

FIRST DIVISION

[G.R. NO. 171019, February 23, 2007]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAFAEL STA. MARIA Y INDON, APPELLANT.

DECISION

GARCIA, J.:

Under consideration is this appeal by Rafael Sta. Maria y Indon from the Decision^[1] dated November 22, 2005 of the Court of Appeals (CA) in *CA-G.R. CR-H.C. No. 00802*, denying his earlier appeal from and affirming the May 5, 2004 decision^[2] of the Regional Trial Court (RTC) of Bulacan, Branch 20, which found him guilty beyond reasonable doubt of the crime of violation of Section 5,^[3] Article II of Republic Act No. 9165, otherwise known as the **Comprehensive Dangerous Drugs Act of 2002**.

The indicting Information,^[4] docketed in the RTC as Criminal Case No. 3364-M-2002, alleges:

That on or about the 29th day of November, 2002, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat sealed transparent plastic sachet containing methylamphetamine hydrochloride weighing 0.041 gram.

Contrary to law.

Duly arraigned on January 23, 2003, appellant pleaded "Not Guilty" to the crime charged. Trial ensued thereafter.

The prosecution's version of events which led to appellant's arrest and subsequent prosecution under the aforementioned Information is as follows:

On November 27, 2002, at around 10:00 o'clock in the morning, P/Chief Insp. Noli Pacheco, Chief of the Provincial Drug Enforcement Group of the Bulacan Provincial Office based at Camp Alejo Santos, Malolos, Bulacan received an intelligence report about the illegal drug activities in Sitio Gulod, Barangay Pantubig, San Rafael, Bulacan of a certain "Fael," who later turned out to be appellant Rafael Sta. Maria. P/Chief Insp. Pacheco formed a surveillance team to look for a police asset to negotiate a drug deal with appellant. In the morning of November 29, 2002, the surveillance team reported to P/Chief Insp. Pacheco that a confidential asset found by the team had already negotiated a drug deal for the purchase of P200 worth of

shabu from appellant at the latter's house at No. 123 Sitio Gulod, Barangay Pantubig, San Rafael, Bulacan between 7:00 and 7:30 in the evening of November 29, 2002. The surveillance team then prepared for a buy-bust operation, with PO3 Enrique Rullan as team leader, and PO1 Rhoel Ventura, who was provided with two (2) marked P100-bills, as poseur-buyer. At the appointed time and place, PO1 Ventura and the confidential informant proceeded to appellant's house and knocked at the door. Appellant opened the door and the confidential informant introduced to him PO1 Ventura as a prospective buyer. PO1 Ventura later handed the two (2) marked P100-bills to appellant who, in turn, gave him a plastic sachet of shabu. Thereupon, PO1 Ventura sparked his cigarette lighter, which was the pre-arranged signal to the other members of the buy-bust team that the sale was consummated. Appellant was arrested and the two marked P100-bills recovered from him. Also arrested on that occasion was one Zedric dela Cruz who was allegedly sniffing shabu inside appellant's house and from whom drug paraphernalia were recovered. Upon laboratory examination of the item bought from appellant, the same yielded positive for methylamphetamine hydrochloride or shabu weighing 0.041 gram.

The defense gave an entirely different account of what allegedly transpired prior to and at the time of appellant's arrest on that evening of November 29, 2002.

Appellant testified that on November 29, 2002, he was at home with a certain Zedric dela Cruz who was allegedly offering him a cellphone for sale and collecting payment on a loan of his wife. At that time, his wife was out of the house to pay their electric bill. While waiting for his wife, he and Zedric watched television when they heard the barking of dogs. Immediately, three (3) men suddenly barged into the house and announced that they were police officers while three other men stayed outside the house. The police officers frisked him and Zedric and searched the house. He tried to complain about what they were doing but the police officers got mad and accused him of selling shabu. He replied that he does not know anything about drugs. Afterwards, he and Zedric were brought out of the house and handcuffed. While on board the police vehicle, the police officers warned them to cooperate. The police officers also asked him to be their asset and when he said that he does not know anything about it, they told him that they could file a case against him. The police officers also offered to buy drugs from him but he refused the offer because he knows that it is only a plan for them to arrest him.

In a decision^[5] dated May 5, 2004, the trial court found appellant guilty beyond reasonable doubt of the offense charged, and accordingly sentenced him, thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1). xxx

2). xxx

3). In Criminal Case No. 3264-M-2002, the Court finds accused RAFAEL STA. MARIA Y INDON guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act 9165. He is hereby sentenced to suffer the penalty of life imprisonment and is ordered to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The dangerous drug and drug paraphernalia submitted as evidence in these cases are hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA).

SO ORDERED.

From the aforesaid decision, appellant went directly to this Court. Pursuant to our pronouncement in *People v. Mateo*,^[6] which modified the pertinent provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment, the Court transferred the appeal to the CA for appropriate action and disposition, whereat it was docketed as *CA-G.R. CR-H.C. No. 00802*.

On November 22, 2005, the CA promulgated the herein assailed Decision^[7] denying the appeal and affirming that of the trial court, to wit:

xxx The Court sees no reason to disturb the finding of trial court. The evidence presented by the prosecution proves to a moral certainty appellant's guilt of the crime of selling illegal drugs. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized as evidence.

WHEREFORE, the appeal is **DENIED**. The decision of the Regional Trial Court is hereby **AFFIRMED**. Costs de officio.

SO ORDERED.

The case is again with this Court following its elevation from the CA, together with the case records.

In his Brief, appellant contends that the trial court erred in convicting him because his guilt was not proven beyond reasonable doubt. He maintains that instigation, not entrapment, preceded his arrest. He also faults the appellate court in not finding that the evidence adduced by the prosecution was obtained in violation of Sections 21 and 86 of Republic Act No. 9165.

It is appellant's submission that what transpired on that fateful evening of November 29, 2002 was instigation and not a valid buy-bust operation. He would make much of the fact that the transaction between him and the police informant occurred on November 27, 2002, while the buy-bust operation took place on November 29, 2002. To appellant, the informant, by pretending that he was in need of *shabu*, instigated or induced him to violate the anti-dangerous drugs law. He adds that the prosecution was not able to prove that at the time of the police surveillance, he was indeed looking for buyers of *shabu*, and that were it not for the inducement of the informant that the latter would buy *shabu*, he would not have produced the same on November 29, 2002.

We are not persuaded.

In entrapment, the entrapper resorts to ways and means to trap and capture a lawbreaker while executing his criminal plan. In instigation, the instigator

practically 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. The idea and the resolve to commit the crime come from him. In instigation, the law enforcer conceives the commission of the crime and suggests to the accused who adopts the idea and carries it into execution. The legal effects of entrapment do not exempt the criminal from liability. Instigation does.^[8]

Here, the mere fact that the agreement between appellant and the police informant for the purchase and sale of illegal drugs was made on November 27, 2002, while the buy-bust operation was conducted on November 29, 2002, is of no moment. Without more, it does not prove that said informant instigated appellant into committing the offense. If at all, the earlier agreement and the subsequent actual sale suggest that appellant was habitually dealing in illegal drugs.

It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the offense is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.^[9]

As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant induced appellant to sell illegal drugs to him.

It is a basic rule in evidence that each party must prove his affirmative allegation.^[10] In this case, apart from appellant's self-serving declaration that he was instigated into committing the offense, he did not present any other evidence to prove the same.

A perusal of the records readily reveals that the police operatives who took part in the buy-bust operation, namely, PO1 Alexander Ancheta, PO1 Rhoel Ventura and PO3 Enrique Rullan, clearly and convincingly testified on the circumstances that led to appellant's arrest. In a credible manner, they narrated in open court the details of the buy-bust operation they conducted on November 29, 2002 in Sitio Gulod, Barangay Pantubig, San Rafael, Bulacan. We thus quote with approval the trial court's findings on this matter:

PO1 Ancheta, PO1 Ventura and PO2 Rullan testified on the aforementioned circumstances concerning the drug buy-bust operation that led to the arrest of accused Sta. Maria, following the purchase from him of P200 worth of shabu by PO1 Ventura posing as poseur-buyer. The testimonies of these officers, as summarized above, are essentially clear credible and convincing. Notwithstanding minor inconsistencies, their declarations in Court dovetail and corroborated one another on material points, and are generally consistent with the narrations contained in their "Joint Affidavit of Arrest" (Exh. "D") executed on December 2, 2002. More significantly, there is no credible showing that the aforementioned