

FIRST DIVISION

[G.R. No. 133225, July 26, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN CONCEPCION Y JACINTO, JIMMY ALMIRA Y BALDONADO, HAROLD CONCEPCION Y SIOCO, AND JOEY ALMODOVAR Y CAPUSO, ACCUSED-APPELLANTS.

DECISION

YNARES-SANTIAGO, J.:

For selling Methamphetamine Hydrochloride commonly known as *Shabu* to a poseur-buyer, Edwin Concepcion y Jacinto, Jimmy Almira y Baldonado, Harold Concepcion y Sioco and Joey Almodovar y Capuso were charged with Violation of Section 21 (b), Article IV in relation to Section 15 of R.A. No. 6425, as amended, otherwise known as the Dangerous Drugs Act, in an information^[1] which alleges -

That on or about March 22, 1996 at Brgy. Maytalang I, Municipality of Lumban, Province of Laguna and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, and mutually helping one another not being licensed or authorized by law, did then and there wilfully, unlawfully and feloniously transport and deliver to a NARCOM poseur-buyer Methamphetamine Hydrochloride (SHABU) weighing 574.56 grams contained in a self-sealed plastic bag, a regulated drug, in violation of the aforementioned law.

CONTRARY TO LAW.

Upon arraignment, all accused pleaded "Not Guilty" to the offense charged.^[2] The case thereafter proceeded to trial. After trial, the court *a quo* rendered judgment, the dispositive^[3] portion of which reads:

WHEREFORE, premises considered, the Court finds all the accused guilty beyond reasonable doubt of having committed the offense charged in the information (conspiracy in the delivery and transport of methamphetamine hydrochloride), and considering that the drug (shabu) involved is 574.56 grams, there being no mitigating or aggravating circumstances in the commission of the same, they are hereby sentenced to suffer the penalty of **reclusion perpetua** and to pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00) each without subsidiary imprisonment in case of insolvency, and to pay the costs.

The exhibit Methamphetamine Hydrochloride (shabu) is hereby forfeited and confiscated in favor of the government and the Officer in Charge of this Court or his duly authorized representative is hereby ordered to deliver the said exhibit, within ten (10) days from the date of the promulgation, to the Dangerous Drugs Board, Manila, for proper

disposition.

Considering that herein accused have undergone preventive imprisonment, being detention prisoners, and there being no evidence to show that they are recidivists, they shall be credited in the service of the sentence with the full time during which they have undergone preventive imprisonment, had they agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, they shall be credited only with four-fifths (4/5) of the time during which they have undergone preventive imprisonment, as provided for in Art. 29 of the Revised Penal Code, as amended.

SO ORDERED.

Dissatisfied, accused-appellants interposed this appeal alleging that -

I. THE TRIAL COURT ERRED IN NOT HOLDING THAT THE ACCUSED-APPELLANTS WERE MERE VICTIMS OF A POLICE FRAME-UP.

II. THE TRIAL COURT ERRED IN NOT ACQUITTING THE FOUR (4) ACCUSED.

The facts of the case as summed by the trial court are as follows:

During the trial, it was established that prior to March 22, 1996, and subsequent thereto, prosecution witnesses, Police Inspector Isagani Montalbo Latayan (Latayan for short) and SPO2 Marcelino Perez Male, (Male for brevity) are members of the Fourth Narcom Regional Field Unit, PNP Narcotics Command, with office at Camp Vicente Lim, Calamba, Laguna. Their main duty as Narcom agents is to conduct operations against violation of the Dangerous Drugs Act of 1972, as amended.

That for quite a time, their office was already receiving information from confidential informants, and lately from concerned citizens of Lumban, Laguna, about the rampant illegal drug activities at Barangay Maytalang I, Lumban, Laguna. Already fed up, on the first week of February 1996, Barangay Captain Alfredo F. Alcantara of Maytalang I, together with several Barangay Kagawad, and concerned citizens reported and requested the Narcom Office to conduct operation to go against those persons indulging in illegal trade. Thus, the Chief of Office, Police Superintendent Joseph Roxas Castro directed Latayan to form and head a team to conduct surveillance in the area to confirm the report. Consequently, Latayan directed Male to personally conduct the surveillance. After two (2) weeks, proper basis for the report was gathered, with the information that one alias Jimmy from Sta. Rosa, Laguna, as the person delivering the stuff. Thereafter, plan to arrest him and his group was prepared.

Male did the tedious and risky job. Luckily, he was able to penetrate the group by pretending to be a pusher and joining their happenings until he gained their trust. Come, March 20, 1996, at around 9:00 to 10:00 o'clock in the morning, he was introduced by his contact man (Andres Manambit alias Boy Manambit) to one of the sources of shabu in the

name of Jimmy at the latter's house at Barangay Aplaya, Sta. Rosa, Laguna. On the same occasion, a sale of shabu was perfected between the two, in the presence of Andres Manambit and a certain Joey, with Jimmy to deliver to Male one half (1/2) kilo of shabu at a price of P1,000.00/gram. Likewise, on that instance, Jimmy called up somebody through telephone telling the person at the end of the line that the deal was okay. They parted with the agreement that Jimmy will bring the stuff to Lumban, Laguna, together with his manager and that Male will prepare the money.

Report of the development was immediately made to Latayan who headed a team composed of Male, SPO1 Patag, SPO1 Guevarra and Yatco, to Barangay Maytalang I, Lumban, Laguna, at around 2:00 o'clock in the afternoon and waited together with some Barangay Officials, the arrival of accused/pushers at the place of a certain alias Daboy Manambit (Narcom's Agent/Informer), and the cousin of Andres Manambit. At around 1:00 o'clock in the morning of March 22, 1996, Jimmy arrived alone. Male and Jimmy talked to each other and the latter asked if the money is ready. Male responded in the affirmative to which Jimmy replied "If the money is ready, I will fetch my manager", and left the place. After about ten (10) minutes, a white Toyota car with Plate No. TSZ-227 arrived. Jimmy first alighted from the car followed by three (3) others, who introduced themselves by the name of Edwin, Harold and Joey. The two (Male and Jimmy) proceeded to the terrace of the house of Daboy followed by the three. Male asked Jimmy if the stuff was with him, and Jimmy answered by pointing to Edwin as their manager, and added that the order was with them. Male and Edwin greeted each other. Male asked Edwin if he can see the stuff, who answered "yes" then showed and gave Male one (1) blue clutch bag. Edwin even told Male to see if it is real. For their part, Joey and Harold also asked Male if the money is ready and he answered "yes". Male opened the clutch bag and saw the plastic bag containing shabu. Thereafter, as a pre-arranged signal to his colleagues, Male pulled out a handkerchief from his pocket and wiped his face. With signal he gave, the members of the arresting team approached them, and arrested the four (4) accused, and brought them to their headquarters at Calamba, Laguna.

Accordingly, the one half (1/2) kilo of shabu (Exhibit "L-2") handed to Male was submitted to the PNP Crime Laboratory, Regional Unit IV, Camp Vicente Lim, Calamba, Laguna, upon formal request dated March 23, 1996 (Exhibit "J") of Pol. Supt. Joseph Roxas Castro for laboratory examination, and Chemistry Report No. D-186-96 dated March 23, 1996 submitted by Forensic Chemist Mary Jane H. Geronimo, (Exhibit "A" also marked as Exhibit "K"), approved and noted by Pol. Supt. Rafael P. Roxas, Regional Chief, shows a findings (*sic*) that qualitative examination conducted on the specimen gave positive result to the test for the presence of methamphetamine hydrochloride (shabu), a regulated drug, which findings (*sic*) was testified to by the said Forensic Chemist. Be that as it may, Barangay Captain Alfredo F. Alcantara said, the shabu presented and submitted to the Court by the Forensic Chemist is not the same shabu taken from the accused during the arrest, the latter being fine in quality.

Likewise, urine samples were taken from the four (4) accused and were examined by the aforementioned forensic chemist to determine the presence of prohibited/regulated prescription drug, and per Chemistry Report Nos. DT-075-96 (Exhibit "D") and DT-076-96 (Exhibit "C") for accused Joey Almodovar y Capuno and Edwin Concepcion y Jacinto, respectively, both dated March 24, 1996, qualitative examination conducted gave positive result to the test for the presence of Methamphetamine Hydrochloride, a regulated drug. As far as the other accused are concerned, no result of examination was presented. Booking sheets, arrest reports, receipt of property seized, and finger printings (Exhibits "F" to "I-1") are also prepared and conducted of the four (4) accused for purposes of record.

The records further show that per order dated January 9, 1997, Male's testimony (as recalled witness) and that of Pol. Supt. Joseph Roxas Castro for the identification of the shabu were dispensed due to accused and counsel's admission of their would be testimony to the effect that the shabu Male and his group had confiscated from the accused is the same shabu examined by the Forensic Chemist and submitted to the Court (TSN January 9, 1997) which stipulation amounts to judicial admission under Rule 129, Section 4 of the Rules of Court. *People versus Cristina Hernandez (supra)*.

On the contrary, the accused are in unison when they testified that they were framed-up by the Narcom agents, thus, denying the charge against them. That on March 21, 1996, they went to the house of Mila Almira Flores (relative of accused Jimmy B. Almira) at Barangay Maytalang I, Lumban, Laguna, to request her to accompany them to buy barong tagalog. Arriving at the house of Mila at around 4:00 o'clock in the afternoon, they were informed by Mila that the storeowner was not around which prompted them to return home. However, while negotiating the national road at Barangay Maytalang I, at around 5:00 o'clock in the afternoon they chanced Boy Manambit who greeted them, so they stopped the vehicle. While still on board, military officers numbering around twenty (20) unexpectedly and suddenly arrived. Upon seeing the military officers, Boy Manambit ran toward his house but was chased and arrested by some of the militia men. Thereafter, they turned their ire on them and ordered them to alight from the vehicle with guns pointed at them. They were then brought to the house of Boy Manambit. Thereat, they saw Boy handcuffed. From the arresting officers, they heard that shabu was found at the house of Boy Manambit. After talking for about an hour with the arresting team, Boy Manambit's handcuffs was removed and he was released. Confused of what was happening, the military officers in turn handcuffed them and they were brought to the Barangay Captain for allegedly having in possession of shabu. As a natural reaction, they denied the accusation but the arresting team continued insisting that they were in possession of shabu. After that, in the early morning of March 22, 1996, they were brought to the Narcom office at Canlubang, Laguna, and were detained for about three (3) days. They were detained for more or less twenty (20) days before they were finally

brought to the Provincial Jail, Sta. Cruz, Laguna, which became their shelter to this day.

Accused-appellants insist that the trial court erred in convicting them of the crime charged because there were glaring circumstances which cast serious doubt on their culpability. They claim that they are merely victims of a police frame-up.

According to accused-appellants, the following "are glaring circumstances which cast serious doubts" as to their guilt:

- a.] While travelling along the national highway at Barangay Maytalang, Lumban, Laguna going towards the direction of Manila, the car on which the accused rode was flagged down by an unidentified man upon which when they stopped, police officers suddenly appeared and apprehended the unidentified man;
- b.] For reasons unknown to them, all four accused-appellants were also apprehended;
- c.] During the investigation conducted at the Barangay Hall of Maytalang, Lumban, Laguna, the unidentified man who flagged down the accused-appellants and who first arrested by the police mysteriously disappeared;
- d.] As a consequence, the accused-appellants were instead charged for a crime they did not commit;
- e.] The shabu specimens allegedly confiscated from the possession of the accused were the subject of substitution and this fact of substitution was admitted in open court by no less than the forensic chemist and confirmed by the Barangay Chairman of Maytalang, Lumban, Laguna; and
- f.] The fact of substitution was never explained by the prosecution, hence, the guilt of accused-appellants was not established beyond reasonable doubt.

We disagree.

The defense of frame-up or denial, like alibi, has invariably been viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.^[4] For such a defense to prosper, the evidence must be clear and convincing.^[5]

What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place coupled with the presentation in court of the *corpus delicti* as evidence.^[6] In this regard, in a prosecution for illegal possession of dangerous drugs, it must be shown that: 1.] the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; 2.] such possession is not authorized by law, and 3.] the accused freely and consciously possessed the said drug.^[7]