

EN BANC

[G.R. No. 143805, April 11, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GERARDO GONZALES Y MARISTAÑES, ACCUSED-APPELLANT.**

DECISION

PUNO, J.:

Accused GERARDO "Gerry" GONZALES y MARISTAÑES is a police officer who was separated from service in 1986 on the ground of absence without leave (AWOL). Apparently, the accused found a more lucrative source of income for, in January 1999, he fell into the trap of police operatives in a buy-bust operation.

For automatic review is the decision of Branch 36 of the Regional Trial Court of Calamba, Laguna, convicting the accused for selling methylamphetamine hydrochloride, more popularly known as shabu, in violation of Section 15, Article III of Republic Act 6425, as amended. The Information^[1] indicting him reads:

"That on or about January 14, 1999, at Crossing, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver Methamphetamine Hydrochloride otherwise known as "S H A B U," a regulated drug weighing 279.180 grams, in violation of aforesaid law.

CONTRARY TO LAW."

Upon arraignment, the accused pled not guilty. Accordingly, trial ensued.

The prosecution evidence, upon which the trial court anchored its finding of guilt, consisted of the testimonies of two (2) of the operatives involved in the buy-bust operation, PO3 Rey Lucido and PO2 Teodoro Cortez, forensic chemist Lorna Tria and investigator Jolito Culili. Their version of the incident leading to accused's arrest is as follows:

PO3 REY LUCIDO and PO2 TEODORO CORTEZ were assigned at the Regional Intelligence and Investigation Division (RIID R2) and members of the Special Operations Team at Camp Vicente Lim, Canlubang, Laguna. On January 14, 1999, at about 3:00 p.m., one of their confidential informants reported to team leader P/Insp. Danilo Bugay that he met accused Gerry Gonzales who was a "big time" drug pusher in Calamba, Sta. Rosa, Biñan and the surrounding areas of Laguna.

Acting on the information, P/Insp. Bugay immediately organized a team and planned the conduct of a buy-bust operation to entrap the accused. The seven-man team was composed of P/Insp. Bugay, PO3 Lucido, PO3 Cortez, SPO1 Danilo Satuito, SPO3 Enorio Sanches, SPO3 Rodelo Lareza and the confidential informant. PO3

Lucido was designated as the poseur-buyer while the other members of the team were tasked to secure the perimeter area where the entrapment would be conducted.

At about 4:00 p.m., after the briefing on the buy-bust operation, the confidential informant proceeded to the accused's house in Criscor Subdivision, Calamba, Laguna, to finalize the drug deal. When he informed the accused that he has a buyer for 300 grams of shabu, the accused agreed to the proposed sale to be made that night in his house. The informant then reported back to the office and confirmed the planned sale.

When the team arrived at the subdivision, they first conducted a surveillance of the area surrounding the accused's house to identify the places where the team members will position themselves for the entrapment. Thereafter, PO3 Lucido and the informant proceeded to the house of the accused where they saw the accused standing by the door. When they approached him, the accused immediately asked to see the money. PO3 Lucido refused and demanded that the accused show them the shabu first. The accused momentarily disappeared inside his house and returned with an object wrapped in newspaper. When PO3 Lucido opened the wrapper, he saw a heat-sealed plastic bag containing white crystalline substances. Whereupon, he handed to the accused a white plastic bag containing three (3) one thousand peso bills and the boodle money, i.e., a bundle of newspaper cut in the shape of paper money with real money placed on top. With the consummation of the sale, PO3 Lucido scratched his head as a signal to his teammates to arrest the accused. He then introduced himself to the accused as a police officer. He failed to grab the accused as the latter fled inside the house. Shortly, the back-up team arrived and they followed the accused into the house. They successfully talked the accused into coming out of the bedroom so as not to create any trouble and recovered the boodle money from him.

After the arrest, the police operatives brought the accused to their office. They turned over to Chief Investigator JOLITO CULILI the white crystalline substance sold by the accused, the marked genuine money and the boodle money. After Culili marked the seized substance and made a written request for its chemical analysis, he returned the evidence to the arresting officers. Culili also prepared a request for the accused to be subjected to a drug dependency test. The seized substance and the requests were then brought to the crime laboratory.^[2]

LORNA TRIA, a PNP forensic chemist at Camp Vicente Lim, duly examined the substance to determine the presence of prohibited or regulated drugs. PO1 Siquioco received the evidence and letter-request at 11:47 p.m. of January 14, 1999. These were forwarded to Tria for examination at 8:00 a.m. the following day.

Tria measured the net weight of the white crystalline substance which amounted to 279.180 grams. She then conducted three (3) chemical examinations of the substance to test the presence of methylamphetamine hydrochloride. The first examination she conducted was the color test or the Marquiz Test, the second test was the Simon's Test and the last confirmatory test was the Thin Layer Chromatographic Examination, all of which yielded positive results for the presence of methylamphetamine hydrochloride or shabu. Her examination of the accused's urine sample also revealed the presence of shabu.^[3]

Expectedly, the accused presented an entirely different version. The accused's testimony was corroborated by his wife Ma. Lourdes Gonzales and his friend Danilo Jeresano. Their version: On said date and time, Jeresano was in the accused's house fixing the kitchen sink. While he was outside the house looking for a tool, about six to seven men arrived. He recognized only one of them as Danny Satuito who was waiting near the gate. The men who approached him inquired if he was Gerry Gonzales, the accused. When he replied in the negative, two of the men entered the accused's house. Whereupon, he called out to the accused and his wife who were in one of the rooms to warn them of the entry of unidentified men in their house.

When the accused and his wife went outside the bedroom to check what the commotion was all about, they found the men searching their house for shabu and a gun. When their search yielded nothing, they brought the accused^[4] to Camp Vicente Lim. After asking his name and personal circumstances, they proceeded to maul him. The accused claimed he did not know the result of the medical examination and denied that a urine sample was taken from him. He insisted that the men merely forced the head nurse to sign his medical certificate as there was no attending physician that time.

Ma. Lourdes Gonzales, accused's wife, testified that shortly before midnight of the same day, a man who claimed to be a representative of one Asuncion came to their house and extorted money from her in exchange for the release of the accused. She immediately gave in to the demand and handed the man P10,000.00. The accused, however, was never released from prison as promised.^[5]

It was only on the following day, when the accused was brought to the fiscal's office, that the accused learned he was being charged with a violation of Section 15 of R.A. 6425 for selling shabu.^[6]

After trial, the court *a quo* found the accused guilty as charged. He was sentenced to the supreme penalty of death and all its accessory penalties and to pay the fine of two (2) million pesos (P2,000,000.00).^[7]

On automatic review by this Court, the appellant assigns the following errors:

I

THE LOWER COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES PARTICULARLY THE ALLEGED ARRESTING OFFICERS (PO3 LUCIDO AND PO2 CORTEZ) DESPITE THE FACT THAT THEY ARE NOT ONLY INCONSISTENT BUT THEY ARE IN THEMSELVES UNRELIABLE.

II

THE LOWER COURT ERRED IN NOT HOLDING THAT THE TESTIMONIES OF THE SAME PROSECUTION WITNESSES (LUCIDO AND CORTEZ) GRANTING WITHOUT ADMITTING THEM TO BE TRUE, WOULD ONLY EXEMPT ACCUSED-APPELLANT FROM ANY CRIMINAL LIABILITY FOR