

THIRD DIVISION

[G.R. No. 126391, May 19, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN K. C. KHOR, DEFENDANT-APPELLANT.

DECISION

GONZAGA-REYES, J.:

This is an appeal from the Decision^[1] rendered on September 16, 1996 by the Regional Trial Court of Manila, Branch 41 in Criminal Cases Nos. 96-150419 and 96-150420 finding accused-appellant Alan K. C. Khor guilty beyond reasonable doubt of violation of Presidential Decree No. 1866 for illegal possession of one (1) Sig-Sauer caliber .380 automatic pistol with one (1) magazine without the proper license therefor; and for violation of Section 16, Article III in relation to Section 2 (e-2), Article I of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by Batas Pambansa Bilang 179, for having in his possession ninety-five (95) kilos of methamphetamine hydrochloride known as "shabu".

Alan K.C. Khor, a Malaysian national, was charged in two (2) separate Informations by Assistant City Prosecutor Antonio S. Dimalanta before the Regional Trial Court of Manila, Branch 41, to wit:

CRIMINAL CASE NO. 96-150419

"That undersigned accuses ALAN K.C. KHOR of (a) (V)iolation of Presidential Decree 1866, committed as follows:

"That on or about June 7, 1996, in the City of Manila, Philippines, the said accused, a Malaysian national, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one SIG-SAUER Caliber .380 automatic pistol with one magazine without first having secured from the proper authorities the necessary license therefor."^[2]

CRIMINAL CASE NO. 96-150420

"The undersigned accuses ALAN K.C. KHOR of (a) violation of Section 16, Article III in relation to Section 2 (e-2) Article I of Republic Act No. 6425 as amended by Batas Pambansa Bilang 179, committed as follows:

"That on or about June 7, 1996, in the City of Manila, Philippines, the said accused, not having been authorized by law to use and/or possess any regulated drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control 95 kilos of

methamphetamine hydrochloride known as 'SHABU' separately placed in 95 pcs. of transparent plastic/cellophane bags at 1 kilo each, containing methamphetamine hydrochloride, a regulated drug, without the corresponding license or prescription thereof."^[3]

Upon arraignment, the accused, assisted by counsel, pleaded not guilty to both Informations.^[4]

Trial ensued. The prosecution presented the following witnesses: Police Inspector Cielito Coronel of the Police Assistance Reaction Against Crime (PARAC) of the Department of Interior and Local Government (DILG); Forensic Chemist Renee Eric Checa of the Western Police District; Police Senior Inspector Lucio Margallo IV of the PARAC, DILG; SPO3 Reynaldo Cristobal also of the PARAC, DILG; and SPO4 Rodrigo Escaño of the Firearms and Explosives Unit (FEU) of PNP, Camp Crame.

The defense, on the other hand, presented the following witnesses: 1) Olivia Torreras, a lady detective of the Manila Diamond Hotel; 2) Miguel Abe, a radio broadcaster of DZXL; 3) Elfren Meneses, Jr. from the National Bureau of Investigation (NBI); and 4) accused himself, Alan K.C. Khor, whose testimony was in the Chinese language and was interpreted in English by Andrew Teh, an official Chinese Interpreter from the Taipei Economic and Cultural Office in the Philippines.

After trial, the court *a quo* rendered judgment^[5] on September 16, 1996, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered:

1. In Crim. Case No. 96-150419, finding the accused guilty as charged and sentencing him to an indeterminate penalty of fourteen (14) years, eight (8) months and one (1) day to twenty (20) years of reclusion temporal as minimum and maximum, respectively; and
2. In Crim. Case No. 96-150420, finding the accused guilty as charged and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of Five Million Pesos (P5,000,000.00).

The Clerk of Court is hereby directed to deliver and/or cause the delivery of the subject firearm and ammunitions and 95 kilos of shabu and other seized evidence, which are hereby forfeited in favor of the Government, to the Firearms and Explosive Unit of Philippine National Police and Dangerous Drugs Board, respectively, for their safekeeping and proper disposition upon finality of the judgment in this case.

Let a copy of this decision be also furnished to the DILG and Chief, PNP for appropriate action on pertinent matters treated in this decision."

Hence, this appeal by accused-appellant.

In the Appellee's Brief^[6], the Office of the Solicitor General adopted the trial court's summation of the versions of the prosecution and the defense as follows:

"The gist of the testimonies of prosecution witnesses Cielito Coronel, Lucio Margallo and Reynaldo Cristobal, the police officers who

apprehended the accused, aside from their claim that the accused tried to bribe them to secure his immediate release, more or less, echoes their Affidavit of Arrest dated June 8, 1996 (Exh. `SSSS') which insofar as pertinent states as follows:

X X X X X X X X

AFFIDAVIT OF ARREST

WE THE UNDERSIGNED police officers, all bonafide members of the Western Police District Command, presently assigned with the PUBLIC ASSISTANCE AND REACTION AGAINST CRIME (PARAC), DILG, with office address at EDSA corner Reliance St., Mandaluyong City after having been sworn in accordance with law do hereby depose and say:

That we effected the arrest of a suspected druglord identified as ALAN K.C. KHOR, 51 yrs. old married, Malaysian citizen presently residing at room 2305 Manila Diamond Hotel, Roxas Blvd., Malate, Manila for violation of Section(s) 15 and 16 Article 3 of RA 6425 as amended (Illegal Distribution/Transport and Possession of Firearm/Ammunition), committed as follows:

That on or about 10:15 am 07 June 1996, at the front driveway of the Diamond Hotel located at Roxas Blvd., corner Quintos St., Malate, Manila, herein suspect ALAN K.C. KHOR, although not duly licensed nor authorized to do so, was actually caught en flagrante de lito, (sic) in the act of delivering/distributing/transporting TEN (10) KILOS of SHABU or METHAMPHETAMINE HYDROCHLORIDE, regulated drug as defined by RA 6425, placed inside a black travelling bag, which he tried to place inside the trunk compartment of the car driven by a police ASSET who pretended to buy the said drugs from him on a delay-payment basis. (p. 8, TSN, July 9, 1996) That when interrogated, suspect Alan Khor was also found in possession of a SIG-SAUER Caliber .380 Automatic Pistol tucked inside the right waistline of his pants but could not present pertinent papers covering the said firearm. (p. 9 & 15, TSN, ibid) When interrogated further, Alan Khor also pointed to an old model Toyota Corolla car without license plate which when opened with a key in his possession, yielded eighty-five (85) more transparent plastic bags all containing suspected Shabu approximately weighing one kilogram each bag, and placed inside five (5) apple carton boxes. (p. 17, TSN, ibid) When submitted to the WPDC Criminal Investigation Laboratory Division for examination, all evidences of suspected Shabu were found POSITIVE for the test of METHAMPHETAMINE HYDROCHLORIDE as certified to by Chemist Renee Eric Checa. (p. 21, TSN, ibid) Hence, the arrest.

On the other hand, accused Alan K.C. Khor admitted that the subject firearm was recovered from him at the time of the incident but contended that said firearm was covered by a license issued by the proper authorities and in support of his contention presented Exh. `J', a Certification dated July 23, 1996 that one Alan K.C. Khor of 1906 San Marcelino Street, Malate, Manila is a licensed/registered holder of subject firearm covered by a computerized license issued on February 15, 1996

with an expiration date of December 1996, and Exh. `2', a copy of the computerized license itself. (p. 14 & 17, TSN, August 12, 1996) The accused however denied the charge that he was in possession of the 95 kilos of shabu. (p. 34, TSN, ibid) He claimed that the black bag which contained the 10 kilos of shabu was possessed or held by a taxi driver called Nick. (p. 9, TSN, ibid). He further claimed that he does not own any Toyota Corolla red car and denied leading the policemen to the said Toyota corolla red car parked in the basement of the Diamond Hotel where the boxes containing the 85 kilos of shabu were allegedly found. (p. 34, TSN, ibid) (T)he accused likewise alleged that in the process of his arrest, while he was placed in the car on their way towards the Manila Hotel, the police officers took/got from him aside from the subject firearm about 1) P5,000.00 to P6,000.00, 2) US\$3,000.00, 3) his Khakia watch, and 4) his necklace. (p. 14, TSN, ibid) He added that thereafter in his hotel room, the police took/got from his dunhill bag and suitcase the amount of 1) US \$3,000.00 2) HONGKONG \$40,000.00, 3) JAPANESE YEN 500,000.00, 4) a diamond ring worth P320,000.00, 5) another diamond ring worth P60,000.00, 6) necklace with diamond worth P250,000.00, 7) two bracelets worth P30,000.00, 8) three dunhill lighters worth more than P60,000.00 9) three dunhill ballpens worth more than P30,000.00 10) one cellular phone, (11) camera worth P80,000.00 and 12) some family souvenirs which was priceless, his coat, pants, underwear, jacket and shoes. He further alleged that he gave the police arresting officers HK\$500,000.00 (Hongkong Dollars) or about 1.6 Million Pesos as partial payment of the P3 Million Pesos the police officers were asking from him. (p. 19, TSN, ibid)."

The accused raises the defense of denial. The appellant's brief^[7] narrates the version of the defense as follows:

"Appellant is a Malaysian citizen, engaged mainly in the business of selling jewelry. (TSN, p. 39, Aug. 12, 1996) At the time of his arrest, his business which had been in operation for eleven years had its principal station at Hongkong where all his business dealings were made, including the deliveries of pieces of jewelry and payments thereof. (TSN, p. 5, Aug. 13, 1996) As some of his clients were residents of the Philippines, he usually came to the country to collect payments, especially when he had encountered difficulty in the collection of payments. (TSN, p. 6, Aug. 13, 1996). By then, he had been doing business in the Philippines for almost four (4) years. While in the Philippines, he had stayed in hotels, particularly, at the Manila Diamond Hotel, Roxas Boulevard. (TSN, p. 40, Aug. 12, 1996).

On June 7, 1996, Friday, at 10:00 in the morning, appellant went out of his room at the Manila Diamond Hotel to look for a friend with whom he had an appointment. Upon reaching the lobby, he went directly to the reception counter to check whether he had any message. (TSN, pp. 8-9, Aug. 12, 1996)

As there had been no message for him, he headed for the main door to see his friend. As he turned around, he saw Nick, a taxi driver with whom he had traveled in his taxi several times in the past. Nick was carrying a

black bag. Nick greeted him but he did not respond and instead, preoccupied with the thought of his appointment with his friend, proceeded to the main door. While he was standing beside the paging table, outside the building, waiting for his friend, Nick approached him and asked whether he needed his taxi services. He declined his offer, and said 'No, I don't need.' (TSN, pp. 9 and 10 Aug. 12, 1996)

He was still standing beside the paging system when he saw Nick went to a vehicle parked outside of the hotel. Nick opened its compartment and placed the bag which was approximately three feet high and one foot wide. (TSN, pp. 10-11 Aug. 12, 1996) When Nick was about to place his bag into the compartment of the car, appellant saw a man, a Filipino, approached Nick and arrested him. Nick was pushed to the front seat of the car. To his surprise, another man, also a Filipino, approached him also, and with gun pointed to his side held the back part of his pants, pushed him into the car vehicle and seated him at the rear portion of the same car by two men. He resisted them but could not do anything as one of the two men had a gun. (TSN, p. 11-12 Aug. 12, 1996) At this point, a female employee of the Manila Diamond Hotel approached the car and talked with the man at his right side. Appellant, being a foreigner, did not understand their conversation, except when the man told the lady to leave. (TSN, p. 12, Aug. 12, 1996)

When the vehicle they were riding was moving, the two men, one sitting at his right, and the other on his left, took his wallet containing P5,000.00 or P6,000 and US \$3,000.00, his Khakia watch, his necklace with diamond and seven pendants. (TSN, p. 14, Aug. 12, 1996) The men spoke to him in Filipino, but while he could not understand the language, he sensed that the two men were asking for his permit to carry the gun which they had also taken from him. (TSN, p. 15 Aug. 12, 1996)

Later, the car was parked at the side of the Manila Hotel, Nick was transferred to another vehicle. On the other hand, appellant remained in the same car. The men threatened him if he would not be able to produce the documents showing his permit to carry the gun. Fearing for his safety, appellant requested that he be taken back to the Manila Diamond Hotel. (TSN, p. 15, Aug. 12, 1996) The men granted his request. Upon reaching the Manila Diamond Hotel, the two men were joined by six other persons and they went up to his room, Room 2305, together with the manager of the hotel. (TSN, p. 16, Aug. 12, 1996) There, the appellant opened his suitcase, got his permit or license of the gun and gave it to the person who took his gun while in the car. (TSN, p. 17, Aug. 12, 1996)

The two men searched his bags, a big Dunhill bag and a big suitcase. Not surprisingly as accused appellant was a businessman, his bags contained valuables which the two men took possession, such as US\$8,000, Hongkong \$40,000.00, Japanese yen 500,000.00, diamond ring worth P320,000.00, another diamond ring worth P60,000.00, a necklace, another necklace with diamond, worth P250,000.00, two bracelets worth P30,000.00, three (3) Dunhill lighters, the value of which is more than P60,000.00, three Dunhill ballpen worth more than P30,000, one cellular phone, one camera worth more than P80,000.00, gifts from his family,