

FIRST DIVISION

[G.R. NO. 168773, October 27, 2006]

**ELIZA ABUAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 25726 and Resolution^[2] denying the motion for reconsideration thereof. The CA affirmed the Decision^[3] of the Regional Trial Court (RTC), Branch 41, Dagupan City in Criminal Case No. 98-02337-D, convicting Eliza T. Abuan of violating Section 16, Article III of Republic Act (R.A.) No. 6425, as amended, otherwise known as The Dangerous Drugs Act of 1972.

The Antecedents

A criminal complaint was filed in the Municipal Trial Court (MTC) of Calasiao, Pangasinan charging Abuan with violating R.A. No. 6425, as amended. On May 8, 1998, she filed a motion to quash the criminal complaint, praying that pending the resolution of her motion, she be allowed to post bail without waiving her right to question her arrest and assail Search Warrant No. 98-62.^[4] The public prosecutor conformed to the motion. Thus, the motion was granted and bail was fixed at P60,000.00.^[5]

The MTC found probable cause against Abuan for violation of Section 16, Article III of R.A. No. 6425, as amended, and recommended the filing of an Information against her. It ordered the elevation of the records to the RTC for further proceedings.

On November 12, 1998, an Amended Information was filed in the RTC of Dagupan City, charging Abuan with violating Section 16, Article III of R.A. No. 6425, as amended. The inculpatory portion of the Information reads:

That on or about 8:45 o'clock in the morning of May 6, 1998 at Brgy, Lasip, [M]unicipality of Calasiao, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously has in her possession, custody and control of the following to wit:

Fifty seven (57) small heat-sealed plastic sachets of met[h]amphetamine hydrochloride (*shabu*) weighing 5.67 grams.

one (1) roll aluminum foil and assorted plastic (luminous) sachets.

without authority to possess the same.

CONTRARY to Art. III, Section 16 of R.A. 6425, as amended.^[6]

During the arraignment on November 12, 1998, the accused, assisted by counsel, pleaded not guilty to the charge.^[7] During the pre-trial on November 19, 1998, Abuan rejected the prosecution's proposal for her to admit the validity of Search Warrant No. 98-62, and that, in the enforcement thereof, 57 sachets of *shabu* were found in her house and later confiscated by the policemen.^[8] She maintained that the warrant was invalid and that any material allegedly confiscated from her house was inadmissible in evidence.

The court set the initial presentation of evidence by the prosecution on December 3, 1998. However, on said date, accused filed a Motion to Suppress Evidence, alleging that there was no probable cause for the issuance of Search Warrant No. 98-62; the applicant, Cesar Ramos, had no personal knowledge of his claim that she had in her possession methamphetamine hydrochloride (*shabu*) and other drug paraphernalia; Marissa Gorospe was a fictitious person, and her testimony was fabricated to convince the Executive Judge to make a finding of probable cause required for the issuance of a search warrant; and the Executive Judge failed to ask searching questions and elicit from "Gorospe" the particularity of the alleged paraphernalia in Abuan's possession. Abuan asserted that since the search warrant is void, whatever evidence was discovered as a result of the search conducted based on the warrant was inadmissible in evidence.^[9]

Instead of allowing the accused to present her evidence in support of her motion, the court declared that any such evidence may be adduced at the trial.^[10]

The Case for the Prosecution

At around 8:30 a.m. on May 5, 1998, SPO2 Marcelino Gamboa and SPO2 Beliguer de Vera of the Calasiao Police Station received information from a confidential informant that Abuan was conducting illegal drug activities in her house at *Barangay* Lasip, Calasiao, Pangasinan. Acting on the said information, Gamboa and de Vera conducted surveillance-monitoring operations on her residence, three times for more than an hour. They saw more or less 20 people who were coming in and out of Abuan's house. According to the informant, these people were drug addicts,^[11] and Abuan was a known drug pusher.^[12] On the same day, the officers, through SPO3 Cesar Ramos, applied for a warrant^[13] with Executive Judge Eugenio G. Ramos of the RTC in Lingayen, Pangasinan, to search the house of Abuan for violation of Section 16, Article III of R.A. No. 6425, as amended, and the seizure of methamphetamine hydrochloride (*shabu*), weighing scale, aluminum foil, and burner.

The application was docketed as Search Warrant No. 98-62. To establish probable cause for the issuance of a search warrant, Ramos presented their informant, Marissa Gorospe, who was subjected to searching questions by the Executive Judge.^[14]

Gorospe testified that she was a resident of *Barangay* Sapang, Manaoag, Pangasinan. She knew Abuan because they were employed as dealers of Avon Cosmetics. Abuan was a prominent personality in *Barangay* Lasip.^[15] Her unnumbered house is a green bungalow-type, cemented and decorated with ornamental plants up front. She visited Abuan in her house at least three to four times a week.^[16] She first came upon the drugs in Abuan's house when the latter invited her to a "jamming" and drinking session. She refused because she had to go home to *Barangay* Sapang, Manaoag, Pangasinan, a place of considerable distance from Calasiao.^[17] Abuan then suggested that they use the *shabu* that she kept inside her bedroom instead. Abuan kept a substantial amount of *shabu* in her house and sold it.^[18] The informant further narrated that several people, including teenagers, arrived in the house of Abuan and bought the substance.^[19] During her visits, she observed that Abuan placed *shabu* inside plastic bags. She also saw weighing scales and paraphernalias used in sniffing *shabu*. Being a mother herself, she did not want teenagers and her children to become drug addicts.^[20] Gorospe identified and affirmed the truth of the contents of her deposition.^[21]

The Executive Judge found probable cause and issued Search Warrant No. 98-62 which reads:

TO ANY OFFICER OF THE LAW:

G R E E T I N G S :

It appearing to the satisfaction of the undersigned after examining under oath thru searching questions on the applicant, SPO3 Cesar A. Ramos, PNP, and his witnesses that there is probable cause to believe that the respondent is in possession without any authority to do so in violation of R.A. 6425 of the following:

Met[h]amphetamine Hydrochloride (*shabu*)
Tooter
Weighing Scale
Aluminum Foil
Burner

which she keeps and conceals in her house premises at Brgy. Lasip, Calasiao, Pangasinan, which should be seized and brought to the undersigned.

YOU ARE HEREBY COMMANDED to make an immediate search at any time of the day or night and take possession of the above-described properties and bring them to the undersigned to be dealt with as the law directs.

This Search Warrant shall be valid only for ten (10) days from its issuance, thereafter, the same shall be void.^[22]

On May 6, 1998, police operatives composed of Col. Fidel Posadas, Major Froilan Perez, SPO2 Gamboa, SPO2 Madrid, SPO2 de Vera, PO2 Tomelden, PO2 Rosario, PO3 Ubando, PO1 Moyano and PO3 Vallo went to *Barangay* Lasip to enforce the

search warrant. However, before proceeding to Abuan's residence, the policemen invited *Barangay* Captain Bernardo Mangaliag and *Kagawad* Miguel Garcia of *Barangay* Lasip to witness the search.

Upon arriving at the premises, Officers De Vera, Gamboa and Garcia and Mangaliag entered the house; the rest of the policemen remained outside. Mangaliag introduced the police officers to Abuan who presented Search Warrant No. 98-62 to her. Abuan read the warrant and permitted the officers to conduct the search.^[23]

De Vera, Mangaliag, Gamboa and Garcia entered the bedroom and found 57 sachets of suspected *shabu*, one roll of aluminum foil and assorted luminous plastic sachets in the drawer just beside Abuan's bed.^[24] The police officers confiscated all these and brought them, along with Abuan, to the police station where an inventory of the items was made. Mangaliag and Garcia affixed their signatures on the inventory/receipt,^[25] but Abuan refused to sign it.^[26]

The police officers prepared a certification of orderly search which Garcia and Mangaliag also signed. Abuan likewise refused to sign the certification.^[27] The police officers requested the PNP Crime Laboratory Unit of Lingayen, Pangasinan to conduct a laboratory examination on the confiscated substance.^[28] According to the laboratory examination conducted by P/Supt. Theresa Ann Bugayong CID, Regional Chief Chemist, the 57 sachets of the suspected *shabu* weighing 5.67 grams gave positive results for the presence of methamphetamine hydrochloride, a regulated drug.^[29]

After presenting its witnesses, the prosecution offered in evidence Search Warrant No. 98-62, the Receipt of the Property Seized, the Physical Science Report and the articles confiscated from Abuan's house.^[30] However, Abuan objected to the admission of the search warrant and the articles confiscated based thereon on the ground that the warrant was issued without probable cause.^[31] The court admitted the documentary evidence of the prosecution subject to the comment or objection interposed by accused and the eventual determination of their probative weight.^[32]

The Case for the Accused

Abuan testified that she was jobless in 1998. Her parents and her sister Corazon Bernadette sent her money from Canada once or twice a month to support her and her daughters. It was her father who spent for the education of her daughters.^[33] She was married to Crispin Abuan, a policeman, but they separated in 1997.^[34] She did not know any person by the name of Marissa Gorospe. She did not work for Avon Cosmetics nor used any of its products.^[35]

At around 8:30 a.m. on May 6, 1998, she was with her two daughters, 21-year old Ediliza Go and 9-year old Mae Liza Abuan.^[36] They were still in bed inside their room. Suddenly, four armed men barged into their house and declared a raid.^[37] About eight to ten others were outside her house. She inquired if they had a search warrant but she was not shown any.^[38] The men searched her house for about 10 to 15 minutes and turned up with nothing.^[39] Some of the men went out of the house and boarded a jeepney. The men outside again went into the bedroom and

came out with "powder placed in a plastic."^[40] At this instance, *Barangay* Captain Bernardo Mangaliag was brought to the scene and was shown the "powder substance" recovered from her bedroom. She refused to sign the inventory and receipt of the property seized and the certification of orderly search. However, Mangaliag signed the same.^[41]

She declared that the sachets/substances which the policemen claimed to have found in her house were merely "planted" to implicate her. The raid as well as the charge against her were instigated by her brother Arsenio Tana, who was enraged when she refused his demand to entrust the properties of the family to the care of his son. It appears that Tana carried out his threat to have her house raided since the policemen did come to her house on May 6, 1998.^[42] Her brother was by the gate of her house at the time of the raid.

Abuan also testified that, during the raid, she saw Tana talking to the police officers who arrested her. Abuan also declared that the money kept inside a box in her room amounting to P25,000.00 (US\$1,100.00) given by her sister Corazon Bernardino had gone missing after the raid.^[43] She did not file any charge for the loss of her money because she was scared. She did not know who took it.

Barangay Captain Robert Calachan of *Barangay* Sapang, Manaoag, Pangasinan and Mercedes Carvajal, an employee of Avon Cosmetics in Dagupan holding the position of team leader, testified for accused.

Calachan declared that he was born in *Barangay* Sapang and never left the place. He was familiar with the residents of the small *barangay*.^[44] He issued a certification^[45] stating that "as per record of this *barangay*, a certain Marissa Gorospe is not a resident of this *barangay*." Before he signed the certification, he inquired from the *barangay* members if they knew a Marissa Gorospe, and he was told that no one by that name was a transient.^[46]

Carvajal, for her part, testified that, based on the certification dated November 12, 1998 of Dagupan City Avon Branch Manager Gigi dela Rosa, "Marissa Gorospe is not a registered dealer of Avon Dagupan Branch based on our records." She did not know any Avon Cosmetics employee or dealer named Marissa Gorospe in Pangasinan. She further testified that she had been a team leader/dealer of Avon Cosmetics for 21 years already, and that Abuan was not such a dealer/employee. On cross-examination, she declared that she was a team leader of Avon Cosmetics (Dagupan Branch), and thus had no participation in the preparation of the certification of Gigi dela Rosa and was not in a position to know if the certification was correct.

On March 28, 2001, the trial court rendered a decision finding accused guilty of the charge. The dispositive portion reads:

WHEREFORE, finding accused guilty beyond reasonable doubt of a violation of Section 15 (sic), Article 6425, she is hereby sentenced to suffer an imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY to FOUR (4) YEARS and TWO (2) MONTHS of PRISION CORRECTIONAL.