

## SECOND DIVISION

[ G.R. No. 139114, October 23, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMAN LACAP Y CAILLES, ACCUSED-APPELLANT.**

### D E C I S I O N

**MENDOZA, J.:**

This is an appeal from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 86, Quezon City, finding accused-appellant Roman Lacap y Cailles guilty of violation of Art. III, §15 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay a fine of P500,000.00.

The information against accused-appellant reads as follows:

That on or about the 7th day of April 1997 in Quezon City, Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully and unlawfully sell or offer for sale 1,798.90 grams of white crystalline substance known as "SHABU" containing methamphetamine hydrochloride, which is a regulated drug.

CONTRARY TO LAW.<sup>[2]</sup>

Upon arraignment, accused-appellant pleaded not guilty, whereupon trial ensued.

Thereafter, the prosecution presented evidence as follows:

Sometime during the first week of March 1997, the National Bureau of Investigation received a tip from an informant that a certain Eduardo "Ed" Contreras and his common-law wife Alice Esmenia were engaged in shabu trafficking at their residence in No. 21 Legal St., SSS Village, North Fairview, Quezon City.<sup>[3]</sup> After verifying the information, the NBI planned a buy-bust operation. The informant introduced to Contreras NBI Supervising Agent Jose Doloiras, whose assumed name was Ricky Baconawa, as a person who wanted to buy shabu in large quantity. Doloiras said he was a mere drug broker. Later, Doloiras and NBI Special Agent Carlos Borromeo III went back to the said address pretending to buy from Contreras and Esmenia one kilo of shabu. However, the purchase of shabu was not consummated despite several attempts because either the couple could not produce the agreed quantity of the drug or their supplier did not arrive.<sup>[4]</sup>

On April 4, 1997, Contreras introduced Doloiras to his half-sister, Mia Saludo, at the family residence of the latter at No. 14-KEW Garden St., St. Ignatius Village, Libis,

Quezon City and there they negotiated for the sale of two kilos of shabu. The deal likewise did not fall through because Saludo's supplier failed to arrive.<sup>[5]</sup>

On April 7, 1997, Doloiras contacted Contreras to find out if the two kilos of shabu were already available. Contreras answered in the affirmative and told Doloiras to proceed to No. 14-KEW Garden St., St. Ignatius Village, Libis, Quezon City.<sup>[6]</sup> Accordingly, Doloiras and the NBI Dangerous Drugs Division organized a buy-bust team which proceeded to the said place. Doloiras would act as the poseur-buyer, while Borrromeo III would act as his driver. He would give the pre-arranged signal to the other members of the team as soon as the shabu was shown to him. They would use "boodle" money consisting of cut newspapers placed in between fake P500.00 bills in several bundles of P50,000.00 each, arranged in a portfolio so as to make it appear that the money amounted to P1,600,000.00.<sup>[7]</sup>

The buy-bust team arrived at the target area at around 4:00 p.m. Doloiras met Contreras, Esmenia, and Saludo, while the members of the team positioned themselves strategically. After a while, Contreras instructed Doloiras to proceed to No. 111 Scout Rallos St., Quezon City as the seller of shabu, a certain Rene, would be waiting for them there. Doloiras informed the other operatives of the transfer of venue and the latter in turn went ahead to the appointed place. Doloiras and Borrromeo III boarded their car, while Contreras, Esmenia, and Saludo took a taxi to the said address.

They all arrived at the said place at around 5:00 p.m. The house was a big old bungalow with a steel gate and a high wall. Doloiras entered the premises with Contreras, Saludo, and Esmenia. Borrromeo III, with the bogus money in his possession, waited in the car parked outside the gate. The other members of the buy-bust team, on the other hand, inconspicuously positioned themselves nearby.

After several hours of waiting, Contreras told Doloiras and Borrromeo III that the seller of the shabu was not coming for another hour. Doloiras and Borrromeo III told Contreras that they would leave for a while and return later. When they left, Borrromeo III radioed the members of the team. They met at the Goodah Restaurant on West Avenue, Quezon City, where they again had a briefing on how the buy-bust operation would be conducted.<sup>[8]</sup>

After an hour or so, Doloiras returned to the house while the others went back to their respective positions. Contreras told Doloiras that the shabu supplier had finally arrived. Doloiras, Contreras, and Esmenia went inside the house. Doloiras and Contreras went inside a room, while Esmenia stayed behind. There Doloiras for the first time met accused-appellant. The two talked about the purchase of two kilos of shabu for P1,600,000.00. Doloiras told accused-appellant that the money was ready and it was in the possession of his driver. Accused-appellant wanted to see the money before giving the shabu, but Doloiras asked to be shown the drug first. They haggled about this matter for an hour and, as they could not agree, Doloiras came out of the room looking tense and annoyed.

Contreras followed him and tried to calm him down. He told Doloiras that he would convince accused-appellant to show him the shabu. Contreras assured accused-appellant that he had seen the money. Accused-appellant therefore showed the white crystalline substance contained in two plastic bags inside a brown carton box

placed on top of a safety vault. Recognizing that it was indeed shabu, Doloiras told accused-appellant and Contreras that he would get his money.<sup>[9]</sup> Doloiras went out to Borromeo III and took the "boodle" money contained in a black attaché case from the latter. Doloiras told Borromeo III, *"Okay na," i.e.,* he had already seen the shabu so that the buy-bust team should get ready to make the arrest. The signal was then given to the rest of the operatives.

Borromeo III drove the car towards the gate and asked the security guard to open it so that he could park it inside. The guard obliged. Then, taking advantage of the open gate, the NBI operatives, led by the back-up team of NBI Dangerous Drugs Division Chief Abdulgani Benito, Agents Migdonio Congzon, Jr., and Jose Justo Yap, and Special Investigators Carlos Borromeo III and Romeo Aradanas, Jr., entered the premises.<sup>[10]</sup>

Meanwhile, Doloiras handed the attaché case to accused-appellant. As accused-appellant was opening it, Doloiras announced the arrest.<sup>[11]</sup> Accused-appellant tried to lock the white crystalline substance inside the vault, but Doloiras prevented him from closing it.<sup>[12]</sup> Shortly afterwards, Aradanas, Jr., Yap, Congzon, Jr., and Borromeo III entered the room. After a while, Benito also entered. They found accused-appellant seated beside the vault with the attaché case. The vault was opened and Doloiras took out the box and handed it to Benito, who asked accused-appellant who his source of the drug was. Accused-appellant told him that the NBI could find the supplier in Pampanga. The NBI operatives also placed Contreras, Esmenia, and Saludo under arrest. Together with accused-appellant, they were taken to the NBI headquarters on Taft Avenue, Manila, where they were detained.

Shortly after, a Nissan Sentra, driven by accused-appellant's daughter, arrived at the house. The NBI agents inquired about the ownership of the car. Accused-appellant's daughter claimed that the car was hers. However, she failed to show documents of ownership, for which reason the NBI operatives took custody of the car until its rightful owner showed up.<sup>[13]</sup>

Doloiras took the two plastic bags containing the white crystalline substance, marked the same for identification, and affixed his signature thereon in the presence of Benito and Aradanas, Jr. Doloiras then turned the confiscated items over to Benito for safekeeping. Thereafter, the team proceeded to Pampanga, following accused-appellant's information, but they failed to find the supplier.<sup>[14]</sup>

On April 9, 1997, at around 9:30 a.m., Doloiras submitted the confiscated items to the NBI Forensic Chemistry Division for examination.<sup>[15]</sup> Forensic Chemist Aida Abear-Pascual took small samples from the specimen. The samples, weighing a total of about one gram, were subjected to chemical and chromatographic tests and were found to be positive for methamphetamine hydrochloride or shabu.<sup>[16]</sup>

The defense then presented its evidence. Accused-appellant, a former police officer with the rank of major, denied that there was any buy-bust operation conducted against him on April 7, 1997. He claimed that the NBI operatives raided the house at No. 111 Scout Rallos St., Quezon City without a search warrant. He denied having been involved in any illegal transaction, especially drug-pushing, and claimed that he was merely framed up by the operatives.

Accused-appellant claimed that on April 7, 1997, at around 8:00 p.m., he was in his house at No. 46 12th Avenue, Cubao, Quezon City. He left the house at about 8:30 p.m. and went to the Goldilocks Restaurant in Cubao to buy food for his 15-year old son, Roman Lacap III, who was then at the Kauffman residence at No. 111 Scout Rallos St., Quezon City. The Kauffmans were family friends. He first went to Project 6, Quezon City to have the signal lights of his car fixed and then proceeded to meet his son.

Upon arriving at the Kauffmans' house, accused-appellant said he noticed five persons, four females and one male, on the front porch. He recognized two of the women to be Rose Lou Kauffman and Mia Saludo. Accused-appellant went to look for his son to let him know that he had arrived, and then returned to the group on the porch. Rose Lou Kauffman introduced him to Ed Contreras, Alice Esmenia, and Ivonne, Mia's sister. After exchanging pleasantries, accused-appellant said he requested Rose Lou to follow him inside. Accused-appellant gave his son the food he bought for him and read the newspaper.

Accused-appellant said he then heard the doorbell ring and a commotion outside. He asked Rose Lou what was going on, but before she could get out of the room, armed men kicked the door open, followed by accused-appellant's daughter Ma. Chrysantine "Tin-Tin" Lacap and a male companion. The men ordered them, "*Dapa, dapa, pulis ito!*" ("On the floor, this is the police!") even as they identified themselves as NBI agents. Accused-appellant, his son, Rose Lou, Tin-Tin, and her companion all sat on the floor with their hands on the bed. Later on, accused-appellant's son was allowed to leave the room. The NBI agents informed them that there were drugs inside the house so they had to make a search. However, according to accused-appellant, Rose Lou objected to the search as the agents did not have a search warrant. But one of the men pointed a gun at her and said, "This is our search warrant" to which, according to accused-appellant, he said to the men, "*Walang ganyanan,*" ("You should not do that") and then told his daughter, "What is this, martial law?"

The men searched the house over the objections of the occupants. When they saw the vault, they asked accused-appellant and Rose Lou to open it. But accused-appellant said he did not know how to open the vault because Roger, a household help of the Kauffmans, was the one using it. When asked where Roger was, accused-appellant said he did not know. Some of the agents went out of the room and returned with a man. They asked accused-appellant if the man was Roger. Accused-appellant said that it was Ricky Kauffman, a son of the owner of the house. He told them to go easy on Ricky because he was sickly. The men then pushed Ricky aside and made him sit on a chair near the foot of the bed. One of the men told him, "*Buksan mo na, parang bale wala, aalis na kami.*" ("Just open the vault and we'll leave as if nothing happened.") Accused-appellant said he shook the vault and surprisingly it opened. He was then pushed aside and one of the men took out something wrapped with a brown masking tape. Accused-appellant claimed he did not know what the contents of the package were as the same was not opened in his presence.

Accused-appellant was then placed under arrest, handcuffed, and taken out of the room. Also arrested were the four people on the porch. An agent even wanted to bring along Tin-Tin and Rose Lou, but accused-appellant begged him not to since

they had nothing to do with the shabu. According to accused-appellant, as the NBI men did not have any vehicle, they asked for the keys of his daughter's car. His daughter Tin-Tin protested, but accused-appellant assured her that it would be all right so she gave him the car keys. Thereafter, accused-appellant and the other people arrested were taken to the NBI headquarters.<sup>[17]</sup>

Accused-appellant's daughter, Ma. Chrysantine Lacap, testified that on April 7, 1997, at around 8:00 p.m., she was also at their house in Cubao, Quezon City. Accused-appellant told her that he was going to check on her brother, Roman Lacap III, who was then staying at the residence of the Kauffmans. She told her father that she would follow him as she promised to bring her brother some clothes. Tin-Tin left their house at about 10:40 p.m., accompanied by her boyfriend, Salvador dela Peña, who drove her Nissan Sentra. When they reached the place, she rang the doorbell and asked the maid to let them in. However, as they were entering the compound, armed men barged inside the premises. The men, who turned out to be NBI agents, ordered them, "*Taas ang kamay! Dapa! Dapa!*" ("Raise your hands! To the floor!") Those on the porch did so. Some of the men went to the side of the car while the others proceeded to the front door. As the door was locked, one of the NBI agents kicked it but it did not open. The man broke the window pane with his gun and reached for the knob. The men then entered the house. Tin-Tin and her companion followed them.

The men went all over the house, kicking doors open and shooting up the place. The agents entered the room where her father, her brother, and Rose Lou Kauffman were. The men also ordered them to lie on the floor face down. They identified themselves as NBI agents and told them that they were looking for drugs. Accused-appellant and Rose Lou objected when they learned that the agents did not have a search warrant, but one of the men pointed a gun at her and told her that the gun was his search warrant. Tin-Tin shouted, "*Ano ba ito, martial law?*" ("What is this, martial law?") The NBI agents ignored her protests and searched the house.

When they saw the vault, they ordered accused-appellant and Rose Lou to open it. Accused-appellant told them that he could not do so because it was Roger who knew the vault's combination. The agents, therefore, went out of the room to look for Roger. They returned with a man, who turned out to be Ricky Kauffman, Rose Lou's brother. Accused-appellant asked the agents not to be harsh on Ricky because he was sick. One agent then pointed a gun at accused-appellant's forehead and said, "*Bubuksan mo ba ito o dadalhin namin kayo lahat?*" ("Are you going to open the vault or will we just arrest all of you?") The man added, "*Sige na, buksan mo na ito at aalis na kami.*" ("Go on, open it now and we'll leave.") According to Tin-Tin, at the sight of her father at gunpoint, she cried, embraced him, and said, "*Sige, patayin na ninyo kami!*" ("Just kill us all!")

Accused-appellant approached the vault and turned its knob counter-clockwise then clockwise. The vault opened and Tin-Tin saw a box wrapped in a brown envelope. An agent asked accused-appellant what was in the box. When accused-appellant replied he did not know, the NBI agents handcuffed him and dragged him out of the room. Tin-Tin tried to stop them, but to no avail.

Outside the house, Tin-Tin saw four persons prostrate on the ground with an armalite pointed at them. The NBI agents were going to take Tin-Tin with them, but accused-appellant begged them not to. They asked her for the keys to her car and,