

FIRST DIVISION

[G.R. NO. 143705, February 23, 2007]

**RUBY DIMACUHA Y EBREO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

GARCIA, J.:

In this petition for review on certiorari, petitioner Ruby E. Dimacuha seeks her acquittal by a reversal of the October 22, 1999 decision^[1] of the Court of Appeals (CA) in *CA-G.R. CR No. 20720* which affirmed her earlier conviction by the Regional Trial Court of Marikina, Metro Manila, Branch 273, for violations of Sections 15^[2] and 16^[3] of Article III of Republic Act (RA) No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, in Criminal Case Nos. 96-112-D-MK and 95-63-D-MK, respectively. Dimacuha's motion for reconsideration of said decision was denied by the CA in its June 19, 2000 resolution.^[4]

Criminal Case No. 95-63-D-MK of the court of origin traces its formal beginning from an Information charging petitioner of the crime of violation of Sec. 16 (Possession or Use of Regulated Drugs), Art. III of RA No. 6425, as amended. A companion case, docketed as Criminal Case No. 96-112-D-MK, for violation of Sec. 15 (Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs), Art. III of the same law, was later lodged in the same branch of the court.

The two separate Informations filed against the petitioner respectively read as follows:

Crim. Case No. 95-63-D-MK

(For Possession or Use of Regulated Drugs)

That on or about the 10th day of August 1995, in the Municipality of Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control 10.78 and 1.15 grams of methamphetamine hydrochloride, a regulated drug, in violation of the above-cited law, as amended.

Contrary to law.

Crim. Case No. 96-112-D-MK

(For Sale, Administration, Dispensation, Delivery,
Transportation and Distribution of Regulated Drugs)

That on or about the 10th day of August, 1995, in the Municipality of

Marikina, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously deliver 1.15 gram of methamphetamine hydrochloride, a regulated drug to another person, in violation of the above-cited law, as amended.

Contrary to law.

Arraigned on separate dates, petitioner, assisted by counsel, entered a plea of "Not Guilty" in both cases. Thereafter, by agreement of the parties, the two cases were tried jointly.

To buttress its case against the petitioner, the prosecution presented the testimonies of Police Inspector Julita T. De Villa, SPO2 Melanio Valeroso and SPO2 Vicente Ostan.

The People's version of the incident, as summarized by the CA in the decision now on appeal, is as follows:

The prosecution's evidence tend to show that at around 9:30 a.m. on 10 August 1995, SPO2 Melanio Valeroso (SPO2 Valeroso, for brevity), Senior Inspector Ely Pintang, SPO2 Ostan, and Edilberto Ogto were at the office of the Intelligence Unit of the Marikina Police Station, Metro Manila. While there, an informant or confidential informer or asset named Benito Marcelo arrived. He relayed to the policemen about a sale of illegal drugs to be done between 11:00 a.m. to 12:00 noon of the same day along the corner to J.M. Basa and Kapwa Streets, Calumpang, Marikina, Metro Manila. He likewise described the seller as "more or less 5'4" in height, has a long hair and she will be using a (sky blue colored) car (Toyota Corolla with Plate No. PPZ-254) in delivering the shabu." At once, Senior Inspector Ely Pintang formulated a plan to conduct the operation of arresting the suspected seller. A team composed of SPO2 Valeroso, SPO2 Vicente Ostan, Bello Borqueta, Jose Castelo, Jr., and Felipe Evangelista was formed. Then, the team dispatched to the said place.

At about 11:00 a.m. of that day, SPO2 Valeroso and SPO2 Vicente Ostan (SPO2 Ostan, for brevity) positioned themselves along J.M. Basa Street, while the other members were at Kapwa Street, Calumpang, Marikina. SPO2 Valeroso and SPO2 Ostan were fronting a house which was more or less 5 to 7 meters away from where they were. The house allegedly owned by a certain alias Rudy Kalawang was where the sale of the illegal drugs was to take place. SPO2 Valeroso saw Benito Marcelo, the confidential informer, walking to and from that house.

More or less thirty minutes later, two vehicles (a colored blue Toyota car with plate number PPZ-254 and a semi-stainless jeep with plate number DJK-840) parked near the said house. In the car, there were the occupants (a female driver, a female companion, and a male companion) while in the jeep there were two (a male driver and a male companion). Moments later, the female driver of the car, which matched the description of the seller given by Benito Marcelo, alighted. She approached the driver of the other vehicle. After a few minutes of transaction, the jeep left. Thereafter, the female driver and her female companion went to the gate of the house while their male companion

stayed at the car. At the said gate, Benito Marcelo, the confidential informer, met the female driver and her female companion. The female driver took out from her shoulder bag "one small plastic bag x x x" and gave it to Benito Marcelo. Immediately, SPO2 Valeroso and SPO2 Ostan approached the female driver, her female companion and Benito Marcelo. Aside from the small plastic bag that was handed to Benito Marcelo, SPO2 Valeroso also recovered "suspected shabu inside the shoulder bag" of the female driver "inserted inside the cover of a check booklet." Then, they were brought to the headquarters. The female driver was Ruby Dimacuja; her female companion was Juvy Carpio and their male companion was Michael Mallari. SPO2 Valeroso then marked the two transparent plastic bags recovered from Ruby Dimacuja by affixing his initials, placing the date and writing Ruby Dimacuja's name. A joint affidavit was executed.

Complying with the letter request dated 10 August 1995 of the Chief of the Investigation Unit of the Marikina Police Station, Forensic Chemist Julita T. De Villa came up with the following:

"SPECIMEN SUBMITTED:

Exh. "A" -- One (1) heat sealed transparent plastic bag with 10.78 grams of white crystalline substance.

Exh. "B" -- One (1) transparent plastic bag containing 1.15 grams of white crystalline substance allegedly delivered by R. Dimacuja.

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of prohibited and/or regulated drug.

FINDINGS:

Qualitative examination conducted on the above stated specimen gave POSITIVE result to the test for methamphetamine hydrochloride a regulated drugs."

For its part, the defense offered in evidence the testimonies of the petitioner herself and her witnesses, namely, Rodolfo Enutallo and Jose Antonio Boo.

The CA decision likewise summarizes the defense' account of the incident, to wit:

On the other hand, the defense's evidence tend to show that at around 10:00 a.m. on 10 October [should be August] 1995, Ruby Dimacuja (Ms. Dimacuja, for brevity) received a message in her beeper. It came from a certain Egay telling Ms. Dimacuja that Juvy Carpio and Michael Mallari were in the house of a certain Rodolfo Caluang whose correct name is Rodolfo Enutallio (Mang Rudy) in Basa St., corner Kapwa St., Calumpang, Marikina, Metro Manila. Immediately, Ms. Dimacuja proceeded there alone.

Upon reaching the two-storey house of Mang Rudy, Ms. Dimacuja went at the second floor. On her way up, she saw Benito Marcelo whom she had known since June 1995 talking with Mang Rudy at the first floor. At the second floor, she saw Juvy Carpio and Michael Mallari. Ms. Dimacuja asked Juvy Carpio about the latter's indebtedness of P24,000.00 to her. As Ms. Dimacuja was collecting the said amount, two men in civilian clothes appeared at the second floor and were looking for Michael Mallari. Upon seeing them, Mallari asked them what the problem was. The two men responded, they wanted to see his belt bag. A scuffle for the belt bag ensued. While that was happening, Ms. Dimacuja continued talking with Juvy Carpio about the debt. Moments later, the three men went down, still grappling for the possession of the said bag. Sensing that what was happening among the men was just a scheme of Juvy Carpio to avoid paying the debt, Ms. Dimacuja followed them at the first floor. There, the two men who barged in at the second floor asked Ms. Dimacuja to go with them at the Marikina Police Station to explain her presence in the house. Hesitantly, Ms. Dimacuja acceded. Using her car, they (Ms. Dimacuja, Juvy Carpio, Michael Mallari, and three other men, as there were six of them) rode together. In the car, Ms. Dimacuja noticed the presence of Valeroso, a friend of her mother, who arrived after the scuffling incident.

At the police station, Ms. Dimacuja's shoulder bag was inspected. Found inside were the "telephone book, perfume, check book and cash money (of) less than P2,000.00." She was told that the contents were to be used as "part of the evidence." She disclaimed carrying the drugs. Thereupon, she was detained for two days and two nights, the contents of her bag remain unreturned and her car was not released from police custody until after one month.

After due assessment of the evidence presented, the trial court gave full faith and credit to the testimonies of the prosecution witnesses and upheld the presumption applied in cases involving violation of Dangerous Drug Acts of regularity in the performance of duty by public officers conducting anti-narcotics operations when the police officers have no motive in testifying falsely against an accused. It found that the evidence for the prosecution convincingly established petitioner's guilt beyond reasonable doubt, and accordingly sentenced her thus:

WHEREFORE, judgment is hereby rendered as follows:

1.) In Criminal Case No. 95-63-D-MK - the Court finds accused Ruby Dimacuja y Ebreo guilty beyond reasonable doubt of Violation of Section 16, Article III of Republic Act No. 6425, as amended, and considering that the quantity of the shabu is only 10.78 and 1.15 grams, and there being no mitigating nor aggravating circumstances, applying the Indeterminate Sentence Law in consonance with *People vs. Simon*, 234 SCRA 572-573, and *People vs. Martinez*, 235 SCRA 183, the accused is sentenced to suffer imprisonment from SIX (6) MONTHS of *arresto mayor*, as minimum, to TWO (2) YEARS and FOUR (4) MONTHS of *prision correccional*, as maximum, and to pay the costs;

2.) In Criminal Case No. 96-112-D-MK - the Court finds accused Ruby Dimacuja guilty beyond reasonable doubt of Violation of Section 15, Article III of Republic Act No. 6425, as amended, and considering that the quantity of the shabu is only 1.15 gram, and there being no mitigating nor aggravating circumstances, applying the Indeterminate Sentence Law in consonance with People vs. Simon, 234 SCRA 572-573, and People vs. Martinez, 235 SCRA 183, the accused is sentenced to suffer imprisonment from SIX (6) MONTHS of *arresto mayor*, as minimum, to TWO (2) YEARS and FOUR (4) MONTHS of *prision correccional*, as maximum, and to pay the costs.

The confiscated shabu are hereby declared forfeited in favor of the government and shall be disposed of in accordance with law.

SO ORDERED.

Unable to accept the trial court's judgment of conviction, petitioner went on appeal to the CA in CA-G.R. CR No. 20720.

As stated at the threshold hereof, the CA, in the herein assailed Decision^[5] dated October 22, 1999, affirmed that of the trial court:

Premises considered, the prosecution has proved appellant's guilt beyond reasonable doubt for violations of Sections 15 (Sale, Delivery, etc.,) and 16 (Possession), Article III, R.A. 6425, as amended. The penalties were properly meted by the court *a quo*.

WHEREFORE, the assailed decision being in conformity with the law and evidence, the same is hereby **AFFIRMED *in toto***.

SO ORDERED.

Undaunted, petitioner is now with this Court via the present recourse thereunder raising the following issues:

1. Whether the CA, in holding that petitioner did not approach SPO2 Melanio Valeroso to profess her innocence, committed a reversible error by affirming in *toto* the questioned decision of the court *a quo*;
2. Whether the CA committed a reversible error when it affirmed the conviction of petitioner in Criminal Case No. 96-112-D-MK for violation of Section 15 (Sale, Administration, Dispensation, Delivery, Etc.), Art. III, of R.A. 6425, as amended, when it was the investigating prosecutor's view that there was not even any probable cause to hold petitioner liable therefor without the testimony of the professed police asset;
3. Whether the non-presentation of one Benito Marcelo, the professed police asset, was a denial of petitioner's right to confront her accuser;