and that they were members of an organized/ syndicated crime group.^[14]

Notwithstanding, the CA affirmed the findings of the RTC but modified the penalty imposed on Monongan, to wit:

WHEREFORE, the appealed Decision dated October 7, 2008 of the trial is affirmed, with modification that the penalty meted upon accused-appellant Ara Monongan is life imprisonment and fine of P10,000,000, but the case is hereby remanded to trial court for appropriate disposition under Section 51, RA No. 9344 with respect to said accused – appellant.

The Decision is affirmed in all other respects.^[15]

The CA ruled that the RTC erred in reducing the penalty of *reclusion temporal* in favor of Monongan. It reasoned that the penalty of life imprisonment as provided in RA 9165 cannot be lowered because **only** the penalties provided in the Revised Penal Code, and not in special laws, may be lowered by one or two degrees.^[16]

The Issues

I

Whether the Court of Appeals erred in affirming the credibility of the testimonies of the prosecution witnesses?

II

Whether the Court of Appeals erred in upholding the ruling of the RTC in rejecting accused-appellants denials and alibis?

III

Whether the Court of Appeals erred in ruling that there was compliance with the chain of custody rule as required by RA 9165?

IV

Whether the Court of Appeals erred in imposing the maximum penalty of life imprisonment and a fine of ten million pesos (Php 10,000,000) against ALL of the accused?

The Ruling of this Court

We sustain the conviction of accused-appellants.

In determining the guilt of the accused for the sale of dangerous drugs, the prosecution is obliged to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. There must be proof that the transaction or sale actually took place and that the *corpus delicti* be presented in court as