

THIRD DIVISION

[G.R. Nos. 132484-85, November 15, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GEORGE DE LEON (ACQUITTED), JULLIVER DE LEON, ACCUSED,
JULLIVER DE LEON, ACCUSED-APPELLANT.**

DECISION

CORONA, J.:

Before us on appeal is the decision^[1] dated November 6, 1997 of the Regional Trial Court of Malabon, Metro Manila, Branch 72, in Criminal Case No. 17806-MN finding appellant Julliver de Leon guilty of violation of Section 16, Article III of RA 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of five hundred thousand pesos (P500,000).

Initially, appellant Julliver de Leon was arrested and charged^[2] together with his father, co-accused George de Leon, with the crime of illegal sale of regulated drugs in violation of Section 15, Article III of RA 6425, as amended, in an Information that read:

That on or about the 19th day of March 1997, in Malabon Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, being private persons and without authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver in consideration of the amount of P10,000.00 to a poseur buyer white crystalline substance contained in two (2) separate sealed transparent plastic bag each with markings "BB/AGN-97/A" and "BB/AGH-97/B" with a total net weight of 5.1846 gram and 5.5693 gram respectively, which substance when subjected to chemistry examination gave positive results for Methamphetamine Hydrochloride otherwise known as shabu which are regulated drugs.

CONTRARY TO LAW.^[3]

They were also charged^[4] with illegal possession of regulated drugs, in violation of Section 16, Article III of RA 6425, as amended, in an Information that read:

That on or about the 19th day of March 1997, in Malabon Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, being private persons and without authority of law, did then and there wilfully, unlawfully and feloniously have in their possession, custody and control white crystalline substance contained in four (4) separate transparent plastic bags marked "R-MPM-1", "R-MPM-2", "R-MPM-3" and

"R-MPM-4" with a total net weight of 48.70 gram, 99.40 gram, 94.40 gram and 4.7556 grams respectively, which substance when subjected to chemistry examination gave positive results for Methamphetamine Hydrochloride otherwise known as shabu which are regulated drugs.

CONTRARY TO LAW.^[5]

Upon arraignment on May 28, 1997, both accused pleaded not guilty to both charges and the trial ensued.

The evidence of the prosecution showed that, after a month of surveillance on a person named Jogie, who turned out to be accused George de Leon, for illegal drug trafficking, the Drugs Enforcement Group of the Malabon Police Station decided to conduct a buy-bust operation on the said accused.

Prosecution witness Ronald Ticlao, the police-aide who acted as the poseur-buyer for the operation, testified that, prior to the operation, he received ten pieces of marked one thousand peso bills which were photocopied. The serial numbers of the bills were also entered in the dispatch book. He was accompanied by a confidential informer named Nora Boysillo to transact with accused George de Leon. In going to the designated place of operation, he and Nora boarded a tricycle and alighted in front of accused de Leon's residence along Kaunlaran St., Muzon, Malabon, Metro Manila.^[6]

Upon entering the compound, Nora Boysillo introduced Ticlao to accused George de Leon. George asked how much money they had with them and the quantity of drugs that they wanted to buy. Ticlao answered that he wanted to purchase "dalawang bulto". George then asked for the money and Nora Boysillo gave him the ten pieces of marked one thousand peso bills. After counting the money, George called his son, herein appellant Julliver "Baye" de Leon. When the appellant came out of the house, George told him to give the desired quantity of shabu to Ticlao and Boysillo. George thereafter handed the money to the appellant and then left the compound, telling Ticlao and Boysillo that the appellant would handle the transaction. Herein appellant then entered the house from which George came out. When he emerged from the said house, he was holding a yellowish envelope. He took two plastic sachets from the said envelope and handed them to Boysillo. Ticlao took one of the sachets and examined its contents. After verifying that what was given to him was shabu, Ticlao gave the pre-arranged signal to the policemen who were then observing the proceedings from outside the compound. Then, Ticlao and Boysillo left, and the police operatives met them as they were leaving the compound.^[7]

After the pre-arranged signal was given, police officers Alberto Nepomuceno, Rogelio Libuton, Rojas, Cruz, Mañalac and Borda entered the compound to arrest appellant Julliver de Leon. On seeing them, the appellant ran inside his father's house. Libuton followed the appellant and saw him throw a yellowish envelope inside the bedroom where he entered and hid. Libuton picked up the envelope, looked inside and found four transparent plastic sachets containing shabu. He turned over the envelope to police officer Melvin Mañalac. He and Mañalac affixed their signatures and the date of recovery on the envelope. They also marked the four sachets inside the said envelope.

During the trial, Ticlao identified the two accused, the buy-bust shabu, the confiscated shabu, the pertinent entries in the police blotter containing the serial

numbers of the marked money bills, the yellowish envelope from which Baye took the buy-bust shabu and the markings thereon.^[8]

SPO 1 Rogelio Libuton also identified their signatures and the date they wrote on the envelope, and their markings on the sachets, as the exact markings they made during the operation. They identified the marked bills as the same bills used during the operation; they were the same bills whose serial numbers were entered in the dispatch book and photocopied.^[9]

SPO 1 Alberto Nepomuceno and SPO 1 Rogelio Libuton corroborated the testimony of Ticlao. Furthermore, they testified that, in going to the place of operation, they used a Tamaraw FX vehicle, an owner-type jeep and a tricycle in which Ticlao and Boysillo rode. When George left the compound while the transaction was taking place, Nepomuceno ordered police officers Querubin and Agustin to follow George.^[10]

SPO1 Benjamin Querubin testified that he and SPO2 Agustin followed accused George de Leon right after he left Ticlao and Boysillo in the middle of the negotiation. Later on, Querubin received a radio message from SPO 1 Nepomuceno ordering him to arrest accused George de Leon who was by then having a drinking session with his friends about 200 meters from his house.^[11]

The buy-bust white crystalline substance^[12] and the confiscated white crystalline substance^[13] were sent to a forensic chemist for laboratory examination^[14] and were found to be the regulated drug^[15] known as shabu.

For their defense, accused George and herein appellant denied that an entrapment operation took place.

Defense witness Geoffrey Santos, a tricycle driver plying the Concepcion-Muzon route, testified that, between two and three o'clock in the afternoon of March 19, 1997, three men whom he discovered later were policemen boarded his tricycle and directed him to go to Kaunlaran Street with two other tricycles. The tricycles unloaded the passengers in front of the gate of the residence of the accused. They entered the gate then drew their firearms. He denied seeing any female who accompanied the policemen nor seeing a Tamaraw FX vehicle along the street.^[16]

Defense witnesses Helen Navarro and Vicente Martin, neighbors of the accused, corroborated the testimony of Santos. Martin added that he knew the persons who boarded the tricycles were police officers because he recognized Mañalac and Nepomuceno as police officers. He did not see Ronald Ticlao, any female companion or a Tamaraw FX vehicle purportedly used by the police officers.^[17]

Herein appellant Julliver de Leon narrated before the court that, in the afternoon of March 19, 1997, he and his wife were in his house when police officers Borda and Libuton suddenly entered. He woke up when a gun was poked at him. When he asked why the policemen were there, herein appellant was immediately handcuffed and brought to the sala. The police operatives searched his house but found nothing illegal. He saw Mañalac in a radio conversation with another person outside the house. He heard the person on the other end say, "Bok, positive nakuha na namin ang ama." Mañalac replied, "Kuha na rin ang anak." In turn, the person at the other end asked, "Bakit pa kinuha nyo yan. Sakit lang ng ulo iyan." Mañalac answered,

"Kasubuan na, marami ng tao dito." From his house, he was brought to the Pagamutang Bayan ng Malabon and thereafter to the Drugs Enforcement Group Headquarters of the Malabon Police Station.^[18]

Accused George de Leon testified on how the police operatives arrested him. At about the same time that the police operatives entered and searched appellant Julliver de Leon's house, George, since late morning of the same day, was having a drinking spree with his friends along Kaunlaran Street in front of a house of a certain Aguila 200 meters away from his own house and the house of the appellant. Police officers Benjamin Querubin, Cruz and Agustin arrived and told him that Captain Ona, whom he used to work for as a personal driver, was looking for him. When he replied that Captain Ona was attending a town fiesta in Batangas, they said that it was actually the Chief of Police who was looking for him. At first, he refused to go but went with them after they threatened him.

They brought him to the Barangay Hall of Muzon, Malabon, Metro Manila, then to the Pagamutang Bayan ng Malabon and later to the DEG headquarters where the two accused met each other. There, SPO1 Nepomuceno told George that they arrested Nora Boysillo, a courier of a known big-time drug pusher named Biyo Nuñez, also known as "Biyo Kalabaw." Being Nuñez' kumpadre, he was asked to reveal the whereabouts of Nuñez or at least to contact the latter by cellphone to determine where he was. He felt that acceding to Nepomuceno's request would endanger his family so he declined to divulge any information about Nuñez.^[19] As a result of his refusal to cooperate with his interrogators, he and his son were arrested and criminal charges were filed against them.

George alleged that he could not have transacted with Ticlao as he knew him to be a police aide when he was still the personal driver of Captain Ona. He said Ticlao and Boysillo testified against him due to his refusal to cooperate with the police concerning the whereabouts of Biyo Nuñez. At the headquarters, Ticlao and Boysillo asked him to cooperate with the police operatives but he refused.^[20]

Several weeks after the incident, on April 27, 1997, Ritzie de Leon, appellant Julliver de Leon's wife, filed separate complaint-affidavits before the Office of the City Prosecutor in Malabon against the raiding DEG police operatives for violation of domicile. However, the investigating prosecutor of the said complaint-affidavits, who happened to be the trial prosecutor of the subject criminal cases, dismissed the same.^[21]

On November 6, 1997, the trial court rendered a decision, the dispositive portion of which read:

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

a) In Criminal Case No. 17805-MN for Drug Pushing (Section 15, Art. III, R.A. 6425, as amended by R.A. 7659): acquitting both accused, George de Leon and Julliver de Leon, on the ground of reasonable doubt;

b) In Criminal Case No. 17806-MN for Illegal Possession of Shabu (Section 16, Art. III, R.A. 6425, as amended by R.A. 7659): acquitting accused George de Leon only on the ground of reasonable doubt. Accused Julliver de Leon is thereby found guilty beyond reasonable doubt

and is hereby sentenced to the prison term of Reclusion Perpetua and to pay a fine of P5,000,000.00.

Accused Julliver de Leon, being a detention prisoner, he shall be credited in full the period of detention he had already undergone in connection with these cases if he signed the written agreement allowing him to be treated while still a detention prisoner under the same rules governing prisoners already serving sentence by virtue of final judgments. Otherwise, he shall only be credited with 4/5 thereof.

The shabu subject matter of these cases are hereby forfeited in favor of the government.

SO ORDERED.^[22]

In acquitting George de Leon of illegal possession of regulated drugs and both George de Leon and appellant Julliver de Leon of illegal sale of regulated drugs, the trial court wrote:

The Court cannot help noting at once the fact that George was arrested in a place at least 200 meters away from where the police claimed he transacted with them for the sale of P10,000.00 worth of shabu (T.S.N. Oct. 1, 1997, page 10) and that when he was arrested he was actually in a drinking spree with several persons who claimed he never left the place since they started drinking up to the time of his arrest, with nothing having been found in his possession that will connect him to either possession of illegal drugs or to the claimed buy-bust transaction.

Also noted by the Court is the failure of the police to immediately pick him up and place him under arrest as soon as they have seen the signal from Ticlao that the buy-bust operation yielded positive results.

According to Ticlao, it did not take long for him, after George told them that Julliver will take care of everything, meaning, the delivery of shabu for which they gave George P10,000.00 to give the positive signal. Nepomuceno and the other police officers acting as back-ups for Ticlao and Boysillo allegedly saw the signal at once and they immediately pounced on Julliver. They did not, however, immediately place George under arrest.

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There also was no rebuttal testimony on the claim that George and Ticlao knew each other long before the incident, which would make the alleged sale of shabu to Ticlao improbable as George knew him already as a police aide

All the foregoing, taken together with the testimonials of several witnesses to the effect that George was all the while with them in a drinking spree when he was arrested, cast doubt, even as the Court is not prepared to pronounce that the evidence in this case was merely planted by the police, on the alleged participation of George in these cases.