

EN BANC

[G.R. No. 129676, June 23, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLOS BOCO Y ALEJO AND RONALDO INOCENTES Y CRUZ,
ACCUSED-APPELLANTS.**

D E C I S I O N

PANGANIBAN, J.:

The capital penalty is not automatically imposed upon illegal peddlers of dangerous drugs. The penalties under the latest amendments to the Dangerous Drugs Law, introduced by Republic Act 7659, range from *prision correccional* to death, depending on the quantity and the kind of the prohibited or regulated drug involved and on the attendant mitigating and aggravating circumstances. More specifically, the penalty is *reclusion perpetua* to death when the amount of *shabu* involved is 200 grams or more. Since the prosecution did not prove the presence of any aggravating circumstance in the present case, the trial court indubitably erred in sentencing the appellants to death.

The Case

Before the Regional Trial Court (RTC) of Pasig City, Branch 163,^[1] accused-appellants Carlos Boco and Ronaldo Inocentes were charged with violation of Section 21, Article IV of Republic Act No. 6425 (RA 6425), as amended, otherwise known as the Dangerous Drugs Law. The accusatory portion of the Information^[2] dated October 24, 1996, filed against them by 3rd Assistant Provincial Prosecutor Felicitas A. Asinas-Guevarra, reads as follows:

"That on or about [the] 22nd day of October, 1996 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring[,], confederating together and mutually helping one another, without having been authorized by law, did then and there willfully, unlawfully and feloniously attempt to deliver, distri[b]ute, transport or sell to another, white crystalline substance weighing 234.84 grams all contained in various heat-sealed transparent plastic bag[s] found positive to the test for [m]ethamphetamine hydrochloride locally known as 'shabu', a regulated d[ru]g."

During their arraignment on November 12, 1996, the accused-appellants, duly assisted by counsel, pleaded not guilty to the charge.^[3] After trial, the RTC promulgated its herein assailed Decision^[4] dated June 5, 1997, the dispositive portion of which states:

"WHEREFORE, premises considered, this Court finds accused Carlos Boco y Alejo @ Caloy and Ronaldo Inocentes @ Boyet Paa guilty beyond reasonable doubt as principals for violation of Section 21, Art. IV, R.A. 6425, as amended, and imposes upon them the supreme penalty of death and xxx a fine in the sum of P5,000,000.00.

"The 234.84 grams of shabu subject of the information in this case is hereby ordered forfeited in favor of the government and ordered turned over to the Dangerous Dru[gs] Board c/o NBI Manila, for disposal as provided by law."

The Facts

Version of the Prosecution

Based on the evidence proffered by the prosecution, the trial court summarized the factual antecedents of the case as follows:^[5]

"About 2:00 o'clock in the morning on 22 October 1996, a confidential informer arrived in the District Anti-Narcotic Unit, Eastern Police District (DANU-EPD), Camp Miguel Ver, Capitol Compound, Pasig City and talked with Capt. Rodrigo Bonifacio [who, in turn,] tol[d] SPO1 Emmanuel Magallanes that the informer [would] come back and if the suspect [was] available, he [would] act as poseur-buyer. When the confidential informer returned and informed Capt. Bonifacio that the suspect [was] available, Capt. Bonifacio formed a team to effect a buy-bust operation. The team left their headquarters about 3:15 a.m. on 22 October 1996 and arrived at the target area about 3:45 a.m. on the same date. Upon arrival in the place, SPO1 Magallanes with the confidential informer proceeded to the pre-arranged meeting place located at Martinez St., corner Gen. Kalentong St., Brgy. Vergara, Mandaluyong City. The rest of the team members placed themselves in strategic places in the area, while SPO1 Magallanes and the confidential informer stood-by in the designated meeting place. Soon thereafter, a Mitsubishi Lancer car arrived and stopped at where SPO1 Magallanes and the confidential informer were standing by. On board the car were two (2) men, the driver and a passenger. When the confidential informer recognized @ Caloy, the man seated in th[e] passenger seat [o]f t[h]e Mitsubishi Lancer, he introduced SPO1 Magallanes to him telling @ Caloy that he would be a potential regular customer. After a short conversation, SPO1 Magallanes asked @ Caloy if he ha[d] the shabu which was previously ordered. Alias Caloy told SPO1 Magallanes that he ha[d] the shabu and it [would] cost him P20,000.00. SPO1 Magallanes then showed @ Caloy his P20,000.00, but before giving it, he asked [if he could] examine first the shabu. Alias Caloy then asked his companion, @ Boyet Paa, to get the shabu. Boyet Paa then got one (1) piece of heat sealed plastic from the glove compartment of the car and handed it to @ Caloy who in turn handed it over to SPO1 Magallanes who examined it and found that it contained crystalline substance suspected to be shabu. SPO1 Magallanes then made the pre-arranged signal to his back-up who rushed to where he was and after introducing themselves as policemen, arrested the suspects. SPO1 Magallanes then frisked @ Caloy and found five (5) pcs. of heat sealed

plastic bags neatly taped around his right leg weighing about 210 grams. SPO1 P[o]ngyan who frisked 'Boyot Paa found from his right front pocket one (1) piece of heat sealed plastic containing crystalline substance weighing about 5 grams. The suspects then were informed of the offense they ha[d] committed and their constitutional rights. They were also identified as Carlos Boco y Alejo @ Caloy and Ronaldo Inocentes y Cruz @ Boyet Paa. Thereafter, they were brought to the police headquarters together with the confiscated items. At the headquarters, the suspects were turned over to the police investigator and the suspected shabu forwarded to the PNP Crime Laboratory at Camp Crame for examination and P/Insp. Isidro Cariño to whom the required examination was assigned, found the same positive for Methamphetamine Hydrochloride (shabu), a regulated drug (Exhibit 'C')."

Version of the Defense

On the other hand, the defense presented the following version of the facts:^[6]

"On 21 October 1996 before midnight, Carlos Boco, Jr. and Ronaldo Inocentes went to 246 La Torre St., Sta. Ana, Manila to pic[k]-up the former's live-in partner. They stayed in the place for about three (3) hours. When they boarded their car and [was] about to leave, men approached them with the[i]r guns drawn, ordered them [t]o alight from their car and to board a van to bring them to the Eastern Police District. Francis Labutap corroborated Boco on this point. Before proceeding to said Eastern Police District, they passed by the 7-11 Restaurant at New Panaderos, Mandaluyong City. They stopped there for about half an hour. While in the place, the driver of the van took from Boco his jewelries consisting of three (3) rings, one (1) necklace, one (1) bracelet and his wrist watch plus 10,000.00 Yen, \$100.00 and P18,500.00. Thereafter, Capt. Bonifacio arrived in the place [and] told them xxx '[Y]ari kayo', shabu was found on board your car. Boco told Capt. Bonifacio that they d[id] not have any drug. Thereafter, they were brought to the Eastern Police District and about 2:00 p.m. that day, they were required to fac[e] press people and there, they denied the charges agai[n]st them. About 7:00 p.m. that [s]ame day, they were transferred to the City Jail of Mandaluyong City."

Ruling of the Trial Court

In giving more credit to the prosecution evidence than the defense, the trial court reasoned:^[7]

"As between a denial and an alibi [of the accused] and the positive testimonies of the prosecution witnesses, the latter has more weight than the former xxx. Moreover, police officers are entitled to the presumption that they have performed their official duties. Their testimony is entitled to great respect xxx.

In arriving at its conclusion that there was a consummated unauthorized sale of the regulated drug methamphetamine hydrochloride, the court *a quo* explained:^[8]

"In buy-bust operations involving drugs, the delivery of the buy-bust money to the seller is not a prerequisite. The fact that the money was shown to the pusher and the poseur-buyer asked that he be shown the drug before he [would deliver] the money and said drug was handed to said poseur-buyer, that circumstance is enough for the police to apprehend the accused. Sale transaction of drugs under such circumstances is already perfected. After all, [a] contract of sale is perfected upon [the] meeting of the minds of the parties as to the object and the price thereof (Art. 1475, New Civil Code). Therefore, the arrest of the accused is legal, accused having been caught in flagrante delicto pushing prohibited drugs xxx. Hence, the search subsequent to accused's arrest is also legal (Sec. 12, Rule 126, Rules of Court; xxx).

The trial court also concluded from the acts of both accused-appellants that conspiracy existed between them. "Inocentes was the driver of the car they were using at the time. When asked by SPO1 Magallanes to allow him to examine the shabu before giving the money, Boco asked Inocentes to get the shabu and the latter got one heat[-]sealed plastic sachet from the glove compartment of the car and handed it to Boco who in turn handed it to SPO1 Magallanes. Such acts, "the court ruled, "clearly constitute conspiracy."^[9]

Finally, addressing the variance between the offense (attempted sale or delivery) for which the accused were charged on the one hand and, on the other, the evidence (of consummated sale) presented by the prosecution during the trial, the lower court said:^[10]

"The evidence shows that a perfected contract of sale [o]f shabu has been entered into between Carlos Boco @ Caloy and SPO1 Emmanuel Magallanes although SPO1 Magallanes did not deliver the money but instead confiscated the entire shabu in the possession of accused. Although the evidence shows a perfected buy-bust operation, the investigating prosecutor played safe. Instead of filing [for] violation of Section 15, Article IV of RA 6425, as amended, he chose to file the information under Section 21 of the same law. That, nevertheless, did not affect the liability of the accused because if the evidence is sufficient to support conviction of a consummated offense under Section 15, Article IV of RA 6425, as amended, there is no reason why the same evidence cannot support conviction for an attempted offense under Section 21 of the same law. Besides, violation of Section[s] 15 and 21 of the law provides the same penalty."

Issues

In his Appeal Brief^[11] filed by his own counsel,^[12] Carlos Boco assigns the following alleged errors in the RTC Decision:

"1. The lower court erred in holding that the prosecution has established the guilt of the accused beyond reasonable doubt.

a. The lower court erred in holding that what transpired in the arrest of the accused was a buy-bust operation and not a frame-up.

b. The lower court erred in not considering the buy-bust operation, assuming that it did occur[,], as a case of instigation and not [of] a valid entrapment.

2. Assuming that the testimonies of the prosecution were true, the court erred in convicting the accused for conspiracy in committing illegal sale of seven (7) packs of shabu weighing 234.84 grams when only one pack containing about 20 grams appeared to be the object of the sale and the rest having been merely found in the possession of the accused when they were subjected to body search."

In his separate Brief^[13] filed by his counsel *de parte*,^[14] Ronaldo Inocentes makes the following assignment of errors:

"I.

"THAT THE TRIAL COURT ERRED IN xxx CONCLUDING [THE] EXISTENCE OF CONSPIRACY ON THE BASIS OF INCONCLUSIVE, UNCLEAR, UNSUBSTANTIATED AND UNCORROBORATED FACT AND EVIDENCE OF THE MERE PRESENCE OF ACCUSED-APPELLANT INOCENTES AT THE PLACE OF THE INCIDENT WHICH WAS EXPLAINED AND UNREBUTTED, WHERE THE SPECIFIC TARGET WAS BOCO WHERE [THE] ACTUAL FACT AND EVIDENCE SHOW NO CLEAR OR PARTICIPATORY ACT OF INOCENTES OF A CONSCIOUS DESIGN TO COMMIT AN OFFENSE SAVE THE LONE UNSUPPORTED TESTIMONY OF SPO1 MAGALLANES ABSOLVING INOCENTES TESTIFYING THAT INOCENTES WAS SIMPLY SEATED AT THE DRIVER'S SEAT AND THAT IT WAS BOCO WHO TOOK THE SHABU FROM THE COMPARTMENT OF THE CAR HIMSELF.

II.

"THAT THE TRIAL COURT ERRED GRIEVOUSLY IN RENDERING AND PROMULGATING A DECISION CONVICTING ACCUSED-APPELLANTS BOCO AND INOCENTES FOR THE ALLEGED SALE AND DELIVERY OF SHABU IN AN INFORMATION CHARGING AND DESCRIBING THE OFFENSE BEING PROSECUTED AS 'WILLFULLY, UNLAWFULLY, AND FELONIOUSLY [AN] ATTEMPT TO DELIVER, DISTRIBUTE TRANSPORT OR SELL TO ANOTHER, WHITE CRYSTALLINE SUBSTANCE' AND THEREFORE A VERY CLEAR VARIANCE EXISTED BETWEEN THE CRIME CHARGED AND THE EVIDENCE PRESENTED RESULTING IN THE PROMULGATION OF AN ERRONEOUS DECISION.

III.

"THAT THE TRIAL COURT ERRED IN HOLDING AND CONVICTING ACCUSED-APPELLANTS ON MERE INFERENCES AND ASSUMPTIONS OF COMPLETE SALE OR TRANSACTION WHERE EVEN THE EXISTENCE OF THE SHABU AND THE ALL IMPORTANT BUY-BUST MONEY IS DOUBTFUL CONSIDERING THAT IN OUR JURISDICTION, NOT ONLY EACH AND EVERY ASPECT AND FACT CLAIMED AS EVIDENCE OF THE COMMISSION OF A CRIME MUST BE PROVEN BY VERY CLEAR AND CONVINCING EVIDENCE, THE EVIDENCE OF GUILT MUST BE PROVEN BEYOND