

## EN BANC

[ G.R. No. 145915, April 24, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VILMA  
ALMENDRAS Y ZAPATA AND ARSENIO ALMENDRAS Y LOCSIN,  
APPELLANTS.**

### DECISION

**QUISUMBING, J.:**

For automatic review is the judgment<sup>[1]</sup> of the Regional Trial Court of Calamba, Laguna, Branch 36, dated November 23, 2000, in Criminal Case No. 6014-98-C, the *fallo* of which reads:

WHEREFORE, this court finds accused Vilma Almendras and Arsenio Almendras guilty beyond reasonable doubt for violation of Sec. 15, Title III of Republic Act 6425 as amended by Republic Act 7659, and are hereby sentenced to suffer the death penalty.

The two accused are hereby ordered to pay the fine of two million pesos each.

SO ORDERED.<sup>[2]</sup>

Appellants herein are Vilma Almendras y Zapata, alias "Apple," and her husband, Arsenio Almendras y Locsin, a.k.a. "Scout." They are residents of Sta. Ana, Manila. They were arrested by operatives of the Philippine National Police Narcotics Command (PNP NARCOM) in Calamba, Laguna as a result of a "buy-bust" operation on June 19, 1998.

In an information dated August 4, 1998, the Office of the Provincial Prosecutor of Laguna charged the appellants of violating Sec. 21 (b)<sup>[3]</sup> in relation to Sec. 15,<sup>[4]</sup> Art. III, of Republic Act No. 6425, otherwise known as the "Dangerous Drugs Act of 1972," as amended by Rep. Act No. 7925. The offense was allegedly committed as follows:

That on or about June 19, 1998, at Brgy. Pansol, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, conspiring, confederating and mutually helping one another, did then and there wilfully (sic), unlawfully and feloniously sell and deliver Methamphetamine Hydrochloride, otherwise known as "SHABU" weighing one (1) kilogram a regulated drug, to a poseur buyer for and in consideration of Ten Thousand Pesos (P10,000.00) and the rest in boodle money arranged into bundles to make it appear as real and genuine payment of ONE MILLION PESOS (P1,000,000.00), as full payment of the agreed price, in violation of the aforesaid law.

## CONTRARY TO LAW.<sup>[5]</sup>

Assisted by their defense counsel, Atty. Rodolfo Jimenez, appellants pleaded not guilty to the charge.<sup>[6]</sup> The case then proceeded to pre-trial.

At the pre-trial the defense admitted that: (1) appellants are not residents of Calamba, Laguna; (2) they are the same persons charged in the information; (3) that they were arrested at 4:00 a.m. of June 19, 1998 at Pansol, Calamba, Laguna; (4) there were two (2) photos of a Mercedes Benz car where the supposed *shabu* weighing 990.97 grams was supposedly found; (5) the existence of a Police Arrest Investigation Report, the photocopies of the alleged "buy-bust" money, Receipt of Items Confiscated, Request for Laboratory Examination, and Examination Report as part of the records, subject to cross-examination. The prosecution, in turn, marked the aforesaid documents as Exhibits "A" to "F" without prejudice to the presentation of additional documentary exhibits. It likewise admitted that there was only one laboratory qualitative examination conducted on the alleged *shabu*, the result of which was contained in the report marked as Exhibit "F" for the prosecution and Exhibit "1" for the defense. The parties agreed to limit the issues for trial to the following:

1. Whether in fact there was a "buy-bust" operation;
2. Whether the alleged prohibited drugs were found inside the car of the accused; and
3. Whether the quantity of the alleged prohibited drugs was 990.97 grams.<sup>[7]</sup>

During the trial, the prosecution established that:

At around 5:00 p.m. of June 18, 1998, the PNP NARCOM, Region IV, in Camp Vicente Lim, Calamba, Laguna received a tip from a confidential informer that a supplier of *shabu* recently arrived from Manila and was looking for a buyer.<sup>[8]</sup> The quantity of the drug was one kilo, with a street price of one million pesos (P1,000,000).

Acting thereon, P/Supt. Emelito T. Sarmiento, PNP NARCOM Region IV Chief, immediately instructed his men to organize a team to conduct a "buy-bust" operation. P/Insp. Mauricio M. Cadano<sup>[9]</sup> headed the team and designated SPO3 Rico Atienza to be the poseur-buyer.<sup>[10]</sup> The police informer then called up one "Apple" on his mobile phone and arranged for a meeting the following day, between the hours of three o'clock to six o'clock in the morning, at the Mountain View Resort Restaurant in Pansol, Calamba, Laguna.<sup>[11]</sup>

The team proceeded to prepare marked money consisting of ten P1,000 bills.<sup>[12]</sup> Bundles of "boodle money" were also prepared to make it appear that SPO3 Atienza was carrying a million pesos in cash.<sup>[13]</sup> The marked bills were placed on top of each bundle.

Early in the morning of June 19, 1998, the police operatives, accompanied by their informer, proceeded to Mountain View Resort on board two vehicles.<sup>[14]</sup> On arriving

at the resort, SPO3 Atienza parked at the resort's parking area, while the other members of the team remained outside the gate of the resort, to act as a blocking force.

SPO3 Atienza and the informer then went inside the resort's restaurant where they ordered coffee.<sup>[15]</sup> After a few seconds, the police informer approached a couple seated at a nearby table and talked to the woman. He then introduced SPO3 Atienza to the woman who called herself "Apple."<sup>[16]</sup> When "Apple" was told that SPO3 Atienza was interested in buying *shabu*, she asked him whether he had the money for the drug.<sup>[17]</sup> SPO3 Atienza replied that the money was in his vehicle.

"Apple" then introduced her male companion as "Scout." All four of them proceeded to the parking lot. SPO3 Atienza then took out a bag from his car, showed the "buy-bust" money to "Apple" and "Scout."<sup>[18]</sup> The latter then went to his vehicle, which was parked nearby, opened its trunk and pulled out a black box.<sup>[19]</sup> "Scout" then showed its contents, a white crystalline powder wrapped in a transparent plastic bag to SPO3 Atienza. SPO3 Atienza handed over the bag with the marked money to "Apple" and got the box. Once the box was in his hands, SPO3 Atienza gave the pre-arranged signal to the other members of the team. The back-up team approached, introduced themselves as NARCOM agents, and arrested "Apple" and "Scout." The marked money was recovered from "Apple" and the suspected *shabu* was turned over to P/Insp. Cadano. The police then brought the suspects to Camp Vicente Lim for further investigation. Interrogation by the PNP NARCOM operatives revealed that "Apple" was Vilma Almendras y Zapata while "Scout" was her husband, Arsenio Almendras y Locsin.

The confiscated bag containing the white substance was turned over to the PNP Crime Laboratory, Region IV for testing. PNP Forensic Chemical Officer P/Insp. Lorna R. Tria tested the said substance and found it positive for methamphetamine hydrochloride, more popularly known as *shabu*, a regulated drug.<sup>[20]</sup> The quantity of the seized drug amounted to 990.97 grams.

On May 6, 1999, the prosecution rested its case. Reception of the defense evidence was then set for May 12, 13, and 17, 1999.<sup>[21]</sup>

On May 10, 1999, defense counsel moved for leave to file a Motion for Demurrer to Evidence and the admission of said Demurrer with Alternative Prayer for Bail.<sup>[22]</sup> The defense submitted that the prosecution failed to establish the element of lack of authority to sell and deliver the alleged *shabu*. It further alleged that the prosecution failed to present any concrete evidence establishing that the substance tested at the PNP Crime Laboratory was the same substance seized from appellants. The defense then prayed for an acquittal.

In view of the Demurrer to Evidence filed by the defense, the lower court cancelled the scheduled hearings for May and new settings were made for June 8, 14, and 21, 1999.<sup>[23]</sup>

On June 8, 1999, the trial court denied the Demurrer to Evidence.<sup>[24]</sup> It ruled that what is material in a prosecution for a sale of an illegal drug is proof that the transaction took place. The trial court pointed out that both the marked money and

the *shabu* were presented in open court. The trial court also pointed out that the poseur buyer, the police investigator, and the forensic chemist identified in court the *shabu* seized from the Almendras couple, had placed their initials on the bag containing the same, and hence, established that it was the same drug seized from appellants. The lower court likewise denied appellants' prayer for bail since the amount of *shabu* involved was 990.97 grams, for which the imposable penalty was *reclusion perpetua* to death, making the offense non-bailable.

On June 21, 1999, the defense manifested that it was seeking a review of the trial court's Resolution denying its Demurrer to Evidence from the Supreme Court. The reception of the defense evidence was then reset anew to September 7, 15, and 23, 1999.<sup>[25]</sup>

The defense then filed a Petition for Certiorari, Prohibition, and Mandamus with Preliminary Injunction before the Court of Appeals, which docketed the same as CA-G.R. SP No. 54343.<sup>[26]</sup> In their petition, appellants alleged that the trial court gravely abused its judicial discretion in denying their Demurrer to Evidence and in denying their prayer for bail.<sup>[27]</sup>

In view of the filing of CA-G.R. SP No. 54343, the trial court moved the dates for the hearing of Criminal Case No. 6014-98-C to March 7, 14, and 21, 2000.<sup>[28]</sup>

On March 14, 2000, defense counsel Jimenez was not present at the hearing. The trial court then ordered him to appear for the defense on March 21, 2000, failing which it would appoint a counsel *de officio* for the Almendras couple, to expedite the disposition of the case.<sup>[29]</sup>

On March 20, 2000, defense counsel moved to suspend proceedings in Criminal Case No. 6014-98-C pending the final disposition by the Court of Appeals of their petition in CA-G.R. SP No. 54343.<sup>[30]</sup> The prosecution was then given ten days to comment on the motion and the trial dates were moved anew to April 6 and 10, 2000 and May 10, 2000.<sup>[31]</sup>

On May 10, 2000, the trial court cancelled the scheduled hearing and reset new hearing dates for July 5, 12, and 19, 2000.

At the hearing of July 5, 2000, defense counsel again failed to show up. The trial dates were then moved anew to September 21 and 28, and October 5, 2000.<sup>[32]</sup>

When trial resumed on September 21, 2000, defense counsel was absent once again. The trial court then advised appellants to coordinate with their counsel to ensure his presence at the next scheduled trial date.<sup>[33]</sup>

On September 25, 2000, the defense moved that the trial court cancel the hearing set for September 28, 2000 to await the final disposition of CA-G.R. SP No. 54343 by the Court of Appeals.<sup>[34]</sup>

On September 28, 2000, trial resumed. Since defense counsel, Atty. Jimenez, again failed to show up, the trial court appointed Atty. Vicente Carambas of the Public Attorney's Office (PAO) as counsel *de officio* for the Almendras couple in the event

counsel Jimenez was absent at the next scheduled hearing. The trial court also denied the defense's motion of September 25, 2000. New trial dates were then set for October 5, 11, 12, and 19, 2000.<sup>[35]</sup>

However, counsel *de parte* (Jimenez) was absent for the October 5, 2000 trial. Appellant's counsel *de officio* then manifested that the Almendras spouses refused to testify in court. When questioned by the court, appellant Arsenio Almendras affirmed the manifestation of Atty. Carambas. The trial court then reset the hearing for October 26, 2000 and ruled that in the event the defense failed to adduce its evidence on said date, the defense would be considered as having waived its right to present evidence and Criminal Case No. 6014-98-C would be deemed submitted for decision.<sup>[36]</sup>

On October 10, 2000, appellants filed a Motion for an Order Enjoining Observance of Judicial Courtesy in CA-G.R. SP No. 54343.<sup>[37]</sup> They prayed that the appellate court issue an order enjoining the trial court to observe judicial courtesy by suspending proceedings in Criminal Case No. 6014-98-C so as not to preempt the decision of the appellate court in CA-G.R. SP No. 54343. Appellants contended that the order of the trial court compelling them to present their evidence with assistance of a counsel *de officio* was violative of their right to due process.

On October 24, 2000, appellants moved that the trial court judge voluntarily inhibit himself from hearing Criminal Case No. 6014-98-C.<sup>[38]</sup>

At the hearing of October 26, 2000, the trial court denied the Motion for Voluntary Inhibition for lack of merit. Since counsel *de parte* (Jimenez) was again not in court, counsel *de officio* (Atty. Carambas) appeared for appellants. After due consultation, Atty. Carambas manifested that the Almendras spouses told him that they would not testify in court unless assisted by Atty. Jimenez. When questioned by the lower court, appellants affirmed the manifestation of Atty. Carambas. The prosecution then moved that the defense be deemed to have waived its right to present its evidence and the case be considered submitted for decision. The trial court granted the prosecution's motion and set promulgation of judgment for November 23, 2000.<sup>[39]</sup>

On November 15, 2000, appellants filed in CA-G.R. SP No. 54343 a Very Urgent Motion for the Issuance of a Temporary Restraining Order.<sup>[40]</sup>

On November 23, 2000, the trial court promulgated its judgment finding appellants guilty beyond reasonable doubt of violating Sec. 15 of Rep. Act No. 6425, as amended, and sentenced both appellants to death. Since counsel *de parte* (Jimenez) was not around for the promulgation of judgment, appellants were assisted by Atty. Carambas as counsel *de officio*.<sup>[41]</sup>

Hence, the need for this automatic review of the appellants' conviction and sentence by this Court.

On September 6, 2001, the PAO manifested to this Court that they talked to appellant Vilma Almendras to ascertain if she wanted to be represented by them. Said appellant told the PAO that her counsel was Atty. Jimenez. Out of respect for the right of appellants herein to be represented by a counsel of their choice, the PAO